

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

**CRA-D-980-DB of 2010
Date of decision:-19.5.2017**

Bhawani Singh and others

....Appellants

Versus

State of Haryana

....Respondent

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

Present : Mr.Dhruv Sihag, Advocate and
Mr.N.S. Shekhawat, Advocate
for the appellants.

Mr.Praveen Bhadu, Assistant Advocate General, Haryana.

H.S. MADAAN, J.

This appeal has been preferred against the judgment dated 31.8.2010 passed by the Court of learned Additional Sessions Judge, Rewari, vide which accused Bhawani Singh, Sher Singh and Smt.Narmada Devi were convicted for offence under Section 302 read with Section 34 IPC as well as for offence under Section 323 read with Section 34 of the Indian Penal Code and sentenced as follows:

Under Section	Sentence Awarded
302 read with Section 34 IPC	Imprisonment for life and to pay a fine of Rs.5,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of one year.
323 read with Section 34 IPC	Rigorous imprisonment for six months and to pay a fine of Rs.500/- each and in default thereof, to further undergo rigorous imprisonment for three months.

The accused-convicts, who are appellants before this Court pray that the appeal be accepted, the impugned judgment of conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the prosecution story as it emerged during the trial is that on 5.5.2009, a telephonic information was received at Police Station Khol from Police Post, General Hospital, Rewari that Mahender Singh and Sapna, residents of village Khol were admitted in General Hospital, Rewari having suffered injuries in an incident and some Investigating Officer be sent. Inspector Ajit Singh, SHO of the Police Station Khol was not available at police station, however, he was informed by MHC telephonically regarding the incident. Inspector/SHO Ajit Singh directed that SI Mange Ram should go to the hospital, whereas ASI Shamsher Singh was directed to proceed to the place of occurrence to preserve the crime scene. Accordingly, SI Mange Ram along with other police officials went to General Hospital, Rewari and received a ruqa and MLR from Police Post at that medical institute. He sought opinion of the attending doctor regarding fitness of injured Mahender Singh to make statement and on getting the opinion in affirmative, recorded his statement Ex.PP.

Inter alia, in his statement complainant Mahender Singh son of Amar Singh of Rajput Community, resident of village Khol, District Rewari, aged 24 years stated that he has got two more brothers, his eldest brother Om Parkash has renounced the world, Kanwar Pal deceased was younger to Om Parkash and he i.e. the complainant is the youngest amongst the brothers; that the complainant and Kanwar Pal used to work as labourers as they did not have any agricultural land; that Kanwar Pal was married and was having a son; that their uncle Sher Singh has been residing in front of their house, who was in habit of abusing them daily after consuming liquor; that many quarrels had taken place in the past due to that reason but every time the matter was settled within the family; that on 4.5.2009 between 4:30 p.m. and 5:00 p.m., Sher Singh in drunkard condition came and started giving filthy abuses to them. According to the complainant, he and his brother Kanwar Pal tried to stop him but to no affect, as such Kanwar Pal gave two slaps to Sher Singh on his face and sent him back to his house. Thereafter, the complainant and his brother Kanwar Pal went to their elder brother Om Parkash at the temple situated at hill to discuss their daily dispute with their uncle Sher Singh and when they were returning home and time was around 8:30 p.m., they saw Sher Singh, his son Bhawani Singh and wife Narmada Devi standing in the street armed with axes and on seeing them Sher Singh exhorted his son Bhawani Singh and wife Narmada Devi that the enemies had arrived and they be killed on that day, hearing that Bhawani Singh gave an axe blow to Kanwar Pal hitting him on neck due to which he (Kanwar Pal) fell on the ground, then Sher Singh gave an axe blow to complainant hitting him on head, another blow given by

Sher Singh hit complainant Mahender Singh on his left shoulder, Sher Singh also gave a blow to Kanwar Pal on left side of his face, after that Bhawani Singh gave an axe blow to Kanwar Pal and the axe struck on hard surface of street due to which its handle got broken and it was thrown by Bhawani Singh near water tank. The complainant further stated that on hearing the noise, Sapna wife of Kanwar Pal reached at the spot and tried to rescue Kanwar Pal, then Narmada Devi gave an axe blow to Sapna hitting her on right hand, Sher Singh also gave an axe blow to Sapna hitting her on left knee, however, when the complainant party raised hue and cry, several persons which included Satbir son of Shish Pal and Lala son of Roshan Singh of the village, arrived there and rescued the injured from the clutches of accused; that thereafter the assailants returned home along with their respective weapons. After the incident, Satbir arranged an ambulance and brought all the three injured to General Hospital, Rewari for treatment. The complainant and Sapna were admitted in the said hospital, however, keeping in view serious condition of Kanwar Pal, he was referred to PGIMS, Rohtak but he succumbed to the injuries there. The complainant came to know about it on 5.5.2009.

The said statement Ex.PP of complainant was signed by him in Hindi. His signatures were attested by SI Mange Ram, who appended his endorsement Ex.PP/1 below such statement of complainant and sent ruqa to the police station through Constable Satbir Singh for registration of case, on the basis of which formal FIR Ex.PQ was recorded by ASI Shamsheer Singh. Thereafter, the police party headed by SI Mange Ram proceeded towards PGIMS, Rohtak in a

private vehicle for initiating proceedings under Section 174 Cr.P.C. On reaching PGIMS, Rohtak, SI Mange Ram carried out inquest proceedings with regard to dead body of deceased Kanwar Pal. He recorded statements of witnesses under Section 175 Cr.P.C and prepared inquest report Ex.PY. He got the post-mortem examination conducted on the dead body of Kanwar Pal by moving application Ex.PO. He received copy of the post-mortem report along with a parcel containing clothes of the deceased duly sealed with seal of doctor and that parcel was taken into possession vide memo Ex.PZ. In the meanwhile, Inspector/SHO Ajit Singh had reached the scene of crime and by that time, photographs of the spot had been got clicked. Sapna widow of the deceased, Man Singh and other persons of the village were present along with the police party. Inspector/SHO Ajit Singh carried out spot inspection during course of that he taken into possession wooden handle of the axe (MO2), which was blood stained, after preparing its rough sketch Ex.PS/1 vide memo Ex.PS. Then blood stained earth was picked up from the spot vide memo Ex.PR. Broken pieces of bangles were also taken into possession vide recovery memo Ex.PT. Thereafter, rough site-plan of the place of incident was prepared as Ex.PA/F. Statements of the witnesses were recorded. Premises of Sher Singh and Bhawani Singh accused were raided and they were accordingly arrested in this case. Pant (MO4) of accused Bhawani Singh was blood stained and it was taken into police possession vide memo Ex.PU. Thereafter, all the recovered articles were converted into separate parcels and sealed with the seal having inscription 'MS'.

On 6.5.2009, accused were interrogated. Accused Bhawani

Singh suffered a disclosure statement Ex.PV wherein he admitted his involvement in the crime and in pursuance of disclosure statement, accused Bhawani Singh got the axe used in the incident recovered by leading the police party to his residential house, the axe being MO1. Its sketch was prepared as Ex.PX and then it was taken into possession vide memo Ex.PW. Rough site-plan of the place from where the recovery was effected was also prepared, the same being Ex.PA/G. The Investigating Officer recorded statements of witnesses and on return to police station deposited the case property with MHC.

On 22.5.2009, the Investigating Officer had recorded statements of Constable Sunil Kumar, MHC Jai Singh and Constable Manoj under Section 161 Cr.P.C. after having forwarded the case property to FSL for forensic examination.

On 5.5.2009, SI Mange Ram had produced before Inspector Ajit Singh, the record obtained from PGIMS, Rohtak along with papers of inquest and post-mortem report. The dead body was handed over to family members of the deceased vide memo Ex.PA/H. Statements of witnesses were recorded. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of learned Judicial Magistrate Ist Class, Rewari.

On presentation of challan in the Court of learned Judicial Magistrate Ist Class, Rewari, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under Section 302 IPC is exclusively triable by Court of Sessions, learned Judicial Magistrate Ist Class, Rewari vide his order dated 14.7.2009 committed

the case to the Court of learned Sessions Judge, Rewari from where it was entrusted to the Court of learned Additional Sessions Judge, Rewari.

On receipt of case in the Court, learned Additional Sessions Judge, Rewari observed that charge for offences under Sections 323 and 302 read with Section 34 IPC was disclosed against all the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of its evidence, the prosecution examined as many as fourteen witnesses as under:

PW1 Dr.Rajneesh Kumar, Medical Officer, General Hospital, Rewari tendered in evidence his affidavits Ex.PA and Ex.PB. He stated that he had also sent medical ruqa Ex.PC to Police Post, General Hospital, Rewari along with two MLRs, one relating to injured Mahender Singh Ex.PD and other that of injured Sapna Ex.PE. The witness stated that when injured Mahender Singh was medico-legally examined vide MLR Ex.PD, then following injuries were found on his person:

1. Skin peeled abrasion over back, scapular area left side of size 5 cm x 1 cm.
2. Abrasion with reddish colour over middle of back left side of size 3 cm x 1 cm.
3. A lacerated wound over right side parietal area of size 2.5 cm x 0.5 cm.

Injuries No.1 and 2 were simple in nature and injury No.3 was kept under observation. All the injuries were caused by blunt

weapon within duration of six hours. The injured was also referred for conducting x-rays. He proved corresponding films as Ex.PF and Ex.PF/1 and MLX as Ex.PG.

On 4.5.2009, he medico legally examined Sapna wife of Kanwar Pal, aged 22 years in terms of his detailed report Ex.PE and found following injuries on her person:

1. Complaint of pain over left knee joint with small abrasion of size 1 x 0.5 cm.
2. Scratch marks over right forearm.

Both the injuries were caused by blunt weapon within six hours of examination and the nature of injury No.2 was simple, however, injury No.1 was kept under observation and x-ray was advised for the same. At the time of admission, the patient had given a history of physical assault at 9:00 p.m. on 4.5.2009 by Sher Singh, Bhawani Singh and others.

The witness stated that patient Sapna was radiologically examined on 5.5.2009. He proved x-ray film as Ex.PK and MLX as Ex.PL.

PW2 Dr. Naresh Kumar Karanwal, Medical Officer, PGIMS, Rohtak tendered in evidence his affidavit as Ex.PM. He stated that on 5.5.2009, he had conducted the post-mortem of deceased Kanwar Pal son of Amar Singh, 27-28 years male, resident of village Khol, District Rewari. He proved post-mortem report as Ex.PN. He further stated that the cause of death was the complication arising out of the injuries suffered by the deceased. The deceased was found to have suffered six injuries in the form of incised wounds of varying sizes and

all the injuries had been caused by sharp edged weapon and the examination of the dead body had also revealed that the right lung of the deceased was full of blood and his abdominal organs had gone pale. He proved police request for conducting post-mortem examination as Ex.PO. In his opinion, the time elapsed between post-mortem examination and death was within 6 to 24 hours.

PW3 ASI Shamsheer Singh stated that on 5.5.2009, while posted at Police Station Khol, District Rewari, he was joined in investigation of case by Inspector/SHO Police Station Khol; that he had received a writing Ex.PP with endorsement of Inspector/SHO Ajit Singh Ex.PP/1, on the basis of which he had registered FIR as Ex.PQ; that he had made his endorsement Ex.PQ/1 on the writing Ex.PP. He deposed regarding investigation which was carried out in his presence on 5.5.2009.

PW4 SI Mange Ram, who had carried out the investigation in this case partly deposed in that regard.

PW5 Dharampal, Draughtsman, S.P. Office, Rewari deposed that on 25.5.2009, he had gone to the spot at village Khol and on pointing out of Mahender Singh had prepared scaled site-plan as Ex.PAA.

PW6 HC Jai Singh and PW7 Constable Manoj Kumar, both formal witnesses tendered in evidence their affidavits Ex.PAC and Ex.PAD, respectively.

PW8 Mukesh Kumar, Proprietor of M/s Chauhan Photo Studio, village Khol deposed that on 5.5.2009, he had been summoned by the police and he had clicked photographs as Ex.PA/E to Ex.PA/L at

the asking of SHO; that after getting the photographs developed, he had handed over the same to the police on 13.5.2009. He stated that since the photographs had been clicked with the help of digital camera as such their negatives did not come into being.

PW9 Mahender Singh, who himself had suffered injuries in the incident provided the eye-witness account deposing as per the prosecution story.

PW10 Sapna – injured also provided the ocular version supporting the prosecution story on material points.

PW11 Man Singh son of Umrav Singh, aged 64 years, resident of village Khol deposed that on 4.5.2009, he was sleeping in front of his house and on hearing of noises at about 8:30 p.m., he was attracted to the place of occurrence where he saw that Kanwar Pal (since deceased) was lying on the ground with injuries on his neck in a pool of blood and his wife was lying with him; that Rattan Singh @ Lala and Satbir were also attracted to the spot; that Mahender Singh was also there; that Mahender Singh and Sapna were injured; that thereafter Rattan Singh and Satbir arranged a vehicle and took the deceased along with Sapna and Mahender Singh to General Hospital, Rewari. Going further, the witness stated that on the next day i.e. on 5.5.2009, the police had come to the spot and summoned him there and that the police picked up blood stained earth, pieces of broken bangles and broken handle of axe from the spot and prepared memos in that regard which being Ex.PR, Ex.PS, Ex.PS/1 (sketch) and Ex.PT, respectively. Those were signed by him and recovered articles were converted into sealed parcel. The witness stated that on 6.5.2009, accused Bhawani Singh was

arrested and interrogated in his presence to which he suffered disclosure statement Ex.PV and volunteered to get the axe recovered from his residential house. The accused, while in police custody, led the police party to his house and got recovered axe Ex.MO1, which was taken into possession vide recovery memo. The police had also recovered the blood stained pant of accused (Bhawani Singh) and a memo Ex.PU was prepared. According to this witness, Mahender Singh had told him that the accused inflicted injuries to him and his *BHABHI* Sapna, besides brother Kanwar Pal. He stated that all the recovered articles were sealed and seal was handed over to him after use.

PW12 Constable Sunil Kumar stated that on 5.5.2009 while he was posted at Police Station Khol, ASI Shamsheer Singh had handed over to him special report Ex.PQ of this case for delivering the same to Illaqa Magistrate and senior officers of the police and he delivered special report to Illaqa Magistrate at about 2/2:30 p.m. and he had travelled in a jeep from Khol to Kund and thereafter in a bus from Kund to Rewari.

PW13 Inspector/SHO Ajit Singh, who had carried out investigation in this case to a major extent deposed in that regard proving various documents.

PW14 Satbir son of Shishpal, Shopkeeper, resident of village Khol, District Rewari deposed that he is running a photographer shop under the name of Chauhan Photo Studio at bus-stand village Khol; that Amar Singh father of Kanwar Pal had visited his shop asking him to intervene since a scuffle had taken place between Bhawani Singh etc. and Kanwar Pal at about 5:30 p.m.; that after closing his shop at

about 8:30/9:00 p.m., he had gone to the house of Kanwar Pal, where he witnessed that several persons had assembled and creating noise; that body of Kanwar Pal was lying in a pool of blood; that after seeing the condition of Kanwar Pal, he went to arrange an ambulance and informed the police. Thereafter, Bhawani Singh accused had also gone to Police Station Khol along with the weapon of crime. The witness stated that after arranging an ambulance injured Kanwar Pal, Sapna and Mahender were brought to General Hospital, Rewari. Injured Sapna and Mahender Singh were admitted there whereas Kanwar Pal was referred to PGIMS, Rohtak, where he had succumbed to his injuries. Thereafter, the post-mortem on the dead body of deceased was done. He otherwise deposed supporting the prosecution story.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

During their defence evidence, accused examined Parkash Chand, Reader to SDJM, Kosli, Sessions Division, Rewari as DW1, who deposed that on 6.5.2009, he was posted as Reader to learned Chief Judicial Magistrate, Rewari; that on that day Chief Judicial Magistrate, Rewari was the Duty Magistrate and FIR Ex.PQ was received by Chief Judicial Magistrate, Rewari in a sealed envelop as a Duty Magistrate at 2:58 p.m. through Constable Sunil Kumar. The witness stated that he had made endorsement Ex.DX on dictation of Chief Judicial Magistrate, Rewari.

With that defence evidence of accused was closed.

After hearing arguments, learned trial Court convicted and sentenced accused Bhawani Singh, Sher Singh and Narmada Devi as mentioned above, which left them aggrieved and they have filed the present appeal.

We have heard learned counsel for the appellants – accused - convicts, learned Assistant Advocate General for the State of Haryana besides going through the record.

As far as involvement of accused –convicts Sher Singh, his wife Narmada Devi and their son Bhawani Singh in the incident is concerned, the same stands proved from the cogent and convincing ocular evidence produced by the prosecution in the form of examining Mahender Singh as PW9 and Sapna as PW10. Both of them had received injuries in the incident, as such they are stamped witnesses. Furthermore, the incident had taken place near their house at 8:30/9:00 p.m. and at that time people are mostly at home, therefore their presence at the spot is natural and cannot be doubted. Both of them gave the eye-witness account of the incident supporting the prosecution story on material aspects. Earlier enmity between the parties is not much disputed. Nevertheless, the same has been established by the prosecution by bringing sufficient evidence. Both the eye-witnesses have deposed in that regard. The immediate provocation for the incident was that when Sher Singh was abusing the complainant party at about 4:30 p.m. and on being asked not to do so, he did not stop and was given two slaps on the face by the deceased that would have triggered the reaction inasmuch as Sher Singh along with his son Bhawani Singh and wife Narmada Devi

coming to the street having axes with them. The injuries on the person of deceased are attributed to Sher Singh and Bhawani Singh, whereas Narmada Devi although stated to be armed with an axe had not joined such attack on the deceased. As a matter of fact as the prosecution story goes, she had attacked Sapna when Sapna had come out of house on hearing the noise of her husband being assaulted by assailants Sher Singh and Bhawani Singh. The injuries caused to Sapna are simple in nature inflicted with blunt weapon. During the post-mortem examination of Kanwar Pal, he was found to have suffered six injuries in the form of incised wounds of varying sizes caused by sharp edged weapons. The seats of the injuries that are mentioned clearly goes to prove that intention of assailants Bhawani Singh and Sher Singh was to cause his death. In our considered view, though Sher Singh and Bhawani Singh are proved to be sharing a common intention to commit murder of Kanwar Pal but it is not so as regards their co-accused Narmada Devi. As already observed, Narmada Devi had not joined the assault on Kanwar Pal and she had just attacked Sapna, when Sapna had come out of the house, in the process causing simple injuries to her with a blunt weapon. In our considered view, though there is nothing wrong with the impugned judgment and order as regards Sher Singh and Bhawani Singh convicting them for offence under Section 302 read with Section 34 IPC and sentencing them accordingly, the conviction and sentence of Narmada Devi under Section 302 read with Section 34 is not sustainable and is liable to be set aside.

It needs to be mentioned here that though there is some delay, say of about 12 hours in reporting the matter to the police

inasmuch the incident as per the prosecution story had taken place at 8:30/9:00 p.m., whereas statement of complainant was recorded on the next day i.e. 5.5.2009 at 9:50 a.m. But then delay in this case is not fatal and stands adequately explained. The incident had taken place during night hours. In the incident Kanwar Pal had suffered multiple injuries several of them on vital parts. Under the circumstances, the first and foremost expectation from the complainant side was to take him and injured Mahender Singh and Sapna to the hospital so as to get medical aid for them, rather than leaving the injured unattended at the spot and going to the police first to report regarding the matter. Furthermore, information from General Hospital, Rewari had been sent to the police station concerned from where the police party had come and recorded statement of complainant Mahender Singh. There is no question of substitution of assailants in this case. There was no reason for the PWs to screen the actual offenders and involve the accused in this case falsely by way of substitution. Although in the present case only Bhawani Singh is shown to have got recovered the axe used by him in the incident which when sent to FSL, Madhuban, Karnal was found to be stained with human blood as per report Ex.PAB showing that the axe had been used in the incident by accused Bhawani Singh. Though no weapon was got recovered at the instance of Sher Singh and Narmada Devi but that does not affect the prosecution story adversely since there is overwhelming evidence on the file to show active participation of Sher Singh in the incident and Narmada Devi also taking some part in the incident by assaulting and injuring Sapna. Merely due to non-recovery of weapons at the instance of Sher Singh and Narmada Devi does not point

out towards their non-participation in the incident. The medical evidence corroborates the ocular evidence. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challaned them falsely or to depose against them to secure their conviction. Strong motive for the incident was also there as discussed in detail above. Therefore, we conclude that the impugned judgment of conviction and order of sentence does not suffer from any illegality or irregularity as far as accused Bhawani Singh and Sher Singh are concerned since the prosecution has successfully proved its charge against both of them of sharing common intention to commit murder of Kanwar Pal, whereas it is not so as regards accused Narmada Devi. However, all three of them are shown to have common intention to voluntarily cause simple hurt to Mahender Singh and Sapna.

Therefore, conviction and sentences of accused Bhawani Singh and Sher Singh are maintained and appeal filed by them is dismissed being without any merit, whereas appeal filed by Narmada Devi is allowed partly. Her conviction and sentence under Section 302 read with Section 34 is set aside and she is acquitted of the charge for that offence whereas her conviction and sentence under Section 323 read with Section 34 IPC is ordered to be kept as intact.

Necessary intimation be sent to the quarter concerned.

	(T.P.S. MANN)	(H.S.MADAAN)
	JUDGE	JUDGE
19.5.2017		
Brij		

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No