

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

Criminal Appeal No.S-13-SB of 2010

Date of Decision : May 15, 2017

Dalbir Singh and another

....Appellant

Versus

State of Punjab

....Respondents

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

Present : Mr. Manvinder Singh Sidhu, Advocate
for the appellant.

Mr. Vikram Bishnoi, Assistant A.G., Punjab.

T.P.S. MANN, J.

Dalbir Singh-appellant was tried for committing the offence punishable under Section 302 IPC whereas Jagtar Singh-appellant was tried for committing the offence punishable under Sections 302/34 IPC. Vide judgment and order dated 11/14.12.2009, learned Sessions Judge, Rupnagar acquitted them of the said charge. However, Dalbir Singh appellant was convicted under Section 304 Part I IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.25,000/- and in default of payment of fine, to undergo rigorous imprisonment for 1½ years, whereas Jagtar Singh-appellant was convicted under Section 304 Part I IPC read with Section 34 IPC

and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.2,500/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.

Aggrieved of their conviction and sentence, the appellants filed the present appeal which was admitted on 7.1.2010. Subsequently, sentence of Jagtar Singh-appellant was suspended on 27.1.2011 whereas that of Dalbir Singh-appellant was suspended on 24.8.2011.

According to the prosecution, complainant Narinder Singh, resident of village Kainaur and an employee of Punjab State Electricity Board at Morinda, alleged that there was a blockade in the flow of drain water passing in front of the house of one Jang Singh. Due to rains, the blockade stood washed off. The appellants, alongwith Baljit Kaur wife of Dalbir Singh-appellant, came in a white Ambassador car with blue light on top bearing registration No.PB-65-5367 and asked as to who had put the blockade. Jang Singh disclosed that it was done by Labh Singh Sarpanch. Thereafter, Jang Singh called Labh Singh, father of the complainant to reach the spot. The complainant and his father Labh Singh reached the spot, whereafter the appellants alongwith Baljit Kaur caught hold of Labh Singh from his hair. Dalbir Singh gave a blow with a tile brick on the head of Labh Singh hitting behind his right ear due to which he fell down. Jagtar Singh-appellant and Baljit Kaur gave kick blows to Labh Singh.

The complainant came forward to rescue his father. On hearing the noise, some persons assembled there. All the appellants fled away in the aforementioned car. The occurrence was witnessed by Jang Singh. As a result, the complainant took his father to Civil Hospital, Morinda where the doctor declared him to be already dead. The complainant went on to state that there was party faction in the village. Four members of the Panchayat belonged to one party while the remaining four from the other. The deceased, who was a Panch, was elected as Sarpanch by toss.

It is also the case of the prosecution that on the statement made by complainant Narinder Singh on the aforementioned lines, FIR No.150 dated 20.9.2008 under Section 302 IPC was registered at Police Station, Morinda. During the investigation of the case, site plan of the place of occurrence was prepared. The dead body of Labh Singh was subjected to post mortem. Both the appellants were arrested on 21.9.2008 and pursuant to the disclosure statement suffered by him, Dalbir Singh-appellant got recovered the tile brick on 23.9.2008. On further investigation, Baljit Kaur was found innocent and after mentioning her name in column No.2 of the report under Section 173 Cr.P.C, challan was presented against the appellants. Dalbir Singh-appellant was charged for the offence under Section 302 IPC, whereas Jagtar Singh-appellant was charged for offence under Sections 302/34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Dr. Navtej Pal Singh, who deposed about conducting post mortem on the dead body of Labh Singh.

Complainant Narinder Singh, while appearing as PW2 and Jang Singh as PW5 deposed about the motive and ocular account of the occurrence.

PW3 Karnail Singh testified that he had identified the dead body of Labh Singh during inquest proceedings.

PW4 Dr. R.S. Bhatia, deposed that on 20.9.2008 at about 6.00 p.m. Labh Singh was brought to the Civil Hospital as dead and he had informed the police vide ruqa Ex.P6.

PW6 HC Dharam Pal tendered into evidence his affidavit Ex.P7.

PW7 Kuldeep Singh Patwari proved the scaled site plan Ex.P8, which he had prepared on 5.12.2008 after visiting the spot.

PW8 Harpal Singh Sodhi, Advocate testified that he had attested affidavit dated 20.1.2008 of Karamjit Kaur, being an Oath Commissioner.

PW9 SI Gurbax Singh testified about apprehending the appellants on 21.9.2008. At that time they were going in the car which was taken into possession alongwith blue light lying under the seat of the car. On 23.9.2008, Dalbir Singh-appellant got

recovered tile brick Ex.P10/1 pursuant to the disclosure statement made by him.

PW10 HC Gurmeet Singh tendered into evidence his affidavit Ex.P19.

PW11 Constable Bhupinder Singh deposed about handing over the special report to the Ilaqa Magistrate at her house.

PW12 SI Arvind Puri deposed that on 20.9.2008 he was posted as SHO in Police Station, Morinda. On receipt of ruqa Ex.P6 he alongwith police party went to Civil Hospital Morinda. As none from the family of the deceased met him there, he left for the place of occurrence. Narinder Singh complainant met him at bus-stop of Kainaur whose statement Ex.P4 was recorded by him. On its basis formal FIR Ex.P4/B was recorded. Then he went to the place of occurrence and inspected the same, he prepared rough site plan Ex.P20. He then went to Civil Hospital, Morinda and prepared inquest report Ex.P21 in respect of deceased Labh Sigh. The dead body was sent for post mortem. The houses of the appellants were raided but they were not found present. In the evening of 21.9.2008, a naka was held at Gopalpur where the appellants were apprehended when they were going in the car. The car as well as the blue light were taken into possession. On 23.9.2008 Dalbir Singh-appellant suffered disclosure statement. Pursuant to the same, he got recovered tile brick which he had kept concealed on

the eastern corner of the plot of Ajaib Singh adjoining his residential house.

When examined under Section 313 Cr.P.C., both the appellants stated that they were innocent and falsely implicated in the case. They had not caused any injury to deceased Labh Singh nor there was any injury on the person of Labh Singh. The appellants had moved an application against Jang Singh in the Police Station for blocking the water of their house. Due to enmity, false case had been planted against them in connivance with Jang Singh. Dalbir Singh-appellant further stated that he alongwith his wife Baljit Kaur and children was residing at House No.HE-1235, Phase I, Mohali. However, in defence, no witness was examined by the appellants.

After hearing learned counsel for the parties and on going through the record, the trial Court believed the prosecution case. However, as the occurrence had taken place all of a sudden, when query was put regarding putting up of blockade and, thus, there was no pre-meditation to cause death of Labh Singh. As such it was held that homicide of Labh Singh was not caused with intention of causing his murder and, therefore, the appellants were convicted for the offence under Section 304 Part I and 304 Part I read with Section 34 IPC and sentenced them to undergo imprisonment for ten years and also to pay fine.

After hearing learned counsel for the parties and on going through the evidence with their able assistance, this Court finds that PW2 Narinder Singh and PW5 Jang Singh have testified about the manner in which the occurrence had taken place. Their presence at the spot at the time of the occurrence cannot be held to be doubtful. Both, PW2 Narinder Singh and PW5 Jang Singh, were present when the ambassador car with blue light on the top came and its occupants proclaimed as to who had blocked the flow of the drain water. Upon this, Jang Singh had disclosed that it was done at the instance of Labh Singh, father of complainant Narinder Singh, Sarpanch of the village. On being asked to bring Labh Singh to the spot, Jang Singh went to his house. After the arrival of Labh Singh and his son Narinder Singh at the spot, Baljit Kaur accused had caught hold of Labh Singh from his hair, whereas Dalbir Singh-appellant gave a blow with the tile brick hitting on the head of Labh Singh behind his right ear. As a result, Labh Singh fell on the ground. Jagtar Singh-appellant and Baljit Kaur accused gave kick blows to Labh Singh. After the assailants decamped from the spot, Labh Singh was transported to Civil Hospital, Morinda but on examining him, the doctor declared him to be dead. In order to perform post mortem on the dead body of Labh Singh a Board of doctors headed by PW1 Dr. Navtej Pal Singh was constituted by Senior Medical Officer, Civil Hospital, Ropar. As per police papers, the death had occurred on 20.9.2006 at 6.15 p.m. The post mortem was conducted on 21.9.2008 at 11.40 a.m.

The following injuries were noticed on the dead body:-

1. Lacerated wound 1 cm x 1½ cms. Abrasion over middle of right pinna.
2. Lacerated wound 1 cm x ¼ cm. over half of right pinna. Clotted blood present over right ear.
3. Reddish contusion 2 cms. x 2 cms. behind right ear over mastoid area. Diffused swelling over mastoid area and around right ear. On dissection there was diffused haematoma in the region. On further dissection diffused extra dural haematoma was present.
4. Interrupted abrasion over left chest vertically below left nipple 7 cms. x 3 cms. (L x B) 8 cms. below left nipple.

The cause of death in the opinion of the Board of doctors was head injury causing extra parietal dural haematoma, which was ante-mortem and was sufficient to cause death in ordinary course of nature. The medical evidence fully corroborated the prosecution case regarding infliction of injuries by the appellants. Even the investigating agency had collected sufficient material to bring home the guilt of the appellants. After the arrest of the appellants, one of them, namely. Dalbir Singh had suffered disclosure statement and got recovered the tile brick from the place which was in his exclusive knowledge. Injuries No.1 to 3, which were on the middle of right pinna and lower half of

right pinna, could be the result of use of tile by Dalbir Singh appellant.

In view of the above, no case is made out for any interference in the conviction of Dalbir Singh appellant under Section 304 Part I IPC and of Jagtar Singh appellant under Section 304 Part I read with Section 34 IPC.

As regards the question of sentence, it may be noticed that the appellants are facing the agony of criminal prosecution for the last about nine years. Both of them remained in custody during the trial of the case. As per the custody certificates already brought on record by the learned State counsel, Dalbir Singh-appellant has already undergone an actual sentence of 4 years, 5 months and 12 days, inclusive of remission of 1 year, 9 months and 5 days, whereas Jagtar Singh-appellant has undergone an actual sentence of 3 years, 1 month and 13 days, inclusive of remission of 11 months and 5 days. None of them is shown to be a previous convict. No conventional weapon was used by Dalbir Singh-appellant in causing a blow on the right ear of Labh Singh deceased. Only a tile brick which might have been present at the place of occurrence itself was used by Dalbir Singh in causing a solitary blow. Subsequent thereto, Jagtar Singh-appellant and Baljit Kaur had given kick blows to Labh Singh. Further, during the pendency of the appeal the parties have amicably settled the dispute between themselves. In this regard, the appellants have placed on record compromise deed dated 15.3.2017 and affidavit

dated 15.3.2017 sworn by complainant Narinder Singh as Annexures A1 and A2, respectively.

Taking into consideration the totality of the circumstances, this Court is of the view that the sentence of imprisonment for ten years imposed upon the appellants is on the higher side. Ends of justice shall be suitably met if the sentence of imprisonment is reduced to eight years in the case of Dalbir Singh-appellant and 5 years in the case of Jagtar Singh-appellant.

Resultantly, the conviction of Dalbir Singh-appellant under Section 304 Part I IPC and of Jagtar Singh-appellant under Section 304 Part I read with Section 34 IPC is upheld. The substantive sentence of imprisonment of Dalbir Singh-appellant is reduced from ten years to rigorous imprisonment for eight years whereas that of Jagtar Singh-appellant is reduced from ten years to rigorous imprisonment for five years. The sentences of fine, alongwith their default clauses, are maintained.

The appeal is, accordingly, disposed of.

May 15, 2017
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(T.P.S. MANN)
JUDGE

Whether reasoned/speaking : YES / NO

Whether reportable : YES / NO