

Criminal Appeal D-910-DB of 2010

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**IN THE HIGH COURT OF PUNJAB & HARYANA,
CHANDIGARH**

**Criminal Appeal D-910-DB of 2010
Date of decision : January 9, 2017**

Jaspal Singh @ Jagpal Singh @ Kala

..... Appellant

Versus

State of Punjab

..... Respondent

Criminal Appeal D-1060-DB of 2010

Bhagwant Singh

..... Appellant

Versus

State of Punjab

..... Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE H.S.MADAAN**

**Present:- Mr. A. A. Pathak, Advocate
for the appellants.**

Mr. S. S. Dhaliwal, Additional A.G., Punjab.

H.S.MADAAN J.

Vide this judgment we intend to dispose of Criminal Appeal

Criminal Appeal D-910-DB of 2010

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D-910-DB of 2010 filed by the accused-convict Jaspal Singh @ Jagpal Singh @ Kala and Criminal Appeal D-1060-DB of 2010 filed by accused-convict Bhagwant Singh against the judgment dated 5.8.2010 passed by the Sessions Judge, Sangrur vide which both of them were convicted and sentenced as follows:-

1.	<u>Jaspal Singh</u>	
	under Section 324/34 IPC	Rigorous Imprisonment for three years plus fine amounting to Rs.2,000/- and in default of payment of fine to undergo further rigorous imprisonment for two months
	Under Section 302/34 IPC	Imprisonment for life and a fine of Rs. 10,000/- and in default of payment of fine to undergo further rigorous imprisonment for one year.
2	<u>Bhagwant Singh</u>	
	Under Section 324 IPC	Rigorous Imprisonment for three years plus a fine amounting to Rs. 2,000/- and in default of payment of fine to undergo further rigorous imprisonment for two months.
	Under Section 302	Imprisonment for life and a fine of Rs.10,000/- and in default of payment of fine to undergo further rigorous imprisonment for one year.

Substantive sentences were ordered to run concurrently.

Both the accused/convicts who are appellants before this Court pray that the appeals be accepted, impugned judgment of their conviction and sentence be set aside and they be acquitted of the charges framed against them.

Briefly stated, facts of the case as per the prosecution story are that complainant-deceased Jaswinder Kaur daughter of Gurcharan Singh of Jat community, resident of Village Nagri, P.S.Sadar Sunam, aged about 35 years, was married with Bhagwant Singh accused, a natural born son of late Lekh Singh and

adopted son of Balkar Singh of Jat Community resident of village Bhato P.S. Bhawanigarh, about 13-14 years prior to the incident. The couple was blessed with two sons. Bhagwant Singh was addicted to taking liquor and he had sold three killas of his land about 5-6 years prior to the incident to fullfil his such vice. Complainant, Jaswinder Kaur, his wife had been dissuading him from doing so, which gave rise to quarrels between the husband and wife. Resultantly, Jaswinder Kaur along with her two minor sons was turned out of the matrimonial home by Bhagwant Singh, accused about four years prior to the incident and they started residing at parental place of Jaswinder Kaur.

Jaswinder Kaur had initiated litigation against her husband, seeking maintenance and for restraining Bhagwant Singh from disposing of the property in his name. The cases had been pending in different courts. On 25.8.2007 Jaswinder Kaur along with her mother Karnail Kaur had gone to the Court complex at Sangrur to attend hearing in the court of Sh. Sarbjit Singh Dhaliwal, the then Additional Chief Judicial Magistrate, Sangrur, in a maintenance case. Both of them were sitting in the court room, when Bhagwant Singh, (accused) along with his adoptive father Balkar Singh son of Gurbux Singh besides Jaspal Singh @ Kala son of Harbans Singh, resident of Bhato (accused) and one more person came there. They were sitting outside the court room. At about 3.30 in the evening Bhagwant Singh and Jaspal Singh @ Kala entered the court room, whereas Balkar Singh along with their associate was standing at the gate of the Court room, Balkar Singh gave an exhortation, at which Jaspal Singh @ Kala accused took Karnail Kaur in his grasp whereas Bhagwant Singh

having a Kirpan (small sword) in his right hand stabbed Jaswinder Kaur in the abdomen besides inflicting injury on her backside. When Karnail Kaur tried to intervene and to snatch Kirpan from Bhagwant Singh to save Jaswinder Kaur, in the process, she received injury with the sword of Bhagwant Singh on her right hand. Both the injured raised alarm. In the meanwhile HC Jagdish Lal, Naib court attached with the court came and over powered Bhagwant Singh and snatched kirpan from his right hand, while Balkar Singh and Jaspal Singh @ Kala and their associate managed to flee from the spot. The injured were removed to Civil Hospital Sangrur, where they were medically treated and medico legally examined. The intimation regarding admission of injured in the Civil Hospital, Sangrur Ex. PH was sent to Police Station, City Sangrur, on receipt of which the police party headed by ASI Darshan Kumar (hereinafter referred to as the 'Investigating Officer/I.O.also) went to the Civil Hospital, Sangrur. ASI Darshan Kumar moved written application, Ex. PJ and PK inquiring about fitness of injured Jaswinder Kaur and Karnail Kaur to make statements, on which the attending doctor vide his endorsement Ex. PJ/1 and PK/1 respectively declared both the injured fit to make statements. Thereafter, the Investigating Officer recorded statements of both the injured.

The motive for the incident was that Jaswinder Kaur was asking her husband Bhagwant Singh not to sell the property and had filed a maintenance case against him in the Court. Her husband Bhagwant Singh was asking her to withdraw the case but she did not agree, as such, Bhagwant Singh along with his associates, including Jaspal Singh @ Kala

had attacked Karnail Kaur and Jaswinder Kaur.

Below statement Ex. PT which complainant-injured Jaswinder Kaur had made to ASI Darshan Kumar of P.S.City Sangrur, ASI Darshan Kumar had appended his endorsement Ex. PT/1 sending ruka to Police Station through PHG Paramjit Singh on the basis of which, formal FIR Ex. PT/2 was recorded at Police Station Sangrur under signatures of ASI Gulab Singh. ASI Darshan Kumar had also recorded statement of Karnail Kaur injured. ASI Darshan Kumar had taken into possession the blood stained salwar (trouser) and Kameej (shirt) of injured Jaswinder Kaur and converted those into a parcel sealing it with his seal having inscription 'DK' and that parcel was taken into possession by him vide memo Ex. PU attested by HCs Ajaib Singh and Darshan Singh. Then the police party led by ASI Darshan Kumar went to the spot i.e. the court of Addl.CJM, Sangrur. There Naib Court HC Jagdish Lal produced the accused Bhagwant Singh before the Investigating Officer and he was arrested in this case. His personal search was conducted, which had resulted in recovery of one mobile make Motorola and a currency note of denomination of Rs.100/-, those were taken into possession vide recovery memo Ex. PV signed by the accused and attested by HC Darshan Singh. Grounds of arrest were disclosed to the accused vide memo Ex. PW, which was signed by the accused and attested by both the witnesses aforementioned. HC Jagdish Lal, Naib Court produced before the Investigating Officer a small sword (kirpan) Ex. P1, which was taken into possession vide memo Ex. PB. That memo was attested by HC

Jagdish Lal and HC Ajaib Singh. Rough sketch of the recovered kirpan was prepared as Ex. PA attested by the aforesaid witnesses. The Investigating Officer carried out the spot inspection and prepared a rough site plan Ex. PX qua place of incident. He recorded statements of witnesses. Motor cycle of the accused bearing registration No. PB-13-P 2115 was also taken into possession from the court compound on the basis of information disclosed by Bhagwant Singh. A memo Ex. PY was prepared in that respect.

On return to the police station, the Investigating Officer deposited the case property with MHC Karamjit Singh. Police remand of the accused was taken from Illaqa Magistrate. On 27.8.2007, ASI Darshan Kumar recorded supplementary statement of Jaswinder Kaur as Ex. PZ. In the said statement Jaswinder Kaur stated that since she was perturbed when she had got her original statement recorded with the police wherein she had disclosed her age as 25 years but actually her age was 35 years. Furthermore, she had given the name of Naib Court as Omparkash when his actual name was Jagdish Lal. Similarly, she had given name of Jagtar Singh instead of PHG Malkiat Singh and that she and her mother Karnail Kaur had been sent to Civil Hospital, Sangrur in a Government vehicle though, in her original statement she had mentioned it to be a private vehicle.

Further investigation in this case was carried out by SI Bharpur Singh, SHO, Civil Lines, Patiala. On 28.8.2007, accused Bhagwant Singh was interrogated by SI Bharpur Singh. On 29.8.2007, accused was remanded to judicial custody by the Court of

Illaq Magistrate.

On 4.9.2007, SI Bharpur Singh had received a telephonic message from HC Malkiat Singh, PP Rajindra Hospital, Patiala that Jaswinder Kaur injured, who was admitted in Rajindra Hospital, Patiala had expired. SI Bharpur Singh recorded entry in the DDR and added offence under Section 302 IPC in this case, the attested copy of the DDR being Ex.PS. Then the police party headed by SI Bharpur Singh went to Rajindra Hospital, Patiala. The dead body of Jaswinder Kaur was lying in mortuary of that hospital. The Investigating Officer carried out inquest proceedings with regard to the dead body of Jaswinder Kaur. Dead body of Jaswinder Kaur was identified by her father Gurcharan Singh and one Lal Singh. The Investigating Officer had prepared inquest report as Ex. PE. Then he drafted an application Ex.PB/1 for getting post mortem examination conducted on the dead body of Jaswinder Kaur from Rajindra Hospital, Patiala through HC Ajaib Singh. After postmortem examination HC Ajaib Singh handed over the dead body to the family members of the deceased against a receipt whereas clothes of the deceased were produced by HC Ajaib Singh before SI Bharpur Singh which were converted into a parcel and sealed by him with seal bearing letters 'BS' and the said parcel was taken into possession vide memo Ex. PAA which was attested by HC Ajaib Singh. The Investigating Officer recorded the statement of HC Ajaib Singh. On return to the Police station, the Investigating Officer deposited the case property with the MHC.

On 12.9.2007, after getting permission from the Court of Illaqa Magistrate SI Bharpur Singh formally arrested accused Bhagwant Singh for offence under Section 302 IPC. At that time personal search of accused was carried out but nothing incriminating was recovered from him as a result thereof. A memo Ex. PB was prepared by the Investigating Officer which was signed by the accused. Wives of Balkar Singh and Jaspal Singh @ Jagpal Singh @ Kala had moved an application that their husbands were innocent. SI Bharpur Singh had conducted inquiry and found that Balkar Singh and Jaspal Singh @ Jagpal Singh were infact not involved in the incident. On 3.10.2007 the Investigating Officer had recorded statement of Aasa Nand, Photographer who had produced before him four photographs along with negatives of Jaswinder Kaur which had been taken into possession vide memo Ex. PN attested by PW Aasa Nand and HC Ajaib Singh. Photographs are Ex.P2 to P5 and negatives are Ex.P6 to P9.

During the course of investigation, the Investigating Officer got prepared scaled site plan of the place of incident from Dharminder Singh, Draughtsman and made the same part of the investigation file.

After completion of investigation, and other formalities, challan against Bhagwant Singh, accused was prepared and filed in the Court of Illaqa Magistrate, Sangrur. The copies of the documents as envisaged under Section 207 Cr.P.C were furnished to the accused free of cost.

Then observing that the challan had been filed for offences including one under Section 302 IPC which is exclusively triable by the Court of Sessions, the Illaqa Magistrate committed the case.

The case was received by the learned Sessions Judge, and after consideration, charges for offence under Sections 302 and 324 IPC were framed against the accused, who pleaded not guilty and the case was fixed for evidence of prosecution. Statement of PW1 Karnail Kaur was recorded. Thereafter the Public Prosecutor moved an application under Section 319 Cr.P.C for summoning Balkar Singh and Jaspal Singh @ Jagpal Singh as additional accused to face trial along with Bhagwant Singh. That application was accepted partly by the Sessions Judge vide his order dated 23.4.2008 inasmuch as Jaspal Singh @ Jagpal Singh @ Kala was summoned to face trial under Section 302 read with Section 34 IPC. He was arrested in this case and produced in the Court. Copies of the documents relied upon in the challan were supplied to him free of cost in terms of Section 207 Cr.P.C. Then after making consideration, charge for offences, under Sections 324, 302 read with Section 34 IPC was framed against the accused Bhagwant Singh and Jaspal Singh @ Jagpal Singh @ Kala to which they pleaded not guilty and the case was fixed for evidence of prosecution.

During the course of trial, the prosecution examined witnesses as follows:-

PW-1 Karnail Kaur, injured mother of Jaswinder

Kaur deceased provided ocular version of the incident deposing in

consonance with the prosecution story.

PW-2 (wrongly mentioned as PW-1) HC Jagdish Lal, Naib Court gave the eye witness account of the incident.

PW-3 (wrongly mentioned as PW2) S. S. Dhaliwal, Presiding Officer, Fast Track Court-II, Sangrur provided ocular version of the occurrence.

PW-4 Dr. K. K. Aggarwal, Additional Professor Medicines, Government Medical College, Patiala stated that on 4.9.2007 he had conducted postmortem on dead body of Jaswinder Kaur observing the following injuries on the dead body:-

- “1. Stitched wound 3 cm in length with three stitches intact was present on right side abdomen, 4 cm from midline. Clotted blood was present. It was horizontally placed. Margins were clean cut.
2. Stitched wound 1.5 cm.in length with two stitches present on the back of abdomen on right side, 3 cm. lateral from midline. Clotted blood was present. It was obliquely placed.”

All the injuries were antemortem in nature. He stated that in his opinion cause of death was septicaemia as a result of injury to abdominal viscera which was sufficient to cause death in ordinary course of nature and that the time elapsed between injury and death was within 7 to 10 days and between death and postmortem was within 24 hours. He proved copy of postmortem report as Ex. PC and copy of pictorial diagram as Ex. PC/1.

PW-5 Dr. Gurpreet Singh Nagra, Medical Officer, Chest & T.B. Hospital Patiala stated that on 25.8.2007 while posted at Civil Hospital as Medical Officer he had medico legally examined Jaswinder Kaur, injured finding following injuries:-

“1. An incised wound 3 cm x $\frac{1}{2}$ cm x $\frac{3}{4}$ cm. was present 4 cm from umbilicus on right side of abdomen and at the level of abdomen. Fresh blood was present. She was advised X-ray and ultrasound of whole abdomen and surgical opinion.

2. An incised wound 1.5 cm x $\frac{1}{2}$ cm x $\frac{1}{2}$ cm was present on right sided back 3 cm from mid line and 22 cm from right antero superior spine. Fresh blood was present. She was advised X-ray and surgical opinion.”

He stated that injuries No.1 and 2 were kept under observation subject to X-ray and ultrasound and for surgical opinion. The probable duration of injuries was found within six hours and nature of weapon used was found to be sharp edged. He proved MLR prepared by him as Ex. PF. He further stated that on the same day at 4.05 P.M. he had medico legally examined Karnail Kaur finding following injuries on her person:-

“1. A perforating wound present on palmer aspect of right hand with dimensions 3 cm x $\frac{1}{2}$ cm with sharp margins, longitudinally placed, starting from 1 cm from the base of middle finger and making exit at dorsal aspect of right hand starting 2 cm from metaphalangeal joint of middle finger. 2.5 cm x $\frac{1}{4}$ cm in dimension with everted margins (Probe was done under local anesthesia. She was advised X-ray and ortho opinion.”

He stated that the injury was kept under observation subject to X-ray and ortho opinion. The probable duration of the injury was six hour and nature of weapon used was sharp edged weapon. He proved copy of the MLR as Ex. PG and copy of the pictorial diagram showing the seat of injuries as Ex. PG/1. He further deposed regarding the further action taken by him with regard to giving fitness of the injured for making statement etc.

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PW-6 Dharminder Singh, Draughtsman stated that on 4.10.2007 he had gone to the spot and prepared a site plan using scale 1"=10'. He proved the site plan as Ex.PM.

PW-7 Aasa Nand Gaba, photographer stated that on 4.9.2007, he had gone to mortuary in Rajindra Hospital, Patiala and took four photographs of dead body of Jaswinder Kaur. He proved photographs Ex. P2 to P5 and negatives Ex. P6 to P9 stating that he had produced those before SI Bharpur Singh on 3.10.2007 who had taken those in possession vide memo Ex. PN, which was attested by him and HC Ajaib Singh.

PW-8 Ravinder Kumar, Additional Ahlmad attached to the Court of Ms. Manjot Kaur, ACJM, Sangrur had brought the summoned file of Criminal Misc.No.31 of 17.7.2007 titled as 'Jaswinder Kaur and others Vs. Bhagwant Singh' decided on 16.4.2009. He proved zimni order dated 25.8.2007 passed on the file by Sh. S. S. Dhaliwal, the then Civil Judge (Senior Division)-cum-ACJM, Sangrur. He proved certified copy of order dated 25.8.2007 as Ex. PQ stating that 25.8.2007 was date of hearing in the above case.

PW-9 Ravinder Sharma, Clerk, office of District Transport Officer, Patiala had brought the original record relating to registration of vehicle No. PB 13 P-2115 Motor cycle registered in the name of Bhagwant Singh resident of Bhato Tehsil Bhawanigarh, District Sangrur. He stated that the entry is signed by District Transport Officer, Sangrur. He proved the registration certificate of the Motor cycle as Ex. PR.

PW-10 HC Karamjit Singh from Police Station, City Sangrur, who was posted as MHC in the Police Station, Sangrur stated that on

4.9.2007 while he was posted as MHC, on receipt of telephonic message

from Rajindra Hospital, Patiala at Police Station, Sangrur regarding the death of Jaswinder Kaur, who was admitted in Rajindra Hospital, Patiala, a DDR regarding the same was recorded by HC Ajaib Singh and offence under Section 302 IPC was added. He stated that on 25.8.2007 ASI Darshan Kumar deposited with him a cell phone make Motorola, Rs. 100/-, sword and parcel of clothes of injured duly sealed with seal bearing impression DK as also a motor cycle No. PB-13P-2115.

PW-11 retired ASI Darshan Kumar, who had carried out investigation in this case deposed in that regard proving various documents.

PW-12 SI Bharpur Singh, who had investigated the case at a later stage and on completion thereon had filed challan in the Court testified in that regard.

PW-13 Dr. Simran Singh, Department of Surgery, Sector 32, Government Medical College & Hospital, Chandigarh deposed regarding surgery being conducted on person of injured Jaswinder Kaur at Rajindra Hospital, Patiala on 27.8.2007. He proved copy of her bed head ticket as Ex. PCC and operation notes as Ex. PCC/1. He further stated that as per record patient had expired on 3.9.2007 at 7.15 P.M.

PW-14 Dr. Bharti Tanwar, Medical Officer, Civil Hospital, Mansa who was having operating team of doctors who conducted surgery on person of Jaswinder Kaur stated that operation was conducted by the team on 27.8.2007 at Rajindra Hospital, Patiala which was started at 10.40 P.M. and completed at 1.40 A.M. on 28.8.2007. She stated that best possible treatment was given to the patient Jaswinder Kaur. She had proved operation notes as Ex. PCC/1 and bed head ticket as Ex.PCC.

With that evidence of the prosecution got concluded.

Statements of accused under Section 313 Cr.P.C were recorded, in which they were put all incriminating circumstances, appearing against them but they denied the allegations and stated that they are innocent and have been falsely implicated in this case. However, accused Jaspal Singh @ Jagpal Singh @ Kala had taken up a further plea that on the day of occurrence, he along with his cousin Balkar Singh son of Gurbux Singh remained busy throughout the day in their fields while spraying paddy crop and he was not present in the court complex at Sangrur on 25.8.2007. The police conducted inquiry from the respectables of his village Bhato and found him innocent. Some time prior to the occurrence, accused Bhagwant Singh tried to commit suicide as he was not having cordial relations with his wife Jaswinder Kaur, that he got him treated in the hospitals at Nabha and Ludhiana and Bhagwant Singh was saved but for that reason Jaswinder Kaur and his mother Karnail Kaur were having a grudge against him as to why he had saved Bhagwant Singh, and for that reason both Karnail Kaur and Jaswinder Kaur implicated him in this case.

During the course of their defence evidence, accused examined DW-1 Rupak Sharma, Correspondent Punjab Kesari Group of Publications posted at sub office, Sangrur. He stated that news having title 'Patni Te Sas Nu Judge Sahmne Jakhmi Kita' was got published by him in the newspaper 'Jag Bani', Edition Sangrur-Barnala dated 27.8.2007 and the photograph published along with the news item was also taken by him. He stated that he got the news as per information furnished by Karnail Kaur w/o Gurcharan Singh r/o village Nagri who was lying admitted in the Civil Hospital and the news items had also covered the information as furnished by Jaswinder Kaur daughter of Karnail Kaur, who was also admitted there

in the hospital. He added that the news had been published without any addition or omission and only on the information furnished by Karnail Kaur. He proved the news item Ex. DD.

With that the defence evidence of the accused stood closed.

After hearing arguments, learned Session Judge, Sangrur convicted and sentenced the accused as mentioned above, which left them aggrieved and they have filed the present appeals praying that the same be accepted, the impugned judgment of the trial court be set aside and they be acquitted of the charges.

We have heard learned counsel for the appellants and the Additional Advocate General, Punjab besides going through the record.

As far as involvement of Bhagwant Singh in the incident is concerned that is fully established on the record. He was nabbed by officials of court of Additional Chief Judicial Magistrate, Sangrur at the spot along with small kirpan used by him in the incident. The accused was handed over to police by HC Jagdish Lal, Naib court and was produced before the Investigating Officer on the same day. There are statements on oath of PW-1 Karnail Kaur injured, PW-2 HC Jagdish Lal, Naib Court and PW-3 Sh. S. S. Dhaliwal the then ACJM, Sangrur and all of them were unanimous in saying that it was Bhagwant Singh, accused who had inflicted injuries with small kirpan upon Jaswinder Kaur deceased, and so also to Karnail Kaur. Despite their lengthy cross examination they could not be shattered on any material point as far as inculpatory acts of accused Bhagwant Singh are concerned. During the investigation conducted, involvement of Bhagwant Singh was found to be there. The Investigating Officer had no reason to involve him in this case wrongly. Rather, the investigation had been

conducted in a fair and impartial manner. A strong motive was there for Bhagwant Singh to cause injuries to Jaswinder Kaur, since as per prosecution story Jaswinder Kaur, his wife, had been dissuading him from selling the land and he was annoyed with her for such reason, and Karnail Kaur happened to be mother of Jaswinder Kaur who had accompanied her to the Court at that time, Karnail Kaur having lost her real daughter in the incident would have been the last person to involve Bhagwant Singh in this case falsely.

Similarly, PW-3 Sh. S. S. Dhaliwal, a Senior Judicial officer and HC Jagdish Lal a disinterested person had absolutely no reason to implicate the accused in this case wrongly. The medical evidence duly corroborates the ocular evidence inasmuch as the doctor namely Dr. Gurpreet Singh who had medico legally examined the injured Jaswinder Kaur had found two injuries on her person both incised wounds. She was medico legally examined on 25.8.2007 at 4.00 P.M. PW-5 Dr. Gurpreet Singh Nagra had given probable duration of injuries within six hours and nature of weapon used for injuries No.1 &2 to be sharp edged weapon, which is commensurate with the prosecution story. Similarly, he had medico legally examined Karnail Kaur at 4.05 P.M. finding a perforating wound present on palmer aspect of right hand. Nature of injury was kept under observation subject to X-ray and ortho opinion. The probable duration of injuries was found within six hours and nature of weapon used was found to be sharp edged.

There is evidence adduced by the prosecution in the form of statement of PW-4 Dr. K. K. Aggarwal, Additional Professor, Forensic Medicines, Government Medical College, Patiala, who had conducted

postmortem examination on the dead body on 4.9.2007, from which it comes out that the injuries found on the dead body were ante mortem in nature though he had opined that the cause of death was septicaemia as a result of injury to abdominal viscera which was sufficient to cause death in ordinary course of nature.

Learned counsel for the appellants had tried to build up an argument that cause of death was not injuries inflicted on the person of Jaswinder Kaur but due to septicaemia which was result of negligence on the part of doctors treating Jaswinder Kaur injured. However, we do not find any merit in this argument. As it comes out from the record septicaemia was caused due to injuries inflicted on person of Jaswinder Kaur. We have perused the bed head ticket of Jaswinder Kaur which shows that antibiotic injections were also given to her. Learned counsel for the appellants failed to point out any wrongful act or omission on part of the attending doctors, which might have resulted in causing septicaemia to Jaswinder Kaur, irrespective of injuries suffered by her on her person. Therefore this contention of learned counsel for the appellants cannot be accepted. If we see cross examination of PW4 Dr. K. K. Aggarwal on behalf of Bhagwant Singh therein he though, admitted that puss was present in the abdominal cavity and deceased died as a result of infection there but he denied the suggestion that deceased had died because of improper treatment given to the patient or because of negligence of doctors, therefore prosecution had successfully proved its charge under Sections 302 and 324 IPC against Bhagwant Singh.

Since it stands fully established on record that on the fateful

Singh had voluntarily caused injuries to his mother-in-law Karnail Kaur with a kirpan which is an instrument of cutting and is a sharp edged weapon and on the same day by causing injuries on vital parts of his wife Jaswinder Kaur with a sword which is a dangerous weapon, he obviously had intention of causing her death in addition to having knowledge that he was likely to cause death of Jaswinder Kaur, therefore he was rightly convicted by the trial court for the said charges and no interference is called for in the said judgment of conviction.

As regards sentence part also no interference is required keeping in view the facts and circumstances of the case, therefore the appeal filed by Bhagwant Singh, accused is bound to fail.

Coming to the appeal filed by convict Jaspal Singh @ Jagpal Singh @ Kala, we find that it has merit since the prosecution has failed to bring home the guilt to Jaspal Singh @ Jagpal Singh @ Kala conclusively and affirmatively beyond a shadow of reasonable doubt. The reasons for saying so are many.

Firstly, Jaspal Singh @ Jagpal Singh @ Kala is not shown to have any motive prompted by which, he might have participated in the incident.

Secondly, his very presence at the spot comes out to be doubtful for various reasons, one of which being that he was not arrested from the spot, secondly, the later Investigating Officer, SI Bharpur Singh the then SHO Police Station, Sangrur who is not shown to have favourable inclination towards the accused on an application having been received from wives of Jaspal Singh and Balkar Singh and conducted enquiry had found

that Jaspal Singh @ Jagpal Singh @ Kala was innocent vide his report dated

15.9.2007. SI Bharpur Singh had appeared as PW-12 and he categorically stated so deposing that as a result of inquiry conducted by him he had given clean chit to Jaspal Singh @ Jagpal Singh @ Kala and Balkar Singh and their involvement in the incident was not found to be there, for the said reason Jaspal Singh had not been challaned. Further in his cross-examination SI Bharpur Singh admitted that an application was filed by Hardev Kaur wife of Balkar Singh and Parvinder Kaur w/o Jaspal Singh @ Jagpal Singh @ Kala to the SSP in connection with innocence of their respective husbands which was marked to him and he had conducted inquiry on the basis of that application Ex. DB recording statement of various persons and then he had found accused Balkar Singh, Jagpal Singh and Pal Dass to be innocent. He proved report submitted by him in inquiry as Ex. DC. He further deposed that the report was agreed to by the Circle Officer Pritpal Singh Thind, DSP vide his endorsement Ex. DC/1 and it was put up before SSP, who has recorded his endorsement Ex. DC/2. He has further stated that since accused Balkar Singh, Jaspal Singh @ Jaspal Singh @ Kala and Pal Dass were found to be innocent, as such, they were placed in column No. 2 of the report under Section 173 Cr.P.C. Though, when Bhagwant Singh alone was sent up for trial and statement of Karnail Kaur was recorded as PW-1 she had attributed specific role to Jaspal Singh and Balkar Singh, yet, on an application under Section 319 Cr.P.C having been filed by the prosecution only Jaspal Singh had been summoned to face trial along with Bhagwant Singh and not the other persons.

Another important fact to be taken note of is that PW-2 Jagdish Lal in his examination-in-chief had deposed regarding involvement of Bhagwant Singh only in the incident and has not uttered a single word

against Jaspal Singh. In the concluding line of his examination-in-chief he stated that he has nothing to state against any other person. Similarly, PW-3 Sh. S. S. Dhaliwal a Senior Judicial officer had deposed regarding involvement of Bhagwant Singh not saying anything incriminating against Jaspal Singh, rather he stated that besides accused Bhagwant Singh he had not seen any other person attacking upon Jaswinder Kaur. Both these PWs were not got declared hostile by the Public Prosecutor which goes to show that the prosecution accepted the version given by them in court which puts a big question mark over involvement of Jaspal Singh in the incident. If we see cross-examination of Jagdish Lal on behalf of Jaspal Singh @ Jagpal Singh @ Kala on page 3, he has stated that he had seen accused (Bhagwant Singh) when he was entering into the court and he was all alone. He had further stated that he had not seen any person rushing out of the court after the occurrence and that the two ladies were injured by accused Bhagwant Singh.

Under the circumstances, it becomes highly doubtful that Jaspal Singh would have been there at the spot or grappling had taken part in the incident with Karnail Kaur. The such role being attributed by Karnail Kaur to Jaspal Singh does not seem to be convincing.

The prosecution has been relying upon the statement made by Jaswinder Kaur before the police Ex. PT, which formed basis for registration of the formal FIR. In the said statement she has deposed regarding involvement of Jaspal Singh in the incident. The prosecution desires that it be taken as dying declaration in view of provisions of Section 32 of the Indian Evidence Act, 1872 whereas the defence opposes the plea tooth and nail stating that it cannot be so done for various reasons. The trial

court in para 30 of its judgment has agreed with the contention raised by the defence that when statement Ex. PT was made by the deceased at that time she was not under expectation of death and had her relatives by her side. We further agree with another plea of the defence that statement has been recorded by the police officer without putting in any effort to call even the Magistrate. The Magistrate was available at a little distance away from the place where the statement was recorded. Such statement is not attested by the doctor and is not accompanied by certificate of doctor to say that deceased remained conscious throughout its recording. The trial court has referred to various judgments cited by the defence in para 29 of the impugned judgment observing that position of law as adumbrated in the cited judgments is also beyond cavil. However in the subsequent paras while referring to section 32 of the Indian Evidence Act, 1872 and Section 6 of the Act vide that such statement was admissible in evidence in terms of Section 32 of the Act by application of principle of **res gestae**. To our mind, the approach of the trial court in so doing has been erroneous. It has been observed by the trial court that the deceased was not under expectation of death, at that time and in addition, there are several factors which make such statement unreliable. Many of those factors have been noticed by the trial court but conveniently ignored, which in our opinion, has resulted in failure of justice. The statement was made by Jaswinder Kaur on 25.8.2007 whereas she had expired on 3.9.2007 i.e. after eight days of the incident. The Investigating Agency could very well have got statement of injured recorded from a Magistrate, which would have lent much more authenticity to the statement, rather than the one recorded by a police officer. Then there were relatives found to be present near the injured when statement was

recorded by the police officer, showing that there were chances of tutoring.

PW-11 ASI Darshan Kumar admitted in his cross-examination that he had not visited Court of Illaqa Magistrate for making an application for getting the statement of Jaswinder Kaur recorded under Section 164 Cr.P.C.; that at that time more than one JMICS were working at Sangrur; that there is a distance of 1 ½ /2 K.Ms between the civil court and Police Station, City Sangrur. He has further admitted that he had inquired from Jaswinder Kaur as to how occurrence had taken place and at the first instance she did not reply. When her relatives persuaded her then she disclosed the entire incident after about half an hour. When he recorded statement of Jaswinder Kaur, her relatives were sitting on one side of the bed and that he had not obtained any certificate from the doctor after the statement of deceased was over that she had remained fit throughout the time when her statement was recorded. He further admitted that statement of Jaswinder Kaur was not attested by the doctor concerned.

It may be noticed here that in her statement Ex. PT there have been many factual errors inasmuch as name of Naib Court has been mentioned as Omparkash instead of Jagdish Lal. Similarly, name of Jagtar Singh has been given instead of PHG Malkiat Singh. She has given her age as 25 years instead of 35 years which contentions are factually incorrect as admitted by injured herself in her supplementary statement said to have been recorded on 27.8.2007.

Learned counsel for the appellant had referred to the judgment rendered by this Court in **Manphool (since deceased) and Jagan Vs. State of Haryana 2007 (3) RCR (Criminal) 232** wherein the aspect of dying deposition was dealt with at length. The rules dealing with recording

of dying declaration were reproduced as follows:-

“D. Punjab Police Rules Vol.III, Rules 25 and 27- Recording of dying declaration by police-police Rules prescribe the following procedure:-

(1) A dying declaration shall, whenever possible, be recorded by a Magistrate

(2) The person making the declaration shall, if possible be examined by a medical officer with a view to ascertaining that he is sufficiently in possession of his reason to make a lucid statement.

(3) If no Magistrate can be obtained, the declaration shall, when a gazetted police officer is not present be recorded in the presence to two or more reliable witnesses, unconnected with the police department and with the parties concerned in the case

(4) If no such witness can be obtained without risk of the injured person dying before his statement can be recorded, it shall be recorded in the presence of two or more police officers.

(5) A dying declaration made to a police officer should, under section 162, Code of Criminal Procedure, be signed by the person making it.”

It was observed that police could record the dying declaration if Magistrate was not available or there was no time to requisition services of a Magistrate due to precarious condition of victim but when it was so recorded by the police officer without explaining as to why services of a Magistrate were not requisitioned and further when dying declaration was recorded when the doctor declared that she was fit to make the statement but not in presence of doctor though he was available, such a declaration could not be relied upon.

Learned counsel for the appellants further referred to the judgment rendered by the Hon'ble Supreme Court in **Rangaiah Vs. State of**

Karnataka 2009 (1) RCR (Criminal) 923 on this very subject. It was a murder case where the deceased had died after 32 hours of receiving stab wounds. The dying declaration was recorded by the Investigating Officer without explaining as to why judicial officer was not called and conviction was set aside on that ground.

Learned Additional Advocate General, Punjab could not justify recording of statement by the Police officer himself instead of calling a Magistrate and getting the statement of injured recorded from him/her. Obtaining a certificate from the doctor ensuring that the doctor remained present when the statement of injured was being recorded and to get necessary certificate from him in that regard ensuring that victim was not tutored by her relatives. Under the circumstances, for the reasons detailed (supra) we do not find it proper to rely upon the statement Ex. PT as a dying declaration which was wrongly done by the trial court.

The approach of the trial court in convicting and sentencing Jaspal Singh @ Jagpal Singh @ Kala has been erroneous. The evidence was mis-appreciated and provisions of law mis-interpreted while determining verdict of guilt to Jaspal Singh @ Jagpal Singh @ Kala. A reasonable doubt arises, in the mind of the Court about his guilt. As per law the benefit of doubt is to be given to such an accused. Resultantly, the conviction and sentence of Jaspal Singh @ Jagpal Singh @ Kala is liable to be set aside.

In view of the above, CRA-D-910-DB of 2010 filed by Jaspal Singh @ Jagpal Singh @ Kala is accepted, his conviction and sentence is set

aside and he is acquitted of the charges against him. CRA-D-1060-DB of 2010 filed by Bhagwant Singh is, however, dismissed.

(T.P.S.MANN)
JUDGE

(H.S.MADAAN)
JUDGE

January 9, 2017
archana

Whether speaking/reasoned	Yes
Whether Reportable	No