

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA D-435-DB of 2004

DATE OF DECISION: DECEMBER 2, 2017

SARMUKH SINGH AND ANOTHER ...APPELLANTS

VERSUS

STATE OF PUNJAB ...RESPONDENT

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

PRESENT: MS. G.K.DULAT, ADVOCATE
LEGAL AID COUNSEL
FOR THE APPELLANTS.

MR. V.G. JAUHAR, SR. D.A.G., PUNJAB.

MAHABIR SINGH SINDHU, J.

1. Appellants Sarmukh Singh and Swinder Singh have preferred the present appeal against the judgement of conviction and order of sentence dated 28.1.2004, passed by learned Addl. Sessions Judge (Adhoc), Amritsar vide which Sarmukh Singh was convicted under Section 302 IPC and Swinder Singh under Section 302/34 IPC and sentenced to undergo imprisonment for life and to pay a fine of ₹2000/- each and in default, to undergo a further rigorous imprisonment for one month for committing the murder of Tejbir Singh.

2. During the pendency of the appeal, appellant No.2 Swinder Singh died. Factum of his death has been duly verified as is mentioned in the affidavit of Inspector Kamal Kaushal, SHO, P.S. Lopoke. Death certificate dated 19.7.2017 (Annexure R-2/T) of accused Swinder Singh has also been placed on record by the State. Therefore, the appeal qua

him abates.

3. The case of the prosecution was unfolded on the statement dated 7.8.2001 (Ex.PJ/1) made by Ajit Singh which is as under:-

“Stated that I am resident of village Bachiwind and doing cultivation. I have one son Tejbir Singh and two daughters. My all three children are married. My haveli is situated at a distance of about one fulong from my residence, which adjoins the house of my brother Swinder Singh. Today, I alongwith my wife Rajwant Kaur and my brother-in-law Lakha Singh s/o Karnail Singh resident of village Galluwal who had come to my residence to see us was present in our haveli. In the evening when we were going to our residence after milching the buffalo and my son Tejbir Singh was going ahead of us, then at about 6.30 p.m. when my son Tejbir Singh reached near the outer door of the house of my brother Swinder Singh, Sarmukh Singh s/o Swinder Singh armed with spear, Swinder Singh s/o Banta Singh armed with gandasi and Gurbachan Singh s/o Banta Singh armed with sua were standing there. Gurbachan Singh raised lalkara saying that Tejbir Singh be caught hold and taught a lesson for demanding the share in the tubewell connection and then Swinder Singh gave a gandasi blow to Tejbir Singh my son which hit him on his right shoulder. Then Gurbachan Singh gave a sua blow to Tejbir Singh which hit him on his left thigh. Sarmukh Singh gave spear blow which hit Tejbir

Singh little below the left nipple and he fell down on the ground. I and my wife Rajwant Kaur and my brother-in-law Lakha Singh raised hue and cry “Maar ditta, Maar ditta” and the assailants fled away from the spot alongwith their respective weapons. When we reached near, we saw that Tejbir Singh had succumbed to the injuries. Whole occurrence was witnessed by me, my wife Rajwant Kaur and my brother-in-law Lakha Singh. Motive behind the incident is that there was dispute between two brothers over the common tubewell connection. Swinder Singh, Gurbachan Singh ss/o Banta Singh and Sarmukh Singh son of Swinder Singh rs/o village Bachiwind with their common intention have committed the murder of my son Tejbir Singh by causing him injuries. Leaving behind my wife Rajwant Kaur and my brother Waryam Singh near the dead body of my son Tejbir Singh, I alongwith Lakha Singh was going to the police station to lodge the report. You have met us. Action be taken.”

4. On the basis of the aforesaid statement (Ex.PJ), FIR No.143 dated 7.8.2001 under Section 302/34 IPC was registered at Police Station Lopoke (Ex.PJ/3). The spot was inspected by PW7 S.I. Shangara Singh, inquest proceedings were initiated on the dead body of Tejbir Singh, site plan of the place of occurrence was prepared, dead body was sent to Civil Hospital, Amritsar for post mortem examination and blood stained earth was collected from the spot. Accused Swinder Singh and Sarmukh Singh

were arrested by PW6 Inspector Kashmir Singh on 11.8.2001. On interrogation, the accused made their respective disclosure statements. Accused Swinder Singh got recovered a gandasi (Ex.P1) from the bushes near defence drain on the basis of his disclosure statement, which was taken into possession vide memo Ex.PM/1. Accused Sarmukh Singh also made disclosure statement on the basis of which, a spear (Barchhi) (Ex.P2) hidden in bushes near the drain was got recovered by him which was stained with blood and taken into possession vide memo Ex.PN/1.

5. After completion of the investigation, the Police found accused Gurbachan Singh as innocent and submitted report under Section 173 Cr.P.C. against accused Swinder Singh and Sarmukh Singh. The case was committed for trial by learned Illaqa Magistrate as the offence under Section 302 IPC is exclusively triable by learned Sessions Judge. Accused Sarmukh Singh was charge-sheeted under Section 302 IPC and accused Swinder Singh was charge-sheeted under Section 302/34 IPC, to which they pleaded not guilty and claimed trial. An application under Section 319 Cr.P.C. was preferred by the prosecution to summon accused Gurbachan Singh to face the trial and the same was allowed on 2.5.2002 by the trial Court. Accordingly, charge was amended and accused Sarmukh Singh was charge-sheeted under Section 302 IPC and accused Swinder Singh as well as Gurbachan Singh were charge-sheeted under Section 302/34 IPC, to which they pleaded not guilty and claimed trial. However, during this period, complainant Ajit Singh died.

6. The prosecution examined 11 witnesses and brought on record documentary evidence to prove its case.

7. The accused set up a plea in their statement under Section 313 Cr.P.C. that they were innocent and a false case has been foisted on them. Accused Swinder Singh made a statement that deceased Tejbir Singh came in front of his house armed with gandasi and started abusing him alleging that his cattle had damaged their crop; and exchanged blows. He fell down on the ground while Tejbir continued to attack. Then accused Sarmukh Singh came to his rescue and caused spear blow in self defence to Tejbir Singh. Accused Sarmukh Singh also raised the plea on the same lines. They examined DW1 Dr. O.P.Gupta, Medical Officer, Civil Hospital, Ajnala and DW2 Dr. A.S.Virk, Radiologist, Civil Hospital, Ajnala in their defence.

8. The trial Court after going through the evidence on record and relying upon the statements of the witnesses, acquitted Gurbachan Singh of the charges and convicted accused Sarmukh Singh and Swinder Singh as mentioned above.

9. Hence the present appeal.

10. Learned counsel for Sarmukh Singh, the surviving appellant argued that the prosecution has failed to prove the charges against the accused beyond the shadow of reasonable doubt. It is further argued that the trial Court erred in convicting and sentencing the accused-appellant by placing reliance on the testimonies of the prosecution witnesses who were interested witnesses. Learned counsel further argued that there were discrepancies in the statements of the prosecution witnesses. It is further contended that the incident occurred instantly and there was no pre-meditation and further, that the deceased was the aggressor and it was

only in self-defence that Tejbir Singh was attacked and he succumbed to the injuries.

11. The present case is primarily based on eye witness account corroborated by the medical evidence. Complainant Ajit Singh, however, could not be examined as he expired during the trial. PW4 Lakha Singh deposed that on 7.8.2001, he had gone to meet his sister PW5 Rajwant Kaur at village Bachiwind. At about 5/5.30 p.m., he alongwith Ajit Singh and PW5 Rajwant Kaur proceeded to the haveli of Ajit Singh to milch the cattle. At about 6.30 p.m, after milching the cattle when they were returning to the house of Ajit Singh, Tejbir Singh was ahead of them. When Tejbir Singh was near the door of the house of accused Swinder Singh, he (Swinder Singh) armed with gandasi, Gurbachan Singh armed with sua and accused Sarmukh Singh armed with barchhi appeared in the street near the gate of Swinder Singh. Gurbachan Singh raised a lalkara “*phar lavo inu, tubewell de connection vich hissa mangda hai, maza chakha do*” (Catch him and he should be taught a lesson for demanding share in tubewell connection) and Swinder Singh gave gandasi blow on the right side shoulder of Tejbir Singh. Swinder Singh gave another gandasi blow on Tejbir Singh which landed on his head. Gurbachan Singh gave a sua blow which hit Tejbir Singh on his left thigh. Accused Sarmukh Singh @ Manga gave barchhi blow on the left nipple of Tejbir Singh. Thereafter Tejbir Singh fell down. The accused persons ran away from the spot alongwith their respective weapons. Tejbir Singh died at the spot.

12. PW5 Rajwant Kaur widow of Ajit Singh corroborated the

statement as deposed by PW4 Lakha Singh. PW5 Rajwant Kaur deposed a little different from that of the deposition of PW4 Lakha Singh that after serving tea to PW4 Lakha Singh, she herself, Lakha Singh, Ajit Singh and deceased Tejbir Singh left for haveli for milching the cattle. In her cross-examination, she stated that she herself and PW4 Lakha Singh had gone to haveli and deceased Tejbir Singh had left for haveli at 2.00 p.m. and Ajit Singh left just minutes prior to the reaching of PW4 Lakha Singh at the residence of Ajit Singh.

13. PW3 Dr. Ashok Chanana, Assistant Professor, Forensic Medicine and Toxicology Department, Government Medical College, Amritsar deposed that on 8.8.2001 at 1.00 p.m. he conducted post mortem examination (Ex.PH) on the dead body of Tejbir Singh and found the following injuries:-

“1. A perforating incised wound 4.5 x 2.2 cm with clotted blood obliquely placed was present on the front and left side of chest, 4 cm vertically below the nipple. On dissection - It communicated with the right ventricular cavity after perforating the intervening soft tissue structure and fracturing the ribs and cartilages. Clotted blood was present in the track. The left pleura and left lung were also perforated. Clotted blood was present at the site. The left pleural cavity and pericardial cavity contained 150 cc and 120 cc of fluid and clotted blood respectively.

2. An oblique incised wound with clotted blood 3 x 2 x 0.5 cm was present on the point of right shoulder region.

3. *A lacerated wound 3 x 2 cm obliquely placed with clotted blood, muscle deep was present in the centre of frontal region of the head, 4 cm behind the anterior hairline.*
4. *A perforating lacerated wound 0.5 x 0.4 cm circular in shape with clotted blood was present on anteromedial aspect of left thigh in its upper 1/3rd. On dissection – it was four cm deep. Clotted blood was present at the site and in the track.”*

PW3 opined that the cause of death was haemorrhage and shock as a result of injury No.1 which was sufficient to cause death in the ordinary course of nature. In his cross-examination, PW3 also stated that except injury No.1, other injuries were simple in nature.

14. PW7 SI Shangara Singh deposed that on 7.8.2001, he was posted as SHO Police Station Lopoke. Ajit Singh met him at bus stand, Lopoke and narrated the incident, which was reduced in writing vide Ex.PJ/1 on the basis of which a formal FIR Ex.PJ/3 was registered. He alongwith police officials visited the place of occurrence. Statements of witnesses were recorded, inquest was conducted, site plan was prepared and blood stained earth was collected from the spot and was taken into possession vide memo Ex.PP. The dead body was sent for post mortem examination. Accused Sarmukh and Swinder Singh were arrested in his presence on 11.8.2001 by Inspector Kashmir Singh, CIA, Majitha and on disclosure statement made by Sarmukh Singh, a blood stained barchhi (Ex.P2) was got recovered from the bushes near the drain, which was taken into possession vide Ex.PN/1. As per the FSL report (Ex.PU), the barchhi was found stained with human blood.

15. PW6 Inspector Kashmir Singh corroborated the statement made by PW7 SI Shangara Singh. In his cross-examination, PW6 stated that on arrest of Swinder Singh, he got him medically examined for the injuries found on his person.

16. The seat of injuries are proved as per eye witness account narrated by PW4 and PW5 and they have given a graphic account of the whole occurrence. The minor contradiction in the depositions of PW4 Lakha Singh and PW5 Rajwant Kaur with regard to accompanying of Ajit Singh and deceased Tejbir Singh does not, in any way, goes to the root of the case. The depositions of PW4 and PW5 cannot be discarded merely on this minor discrepancy. As rightly held by the learned trial court, the occurrence had taken place on 7.8.2001, whereas the witnesses deposed after more than 1½ years of the occurrence. PW4 and PW5 have categorically deposed about the chain of events which occurred on the fateful day. Their depositions are trustworthy and credible and cannot, in any way, be doubted. Both these witnesses have given minute details of the incident that happened at 6.30 p.m. on 7.8.2001 and at that time, in the month of August, sufficient natural light would be there and there could be no chance to oversee someone else out of resemblance or otherwise, as both the complainant party and the accused party were blood relations. The lengthy cross-examination also could not shake the testimonies of PW4 and PW5. The accused also had not disputed his presence at the place of occurrence, rather, admitted and had taken a stand that he attacked Tejbir Singh in self-defence as Tejbir Singh was assaulting his father-Swinder Singh. In other words, accused Sarmukh Singh has not

disputed the attack launched by him on Tejbir Singh which proved fatal and as per the deposition of PW3, injury No.1 was attributed to accused Sarmukh Singh only.

17. As far as motive part is concerned, Ajit Singh had stated in his complainant, corroborated by PW4 Lakha Singh and PW5 Rajwant Kaur that there was a dispute between them with regard to common tubewell connection. It has also come in cross-examination of PW4 that Ajit Singh had some dispute with regard to share of tubewell with Swinder Singh and Gurbachan Singh. PW5 also stated in her cross-examination that her husband Ajit Singh, accused Swinder Singh, Waryam Singh and Gurbachan Singh, all brothers, had a common tubewell and which was the bone of contention between Ajit Singh and the accused. It has also come in the statement of complainant and the depositions of PW4 and PW5 that while initiating attack on Tejbir Singh, a lalkara to this effect was also raised. Therefore, it can be safely held that the accused party nursed a grudge against the complainant party and pre-meditated the occurrence holding weapons in their hands and attacked Tejbir Singh intentionally and not in self defence. Therefore, the judgement referred to by learned counsel for the appellant in **Veeran and others vs. State of M.P., AIR 2011 SC 1071** does not support the present case, as in that case, it was held by the Hon'ble Supreme Court in para 20 that the death caused was not pre-meditated and the injuries were not sufficient to cause the death, whereas, in the present case PW3 Dr.Ashok Chanana deposed that the cause of death was injury No.1, which was attributed to accused Sarmukh Singh.

18. The accused examined DW1 O.P. Gupta, M.O., C.H., Ajnala in their defence who deposed that on 14.8.2001, he was posted as M.O. at C.H., Ajnala and medico-legally examined Swinder Singh and found the following injury:-

1. *Stitched wound measuring 6 cm x .5 cm healed but stitched threads present on the front of right leg just below knee joint. Advised x-ray right knee joint. AP and lateral. No other mark injury was seen.”*

On receipt of X-ray report, DW1 deposed that a linear chip fracture of shaft of tibia was seen anteriorly on the upper part with overlying soft tissue swelling. The weapon used was blunt. In his cross-examination, DW1 stated that the possibility of this injury by fall cannot be ruled out.

19. The aforesaid defence led by the accused seems to be improbable, as firstly, the Doctor found the injury to be caused with a blunt weapon, whereas, the accused made a statement that Tejbir Singh was armed with gandasi. Secondly, if accused Swinder Singh suffered such fracture injury on his leg from the attack launched by Tejbir Singh, it was impossible for him to have fled away from the scene of occurrence and rather, in that event, he would have been held by the complainant party there and then. Thirdly, the defence failed to examine any witness in order to prove that accused Swinder Singh received such injury on 7.8.2001 in the same occurrence and as to from where the initial treatment was taken and by which Doctor he was treated as the wound was healed. Therefore, the defence led by the accused has to be ignored being untrustworthy and not credible.

20. In view of the eye witness account corroborated by the medical evidence, we are of the view that the prosecution has been able to prove its case beyond the shadow of reasonable doubt and the trial Court has rightly convicted and sentenced the accused for the charges levelled against him. Resultantly, the appeal of Sarmukh Singh appellant is dismissed whereas that of Swinder Singh appellant is disposed of as having abated.

21. The accused-appellant Sarmukh Singh is on bail. His bail bonds stands cancelled. He shall surrender forthwith before the Chief Judicial Magistrate, Amritsar, who shall send him to jail to undergo the remaining part of the sentence. If he fails to surrender, the learned Chief Judicial Magistrate, Amritsar shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

December 2, 2017
Gulati

Whether Reportable	:	Yes
Whether Speaking/Reasoned	:	Yes