

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

CRA-D-No.1602-DB OF 2013
DATE OF DECISION : 14th NOVEMBER, 2018

Parduman Singh & another

.... appellants

Versus

State of Punjab

.... Respondent

CRA-D-No.1622-DB OF 2013

Gurvinder Singh alias Gora

.... appellant

Versus

State of Punjab

.... Respondent

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE H. S. MADAN**

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Present : Mr. R. S. Rai, Senior Advocate with
Mr. Deepinder Brar, Advocate for the appellant.

Ms. Anu Pal, Deputy Advocate General, Punjab.

Mr. G. S. Kaura, Advocate for the complainant.

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A. B. CHAUDHARI, J.

1. In these two appeals there is challenge to the judgment and order dated 04.12.2013 passed by learned Additional Sessions Judge, Ludhiana, by which all the three appellants were convicted for offences punishable under Sections 302, 450, 506 IPC read with Section 34 IPC and were sentenced to undergo rigorous imprisonment for life along with other sentences for the other offences.

FACTS:

2. Briefly stated, the prosecution story is that complainant-Paramvir Singh reported to Sarup Singh SI that on 22.06.2011 in the evening when the complainant was present in the house of his uncle Harjinder Singh the deceased and was talking with him in the courtyard about the illness of their grandmother Pritam Kaur, at about 8.30pm when electric lights were on, the main gate of the house of Harjinder Singh was knocked. Hearing the sound, Harjinder Singh opened the small gate of the house when all the three appellants immediately entered through the gate and came in the courtyard. Then Gurvinder Singh and Partap Singh caught hold of the deceased Harjinder Singh from his left and right arm respectively and Parduman Singh armed with *chhura* delivered blow on the right side chest of Harjinder Singh and went on giving blows continuously. In order to save himself Harjinder Singh tried to catch hold of *chhura* with both his hands and also received injuries on his hands. He fell down thereafter. On hearing the noise, the accused fled away from the spot on the motorcycle parked outside the house. Harjinder Singh was taken to the hospital where he was declared dead. The motive was that some days ago Harjinder Singh and Parduman Singh had quarreled and Parduman Singh had given a threat to kill him. The police recorded the FIR and started investigation. All the appellants were arrested. The *chhura* was discovered by the main accused Parduman Singh which was blood stained. After completion of investigation investigating officer filed challan in the court. The trial commenced. Thereafter the prosecution examined the star eye witness PW-1-Paramvir

Singh (complainant) and other witnesses. The defence examined one witness DW-1-Karamjit Singh. The trial court thereafter heard arguments and convicted the appellants as stated above.

ARGUMENTS:

3. In support of these appeals learned senior counsel for the appellants submitted that the prosecution case is false and there was no eye witness and even if the eye witness is stated to have been present on the spot, it was night time at 8.30pm and the prosecution did not prove by evidence that there was electric lights on. The eye witness was, therefore, a planted witness and close relative of the deceased and was interested witness. It was further argued by learned counsel for the appellants in both these appeals that the discovery of *chhura* from appellant No.1 Parduman Singh was vitiated inasmuch as no independent witness was examined for the alleged discovery. The learned counsel for the appellant then asked that the other two appellants i.e. Gurvinder Singh and Partap Singh are said to have caught left and right arms of the deceased to enable appellant No.1-Parduman Singh to deliver *chhura* blows to the deceased Harjinder Singh. The further story that Harjinder Singh with his hands caught hold of the *chuura* in order to save from the blows, is false because the story of the witness is that both his left and right hand were caught hold by the other two appellants. Thus the eye witness could not be believed and consequently the appellants are liable to be acquitted. In the alternative the learned counsel for the appellants submitted that accused-Parduman Singh is said to have given only one blow by means of *chhura* on the chest and the injury report also shows

only one blow. Therefore, according to the learned counsel for the appellants, no offence of murder was made out or proved against appellant-Parduman Singh and therefore the offence may be converted in to the one under Section 304 part-1 as deemed fit by this court. Finally learned counsel for the appellants prayed for their acquittal.

4. *Per contra*, learned counsel for the State and the counsel for the complainant as well vehemently opposed the appeal and supported the impugned judgment and order of sentence. Learned counsel for the State submitted that the testimony of PW-1-Paramvir Singh is trustworthy and there is no dent in the cross-examination of the said witness. There is a corroboration in the FIR and therefore the prosecution proved its case beyond reasonable doubt. The other appellants shared common intention and therefore, they were also rightly convicted. He prayed for dismissal of both the appellants.

CONSIDERATION:

5. We have heard learned counsel for the rival parties at length. We have perused the entire oral as well as documentary evidence with their assistance. We have also seen the judgment and reasons recorded by the trial court. At the outset, we find that the prosecution has examined PW-5 Gurdeep Singh, Junior Engineer from Punjab State Transmission Corporation, who deposed on the basis of documents that on the relevant date and time the electric supply was on. His evidence has practically gone unchallenged and therefore, we have no hesitation in accepting that the electric lights were on and PW-1-Paramvir Singh could not be said to have not seen the accused persons. At any rate, the

incident is of 22.06.2011 when even otherwise sufficient light is available. We therefore, reject the argument to the above effect.

6. The medical evidence is proved by PW-4 Dr. Rashmi who has proved the injury by *chhura* which is the deep injury and certainly would cause death since it has damaged the vital organs. The appellant Parduman Singh had given the blow of *chhura* with full force that too on the chest fully knowing that the only consequence will be the death. It is true that the evidence shows that there was only one injury on the chest but then that does not necessarily mean that the offence could be converted into the one under Section 304 Part-I IPC. The reasons are that the appellant-Parduman Singh knocked the door of the house of Harjinder Singh having been armed with *chhura* in his pocket, thereafter he entered the house and thereafter gave the blow of *chhura*. In other words he had come with complete preparation to commit murder of Harjinder Singh and it is thereafter he delivered blow of *chhura* on his chest. In view of this preparation made by him we are not in a position to agree that offence under Section 302 IPC was not proved by the prosecution.

7. Insofar as the other appellants-Gurvinder Singh and Partap Singh are concerned what we find is that the evidence of PW-1 is highly doubtful about their role or their presence. The reason is that PW-1 deposed that Gurvinder Singh had caught left hand while Partap Singh had caught right hand of the deceased to enable appellant No1-Parduman Singh to give *chhura* blow on his chest. His further evidence is that Harjinder Singh caught hold of *chhura* and thereafter received injury on

the hand. He has not explained as to how when left and right hand both were caught by these two appellants, the deceased Harjinder Singh would catch hold of the *chhura* of which only one blow was given to him on chest. This evidence according to us is not corroborated and appears to be after thought. We are therefore convinced that insofar as these two appellants Gurvinder Singh and Partap Singh are concerned, the story appears to be improbable. If according to the eye witness, both the appellants had caught both the hand of the deceased, there was no occasion for Harjinder Singh to catch hold of the *chhura*. We are, therefore, inclined to give benefit of doubt to both these appellants i.e. Gurvinder Singh and Partap Singh. We, therefore, hold them not guilty of any offence for which they have been charged and convicted.

8. To sum up, the prosecution succeeded in proving the offence for which appellant-Parduman Singh was convicted and his appeal must fail. Insofar as the appellants Gurvinder Singh and Partap Singh, are concerned, their appeal will have to be allowed and they will have to be acquitted. We, therefore, make the following order:

Order

- (i) CRA-D-No.1602-DB OF 2013 filed by appellant No.1- Parduman Singh son of Partap Singh resident of village Haidon, Tehsil Samrala, District Ludhiana, is dismissed.
- (ii) CRA-D-No.1602-DB OF 2013 filed by appellant No.2 Partap Singh son of Gurdial Singh resident of village Haidon, Tehsil Samrala, District Ludhiana, is allowed.

- (iii) CRA-D-No.1622-DB OF 2013 filed by appellant-Gurvinder Singh alias Gora son of Malkiat Singh resident of village Ballion, P.S. Samrala, District Ludhiana, is allowed.
- (iv) The judgment and the order of conviction and sentence made by learned Additional Sessions Judge, Ludhiana convicting appellant No.1-Parduman Singh son of Partap Singh in CRA-D-No.1602-DB OF 2013 is affirmed.
- (v) The judgment and order as against appellant No.2-Partap Singh son of Gurdial Singh in CRA-D-No.1602-DB OF 2013 and against appellant Gurvinder Singh alias Gora son of Malkiat Singh in CRA-D-No.1622-DB OF 2013, is set aside.
- (vi) Appellant No.2-Partap Singh son of Gurdial Singh in CRA-D-No.1602-DB OF 2013 and appellant Gurvinder Singh alias Gora son of Malkiat Singh in CRA-D-No.1622-DB OF 2013, are acquitted of the charge for which they have been convicted.
- (vii) A photocopy of this order be placed on the file of connected case.

14TH NOVEMBER, 2018
'raj'

(A. B. CHAUDHARI)
JUDGE

(H. S. MADAAN)
JUDGE

Whether speaking/reasoned : *Yes* *No*

Whether Reportable : *Yes* *No*