

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

Crl. Appeal No.D-24-DB of 2003 (O&M)

Date of Decision: February 28, 2018

Nirmal Singh and another

...Appellants

VERSUS

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE A.B.CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.Sukhbir Singh, Advocate
for the appellants.

Ms.Ruchika Sabharwal, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellants against the judgment of conviction and order of sentence dated 20.11.2002, passed by the learned Sessions Judge, Amritsar, whereby they were convicted and sentenced to undergo imprisonment for life and to pay a fine of ₹500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months each under Section 302 read with Section 34 IPC .

The brief facts of the case are that the FIR in the present case has been registered on the statement of Banti, who got recorded her statement to SI Gurdev Singh on 05.02.2000. Complainant Banti stated that she is resident of village Sarli Khurd and after death of her husband, she used to reside with her son Surinder Singh @ Shinda and her daughter was

married at Pakhoke. On that day, in the morning, she along with her son

Surinder Singh and nephew Harbhajan Singh started from their house to Tarn Taran for taking holy bath on account of *Amavasya*. When they went ahead about two killas, then, Nirmal Singh @ Nimma and his maternal uncle's son Bagga overtook them on scooter. All of them proceeded towards Adda Takhtu Chak through *kaccha* footpath. When complainant and Harbhajan Singh reached on metalled road, then Surinder Singh was going 1/2-3/4 killa ahead of them. At about 9.30 a.m., when Surinder Singh reached at Adda Takhtu Chak, then Nirmal Singh and his maternal uncle's son, who were already standing there, started giving knife blows to Surinder Singh on front side of his body within their sight. Complainant and Harbhajan Singh raised hue and cry and ran forward to rescue Surinder Singh. Within their sight, Surinder Singh fell down and both the accused ran away towards village Khakh on their scooter with their knives. Surinder Singh died on the spot. The motive behind the occurrence was that there was some dispute regarding land pending with Nirmal Singh etc. The panchayat of the village had also got effected compromise of the same. One day earlier to the occurrence, Surinder Singh had sown green fodder in the disputed land and for that reason, Nirmal Singh and Bagga had committed his murder. On the basis of this statement, FIR was registered. Inquest report was prepared. Dead body was sent for post-mortem examination. Rough site plan was prepared. Statements of witnesses were recorded. Accused were arrested. Weapon of offence was also recovered. After necessary investigation, challan was presented against the accused-appellants.

On presentation of challan, copies of challan and other

Cr.P.C. Finding prima facie case, the appellants were charge-sheeted under Section 302 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Dr.Ajit Singh, who conducted post-mortem examination on the dead body of Surinder Singh @ Chinda on 05.02.2000 and found following injuries:-

1. *A stab wound of wedge shaped 1 cm x 0.5 cm present on the front side of the left side of the chest, in the fifth intercostal space, 4 cms below the nipple and 10 cms lateral to the mid sternal line. Margins of the wound are clean-cut. Clotted blood was present in the wound. Probing of the wound was done with the help of a probe which went into the wound 6cms. Antero posteriorly.*

On dissection: a huge amount of blood was present in the left pleural cavity (about one litre). The pleural was ruptured and lung tissue coming in front of the wound, was also ruptured, pericardium and anterior wall of the left ventricle, was also ruptured.

2. *A stab wound of wedge shaped, 1 cm x 0.5 cm, present in the anterior aspect of the chest (left). In the anterior axillary line, in the seventh intercostal space 15 cms to the lateral and left of the anterior mid-line of the chest.*

On dissection: The pleura and lung tissue corresponding to the wound, was ruptured.

3. *A scratch wound of 3 cms x 0.2 cm present on the front side of the left side of chest, 3 cms, lateral to the anterior mid-line of the chest.*

4. *A stab wound of 1 cm x 0.5 cm, present on the mid-line of the chest, 5 cms, below the sternal notch.*

On dissection: The sternal was not broken.

5. *A lacerated wound of 2 cms x 1 cm, present on the front side of the right side of forehead.*

6. *A lacerated wound present on the back side of the left elbow (2 cms x 2 cms)*

7. *A lacerated wound of 2 cms x 2 cms, present on the*

middle of the anterior aspect of the middle of the left leg.

The injuries were ante-mortem in nature. In the opinion of the doctor, the cause of death in this case was due to stab wound No.1 leading on to injury to the heart and further leading on to extensive haemorrhage, shock and sudden heart failure, which was sufficient to cause death. The probable time that elapsed between injuries and death was immediate and between death and post-mortem, was within 24 hours. PW-2 Onkar Nath, Junior Assistant, mainly brought the summoned record and stated that Bajaj Scooter bearing registration No.PB-02A-4333 was registered in the name of Dasondha Singh and registration certificate of the vehicle is Ex.P1. PW-3 Banti, complainant, deposed as per prosecution version. PW-4 Harbhajan Singh, another eye witness, also supported the prosecution version. PW-5 Head Constable Amarjit Singh, who is a formal witness, tendered into evidence his affidavit Ex.PF. PW-6 Lakha Singh, mainly deposed regarding compromise Ex.PG got effected by the panchayat. PW-7 Head Constable Gurdial Singh and PW-8 Head Constable Harpal Singh, who are also formal witnesses, tendered into evidence their affidavits Ex.PH and Ex.PJ respectively. PW-9 SI Gurdev Singh, Investigating Officer, mainly deposed regarding investigation conducted by him in the present case. He also deposed that on 12.02.2000, accused Nirmal Singh and Dilbagh Singh were arrested by him when they were coming on scooter bearing registration No.PB-02K-4333. From the right pocket of pant of Dilbagh Singh, one knife was recovered and sketch of knife was also prepared, which is Ex.PS, which was taken into police possession. He further deposed that accused were produced in the Court on the next day and their police remand was

sought. Accused Nirmal Singh was interrogated, who made disclosure statement regarding kept concealing one knife in his house under the fodder, which is Ex.PT and then as per the disclosure statement, he got recovered the same and rough sketch of that knife was drawn, which is Ex.PT/1. That knife was also taken into police possession vide recovery memo. PW-10 Kulwant Singh, Patwari, mainly proved the photocopy of jamabandi for the year 1995-96. PW-11 Hardev Singh, Clerk, mainly brought the licence register and proved the driving licence issued to Dilbagh Singh.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves as innocent.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellants as stated above.

Aggrieved from the above-said judgment of conviction and order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellants contended that there is variation in the ocular version as well as medical evidence. There were three stab wounds, one scratch wound and injuries No.4 to 7 are lacerated wounds. Therefore, he argued that a reasonable doubt exists in the prosecution version. He further argued that presence of Banti and Harbhajan Singh is doubtful on the spot and they are not the eye witnesses. He next argued that version of the prosecution is improbable that there are so many shops etc. at the place of occurrence but none has been

examined to prove the prosecution version. He further contended that no

money has been recovered from the pocket of Surinder singh, which shows that they (complainant side) were not going to Tarn Taran. Learned counsel for the appellants, therefore, argued that there being merit in the present appeal, the same should be allowed and accused-appellants should be acquitted.

On the other hand, learned State counsel argued that it is a case of eye witness account and PWs Banti and Harbhajan Singh have proved the prosecution version. These PWs have seen the occurrence from a distance and they rushed towards the accused, who ran away from the spot. She further argued that version of eye witnesses that injuries were given by knife, is duly supported by medical evidence as stab wounds were found on the dead body of Surinder Singh. She next argued that there is nothing on the record to show that presence of eye witnesses is doubtful on the spot. Learned State counsel next contended that three persons i.e. the complainant, Harbhajan Singh and the deceased were going to Tarn Taran and it is not necessary that everybody must be carrying currency and on this ground, prosecution version cannot be disbelieved. She also contended that PWs have consistently deposed regarding prosecution version. The FIR is immediate. There is nothing to disbelieve the statements of PWs Banti and Harbhajan Singh. She further argued that it is not necessary to examine each and every person by the prosecution as a witness. Learned State counsel, therefore, argued that accused-appellants have been rightly convicted and there being no merit in the present appeal, the same should be dismissed.

After hearing learned counsel for the appellants as well as

learned State counsel and after going through the record, we find that both

the PWs i.e. Banti and Harbhajan Singh, who are the eye witnesses, have deposed consistently as per prosecution version. No material contradictions or improvements have been pointed out by learned counsel for the appellants in their statements, which may go to the root of the case. The perusal of the cross-examinations of both the PWs also shows that there is nothing in their cross-examinations to disbelieve their statements. The statement of PW-3 Banti is consistent as per first version in the FIR. The occurrence took place at 9.30 a.m. and on the same day, within three hours, the FIR was got registered. The version has been given instantly and there was no opportunity to even concoct the false version. PW-1 Dr.Ajit Singh has specifically stated that there are three stab wounds given by knife, which supports the ocular version. As regarding lacerated wounds, we find that as injuries were given by two accused and eye witnesses were behind the deceased at some distance, therefore, it might be possible that they have given injuries with blunt side of the weapon also. When there is nothing in the cross-examinations of the PWs Banti and Harbhajan Singh and they have deposed consistently, then this variation to some extent, will not create any doubt in the prosecution version.

The perusal of the cross-examinations of PW-3 Banti and PW-4 Harbhajan Singh, nowhere shows that there is anything on the record, which create doubt regarding their presence on the spot. Further, we find that it is for the prosecution to examine the witness, it likes. It is not necessary that all the persons present on the spot should be examined. Again, it is not necessary that there must be money in the pocket of deceased, when three persons are going together and especially, when mother of deceased was also along with him. This fact, itself, cannot be treated as fatal to the

prosecution case nor it creates any reasonable doubt in the prosecution version. The compromise Ex.PG has been proved by the prosecution, which further supports and corroborates the version of the PWs regarding motive that there was some dispute regarding agricultural land and Surinder Singh (since deceased) had sown crop/fodder one day before the occurrence.

Therefore, from the evidence on record, we find that prosecution has duly proved its case by leading cogent evidence and no reasonable doubt exists in the prosecution version. The findings have been given by learned trial Court while appreciating the evidence in right perspective.

In view of the above discussion, we find that the impugned judgment of conviction and order of sentence dated 20.11.2002 passed by the learned Sessions Judge, Amritsar, are correct, as per evidence and law and do not require any interference from this Court.

Therefore, finding no merit in the present appeal, the same is dismissed.

As appellants Nirmal Singh and Dilbagh Singh are on bail, their bail bonds stand cancelled and they are directed to surrender themselves before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against them in accordance with law.

(A.B.CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

February 28, 2018
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
No