

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

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CRM No.14909 of 2016 and
CRA-D-658-DB of 2015

Date of Decision: March 16th, 2017

Bhim Sain

...Applicant

Versus

State of Punjab and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. Ashok Kumar Sama, Advocate
for the applicant.

AUGUSTINE GEORGE MASIH, J.

Application under Section 378(4) of the Code of Criminal Procedure seeking leave to file appeal has been preferred by Bhim Sain, complainant, against the judgment dated 22.12.2014 passed by the Additional Sessions Judge, Fazilka, whereby respondents-accused-Jagdish Kumar alias Golu and Gagan alias Gagandeep Singh-respondents-accused 2 and 3 respectively have been acquitted.

As per the prosecution case, on the statement of complainant-Bhim Sain son of Todu Ram, where he stated that they own land measuring 6 acres in village Rampura where they had sown wheat crop and he along with his father Todu Ram were residing in the fields in a hut raised by them. Earlier there was a dispute regarding this very land between the family of Todu Ram, father of the complainant and Sohan Lal son of Sarwan Ram etc. which stood finalised in their favour and on that basis, possession of the land was handed over to them by the Naib Tehsildar. On the intervening night of 13/14.04.2011 at about 1:00/1:30 AM, he was returning to his hut after having a round in their field when from a distance of about 20 karams

from the hut, he heard noises of Sohan Lal and Brij Lal sons of Sarwan Ram, Jagdish Kumar son of Sohan Lal, Gagan son of Krishan Lal and Golu Ram son of Pala Ram. He stopped there and started listening their conversation. Sohan Lal raised a *lalkara* and exhorted Brij Lal, Subhash Chander, Jagdish and Gagan to teach a lesson to Todu Ram and his sons for taking possession of their land. Sohan Lal gave a *sotta* blow on the left side of the head of his father Todu Ram. Brij Lal gave a *sotta* blow on the ear of Todu Ram whereas Jagdish gave a *sotta* blow on his head and Subhash gave a *sotta* blow on his nose. Todu Ram raised hue and cry. The accused remained there for 15/20 minutes and left the spot thinking Todu Ram to be dead. Complainant- Bhim Sain hide himself and remained quiet because the accused were more in number and he was afraid of being hurt. Thereafter he came out and found that his father was unconscious and there was bleeding from his head, nose and ear.

He called his brother Mohinder Kumar, arranged for a vehicle and brought his father Todu Ram to Civil Hospital, Fazilka, for treatment, from where he was referred to G.G.S. Medical Hospital, Faridkot. Todu Ram was medically treated and further referred to P.G.I., Chandigarh. On 16.04.2011, Bhim Sain-complainant, returned to Fazilka for arranging money and gave information to the police, on the basis of which an FIR was registered on 16.04.2011 at Police Station Sadar, Fazilka, under Sections 323/148/149 IPC.

Todu Ram was operated upon in P.G.I., Chandigarh, and was discharged on 22.04.2011, from where he was taken to Tandia Hospital, Ganganagar, where he died on 25.05.2011. Thereafter Sections 308 and 302 IPC were added to the FIR on the basis of the opinion obtained from the

Accused-Sohan Lal, Brij Lal, Jagdish Kumar and Jagdish Chander alias Golu were arrested on 31.08.2011. Accused-Sohan Lal and Brij Lal made a disclosure statement under Section 27 of the Evidence Act and got recovered wooden *sottas* used at the time of occurrence which were taken in possession by the police.

Initially Gagan alias Gagandeep Singh and Subhash Chander were declared proclaimed offenders. Challan was presented against accused-Sohan Lal, Brij Lal, Jagdish Chander and Jagdish Kumar alias Golu. Charge was framed against them and the evidence was led by the prosecution. Statement under Section 313 Cr.P.C. was recorded of all these four accused. Subsequently accused-Gagan alias Gagandeep Singh was arrested by police and a supplementary challan presented against him. After the trial, charges under Section 302 read with Section 34 IPC was proved against Sohan Lal, Brij Lal and Jagdish Chander resulting in their conviction and sentence, whereas Gagan alias Gagandeep Singh and Jagdish Kumar alias Golu were acquitted of the charges framed against them by giving benefit of doubt.

It is the contention of learned counsel for the complainant that the acquittal of respondents 2 and 3, namely, Jagdish Kumar alias Golu and Gagan alias Gagandeep Singh is not sustainable as they were part of the unlawful assembly. They were all present at the spot at the time of occurrence and had participated in the commission of the offence. He states that PW-4 Bhim Sain complainant has specifically stated that he had heard voices of these two accused along with others. Further he contends that respondent-Gagan alias Gagandeep Singh had not surrendered himself and was declared a proclaimed offender and was subsequently arrested by the

therefore, could not have been acquitted by the trial Court. Prayer has thus been made for allowing the present application by granting leave to appeal against acquittal of Jagdish Kumar alias Golu and Gagan alias Gagandeep Singh-respondents 2 and 3.

We have considered the submissions made by learned counsel for the applicant and with his able assistance, have gone through the impugned judgment as also the records of the case.

On the basis of the evidence which has been led by the prosecution and especially PW-4 Bhim Sain complainant, the sole eyewitness, it is clear that the *sotta* blows have been attributed. Sohan Lal on the left side of the head of Todu Ram, Brij Lal on the ear, Jagdish Chander on the head and Subhash on the nose. No other *sotta* blow has been attributed to any other accused. Further as per the medical evidence brought on record i.e. of PW-1 Dr. Hans Raj, Senior Medical Officer, Civil Hospital, Fazilka, who had medicolegally examined Todu Ram on 14.04.2011 at 9:10 AM, following injuries on his person were found:

- “1. Lacerated wound 4 Cm X 1 Cm X bone deep on the left temporo fronto parietal (junction) region with underlying diffused reddish swelling extending to parietal region. Clotted blood was present. Black eye on both sides was present. Advises X-ray and C.T. Scan of head.*
- 2. Reddish contusion 8 Cm X 2 Cm with underlying diffused reddish swelling on right parietal region. Advised X-ray and C.T. Scan of head.*
- 3. Reddish contusion 2 Cm X 1 Cm with underlying diffused reddish swelling on the bridge of nose. Clotted blood in the nostril was present. Advised X-ray.*
- 4. Lacerated wound 1.5 Cm X 0.5 Cm through and through left pinna in middle. Clotted blood was present. Whole of pinna was swollen.”*

There is no other injury which has been found on the person of Todu Ram. That apart, he has also conducted the postmortem of deceased-Todu Ram on 25.05.2011, where again following injuries on his person were found:-

- “1. Stitched wound 23 cm in length on the left side of scalp titled S shaped starting from left temporal region on the left parietal region and extending to occipital prominence with drainage tube. On dissection post operative calvarial defect measuring 16 Cm X 9 Cm found in left fronto temporo parietal region. Clotted blood was present. Brain parenchyma contained old healed contusion underneath. Dura matter was sutured with intact drainage tube.*
- 2. Brain and organs of abdomen were pale. Pleural cavity on right side contained serious fluid. Right lung was congested in lower zone. Abdomen contained bone fragment. Stomach contained gastric juices only.”*

The cause of death has been opined to be the injury to the vital organs i.e. brain (head injury) and post operative complications leading to septicaemia which is sufficient to cause death in the ordinary course of nature.

It is thus apparent that there are only four injuries on the person of deceased-Todu Ram which have been specifically attributed to the four accused out of which three accused namely Sohan Lal, Brij Lal and Jagdish Chander have been convicted under Sections 302/34 IPC and sentenced to rigorous imprisonment for life along with fine of ₹10,000/-, in default of which for one year rigorous imprisonment. It would not be out of way to mention here that the fourth accused Subhash Chander son of Brij Lal who has been attributed a *sotta* blow to the accused, is a proclaimed offender.

It may be added here that on the basis of disclosure statement

been made at the behest of the acquitted accused respondents- Jagdish Kumar alias Golu and Gagan alias Gagandeep Singh nor any injury found or been attributed to them. There is a general tendency to rope in all the family members and near ones including friends.

In view of the above, we do not find any basis to grant leave to file appeal against the judgment of acquittal of Jagdish Kumar alias Golu and Gagan alias Gagandeep Singh-respondents 2 and 3 respectively in the judgment dated 22.12.2014 passed by the Additional District Judge, Fazilka. The application and the appeal, therefore, stand dismissed being devoid of merit.

(M. JEYAPPAUL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

March 16th, 2017
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