

In the High Court of Punjab and Haryana at Chandigarh.

(I) Criminal Appeal No.D-308-DB of 2010
Date of Decision:- November 07, 2017

Gurprit Singh @ D.C.		Appellant
	Versus	
State of Punjab		Respondent

(II) Criminal Appeal No.D-338-DB of 2010

Talwinder Singh @ Kulwinder Singh		Appellant
	Versus	
State of Punjab		Respondent

(III) Criminal Appeal No.D-392-DB of 2010

Gurprit Singh @ Kala		Appellant
	Versus	
State of Punjab		Respondent

CORAM: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. A.P.S.Deol, Senior Advocate with
Mr. Vishal Rattan Lamba, Advocate,
for the appellant(s) in CRA-D No.338-DB of 2010 &
CRA-D No.392-DB of 2010.

Mr. Jagtar Singh Sidhu, Advocate,
for the appellant in CRA-D No.308-DB of 2010.

Mr. H.S.Grewal, Additional Advocate General, Punjab.

Gurvinder Singh Gill, J.

1. Gurprit @ D.C., Talwinder Singh @ Kulwinder Singh and Gurprit Singh @ Kala have filed above mentioned appeals challenging judgment dated 25.2.2010 whereby Gurprit @ D.C. has been held guilty for committing offence punishable under Section 302 IPC and the other two accused have been held guilty for committing offence punishable under Section 302 of IPC with the aid of Section 34 of IPC, for having murdered Budh Singh. All the appellants have been sentenced to undergo imprisonment for life and to pay fine of ₹25,000/- each.
2. The matter arises out of FIR No. 108 dated 25.8.2007 registered at Police Station, Sadar, Mansa, under Sections 302/34 of IPC, lodged on the basis of statement (Ex.PF) of complainant Jagsir Singh resident of Khiala Kalan, District Mansa. The gist of the said statement when translated to English reads as follows:

“I am resident of village Khiala Kalan and work as *Palledar* in FCI Department at Maur Mandi. My uncle namely Budh Singh also works as *Palledar*. On 23.8.2007 a drama was staged in our village near Ravidas Mandir. I along with my uncle Budh Singh and his wife Hardeep Kaur went to watch the drama. The drama was over by 11.15 PM. When we were returning back, then Gurprit Singh @ D.C. armed with ‘*gandasa*’ accompanied by two other persons whose names I do not know but I can identify them upon their appearance, who were armed with sticks, came there.

Gurprit Singh @ D.C. raised *lalkara* (exhorted) saying that Budhia be taught a lesson for quarrelling with him earlier and gave two blows with 'gandasa' from its reverse side on head of Budh Singh. Another blow was given on his head on right ear. Budh Singh fell down. While he was lying on the ground, the other persons caused injuries with sticks on his forehead and right wrist. At that time light was glowing. When we raised alarm, those persons ran away from the spot with their respective weapons. After arranging for a vehicle, I and my sister-in-law took Budh Singh to Civil Hospital, Mansa from where he was referred (to PGI). Yesterday i.e. on 24.8.2007 he succumbed to his injuries. The motive is that about a year back there was a dispute between Budh Singh and Gurprit Singh @ D.C. which was settled before Panchayat. I have made my statement. Action be taken."

3. As per case of prosecution the aforesaid occurrence had taken place at about 11.15 PM on 23.8.2007. Immediately thereafter he was moved to Civil Hospital, Mansa but on account of his critical condition he was referred to PGI where he breathed his last on 24.8.2007 at about 9 AM. The aforesaid statement of the complainant was recorded in PGI. Inquest proceedings were conducted. The post mortem examination was also got conducted. The police visited the place of occurrence. A rough site plan of place of occurrence was prepared. Statements of witnesses were recorded. Upon conclusion of investigation challan was presented against Gurprit Singh @ D.C. only in the

Court of Chief Judicial Magistrate, Mansa on 29.11.2007 who committed the case to the Court of Sessions vide order dated 22.12.2007. The learned Sessions Judge, Mansa framed charges against the accused for offence under Section 302 of IPC on 2.1.2008 to which the accused pleaded not guilty and claimed trial. After the trial commenced and some prosecution evidence had been recorded, the prosecution moved an application under Section 319 Cr.P.C. seeking summoning of Talwinder Singh @ Kulwinder Singh and Gurprit Singh @ Kala, which was accepted on 19.11.2008 and both of these accused were summoned to face trial. Thereafter fresh charge-sheet was framed against all the accused on 30.1.2009 to which the accused pleaded not guilty and claimed trial.

4. The prosecution in order to substantiate charges framed against the accused examined 7 witnesses. PW-1 Dr. Harpal Singh, Medical Officer, Civil Hospital, Mansa who had examined Budh Singh when he was taken to hospital at the first instance, proved MLR (Ex.PA) in respect of medical examination of Budh Singh. PW-2 Dr. Kuldip Kumar, Medical Officer, Civil Hospital, Mansa who had conducted post mortem examination on dead body of Budh Singh proved the post mortem report (Ex.PC). PW-3 Jagsir Singh, complainant has stated in tune with his statement (Ex.PF) on the basis of which FIR was lodged. PW-4 Hardeep Kaur widow of Budh Singh has stated in corroboration to the statement of PW-3 Jagsir Singh. PW-5 Harmit Singh, Draftsman proved scaled site plan (Ex.PW-5/A) of place of occurrence. PW-6 SI Gamdoor Singh, Investigating Officer stated in detail in respect of the entire investigation conducted in the matter right from recording of

statement (Ex.PF) of the complainant upto filing of challan. PW-7 Dr. Kajal Das, Sr. Resident, PGI, Chandigarh stated as regards admission of Budh Singh in PGI on 24.8.2007 and his death on 25.8.2007.

5. Upon conclusion of the prosecution evidence, entire incriminating evidence appearing against the accused was put to the accused to enable them to explain the same but the accused denied the prosecution case and pleaded false implication. Gurprit Singh @ D.C. has further stated that at the time of occurrence he was at home. Accused Talwinder Singh @ Kulwinder Singh has taken a stand that he was present in his fields from 8.30 PM to 12 midnight and that infact he had been found innocent during investigation.
6. The accused in their defence examined DW-1 HC Jagdish Rai, who produced the summoned file and proved the inquiry report (Ex.DA) in respect of inquiry conducted by SP(D) on the directions of Senior Superintendent of Police, Mansa. He stated that upon inquiry, only Gurprit Singh @ D.C. was found to be the real culprit while the remaining accused were found to be innocent.
7. The learned trial Court upon appreciating the evidence on record held that the prosecution had successfully established the charges framed against the accused and held them guilty for having murdered Budh Singh vide judgment dated 25.2.2010. The accused, aggrieved with the judgment, have challenged the same by filing separate appeals.
8. The learned counsel for the appellants while assailing the impugned judgment have submitted that there is inordinate delay in lodging of FIR which clearly indicates that the same has been lodged after consultations so as to implicate

the accused falsely. The learned counsel have further submitted that no motive for the occurrence could be established by the prosecution and in the absence of the same the charges framed against the accused cannot be said to have been established. It has further been submitted that the accused Talwinder Singh @ Kulwinder Singh and Gurprit Singh @ Kala, in any case, are neither named in the FIR nor their description finds mentioned in FIR and, thus, in the absence of any convincing evidence to establish their presence, they cannot be connected with the crime. The learned counsel has, thus, submitted that the impugned judgment cannot sustain and have prayed for acquittal of the accused.

9. We have considered the rival submissions addressed before this Court and with able assistance of learned counsel have also perused the relevant referred record of the case.
10. Before proceeding to weigh the testimonies of the eye witnesses, it would be appropriate to refer to the medical evidence led by the prosecution. The prosecution has examined the doctor who had examined Budh Singh in the first instance while he was still alive and also the doctor who had conducted the post mortem examination after Budh Singh succumbed to his injuries. PW-1 Dr. Harpal Singh, Medical Officer, Civil Hospital, Mansa stated that on 24.8.2007 at 00.45 AM he had medico legally examined Budh Singh and had found the following injuries:

- “1. Reddish abrasion 4.6 x 0.4 cm right side of forehead. It was kept under observation and X-ray was advised.
2. Lacerated wound 2.9 x 0.3 cm on right side of parietal

region just lateral to midline. Probing was not done. Injury was kept under observation and X-ray was advised.

3. 5.1 x 0.3 cm lacerated wound on right side of fronto parietal region. Probing was not done. X-ray was advised. This injury was kept under observation.
4. 4 x 3 cm swelling reddish in colour on left parietal region. Injury was kept under observation and X-ray was advised.
5. 4.2 x 3 cm contusion on posterior aspect of right forearm on its lower 1/3rd injury was kept under observation and X-ray was advised.”

11. PW-1 proved the MLR as Ex.PA. The prosecution also examined PW-2 Dr. Kuldip Kumar, Medical Officer, Civil Hospital, Mansa who stated that on 25.8.2007, at about 2.40 PM he conducted the post mortem examination on the dead body of Budh Singh and found the following injuries on the dead body:

- “1. Reddish brown abrasion size 4.6 x 0.4 cm was present on the right side of forehead 2.5 cm above right eye brow was vertically placed.
2. Stitched wound size 3.0 cm in length vertically on the right side of head in the parietal area 5.5 cm above right eye brow, 3 intact stitches were present. On dissection the underlying wound was muscle deep.
3. Stitched wound size 5.2 cm in length. It was vertically placed on the side of the head in the parietal area 4.5 cm above right eye brow 5 intact stitches were present. On dissection of the wound, it was muscle deep.
4. Reddish blue bruise of the size 4.5 x 3.2 cm was present on the left side of the scalp in the left parieto temporal region, 6.1 cm above mastoid. On dissection 88 cc blood was present beneath the wound as extra cranial haematoma.
5. Reddish blue bruise size 4.5 x 3.2 cm was present on the posterior aspect of right forearm in its lower 1/3rd. The wound was situated 6.5 cm above wrist.”

12. PW-2 proved the post mortem report as Ex.PC. He opined that the cause of death was compression of brain as a result of extra dural haematoma as a result of injury Nos.2 and 3 (head injury) which was sufficient to cause death in ordinary course of nature. Both the aforesaid witnesses were briefly cross-examined on behalf of the accused. While PW-1 during cross-examination stated that possibility of the injuries by brick-bats cannot be ruled out, PW-2 stated that he cannot say whether the injuries were caused with brick bat or not. PW-2 further stated that in cross-examination that if immediately after the injury, best treatment by Neuro Surgeon had been provided, the patient might have survived. A perusal of the MLR Ex.PA and the post mortem report Ex.PC shows that the injuries have been described identically. While three of the injuries are stated to be on the parietal region, one injury is on the forehead and another on forearm. PW-2 Dr. Kuldip Kumar, having specifically opined the cause of death to be due to compression of brain as a result of extra dural haematoma on account of injury Nos. 2 and 3, leaves no scope to doubt the case being of homicidal death. The statement of doctor during cross-examination that in case best treatment by Neuro-Surgeon had been provided immediately after the injury, the patient might have survived is not of much significance as the same is in the nature of a possibility only. In any case, Neuro Surgeons are available only in Referral Hospitals. Even Mansa, is rather a remote District in Punjab and does not have a Super Speciality Hospital where Nuro Surgeons would be available. As such it is held that there is nothing on record to doubt the opinion of the doctor as regards the cause of death and that it is a case of homicidal death.

13. While dealing with the contention regarding delay in lodging of FIR, it is the case of the prosecution that the occurrence had taken place at 11.15 PM on 23.8.2007 and immediately after the occurrence Budh Singh was rushed to Civil Hospital, Mansa in injured condition. PW-1 Dr. Harpal Singh has stated that he had medico legally examined Budh Singh on 24.8.2007 at 00.45 AM. PW-6 SI Gamdoor Singh, Investigating Officer, stated that on 24.8.2007 he was posted as SHO Police Station Sadar Mansa and on the said day upon receipt of MLR of Budh Singh he send HC Suresh Kumar and HC Labh Singh to Civil Hospital Mansa and HC Suresh Kumar obtained opinion from the concerned doctor regarding fitness of Budh Singh to make statement but Budh Singh was declared unfit to make a statement. PW-1 Dr. Harpal Singh while in the witness box has specifically stated that on application (Ex.PB) moved by the police, injured Budh Singh was declared unfit to make statement at 2.05 AM on 24.8.2007 vide his opinion Ex.PB/1.
14. Budh Singh was thereafter referred to PGI and was admitted on 24.8.2007 as has been specifically stated by PW-7 Dr. Kajal Das, Senior Resident, PGI, Chandigarh. However Budh Singh could not survive and breathed his last in PGI on 24.8.2007. PW-6 SI Gamdoor Singh, Investigating Officer has stated that on 24.8.2007 itself he had received a telephonic call from PGI in the evening regarding admission of Budh Singh in injured condition and at 9.04 PM he received a message from PGI that Budh Singh had expired and thereafter he along with other police officials went to PGI where they met complainant Jagsir Singh and recorded his statement (Ex.PF). A perusal of the inquest report shows that the date and hour of discovery is recorded therein as

24.8.2007 at 9.04 PM. A perusal of the ruqa (Ex.PF) shows that the same had been recorded on 25.8.2007 at 3.30 AM in PGI. Mansa is at a distance of about 180 KMs from Chandigarh and it would normally take about 4 hours to reach Chandigarh. Since the intimation was received by Investigating Officer at Mansa at about 9 PM on 24.8.2007 and the proceedings regarding recording of statement/ruqa (Ex.PF) had concluded by 3.30 AM on 25.8.2007, it can not be said that FIR has been lodged belatedly.

15. It is not the case that large number of accused have been named in the FIR so as to suggest that the same has been lodged after consultations to rope in entire family of accused. There is nothing else on record to suggest that a concocted version is forthcoming in the FIR. As such, it is held that neither there is any inordinate delay in lodging the FIR nor is there anything on record to suggest a false implication.
16. The prosecution mainly relies upon testimony of the complainant i.e. PW-3 Jagsir Singh and PW-4 Hardeep Kaur. PW-3 Jagsir Singh while in the witness box stated that when on 23.7.2007 he along with Budh Singh and Hardeep Kaur were returning back after watching a drama staged in their village, then at about 11.15 PM Gurprit Singh @ D.C. armed with '*gandasa*', Talwinder Singh @ Kulwinder Singh and Gurprit Singh @ Kala both armed with sticks came there. PW-3 stated that Gurprit Singh @ D.C. gave a blow of '*gandasa*' from its reverse side to Budh Singh on head and another on the right side above his ear and another blow on his right wrist. He stated that Budh Singh fell down upon receipt of said blows and thereafter Talwinder Singh @ Kulwinder Singh and Gurprit Singh @ Kala gave blows with sticks while he

was lying down. He further stated that when they raised alarm, the accused ran away from the spot.

17. PW-4 Hardeep Kaur, wife of the deceased, has also stated identically to the effect that on the day of occurrence when they were returning back home after watching a play staged in the village, then Gurprit Singh @ D.C. armed with '*gandasa*' and two other persons armed with sticks came there. She further stated that Gurprit Singh @ D.C. raised *lalkara* to teach Budh Singh a lesson and gave two blows from '*gandasa*' from its reverse side on head of her husband and another blow above his right ear as a result of which Budh Singh fell down. She further deposed that thereafter Talwinder Singh @ Kulwinder Singh and Gurprit Singh @ Kala gave blows with their sticks on the forehead and right wrist of her husband. A perusal of the aforesaid statement shows that both the eye witnesses have stated consistently to the effect that Gurprit Singh @ D.C. had caused injuries to Budh Singh with '*gandasa*' from its reverse side hitting him on his head as a result of which he fell down.
18. The medical evidence is also consistent inasmuch as the injuries have been described to be lacerations and abrasions and none of the injuries is stated to be incised wound. Such like injuries would be possible with some blunt heavy weapon. A '*gandasa*' used from its reverse side can cause lacerations and abrasions.
19. Though half hearted plea of *alibi* has been raised on behalf of accused Gurprit Singh @ D.C. in his statement under Section 313 Cr.P.C. but in the absence of any cogent and convincing evidence, the pleas of alibi to the effect that

Gurprit Singh @ D.C. was not present at place of occurrence but was at his home can hardly be accepted.

20. The learned counsel representing Gurprit Singh @ D.C. also submitted that even if the prosecution version is taken to be correct, still at best it would be a case falling within the mischief of Section 304 of IPC and not of Section 302 of IPC inasmuch, as it is a case where occurrence had taken place without any pre-meditation and the injuries have been caused from the blunt side of 'gandasa' and the sharp edged side had not been used at all. The learned counsel cites (2012) 10 SCC 402 Selvam Vs. State of Tamil Nadu and 2015(2) PLJ (Criminal) 200 Dinesh and others Vs. State of Haryana to hammer forth his aforesaid contention.
21. We have considered the aforesaid submission. As regards the contention that the occurrence had taken place all of a sudden without any premeditation, we find that it is not a case of sudden quarrel as there is nothing to suggest that any quarrel had taken place at the spot. Rather it is a case where the accused had come all of a sudden and had raised *lalkara* and started causing injuries. It is neither the case of the prosecution nor is there any evidence to suggest that any kind of exchange of words or altercation between the deceased and accused had taken place so as to lead to a quarrel between the two parties. As such, the aforesaid contention cannot be accepted.
22. We have perused the cited judgments. It is correct that none of the injuries in the present case is in the nature of an incised wound so as to suggest that the same has been caused using a sharp edged weapon. It is the case of the

prosecution itself that the accused Gurprit @ D.C. had caused injuries with the help of 'gandasa' from its reverse side. A perusal of the above cited judgment i.e. Selvam's case (supra), shows there was only one injury on the head. However, in the present case the PMR reveals that the deceased had sustained as many as 3 injuries on the head, and one on forehead. Similarly even in the other case relied upon by the appellant i.e. Dinesh's case (supra) the deceased had sustained one injury on the head which proved fatal. Both the cited cases are, thus, distinct on factual position on account of the fact that there are 3 injuries on the head and one on forehead in the present case as against single injury in the cited cases. Thus, the appellants cannot derive any advantage from the cited judgments.

23. The fact that repeated injuries were caused by the accused and that too on the most vital part of the body i.e. head clearly indicates that the injuries were caused with a clear intention to kill the deceased. As such, the contention raised above on behalf of the appellant Gurprit Singh @ D.C. that the case at best would fall within Section 304 of IPC cannot be accepted.
24. The involvement of Gurprit Singh @ D.C. in the occurrence is fully established from the above referred evidence. It is clearly borne out that Gurprit Singh @ D.C. had caused injuries to Budh Singh from reverse side of 'gandasa' with an intention to kill him.
25. As regards the involvement of Talwinder Singh @ Kulwinder Singh and Gurprit Singh @ Kala, it is noticed that the said two appellants were not named in the FIR. In fact a perusal of the FIR shows that Talwinder Singh @

Kulwinder Singh and Gurprit Singh @ Kala were neither known, nor identified. Neither their names nor their description is forthcoming in the FIR. Both the said accused namely Talwinder Singh @ Kulwinder Singh and Gurprit Singh @ Kala are residents of the same village to which the deceased as well as the complainant belonged. In the FIR as well as in the statement of PW-4 Hardeep Kaur, it is specifically mentioned that light was glowing. In these circumstances it is rather strange that the complainant was unable to identify the residents of the same village despite there being some illumination. In fact PW-3 Jagsir Singh, complainant, in his statement recorded on 7.8.2008 stated as follows:

“..... I got it recorded in my statement Ex.PF that I could identify those two persons as and when they came before me.

Now I have come to know that above two persons were Kulwinder Singh son of Mithu Singh Jaat resident of village Khiala Khurd and the other was Gurprit Singh alias Kala son of Lal Singh alias Mithu Singh Jaat resident of village Khaila Khurd.”

26. The aforesaid identification of the accused, especially when the complainant had specifically stated in the FIR that the assailants were unknown would put the Court to caution. More so, when the said accused happen to be residents of the same village and in fact accused Kulwinder is son of sarpanch of the village and it is the case of prosecution itself that light was glowing at the place of occurrence.
27. Still further, as per FIR, after the main accused Gurprit Singh @ D.C. had caused three injuries with his ‘*gandasa*’ on his head as a result of which Budh Singh fell down, the remaining two accused namely Talwinder Singh @

Kulwinder Singh and Gurprit Singh @ Kala gave blows with their sticks. The dead body was found to be having 5 injuries. While three injuries were on head, one on forehead and another on wrist. A perusal of the statements of PW-3 Jagsir Singh and PW-4 Hardeep Kaur would show that virtually four out of the five injuries on the head/forehead and wrist are attributed to Gurprit Singh @ D.C. In these circumstance it cannot be said that in addition to the aforesaid injuries the deceased had been caused several other injuries with the help of sticks. At best, one injury can be attributed to someone else other than the injuries caused by Gurprit Singh @ D.C. The said fact also causes a doubt regarding the presence of Talwinder Singh @ Kulwinder Singh and Gurprit Singh @ Kala.

28. It is well settled that graver the sentence, stricter the degree of evidence required to establish the offence. Hon'ble Supreme Court in (2008)16 SCC 417 Noor Aga Vs. State of Punjab held as follow:

“ 56. The courts must always remind itself that it is a well settled principle of criminal jurisprudence that more serious the offence, the stricter is the degree of proof. A higher degree of assurance, thus, would be necessary to convict an accused. In *State of Punjab v. Baldev Singh*, (1999) 3 SCC 977, it was stated:

"It must be borne in mind that severer the punishment, greater has to be the care taken to see that all the safeguards provided in a statute are scrupulously followed."

57. It is also necessary to bear in mind that superficially a case may have an ugly look and thereby, *prima facie*, shaking the conscience of any court but it is well settled that suspicion, however high may be, can under no circumstances, be held to be a substitute for legal evidence.”

29. As a sequel to our discussion made above, especially in light of the fact that accused Talwinder Singh @ Kulwinder Singh and Gurprit Singh @ Kala were not named in the FIR and the evidence to show their presence at the spot is not convincing enough, their involvement cannot be said to be proved beyond shadow of reasonable doubt. Appellants Talwinder Singh @ Kulwinder Singh and Gurprit Singh @ Kala are, thus, held entitled to benefit of doubt.
30. Consequently while the conviction of Gurprit Singh @ D.C. for offence under Section 302 is affirmed and appeal on his behalf is dismissed, the conviction of Talwinder Singh @ Kulwinder Singh and Gurprit Singh @ Kala is set aside while allowing their appeals. Talwinder Singh @ Kulwinder Singh and Gurprit Singh @ Kala are acquitted of all the charges framed against them. The sentence as imposed upon Gurprit Singh @ D.C. shall remain unaltered.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

November 07, 2017
mohan

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No