

**336 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRA-D-397-DB of 2003 (O&M)
Date of Decision: 13.11.2019**

Naib Singh and another

.....Appellants

VS.

State of Punjab

.....Respondent

**CORAM : Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mr. Justice H.S. Madaan.****Present :** Mr. Rajinder Mathur, Advocate,
Amicus Curiae on behalf of the appellants.

Mr. Bhupender Beniwal, AAG, Punjab.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment and order dated 07.04.2003 passed by Additional Sessions Judge, (Ad-hoc), Fast Track Court, Patiala, vide which the accused/appellants were convicted and sentenced as under:-

Naib Singh

Offence	Sentence	Fine	In default
302 IPC	Life imprisonment	Rs.1000/-	RI for 6 months
326 IPC	RI for three years	Rs.500/-	RI for 3 months
506/34 IPC	RI for 6 months	--	--

Ranjit Kaur

Offence	Sentence	Fine	In default
302/34 IPC	Life imprisonment	Rs.1000/-	RI for 6 months
326/34 IPC	RI for three years	Rs.500/-	RI for 3 months
506 IPC	RI for 6 months	--	--

However, the sentences on each count were ordered to run

concurrently.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No. 2 are reproduced as under:-

“2. Prosecution story in brief is that on 29.11.2000 one wireless message was received from Control Room, Patiala that Birbal Singh son of Karnail Singh r/o village Nial who was admitted in Rajindera Hospital, Patiala on 28.10.2000 has died today on 29.11.2000 at about 3.30 P.M. and I.O. be sent for further proceeding. On receipt of this wireless message ASI Surjit Singh alongwith police party reached Rajindera Hospital, Patiala where HC Satgur Singh and other police officials met ASI Surjit Singh. Satgur Singh HC had already moved an application Ex.PH to the Medical Officer to enquire as to whether Birbal Singh son of Karnail Singh Jat, r/o village Nail who was admitted in Rajinder Hospital, Patiala in injured condition is fit to make his statement or not and the Medical Officer vide Ex.PE/1 informed that said Birbal Singh has expired at 3.30 P.M. On 29.11.2000. Satgur Singh HC had also moved an application Ex.PF for collecting the MLR's of the injured. Then HC Satgur Singh had moved an application Ex.PJ to the Medical Officer to enquire as to whether Jaswant Singh injured is fit to make his statement or not and the Medical Officer vide Ex.PJ/1 declared him fit to make his statement. Then the investigation was taken over by Surjit Singh ASI who recorded the statement Ex.PD of Jaswant Singh injured which inter alia contained that he is resident of the above address and is student of 10th Class and they are four brothers, out of them Naib Singh alias Roda is residing separately for the last about 10 years and doing his agriculture separately. Younger to Naib Singh is Birbal Singh alias Balla, Bhagwant Singh alias Bhanta is younger to Birbal Singh and he is the youngest. The said 3 brothers namely Birbal, Bhagwant and Jaswant are joint in agriculture and are residing together with their parents. They have one sister. Yesterday

on 28.11.2000 he and the family members after taking dinner went to sleep. He and Birbal Singh had slept in the Verandah and the remaining family members had slept in the Baithak. At about 9.00 P.M. his brother Naib Singh alias Roda and his wife Ranjit Kaur alias Rani started abusing in the street in front of their gate and after hearing this he and his brother Birbal came outside in the street after opening the Gate and saw in the street electric light that his brother Naib Singh and his wife Ranjit Kaur were standing there. Naib Singh was armed with Gandasa. Ranjit Kaur alias Rani raised Lalkara that today they be taught a lesson for not giving land to them. Thereupon Naib Singh gave Gandasa blow from its sharp side which hit on the head of Jaswant Singh. Jaswant Singh fell down on the ground. His brother Birbal Singh intervened to rescue him and Naib Singh gave another Gandasa blow from its sharp side which hit on the head of Birbal. Birbal also fell down on the ground. They raised alarm "Marditta" "Marditta" which attracted his sister Bhinder Kaur and uncle Jarnail Singh who rescued them from Naib Singh and his wife. After causing injuries Naib Singh and Ranjit Kaur fled away from the spot and while running away extended threats that today they have been saved and in future they will be killed. The motive for causing injuries is that the land given to Naib Singh has not been got entered in his name in the revenue record. After arranging the vehicle Jaswant Singh and Birbal Singh were taken to Rajindera Hospital Patiala and got them admitted. On the way Bakshish Singh son of Mann Singh r/o village Nail met them on the village Phirni who was also taken with them while going to Rajindera Hospital, Patiala. Jaswant Singh came to know in the hospital that Birbal Singh has died on account of the injuries received by him."

After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court against accused Naib Singh. Ranjit Kaur was found to be innocent and she was kept in

column No. 2 in the challan.

During pendency of the trial, an application under Section 319 Cr.P.C was moved to summon Ranjit Kaur as an additional accused. The application was allowed and said Ranjit Kaur was summoned to face trial under Sections 302, 326 and 506 read with Section 34 IPC.

Charges under Sections 302, 326 and 506 read with Section 34 IPC were framed against the accused to which the accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1, Dr. Harish Tuli, PW2- Jaswant Singh, PW-3 Bhupinder Kaur, PW-4 Hukam Chand, PW-5 Dr. Saryu Gupta, PW-6 MHC Surinder Pal, PW-7 Surjit Singh and PW-8 Dr. Kulbir Singh and closed the evidence.

The statements of the accused under Section 313 Cr.P.C were recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication.

In defence the accused examined DW-1 DSP Ashwani Kumar.

After appraisal of evidence, the learned trial court vide impugned judgment and order, convicted the accused/appellants under Section 302, 326 and 506 read with Section 34 IPC and sentenced them to undergo imprisonment as narrated in the first paragraph of the judgment.

Thus, the present appeal has been filed by accused/appellants Naib Singh and Ranjit Kaur.

At the outset, it is worthwhile to mention that accused/appellant No. 1 Naib Singh has died during the pendency of present appeal, therefore, appeal qua him stands abated.

On behalf of accused/appellant, Ranjit Kaur, it is contended by the learned Amicus Curiae that there is no evidence on record to hold that accused Ranjit Kaur had ever shared common intention with accused Naib Singh to cause death of Birbal Singh. Learned counsel further refers to the testimony of DW-1 DSP Ashwani Kumar to contend that during the investigation, Ranjit Kaur was found to be innocent at the first instance however, she was summoned later on under Section 319 Cr.P.C. Learned counsel further relies on statements Ex. D-2 to D-6.

On the other hand, on behalf of the State, it is contended that the learned trial Court has rightly convicted and sentenced the accused/appellants. Accused Ranjit Kaur had exhorted Naib Singh to cause death of Birbal Singh, therefore, she has been rightly convicted with the aid of Section 34 IPC.

We have heard the learned counsel for the parties and have gone through the case file.

In this case, the material witness is Bhupinder Kaur PW-3 who is none else but the sister of the deceased. She is the eye witness of the occurrence. It is to be noticed here that the dispute in this case is

inter se the brothers and she is their sister. That is to say, Naib Singh is alleged to have killed his own brother Birbal Singh and their sister Bhinder Kaur is the eye witness of the occurrence, therefore, it can be said with force that a natural and spontaneous version will come out from her mouth. She will not let the real culprit go-scot free nor would she allow an innocent person to be made as the perpetrator of the crime. In this context, her initial version recorded by the Police under Section 161 Cr.P.C which has been exhibited as D-1 assumes significance wherein she had stated that Naib Singh was armed with *gandasa* and his wife Ranjit Kaur was standing outside when her brother Jaswant Singh came outside and then Naib Singh gave a *gandasa* blow to him which hit on his head. On raising alarm Birbal Singh intervened to rescue but Naib Singh gave a *gandasa* blow from its sharp side which hit on his head and Birbal Singh fell down. On hearing the noise, she went to the spot and her uncle Jarnail Singh who was a passersby helped her in rescuing them. Though, while appearing in the Court as PW-3 she has tried to improve her version by stating that Ranjit Kaur raised *lalkara* that the complainant party be taught a lesson for not entering land in their names, it is a material improvement which cannot be allowed to sustain. Ranjit Kaur is none else but the *Bhabhi* of Bhinder Kaur (PW-3). Had Ranjit Kaur played any part in the occurrence, her name would have occurred in the first statement made by Bhinder Kaur. Such a material contradiction casts a serious doubt on the story of the prosecution qua the role of Ranjit

Kaur. Moreover, DSP Ashwani Kumar (DW-1) has in his report exonerated Ranjit Kaur as she was not found to be an accused. He has proved his report while appearing in the Court and has also substantiated his version. In the absence of any evidence with regard to sharing of common intention by Ranjit Kaur with Naib Singh, she cannot be fastened with the liability of murder of Birbal Singh. Even the learned trial Court has fallen in error in not discussing the implication of Section 34 IPC.

In view of the above, the appeal filed by accused/appellant Ranjit Kaur is accepted and the impugned judgment and order are set aside to that extent. She is acquitted of the charges framed against her.

Needless to say, the appeal filed by Naib Singh accused/appellant No.1 stands abated.

(JITENDRA CHAUHAN)
JUDGE

(H.S.MADAAN)
JUDGE

13.11.2019
SN

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