

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

CRA-D-862-DB-2003
Date of decision:20.02.2017

Chamkaur Singh and Others

.....Appellants

Versus

State of Punjab

.....Respondent

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

Present: Mr. P.S. Ahluwalia, Advocate
for the appellants.

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

H.S. MADAAN, J.

This appeal is directed against the judgment dated 16.09.2003
and order dated 17.09.2003 passed by the Court of learned Sessions
Judge, Sangrur vide which he had convicted accused Chamkaur Singh,
Kewal Singh and Satnam Singh alias Satta and sentenced them as under:-

Name of Convict	Offence	Sentence Awarded
Chamkaur Singh	Under Section 323/34 IPC	Rigorous imprisonment for four months.
	Under Section 302 IPC	Rigorous imprisonment for life and to pay a fine of ₹ 5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of one year.
Kewal Singh	Under Section 323 IPC	Rigorous imprisonment for four months.
	Under Section 302/34 IPC	Rigorous imprisonment for life and to pay a fine of ₹ 5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of one year.
Satnam Singh alias Satta	Under Section 323/34 IPC	Rigorous imprisonment for four months.
	Under Section 302/34 IPC	Rigorous imprisonment for life and to pay a fine of ₹ 5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of one year.

All the substantive sentences were ordered to run concurrently.

The accused-convicts who are appellants before this Court

pray that the appeal filed by them be accepted, the impugned judgment of their conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated facts of the case as per the prosecution version are that complainant-Joginder Singh son of Gurdial Singh of *Majbhi* community resident of village Ratoke, Police Station Longowal aged about 40 years has got a residential house in the village, and residential house of accused-Kewal Singh, son of Buta Singh of *Majbhi* community is located in his immediate neighbourhood. On 12.12.2002 at night, Kewal Singh was playing tape-recorder in his house at high volume to which Jasbir Singh, brother of the complainant objected, resulting in exchange of abuses between them. However both of them were pacified.

On 13.12.2002 at about 6:00 a.m., when Jasbir Singh went out of his house followed by his brother Joginder Singh-complainant, then accused-Kewal Singh armed with a *Sota* (club/stick), accused Chamkaur Singh armed with a *Gandasa* (axe) and accused Satnam Singh alias Satta, all sons of Buta Singh were standing in front of house of Joginder Singh-*Panch*. There was electric light in front of house of Joginder Singh. On observing complainant-Joginder Singh and his brother Jasbir Singh, Satnam Singh alias Satta raised a *Lalkara* (exhortation) that the complainant party be taught a lesson for stopping them from playing tape-recorder at night. On hearing that, Kewal Singh opened the attack by giving a *Sota* blow to complainant-Joginder Singh hitting him on his chest, resultantly complainant-Joginder Singh fell on the ground. While he was lying there, Kewal Singh gave another blow to Joginder Singh

hitting him on the right shoulder. Jasbir Singh raised alarm of “*Na Maro - Na Maro*”. In the meantime, Amar Singh father of complainant-Joginder Singh and Jasbir Singh PWs came there. Then Chamkaur Singh-accused gave a *Gandasa* blow from its reverse side to Amar Singh hitting him on the right side of his head, as a result thereof Amar Singh fell on the ground. While Amar Singh was lying on the ground, Satnam Singh alias Satta-accused gave fist blow to him on his nose. During the incident Satnam Singh alias Satta accused had also received some injuries.

Complainant-Joginder Singh had moved Amar Singh-injured to Civil Hospital, Longowal where they were admitted and treated. However, Amar Singh succumbed to the injuries suffered by him in the incident, at about 10:30 a.m.. From Civil Hospital, Longowal an intimation was sent at Police Station Longowal regarding arrival of injured Joginder Singh and Amar Singh there. On receipt of that intimation, a police party led by SI/SHO Jasbir Singh (hereinafter referred to as Investigating Officer/I.O.) Longowal went to that hospital. He sought written opinion from the attending doctor regarding fitness of both the injured to make statements. The doctor had given such opinion in affirmative as regards complainant-injured Joginder Singh, whereas Amar Singh-injured had expired. The Investigating Officer recorded statement of complainant-Joginder Singh Ex.PM. Said statement was thumb marked by complainant-Joginder Singh and it was attested by the Investigating Officer. The Investigating Officer appended his endorsement Ex.PM/1 below said statement and sent *ruqa* to police station through C. Paramjit Singh, on

the basis of which formal FIR Ex.PM/2 was recorded at Police Station Longowal by MHC Hardev Singh.

Since it was a case of unnatural death of Amar Singh, the Investigating Officer carried out inquest proceedings and prepared report Ex.PC. The dead body of Amar Singh was identified to the Investigating Officer by Ms. Labh Kaur and Sh. Mohinder Singh. The Investigating Officer deputed HC Kirpal Singh to get post-mortem examination conducted on dead body of Amar Singh by handing over an application Ex.PB to him. Thereafter the police party accompanied by complainant went to the spot. The Investigating Officer prepared rough site plan of the place of incident as Ex.PQ. He recorded statements of witnesses. HC Kirpal Singh after getting post-mortem examination conducted on dead body of Amar Singh handed over a parcel containing belongings of deceased to Investigating Officer, which was taken into possession vide recovery memo Ex.PR attested by ASI Gurcharan Singh and HC Kirpal Singh. On return to the police station, Investigating Officer deposited case property with MHC Hardev Singh.

On 16.12.2002 all the three accused were produced before the Investigating Officer by Sh. Roor Singh, Ex-Sarpanch. A *Sota* was recovered from accused Kewal Singh, which was taken into possession vide recovery memo Ex.PS. A *Gandasa* was recovered from accused-Chamkaur Singh which was seized vide memo Ex.PT. Before taking the *Gandasa* into possession Investigating Officer had prepared its

rough sketch as Ex.PU. Personal searches of the accused were conducted and a memo Ex.PV was prepared in that regard. Grounds of arrest were furnished to the accused vide memo Ex.PW.

After completion of investigation and other formalities challan against the accused was prepared and filed in the Court of learned Additional Chief Judicial Magistrate, Sangrur.

On presentation of challan in the Court of learned Additional Chief Judicial Magistrate, Sangrur, copies of documents relied upon therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C.. Thereafter finding that offence under Section 302 IPC is exclusively triable by the Court of Sessions, the learned Additional Chief Judicial Magistrate, Sangrur vide his order dated 31.01.2003 committed the case to the Court of Sessions.

When the case was received in the Court of learned Sessions Judge, Sangrur finding a prima facie case charge for offences under Sections 302, 323/34 IPC was framed against all the three accused, to which they pleaded not guilty and claimed trial. The case was fixed for evidence of prosecution.

During the course of evidence of prosecution it examined as much as eight witnesses as detailed below:-

PW-1	-	Dr. Ishwar Singh
PW-2	-	Dr. Baljit Singh
PW-3	-	Joginder Singh
PW-4	-	Jasbir Singh
PW-5	-	Labh Singh

PW-6 - SI Jasbir Singh
PW-7 - ASI Gurcharan Singh
PW-8 - HC Kirpal Singh

PW-1 Dr. Ishwar Singh, Medical Officer, who on 13.12.2002 at 4:00 p.m. had conducted post-mortem examination on the dead body of Amar Singh son of Gurdial Singh, 80 years *Majbhi* Sikh resident of village Ratoke Police Station Longowal, stated that as per information furnished by police he had allegedly died due to homicidal injuries, rigor mortis was present in all the limbs, but not fully established. He had noted down following injuries on his person:-

1. *8 cm x 8 cm contusion present in left temporal region of scalp. On dissection there was present haematoma over the skull. The underlying skull bone was fractured. There was present a sub dural haematoma of the size of 12 cm x 10 cm in the left temporal region. There was present fracture of pterous part of temporal bone.*

2. *Bleeding present from both nostrils.*

Organs of thorax were NAD. Heart was healthy, right side of the heart was full of blood and left side was empty. Organs of abdomen were healthy. Liver, spleen, kidney, bladder were NAD. Stomach contained semi-digested food. Small intestines contained chyme and gases. Large intestines contained faecal matters and gases.

In opinion of this witness, cause of death in this case was due to shock and haemorrhage due to injuries suffered, which were ante

mortem in nature and sufficient to cause death in ordinary course of nature. This witness gave the probable time, which elapsed between death and post-mortem as within twelve hours. He proved the copy of post-mortem report Ex.PA and pictorial diagram showing seats of the injuries as Ex.PA/1. He proved two shirts of the deceased as Ex.P1 & Ex.P2, two long robes (Cholas) as Ex.P3 & Ex.P4 and Kachha (underwear) Ex.P5 stating that he had removed such clothes from the dead body and handed over those to the police in sealed parcels. After seeing *Gandasa* Ex.P6, the witness opined that injury No.1 on the person of deceased could be possible with reverse side of *Gandasa*. He gave the probable time, which in his opinion had elapsed between injuries and death as from 4 to 5 hours.

PW-2 Dr. Baljit Singh, Medical Officer, PHC Longowal, who on 13.12.2002 while posted as such at PHC Longowal had medico legally examined Amar Singh son of Gurdial Singh, aged 80 years, male resident of village Ratoke at 8:45 a.m. stated that he had found following injuries on his person:-

- 1. 8 cm x 8 cm swelling present on the left side of the head and 4 cm above the lateral end of left eye-brow.
(Advised X-ray)*
- 2. Bleeding present in the right nostril. Fresh bleeding present. (Advised X-ray)*

He added that injuries No.1 and 2 were kept under observation and that the probable duration of injuries was within six

hours and the kind of weapon used was blunt for all the injuries. He proved copy of the MLR as Ex.PE and the pictorial diagram showing seats of injuries as Ex.PE/1. After seeing the *Gandasa* in the Court the witness stated that injury No.1 on person of Amar Singh could be possible from reverse side of *Gandasa*.

The witness further added that on the same day he had also medico legally examined Joginder Singh son of Amar Singh, 40 years and had observed the following injuries on his person:-

1. *11 cm x 1 cm contusion present on the right side of the chest, 2 cm medial to the right nipple and 8 cm below the medial end of right clavicle. Reddish in colour.*
2. *11 cm x 1 cm contusion present on the right scapular region. Colour was reddish.*

In his opinion injuries No.1 and 2 were simple in nature and the probable duration of injuries was within six hours with kind of weapon used to be blunt for both the injuries. He proved copy of the MLR as Ex.PF and pictorial diagram showing seats of injuries as Ex.PF/1. He stated that possibility of injuries No.1 and 2 having been caused with stick (Ex.P7) cannot be ruled out. He proved copy of bed-head ticket of Joginder Singh as Ex.PL. He stated that he had handed over dead body of Amar Singh to the police for getting the post-mortem examination conducted thereon from Civil Hospital, Sangrur.

PW-3 Joginder Singh-injured complainant and PW-4 Jasbir Singh provided eye-witness account of the incident deposing in

consonance with the prosecution story.

PW-5 Labh Singh, Patwari deposed that on 16.01.2003 he had prepared scaled map Ex.PN at the instance of SHO Jasbir Singh.

PW-6 Jasbir Singh SI/SHO, Investigating Officer of this case deposed regarding the investigation conducted by him in this case and proved various documents.

PW-7 Gurcharan Singh ASI, who on 13.12.2002 was member of the police party headed by SI/SHO Jasbir Singh, deposed regarding the investigation conducted in his presence. In addition to that he testified regarding all the three accused having been produced before SI/SHO Jasbir Singh by Roor Singh Ex-Sarpanch on 16.12.2002 and *Gandasa* having been recovered from Chamkaur Singh and *Sota* from Kewal Singh, which had been taken into possession. He further deposed regarding personal searches of the accused and grounds of arrest having been conducted/furnished to them, in his presence.

PW-8 HC Kirpal Singh deposed that on 13.12.2002, while he was posted at Police Station, Longowal on that day SI Jasbir Singh SHO of the said police station had deputed him to get post-mortem examination conducted on dead body of Amar Singh from Civil Hospital Sangrur giving him application Ex.PB, that as directed, he got the needful conducted, the doctor had handed over to him one parcel of clothes of Amar Singh which was sealed with the seal of "IS", that on returning to the police station he produced that parcel before SI/SHO Jasbir Singh which was taken into possession vide Ex.PR attested by

him and ASI Gurcharan Singh.

With that the prosecution evidence got conducted.

Statements of accused were recorded under Section 313 Cr.P.C. in which all the incriminating evidence appearing against the accused was put to them, but they denied all the allegations containing therein by stating that they are innocent and have been falsely involved in this case.

Accused Chamkaur Singh stated that his uncle Chhinda Singh had a dispute with Joginder Singh regarding appointment of Chowkidar, but that case was decided against Joginder Singh and due to that reason Joginder Singh had falsely implicated him in this case.

Similar pleas were taken by other co-accused.

Accused Satnam Singh alias Satta had tendered in evidence copy of order of SDM Ex.DF whereas other accused had not led any evidence in defence.

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

We have heard learned counsel for the appellants-convicts and Mr. S.S. Dhaliwal, learned Additional Advocate General for the State besides going through the record.

As far as happening of the incident is concerned, eye-witness account has been provided by PW-3 Joginder Singh and PW-4 Jasbir Singh. Both of them deposed in a natural and convincing

manner. The account provided by them inspires confidence, we find their presence at the spot to be natural, probable and account given by them to be worthy of reliance. Though both the PWs were subjected to lengthy cross-examination on behalf of the accused but they stood their ground well and could not be shattered on any material point. Joginder Singh having suffered injuries in the incident is a stamped witness and his presence at the spot at the relevant time cannot be doubted. Similarly there is nothing to doubt the presence at the spot of other eye-witness Jasbir Singh. Joginder Singh having suffered injuries in the incident and he along with his brother Jasbir Singh having lost their father Amar Singh, they would have been the last persons to involve accused in this case wrongly and to try to screen the actual culprits. Normally it is earnest endeavor of such close relatives, who appear as witnesses to ensure that the persons responsible for their miseries in the form of death of their close relative and injuries to the other is brought to the book and punished suitably rather than trying to save the actual culprits from punishments and introduce some innocent person in their place without any rhyme or reason.

The medical evidence corroborates ocular evidence on most of the aspects. The investigation has been carried out in a fair and impartial manner though not in a very scientific and professional way. The weapons which were recovered from the accused were not converted into sealed parcels and were not sent to Forensic Science Laboratory to find out as to whether those were stained with human

blood or not. Explanation rendered by the Additional Advocate General is that since injury No.1 on person of Amar Singh was in the form of contusion and it was not an open injury, similarly both the injuries found on person of injured Joginder Singh were in the form of contusions, there was little possibility of the weapons used in the incident being stained with blood and sending those to Forensic Science Laboratory would have served a little purpose.

However, we are not completely satisfied with this explanation. As per statement of PW-1 Dr. Ishwar Singh, who had medico legally examined Amar Singh-injured bleeding was present from both nostrils, as such possibility of weapon used being stained with blood was there. The Investigating Officer should have sent both the weapons to Forensic Science Laboratory and if any blood stain was found to be there on the weapons, that too of human blood, that would have further fortified the prosecution story. However due to absence of that evidence the prosecution case cannot be disbelieved, more particularly when as regards other injury on the person of Amar Singh and two injuries on the person of Joginder Singh, no oozing of blood is shown to be there. A slight ambiguity is there as regards injury No.2 on person of Amar Singh-deceased which is said to have been inflicted by Satnam Singh @ Satta with fist blow. PW-1 Dr. Ishwar Singh in his cross-examination stated that there was no external injury on the nose. He stated that possibility of injury No.2 having been caused with *Naksir* cannot be ruled out and injury No.2 is due to injury No.1. However, we

tend to place reliance upon ocular evidence in such an eventuality because medical evidence is in the form of opinion testimony only. Further as per the case of prosecution, Satnam Singh alias Satta had also suffered injuries in the incident. PW-2 Dr. Baljit Singh had stated in that regard in his cross-examination observing that he had found three injuries on the person of Satnam Singh alias Satta, first injury having been in the form of abrasion, second a lacerated wound and third a contusion. Thus participation of Satnam Singh alias Satta in the incident stands proved. The prosecution has successfully established on record that on 13.12.2002 at about 6:00 a.m. in the area of village Ratoke accused Chamkaur Singh, Kewal Singh and Satnam Singh alias Satta shared a common intention to voluntarily cause hurt to Joginder Singh and to cause homicidal death of Amar Singh. After appraisal of evidence and considering other facts and circumstances on the file, we find that intention of all the accused was not to commit murder of Amar Singh but it was a little less than that and the offence which is disclosed against Chamkaur Singh-accused is under Section 304 Part I IPC and against his co-accused Kewal Singh and Satnam Singh alias Satta is under Section 304 Part I read with Section 34 IPC. While observing so we have considered the aspect that though Chamkaur Singh was having a *Gandasa*, which is a sharp edged dangerous weapon but he had given a blow to Amar Singh from its reverse side. He had given a single blow only and had not repeated it. In case, his intention was to commit murder of Amar Singh, then in all likelihood he would have used

Gandasa from its sharp side and given more than one blow. Nevertheless it has to be kept in mind that *Gandasa* is a heavy weapon and using it from reverse side causing injury on the temporal region of scalp on the left side is definitely on the vital part. We find it to be a case of culpable homicide not amounting to murder. Motive in this case was quarrel over a petty matter i.e. playing of tape-recorder at a high pitch. Furthermore Amar Singh had arrived at the spot on hearing alarm by his sons Joginder Singh and Jasbir Singh. He happened to be an old man of 80 years.

In our considered opinion, the appeal is bound to be allowed partly. Resultantly, conviction and sentence of all the three accused under Section 302 read with Section 34 IPC is set aside, rather Chamkaur Singh is convicted for the offence under Section 304 Part I IPC, whereas his co-accused Kewal Singh, Satnam Singh alias Satta are convicted for offence under Section 304 Part I read with Section 34 IPC. As regards sentence part, we are of the view that it would be proper and appropriate if Chamkaur Singh-accused who had actually caused injury No.1 to Amar Singh is sentenced to undergo rigorous imprisonment for ten years and to pay fine of ₹ 5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for one year. Whereas accused-Kewal Singh and Satnam Singh alias Satta are ordered to undergo rigorous imprisonment for eight years and to pay fine of ₹5,000/- each and in default of fine to undergo further rigorous imprisonment for one year each for offence under Section 304 Part I

IPC read with Section 34 IPC. Whereas conviction and sentence of all the three accused for the offence under Section 323 read with Section 34 is maintained. Substantive sentences shall run concurrently. Since the accused-convicts are stated to be on bail by this Court as a result of suspension of their sentences, they are ordered to be taken into custody so as to undergo remaining sentence. The appeal is disposed of as having been partly allowed.

Necessary direction in that regard be issued to Chief Judicial Magistrate, Sangrur.

20.02.2017
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(H.S. MADAAN)
JUDGE

- | | | |
|----|------------------------------|-----|
| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |