

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

CRA-D-No.368-DB-2003 (O&M)
DATE OF DECISION : 18th JULY, 2018

Mohinder Singh & another

.... Appellants

Versus

State of Punjab

.... Respondent

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

* * * *

Present : Mr. Sonpreet Singh Brar, Advocate for the appellants.

Mr. Gaurav Garg Dhuriwala, Sr. DAG, Punjab.

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A. B. CHAUDHARI, J.

1. Being aggrieved by the judgment and order dated 09.04.2003 passed by learned Sessions Judge, Ferozepore by which the appellants were convicted for offence punishable under Sections 302 read with 34 IPC and appellant No.1-Mohinder Singh was sentenced to undergo rigorous imprisonment for life and fine of ₹1000 for offence under Section 302 IPC and appellant No.2-Lakha Singh sentenced to undergo rigorous imprisonment for a period of three years and fine of ₹500/-, the present appeal was filed by them in this Court.

Facts:

2. The complainant/informant-Taro Bai made a complaint on 15.03.1999 to the police present near the Government High School, Behak Khass, stating therein that her deceased husband Balbir Singh son of Kashmir Singh resident of Hamlet of Mohna Ram, were residing together in the house in their land. Munsha Singh son of Jaimal Singh Rai Sikh resident of Village Gulam Rasool related to her husband had come to visit them. On fateful day on 15.03.1999 at 12.00 - 1.00 pm her

husband went to plough the field. When she and Munsha Singh were standing on passage adjacent to the land, suddenly they saw Mohinder Singh armed with *bala* and Lakha Singh armed with *sota* coming toward her husband from their land. Lakha Singh raised *lalkara* that Balbir Singh should be taught lesson for raising the dispute regarding boundary. Mohinder Singh and Lakha Singh both are brothers. Mohinder Singh gave a blow with *bala* on the right temporal region of her husband who fell down while Lakha Singh gave blow on temporal region on the head. The complainant and Munsha Singh, both raised alarm as a result of which both the appellants ran away from the spot with their respective weapons. Balbir Singh died on the spot. The reason was the dispute about the joint boundary line with their fields. After recording of statement of Taro Bai as stated above, the police swung in to action, registered a case and thereafter started investigation. Statements of eye witnesses were recorded. Post mortem report was obtained. Inquest *punchnama* was made. Clothes i.e. pants, shirt etc. were seized. The wooden *bala* was recovered at the instance of Mohinder Singh from his residential house in the village Gulam Rasool under the heap of chaff on his disclosure statement. Site plan was prepared. Investigation was completed and thereafter *challan* was filed. The police found Lakha Singh appellant innocent and therefore his name was kept in column no.2. At the trial before the Sessions Court the prosecution examined seven witnesses, including two eye witnesses, including PW-3 Taro Bai and PW-4 Munsha Singh. The defence was of denial. The trial Court ultimately convicted the appellants as stated above. Hence this appeal.

Arguments:

3. In support of the appeal, learned counsel for the appellants vehemently argued that the medical evidence does not at all tally with the

version given by the alleged eye witnesses i.e. Taro Bai and Munsha Singh. On the contrary, there are several contradictions and inconsistencies in the prosecution case and the evidence available on record. Therefore, the trial Court ought to have acquitted the appellants for the offences for which they were charged. According to the learned counsel for the appellant during investigation the police themselves found appellant No.2-Lakha Singh as innocent. Therefore, he was not named as accused in the *challan*. It was under Section 319 Cr.P.C. when he was summoned as additional accused and was ultimately convicted. The ocular evidence of both the alleged yet witnesses is untrustworthy and will have to be rejected as it does not correlate with the injuries narrated by the Doctor in their injury report. The prosecution case is, therefore, clearly false and will have to be rejected.

4. Per contra, learned State counsel opposed the appeal and submitted that the evidence of the eye witnesses PW-3 Taro Bai and PW-5 Munsha Singh, is convincing and the trial Court has accepted the same as no significant inconsistencies were found in their evidence. The medical evidence also corroborates the ocular testimony of the said two eye witnesses and therefore, there was no reason for the trial Court to discard the prosecution evidence which has been rightly accepted. He, therefore, prayed for dismissal of the appeal.

Consideration:

5. We have heard learned counsel for the rival parties at length. We have carefully perused the evidence of PW-3 and PW-5 and gone through cross-examination of the witnesses with the assistance of learned counsel for the rival parties. At the outset we find that insofar as the evidence of testimony of both the eye witnesses is concerned qua appellant No.1-accused-Mohinder Singh, the same is consistent and is

fully corroborated by the medical evidence. The testimony of both these eye witnesses show that it was Mohinder Singh who had given two blows on the head of the deceased resulting into serious injuries and fracture to the head and thereafter instant death on the spot. The ocular version that Mohinder Singh had given two injuries is liable to be believed and was rightly believed by the trial Court as it is corroborated by the medical evidence. The cross-examination of Taro Bai shows that single blow given by Lakha Singh by means of *sota* on the temporal region of her husband is in the form of improvement. It is in this context if the medical evidence is seen, the same shows that there are only two injuries and they fully corroborate that the two injuries inflicted by only Mohinder Singh. Had Lakha Singh given a *sota* blow, third injury would have definitely occurred or seen in the medical evidence. It is in this context on the appreciation of evidence we find that the version of the eye witnesses regarding assault by Lakha Singh, is clearly improvement and he has been roped in with his brother. That is why Lakha Singh was found innocent during investigation but then he was summoned under Section 319 Cr.P.C. because of the improved statement of PW-3 Taro Bai. Therefore, we are unable to accept the statement of Taro Bai and we must give benefit of doubt to Lakha Singh. In that view of the matter, the appeal must succeed in part. In the result we make the following order.

ORDER

- (i) The CRA-D-No.368-DB-2003 is partly allowed.
- (ii) The judgment of conviction and order of sentence dated 09.04.2003 passed by learned Trial Court, against appellant No.1-Mohinder Singh son of Satnam Singh vide which he has been convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life, stands confirmed. The

appeal qua appellant No.1-Mohinder Singh stands dismissed.
He be taken in to custody for serving out the sentence.

- (iii) The judgment of conviction and order of sentence dated 09.04.2003, passed by the learned Trial Court, against appellant No.2-Lakha Singh alias Lakhbir Singh son of Satnam Singh, vide which he has been convicted under Section 325 IPC and sentenced to undergo rigorous imprisonment for three years and to pay fine of ₹500/- and in default thereof to further undergo rigorous imprisonment for six months, is set aside and he is acquitted of the charge framed against him. Since appellant No.2 is on bail, his bail bonds stands discharged. Accordingly the appeal qua appellant No.2-Lakha stands allowed.

(A. B. CHAUDHARI)
JUDGE

18TH JULY, 2018
‘raj’

(KULDIP SINGH)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>