

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-D-25-DB of 2004
Date of Decision: 01.08.2017

Jagtar Singh @ Partap Singh @ Tabbu & another

... Appellants

Versus

State of Punjab

... Respondent

CORAM:- HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. H.S. Bhullar, Advocate,
for the appellants and
Mr. Arun Kumar Bakshi, Advocate,
as Legal Aid Counsel, for the appellants.

Mr. Sandeep Vermani, Addl.A.G., Punjab.

MAHABIR SINGH SINDHU, J.

1. The two appellants, namely, Jagtar Singh @ Partap Singh @ Tabbu and Hoshiar Singh have filed the present appeal against the impugned judgment of conviction and order of sentence dated 22.10.2013, vide which they have been convicted under Sections 302/325/323/34 of the Indian Penal Code (for short 'IPC') for committing murder of Balbir Kaur, W/o Pritam Singh as well as for causing injuries to Pritam Singh and sentenced as follows:-

- i) Jagtar Singh @ Partap Singh @ Tabbu under Section 302 IPC and Hoshiar Singh under Section 302/34 IPC to undergo life imprisonment and to pay a fine of ₹2000/- each and in default of payment of fine, to further undergo rigorous imprisonment for two months;

- ii) Jagtar Singh @ Partap Singh @ Tabbu under Section 325 IPC and Hoshiar Singh under Section 325/34 IPC to undergo rigorous imprisonment for one year and to pay a fine of ₹500/- each and in default of payment of fine, to further undergo rigorous imprisonment for one month;
- iii) Hoshiar Singh under Section 323 IPC and Jagtar Singh @ Partap Singh @ Tabbu under Section 323/34 IPC to undergo rigorous imprisonment for six months each.

All the sentences were ordered to run concurrently.

2. In brief, the prosecution case is that an FIR No.78, dated 13.10.2001 was registered under Sections 323/325/34 IPC at Police Station Harike, Distt. Tarn Taran on the basis of a statement (Ex.PR) dated 13.10.2001 made by complainant-Pritam Singh which is as under:-

“ Statement of Pritam Singh son of Narain Singh, Caste Jat, resident of village Booh Havelian, aged 65/66 years.

Stated that I am resident of village Booh Havelian and a cultivator by profession. I have two sons, one of them is in job while the other helping me in cultivating the land. After selling my ancestral land in village Issa Khera, Police station Malout, I have purchased land here and constructed the house in the same. In order to reach my land from the official passage, I have left a passage from my land holding. On

12.10.2001 at about 2.00 p.m., when I alongwith my wife Balbir Kaur was sitting in the shade of Jamun tree in order to guard Guava fruits, Hoshier Singh son of Banta Singh armed with a dang, Partap Singh @ Tabbu son of Banta Singh also armed with a dang, both residents of village Booh Havelian and their maternal cousin whose name I do not know armed with a small sized gandali, who were riding a tractor make HMT 5911, were proceeding towards their house after cultivating their land. They tried to pass their tractor through the passage left by me. I tried to stop them from passing their tractor. Upon this, Partap Singh @ Tabbu raised a *lalkara* that they would teach us a lesson for stopping their tractor and they would finish the matter for ever. After stopping their tractor, they came down and simultaneously Hoshier Singh gave a dang blow hitting me on the frontal portion of my right lower leg. As a result, I fell down at the spot. Thereafter, Partap Singh @ Tabbu gave a dang blow to my wife Balbir Kaur, which landed on her head. She became unconscious and fell down. Their maternal cousin gave two blows with the weapon carried by him which hit on the left side of the head behind the ear. Partap Singh @

Tabbu also gave a dang blow thrust wise on my lower lip. As a result, one of my lower teeth was broken. I raised an alarm which attracted my son Rajwinder Singh and my daughter-in-law, who came running from the house and reached the spot. They also saw the incident with their own eyes. The aforesaid accused after causing injuries and leaving their tractor at the spot ran away while carrying their respective weapons. The cause of occurrence was that previously on one or two occasions, there had been a quarrel with them on the issue of cutting of the watt (ridge) of the land. On account of the same, they while sharing common intention have caused injuries to us. After arranging for a conveyance, my son Rajwinder Singh brought me and my wife to Amritsar and got us admitted for treatment. I am the complainant. Action be taken.”

3. Dr. Gurmanjit Rai, who conducted medico legal examination of Pritam Singh on 13.10.2001 at 11.00 AM, had found the following five injuries on his person:-

- “1. 3 x 0.2 cm lacerated wound on left side of head vertically placed on the mastoid process, margins found red and swollen. Clotted blood was present.
2. 2.5 x 2 cm reddish blue bruise on left side of head just below mastoid process.

3. *Reddish blue bruise on mucosa of lower lip on left side 2 cm from angle, canine tooth was missing. Root of tooth is intact in the socket.*
4. *0.2 x 0.1 cm reddish brown abrasion on outer aspect of lower lip 3 cm from angle of mouth on left side.*
5. *3 x 1.5 irregular lacerated wound was present on front of right leg, 15 cm below tibial tuberosity, underlying bone found fractured. Clotted blood was present. Margins of wound were found red and swollen.”*

It was opined by Dr. Gurmanjit Rai that the injures were caused by blunt weapons and injuries No.1 to 5 were subjected to X-Ray examination and injury No.1 was also subjected to surgeon's progress report. Injuries No.3 and 4 were subjected to Dental Surgeon's opinion. Probable duration of injuries was about 12 to 24 hours. Injury No.3 and 5 were declared as grievous in nature and injury No.1, 2 and 4 as simple in nature.

4. Initially, on the basis of MLR, FIR No.78 dated 12.10.2001 (Ex.PR/2) was registered for the offences under Sections 325/323/34 IPC.

5. Balbir Kaur died on 15.10.2001 and accordingly, Section 302 IPC was added in the aforementioned FIR. All the accused were arrested on 26.10.2001. Inquest proceedings were conducted.

6. During investigation, Hoshiar Singh accused suffered disclosure statement to the effect that he had kept concealed a 'dang' in paddy crop in the area of Village Booh Havelian and can recover the

same. Jagtar Singh @ Partap Singh @ Tabbu also made a disclosure statement that he kept concealed 'dang' in the heap of paddy straw near his Haveli and can get recovered the same. Jasbir Singh accused on interrogation also made disclosure statement that he had kept concealed 'Gandasi' under the heap of rubbish belonging to his mother's sister's husband (masar) and he offered to get that recovered. Thereafter, they got recovered weapons of offence from the places disclosed by them. After the completion of the investigation, police submitted its report under Section 173 Cr.P.C. against all three accused.

7. Jagtar Singh @ Partap Singh @ Tabbu was charge-sheeted under Sections 302, 325 & 323/34 IPC and other two accused were charge-sheeted under Sections 302/34, 325/34, 323 IPC, but they pleaded not guilty and claimed trial.

8. The prosecution examined as many as sixteen(16) witnesses and produced documents on record in support of their case. On the other hand, accused examined DW-1 Dr. Sukhwinder Singh Sandhu in their defence.

9. Learned trial Court after taking into consideration the material available on record, found the present appellants guilty and acquitted Jasbir Singh of the charges.

10. PW12 Dr.Neeraj Bansal has stated that on 13.10.2001, he had examined Pritam Singh and declared him fit to make statement vide his report Ex.PT/1.

11. PW-3 Dr.Varinder Saini has stated that on 13.10.2001 ASI Baldev Singh moved an application seeking fitness of Balbir Kaur, but

on examination, Balbir Kaur was declared not fit to make a statement vide his report Ex.PK/1.

12. PW-4 Dr.Navpreet Kaur deposed that on 15.10.2001, Balbir Kaur was declared unfit to make statement by her vide endorsement Ex.PK/2.

13. PW-5 Dr.Ajit Singh Randhawa has stated that Balbir Kaur was admitted in hospital in the night intervening on 12/13.10.2001 at 1.00 AM and she expired on 15.10.2001 at 3.30 PM and her bed head ticket is Ex.PL. This witness has also stated that patient was carrying CT scan report of the brain which showed a clot on the right side of the brain which most likely was caused due to the rupture of blood vessel in the brain and the patient died directly as a result of this brain haemorrhage.

14. PW2 Dr. Gurmanjit Rai conducted the post-mortem examination on the dead body of Balbir Kaur on 16.10.2001 and found the following injuries:-

“1. A diffuse swelling present on right side of fronto temporo parietal region of head with bluish black bruise in its middle in an area of 10 x 8.5 cm.

On Dissection of Skull

Extracranial haematoma present on right side of head and Intra cerebral haematoma present which is extending into ventricles on right side of brain in temporal-frontal lobes. About 200 cc clotted blood present at base of brain which is dark reddish brown in colour. Brain found congested.”

PW2 opined that the injury on head was antemortem in nature. It was further opined that the cause of death was compression of brain (vital organ) as a result of injury No.1 on head which is sufficient to cause death in the ordinary course of nature. Copy of the PMR is Ex.PG.

15. Daler Singh PW-7, who is Revenue Patwari, has prepared the site plan (Ex.PN) of the place of occurrence at the instance of Kulwant Kaur.

16. Pritam Singh injured-complainant (PW-10) has unfolded the detailed version of the case and his son Rajwinder Singh PW-11 has also supported his version. PW-10 Pritam Singh has given his version that he has two sons, one was employed in Police Department at Moga and other is cultivating the field and they constructed a residential house in the farm house after selling the land at Malaut. They left the passage from their land. About one year back at about 2.00 PM, when he along with his wife Balbir Kaur was guarding the plants, convict-appellant Hoshiar Singh son of Banta Singh armed with Gandali, convict-appellant Jagtar Singh @ Partap Singh @ Tabbu son of Banta Singh armed with dang and their mother's, sister's son Jasbir Singh, whose name was previously not known, armed with Gandali came on their tractor in the passage after ploughing the land. He has further stated that he requested them not to take their tractor from his passage. Tabbu accused raised a lalkara that they will teach a lesson for all times to come and all the accused came down from the tractor. Hoshiar Singh gave dang blow which hit on backside of his right leg. He fell down on the ground. Tabbu gave dang blow which hit the head of his wife Balbir Kaur who fell down unconscious on the ground.

Jasbir accused gave Gandali blow which hit on the left side of his head near ear. Partap Singh @ Tabbu gave a dang blow thrust wise which hit his mouth and teeth had broken. He raised a noise which attracted his son and his daughter-in-law Kulwant Kaur, who came there. Accused left the tractor and ran away with their respective weapons. He has also stated that there was a dispute with the accused party regarding boundaries of land and due to that they inflicted injuries. His son Rajwinder Singh took them to the G.N.D. Hospital and he remained admitted there. His wife Balbir Kaur was removed from G.N.D Hospital, Amritsar as her condition was serious and she was shifted to Randhawa Hospital, where she succumbed to the injuries. He identified all the accused. His son Rajwinder Singh PW-11 supported his version.

17. ASI Baldev Singh PW-15 has deposed that he was posted in Police Station Harike and on 13.10.2001 one MLR of Pritam Singh was received and he visited SGTB Hospital, Amritsar and moved application Ex.PT for seeking opinion regard the fitness of Pritam Singh to make statement which was recorded and read over to injured Pritam Singh who signed on the same in token of its correctness and his statement is Ex.PR. The spot was inspected and HMT Tractor was found at the place of occurrence which was taken into possession vide memo Ex.PCC.

18. PW-16 Inspector Joginder Singh investigated the case and he arrested all the accused on 26.10.2001. On 28.10.2001, he interrogated accused Hoshiar Singh in presence of SI Darbara Lal and Constable Lakhwinder Singh who suffered disclosure statement regarding one dang. Ex.PU is the disclosure statement and recovery

memo is Ex.PU/1. In this case, the place of occurrence is clearly proved to be in the field of Pritam Singh situated in Khasra No.10/30 and the tractor of accused party was also found abandoned there.

19. Statement of the accused under Section 313 Cr.P.C was recorded and they denied the circumstances put to them. Jagtar Singh filed written statement that he alone was working in the fields on 12.10.2001 when Pritam Singh came there having gandasi and he being a very hot tempered person started abusing him and caused injuries to him with sharp and reverse side of gandasi. He was having kassi at that time and when he tried to ward-off the blows causing injuries to Satnam Singh (sic), in the meanwhile, deceased came in front of Satnam Singh, who gave her (Balbir Kaur) a push and she fell down. He did not assault her. Other accused did not file any written statement.

20. The accused examined Dr. Sukhwinder Singh Sandhu, DW-1 and he has stated that Jagtar Singh was medico-legally examined by him on 12.01.2001 at 6.20 P.M. and found the following injuries:-

“1. An incised wound 4.x1 cm slightly oblique in direction on front of left leg, 12 cm below knee joint. Wound was bone deep and fresh bleeding was present. X-ray was advised.

2. A lacerated wound 1.5x1 cm on front and lateral side of right leg about 12 cm below knee joint. Wound was muscle deep, fresh bleeding was present.

Injury No.1 was subjected to X-Ray examination and No.2 was simple. Probable

duration was within 6 hours. Kind of weapon used for injury No.1 sharp edged and blunt for No.2.”

Injury No.1 was subjected to X-ray examination. On receipt of the X-ray report, this injury was declared grievous. Photocopy of the MLR is Ex.DB.

21. As per the allegations of the prosecution, Pritam Singh had left a passage from his field and the accused wanted to use this passage; but when he objected they caused injuries to him and his wife Balbir Kaur on 12.10.2001. The passage is shown in the Aks-Sajra(Ex.PN), which is in the field of Pritam Singh and the rough site plan of the place of occurrence prepared by ASI Baldev Singh (Ex.PDD) clearly prove that tractor of the accused was also found at the place of occurrence and was taken into possession. Dr. Gurmanjit Rai (PW-2), who conducted post-mortem of deceased Balbir Kaur, clearly deposed that he had found a diffused swelling present on right side of fronto temporo parietal region of head with bluish black bruise in its middle in an area of 10x8.5 cm. and on dissection of skull extracranial haematoma present on right side of intra cerebral haematoma present which is extending into ventricles on right side of brain in temporal-frontal lobes. About 200 cc clotted blood was present at base of brain which is dark reddish brown in colour. Brain was found congested. This witness has clearly stated that cause of death was compression of brain as a result of injury on head which is sufficient to cause death in the ordinary course of nature. Therefore, the statement of this witness clearly proves that injury was found to have been suffered by Balbir Kaur on right side of fronto temporo parietal

region of head and there was diffused swelling. In the written statement of Jagtar Singh, name of Satnam Singh is mentioned, which is not correct and this fact was specifically noted by learned trial Court in para 9 of the judgment and further in the written statement it has been mentioned that the dispute was over dismantling of the wall, but the occurrence has taken place in the field and there is no wall and the dispute was of common boundary line. Thus, it seems that very casual approach was adopted while preparing the written statement of Jagtar Singh and this fact is clearly noted by learned trial Court as well.

22. The examination of Dr. Sukhwinder Singh Sandhu (DW-1) by the appellants is relevant in this case, who has stated that he conducted medico legal examination of Jagtar Singh on 12.10.2001 at about 6.30 PM and found an incised wound on front of left leg and a lacerated wound on front and lateral side of right leg, which were of the duration of six hours. Further, injury No.1 was of sharp edged weapon and on the basis of X-Ray report it was declared grievous and this injury was caused by Pritam Singh, but there is no explanation by the prosecution.

23. As per Aksh-Sajra (Ex.PN) prepared by the Revenue Patwari, the behak of Pritam Singh is at the distance of 1-2 killas from the place of the occurrence and as such Rajwinder Singh PW-11 could easily see the accused causing injuries to his father Pritam Singh and mother Balbir Kaur. The recovery of tractor belonging to the accused-appellants from the place of occurrence is very relevant and the same has not been disputed by them. This fact clearly strengthens the case

of the prosecution to the effect that the accused wanted to use the passage forcibly which was objected to by Pritam Singh and that resulted into a fight between them and convicts-appellants caused injuries to Pritam Singh and his wife-Balbir Kaur. The written statement filed by Jagtar Singh under Section 313 Cr.P.C also lends credence wherein he has stated that he attacked injured Pritam Singh and his wife in self defence. The motive in this case is previous enmity between both sides on account of using the private passage left by Pritam Singh in his field. The medical evidence regarding injuries is fully corroborated by the statement of injured Pritam Singh (PW-10) and his son Rajwinder Singh (PW-11). As per opinion (Ex.PY) of Dr. Gurmanjit Rai (PW-2) injury on head of deceased is antemortem in nature. Cause of death was compression of brain (vital organ) as a result of injury on head which is sufficient to cause death in the ordinary course of nature.

24. As per the site plan (Ex.PN), the occurrence had place in Killa No.10, Khasra No.30 and Mark 'A' is the place where injuries were inflicted and Mark 'B' is the place where tractor was stopped and this field too was purchased by Karambir Singh son of Gurwinder Singh son of Pritam Singh and Ramandeep Singh son of Davinder Singh son of Pritam Singh. Possession of Khasra No.30/11 has been recorded to be of Darshan Singh, Gurmej Singh son of Buta Singh and Banta Singh, Surat Singh, Sucha Singh son of Darshan Singh. As such Banta Singh, father of Jagtar Singh and Hoshiar Singh-accused is co-owner of Khasra No.30/11 and ownership and possession of Khasra No.30/10, where occurrence has taken place was of the sons

of Pritam Singh. Khasra No.29/15 and 16/1 are the ownership of sons of Pritam Singh which are on the other side of metalled passage i.e. Khasra No.10 and 11 are on the one side and Khasra No.15, 16/1 and 16/2 are on the other side. Thus, the boundaries of the fields of the accused and sons of Pritam Singh were common and definitely there would have been differences and discord over the encroachment thereon, as is alleged by Pritam Singh. Jamabandi is Ex.PN/1.

25. Jagtar Singh @ Partap Singh made disclosure statement Ex.PV regarding the dang which is used to cause injury and Ex.PV/1 is the recovery memo. Ex.PCC is recovery memo of HMT Tractor-5911 colour yellow.

26. Consequently, it can be safely concluded that accused-appellants were the aggressors and not Pritam Singh. It is apparently clear that both sides had suffered injuries, but on account of the injuries caused in the fight, Balbir Kaur had died.

27. In view of the facts and circumstances of the case, it can be safely concluded that all this happened all of a sudden and there was no intention or pre-meditation to cause murder of deceased Balbir Kaur. Consequently, this Court has come to the conclusion that offence under Section 302 IPC is not made out; rather it is the case under Section 304 Part I IPC. Consequently, the appeal is partly accepted and conviction of appellant No.1 under Section 302 IPC and that of appellant No.2 under Section 302/34 IPC is set aside. Instead, Jagtar Singh @ Partap Singh @ Tabbu is convicted under Section 304 Part I IPC whereas, Hoshiar Singh is convicted under Section 304 Part I/34 IPC. The conviction of both the accused under the remaining offences is maintained.

Consequently, both the accused are convicted and sentenced in the following terms:-

Jagtar Singh @ Partap Singh @ Tabbu

Sr. No.	Offence	Sentence (RI)	Fine	In default (RI)
1.	Section 304 Part I IPC	8 years	₹2,000/-	2 months
2.	Section 325 IPC	1 year	₹500/-	1 month
3.	Section 323/34 IPC	6 months		

All the sentences are ordered to run concurrently.

Hoshiar Singh

Sr. No.	Offence	Sentence (RI)	Fine	In default (RI)
1.	Section 304 Part I/34 IPC	8 years	₹2,000/-	2 months
2.	Section 325/34 IPC	1 year	₹500/-	1 month
3.	Section 323 IPC	6 months		

All the sentences shall run concurrently.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

01.08.2017
monika/Gulati

Whether speaking/reasoned	Yes
Whether reportable	Yes