

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

**RSA No.5450 of 2016 (O&M)
Date of decision: 01.05.2018**

Gajjan Singh and others

.....Appellants

Versus

Lajwanti (since deceased) through LRs and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Gagandeep Singh Manku, Advocate,
for the appellants.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 20.08.2016 passed by the Additional District Judge, Gurdaspur, dismissing an appeal filed by defendant-appellants against the judgment and decree dated 12.12.2009 passed by the Additional Civil Judge (Senior Division), Batala whereby suit for recovery by way of damages and compensation filed by plaintiff-respondents, has been decreed.

Lajwanti etc.-plaintiffs (respondents herein) filed a suit for recovery of Rs.4,00,000/- by way of damages on account of murder of Malkiat Singh. It was pleaded in the plaint that plaintiffs and defendant Nos.1 to 4 were the residents of same village and defendant Nos.5 to 7 were daughters of late Malkiat Singh (real sisters of plaintiff Nos.2 to 5). Plaintiffs did not make any claim against defendant Nos.5 to 7. On 05.07.1997, at about 6.00 P.M., Sukhdev Singh and Bal Singh, relatives of plaintiffs, were present in their Haveli. In the meantime, defendants namely

Gajjan Singh, armed with kirpan, Gurdip Singh, armed with loaded

Government Carbine, Sukhwinder Singh, armed with Kirpan and Rup Kaur, armed with chhavi, illegally entered into the Haveli. Gajjan Singh raised a lalkara and exhorted the other defendants to teach a lesson to the persons present there for putting earth along with the wall and caused injuries to Bal Singh with Kirpan on his left hand and arms. Bal Singh fell down and Rup Kaur, defendant No.4, caused injuries to Bal Singh. Joga Singh and Malkiat Singh, cousins of Bal Singh and Bawa Singh, also reached at the spot. Sukhwinder Singh gave a kirpan blow to Joga Singh. Rup Kaur gave a chhavi blow to Bawa Singh, which hit on his right arm. Gurdip Singh fired from his carbine towards Malkiat Singh, which hit on his back. Gurdip Singh also fired at Sukhdev Singh, which hit his left shoulder and right thigh. The injured persons raised hue and cry, which attracted Jagtar Singh and Surnder Singh to the spot, who witnessed the whole occurrence. The injured persons were shifted to Civil Hospital Batala, but Malkiat Singh died on the way to hospital. The matter was reported to the police, whereupon FIR No.67 dated 05.07.1997, under Sections 302, 307, 323, 324, 326 read with Section 34 of the IPC was registered at Police Station, Rangar Nangal. Consequently, plaintiffs, who are widow, daughters and son of deceased-Malkiat Singh, filed the present suit for claiming damages and compensation on account of murder of Malkiat Singh.

Upon notice, defendant (appellants) filed written statement taking preliminary objection that the plaintiffs (respondents) had no locus standi to file the present suit. On merits, it was denied that relatives of plaintiffs had put some earth along with the wall of their house to strengthen the same. It was stated that false allegations had been levelled against the defendants due to long outstanding enmity between the parties. It was further submitted

that Malkiat Singh had tried to snatch the carbine from defendant No.3 and forcibly taken him in the Haveli of Bal Singh, where Bal Singh gave kirpan blow to defendant No.3, which fell on the left side of his neck. All the plaintiffs inflicted injuries to defendant No.3 and other defendants. In this regard, a criminal case under Section 326 IPC was registered against them. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled for recovery of Rs.4,00,000/- by way of damages and compensation as alleged? OPP
2. Whether the plaintiff has no locus-standi to file the present suit? OPD
3. Relief.

Trial Court, after hearing learned counsel for the parties, returned a finding on issue No.1 in favour of plaintiff-respondents by observing that though eye witnesses namely Sukhdev Singh (PW-1), Bal Singh (PW-2) and Bawa Singh (PW-3) filed separate suit for compensation, but their testimonies could not be discarded merely on this ground that they were interested witnesses. During cross-examination, veracity of these witnesses could not be shattered. All those witnesses stated that defendant Nos. 1 to 4 had attacked them with a common intention and deceased-Malkiat Singh died due to the gun shot injury fired at him by Gurdeep Singh. As per postmortem report Ex.P1, cause of death was firearm injuries. Trial Court assessed the income of deceased-Malkiat Singh as Rs.1,00,000/- per annum from his agriculture land. As per postmortem report Ex.P1, he was 60 years of age at the time of death. With the above observations, suit of the

plaintiffs-respondents was decreed and they were held entitled to recover a sum of Rs.3,00,000/- as compensation from defendant Nos.1 to 4.

The lower appellate Court dismissed the appeal on the ground that a criminal case had been registered against the defendants vide FIR No.67 dated 05.07.1997, whereupon they were tried for commission of the offences under Sections 302/307/326/324/323/452/34 IPC and 25 of Arms Act and vide judgment dated 18.02.2012, Gajjan Singh, Sukhwinder Singh and Rup Kaur were convicted and sentenced, whereas Gurdip Singh has died. It has been further observed that although, the parameter for proof required in civil case is preponderance of probabilities and in criminal case, proof beyond reasonable doubt, yet the fact cannot be ignored that Malkiat Singh was murdered by the defendants on 05.07.1997, as there was specific evidence in the shape of testimony of PW-1, PW-2 and P-3.

The argument raised by learned counsel for the appellant that appeal against the judgment of conviction is pending before the High Court, is not sufficient ground to accept the present appeal. In the present case, plaintiffs-respondents have led sufficient evidence by examining eye witnesses namely Sukhdev Singh (PW-1), Bal Singh (PW-2) and Bawa Singh (PW-3) that Malkiat Singh had died due to the gun shot injuries, which was caused by Gurdeep Singh with his weapon. This fact has been further corroborated by the postmortem report Ex.P1, wherein cause of death of Malkiat Singh has been mentioned as fire arm injuries. Moreover, once the defendants have been convicted by the criminal Court, they are liable to make payment of damages to the plaintiffs.

After going through the impugned judgments and documents relied upon by the parties, no illegality, much less perversity, has been

found therein, warranting interference by this Court. The suit has been rightly decreed by the Courts below. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

01.05.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No