

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

(1)

CRA-D-745-DB of 2003

Jagga Singh

.... Appellant

Versus

State of Punjab

..... Respondent

(2)

CRA-D-756-DB of 2003

Darshan Singh and another

.... Appellants

Versus

State of Punjab

..... Respondent

Reserved on : 03.07.2019

Date of decision : 05.07.2019

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Sanjeev Manrai, Senior Advocate, with
Mr. Ajay Singh Parmar, Advocate,
for the appellant in CRA-D-745-DB of 2003.

Mr. Vinod Ghai, Senior Advocate, with
Ms. Kanika Ahuja, Advocate,
for the appellants in CRA-D-756-DB of 2003.

Mr. Aayush Sarna, AAG, Punjab.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in CRA-

D-745-DB of 2003 and CRA-D-756-DB of 2003, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against judgment and order dated 11.08.2003, rendered by learned Additional Sessions Judge (Ad hoc), Patiala, in Sessions Case No. 26 dated 03.08.1999, whereby appellants Jagga Singh, Darshan Singh and Ujjagar Singh, along with co-accused Sarwan Singh and Gurjant Singh were charged with and tried for the offences punishable under Sections 302/148/149 IPC. The appellants were convicted and sentenced to undergo imprisonment for life and to pay fine of ₹ 2,000/- each, and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months, for offence under Section 302 read with Section 34 IPC. Co-accused Sarwan Singh and Gurjant Singh were acquitted of the charge framed against them.

3. The case of the prosecution, in a nutshell, is that on 05.04.1999, Avtar Singh complainant (PW.2) and Lal Singh went to the Dera of Sant Parkash. They were talking to each other. In the meantime, Sarwan Singh son of Mehar Singh along with his sons Ujjagar Singh and Darshan Singh, Jagga Singh Sarpanch and Gurjant Singh parked their jeep near the house of Raja son of Pritam Singh. Gurjant Singh, Darshan Singh and Jagga Singh Sarpanch took out rods from the jeep. Ujjagar Singh took out an axe. Sarwan Singh kept sitting on the driver seat. Avtar Singh's uncle Lal Singh was an agriculturist. He was also rearing buffaloes. He used to sell milk. He was going on his motor cycle with the milk towards Patiala. The accused encircled him. Sarwan Singh also came down from the jeep. He slapped Lal Singh. He was pulled down from the motor cycle. Ujjagar Singh inflicted a

blow with his axe from the reverse side on the head of Lal Singh, uncle of complainant Avtar Singh. He collapsed. Thereafter, Darshan Singh and Jagga Singh inflicted blows with their respective rods on the head, ear and back of Lal Singh. Gurjant Singh also gave a blow with his rod on the forehead of Lal Singh. Complainant Avtar Singh raised hue and cry. However, no body came to rescue his uncle Lal Singh. Jagga Singh then gave a blow with his rod on the shin bone of Lal Singh. Gurjant Singh also gave a blow on the elbow of left hand of Lal Singh. The accused ran away from the spot with their weapons. The motive attributed to the accused was that there was civil litigation between Lal Singh and Sarwan Singh. The lis was decided in favour of Lal Singh, who was in the process of taking possession of the land in dispute. Lal Singh was taken to Rajindra Hospital, where he died. The body was sent for post mortem examination. The investigation was completed and challan was put up after completing all the codal formalities.

4. The prosecution examined a number of witnesses. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were falsely implicated.

5. The appellants were convicted and sentenced, as noticed herein-above. Hence, these appeals.

6. Learned counsel appearing on behalf of the appellants have vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State has supported the judgment and order of the learned Court below.

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

the judgment and record very carefully.

8. PW.5 Dr. Deepak Walia conducted the post-mortem examination on the body of Lal Singh. He noticed following injuries on the body of the deceased :-

- (1) A lacerated wound 5 cm x 1 cm on left temporo-parietal region of head. Underline bone fracture membrane ruptured. Brain tissue coming out of the wound. Brain tissue have a clotted blood and was oedmatous.
- (2) A lacerated wound 8 cm x 1 cm on left temporo occipital region of head, below left ear. Underlying bone was fractured. A sub dural haemotoma was present.
- (3) A lacerated wound 3 cm x below injury No.2, measuring 4 cm x 2 cm.
- (4) A reddish contusion on right maxillary region of face, 5 cm x 4 cm.
- (5) A reddish contusion 9 cm x 5 cm on right side of forehead, just above right eye brow.
- (6) An abrasion on back of left elbow 6 cm x 4 cm.
- (7) An abrasion 6 cm x 4 cm front middle of right leg.

In his opinion, the cause of death was due to injury to vital organ i.e. brain, as a result of injuries on head. All the injuries were ante mortem in nature and sufficient to cause death in ordinary course of nature. Time between injuries and death was about one hour. Time between death and post mortem examination was between 12 to 18 hours.

9. PW.2 Avtar Singh testified that on 05.04.1999 at about 7.00 PM, he and Lal Singh PW were talking to each other near the gate of Dera of Sant Parkash Mahant. In the meantime, Sarwan Singh accused came in a jeep along with his sons Ujjagar Singh and Darshan Singh, Jagga Singh Sarpanch and Gurjant Singh. The jeep was parked near the house of Raja.

Gurjant Singh, Darshan Singh, Jagga Singh and Ujjagar Singh came down from the jeep. Gurjant Singh, Jagga Singh and Darshan Singh were carrying rods and Ujjagar Singh was carrying axe. Sarwan Singh remained sitting in the jeep. After some time, his uncle Lal Singh, who was in the business of selling milk, came on a motor cycle from the side of village to distribute milk at Patiala. He was encircled by four accused. Sarwan Singh accused also got down from the jeep. Sarwan Singh slapped Lal Singh. Sarwan Singh then caught hold of Lal Singh and threw him on the ground. Sarwan Singh exhorted to the co-accused to teach a lesson to Lal Singh. Ujjagar Singh gave an axe blow hitting Lal Singh from its reverse side on the left side of his head. His uncle Lal Singh collapsed. Thereafter, accused Darshan Singh and Jagga Singh gave rod blows on the head of his uncle Lal Singh hitting him at the back of his ear on the head. Gurjant Singh also gave a rod blow on the right side of forehead of Lal Singh. Jagga Singh gave a blow from his rod hitting Lal Singh on the right leg. Gurjant Singh also gave a rod blow hitting Lal Singh on his left elbow. They raised alarm. The accused ran away from the spot with their weapons. He informed about the incident to Jang Singh and his aunt i.e. wife of Lal Singh. He got admitted his uncle Lal Singh in Rajindra Hospital, Patiala. After some time, Lal Singh died. His uncle Lal Singh deceased had a land dispute with Sarwan Singh. The lis was decided in favour of deceased Lal Singh. The deceased was trying to get possession of the disputed land. The accused were bearing grudge against him. In his cross-examination, he admitted that he had not disclosed the registration number of the jeep in which the accused had come at the time of occurrence. The accused had reached the spot two minutes

before the arrival of Lal Singh. He had not called any person from the neighbourhood in order to lift his uncle from the spot and provide first aid. He did not disclose this fact to any person in the neighbourhood.

10. Amendment in the charge was carried out and Gurjant Singh was also added as an accused. PW.2 Avtar Singh deposed that his statement recorded in the trial prior to the amendment of charge be read as evidence. Learned counsel appearing on behalf of Gurjant Singh cross-examined him. In his cross-examination, he admitted that Sarwan Singh, Darshan Singh and Gurjant Singh were not challaned in this case. He also admitted that verification of investigation was done by Gurpreet Singh, SP, City. He did not physically intervene to save Lal Singh. He also admitted that the police did not record the statement of any of the neighbours of Raja son of Pritam Gadaria. No person from the house of Raja came on the spot. He and Lal Singh PW alone took his uncle Lal Singh to hospital at 8.00 PM. He could not disclose the name of the court, in which the land dispute between his uncle Lal Singh and Sarwan Singh was pending. He did not appear as a witness in any such case. He did not know who were the parties in the litigation. He did not see any warrant of possession. He did not know measurement of the land in dispute. He did not accompany his uncle Lal Singh to any court regarding the dispute. He also admitted that during the days of occurrence, Jang Singh PW was defeated by Jagga Singh accused in the Sarpanch elections.

11. PW.7 Lal Singh corroborated the statement of PW.2 Avtar Singh, with regard to the manner in which deceased Lal Singh was administered beatings by the accused. In his cross-examination, he admitted

that he had appeared as witness in the case titled as 'State Versus Sarwan Singh'. He deposed that he noticed the police for the first time on the following day of the occurrence at about 10.30 AM. He was present at the time when the police prepared the site plan. Neither he nor Avtar Singh chased the accused. They did not raise alarm that the accused be caught. Volunteered, they raised noise 'Na Maro – Na Maro'. The occurrence lasted for 2-3 minutes. Lal Singh could not speak after the receipt of injury. He lifted Lal Singh from his leg side. Blood was oozing from the injuries on the head. His clothes were not stained with blood.

12. PW.9 Indresh Khanna prepared the scaled site plan of the place of occurrence.

13. PW.10 Gurchain Singh testified that on 05.04.1999, he was posted as SHO Sadar Patiala. He recorded statements of Jang Singh and Bahal Singh. He sent the dead body for post mortem examination. On 09.04.1999, Ujjagar Singh and Jagga Singh were interrogated. Ujjagar Singh made a disclosure statement that he had kept concealed one kulhari (axe) in the room underneath the cow dung cakes. His disclosure statement is Ex.PW.10/N. Jagga Singh accused also made disclosure statement Ex.PW.10/O. The police got recovered an iron rod as per the disclosure statement of Jagga Singh. Ujjagar Singh got recovered axe from the disclosed place. In his cross-examination, he admitted that he had not recorded statement of Avtar Singh in the inquest. He also admitted that he did not get the inquest report attested from Avtar Singh. He did not record the statement of any person in the neighbourhood.

14. According to PW.2 Avtar Singh, his uncle Lal Singh had a land

dispute with appellant Sarwan Singh. The lis was decided in favour of his uncle Lal Singh. However, in his cross-examination, he could not tell the name of the court in which the land dispute between Lal Singh and Sarwan Singh was pending. He never appeared as a witness in the said civil dispute. He did not know names of the parties in the said litigation. He had never seen warrant of possession issued by any competent court of law. He did not know even the measurement of the land. He deposed that he lifted his uncle Lal Singh after receipt of injuries and his clothes were stained with blood. But these were not taken into possession by the police. PW.7 Lal Singh deposed that he lifted Lal Singh but his clothes were not stained with blood. It has come on record that neither PW.2 Avtar Singh nor PW.7 Lal Singh had tried to save Lal Singh (deceased). They had not tried to chase the assailants. The incident, as per the statement of PW.7 Lal Singh, lasted only for 2-3 minutes. They had not informed the neighbours. The police had not recorded statement of any of the persons residing in the vicinity of the place of occurrence. The recoveries were made on the basis of disclosure statements of appellants Ujjagar Singh and Jagga Singh, which were extracted during the course of interrogation by the police.

15. Learned counsel appearing on behalf of the appellants have vehemently argued that the prosecution has not proved the motive attributed to the appellants. However, the fact of the matter is that PW.2 Avtar Singh and PW.7 Lal Singh had seen the appellants administering injuries to the deceased. Ujjagar Singh had given blow to Lal Singh with reverse side of axe. Appellants Darshan Singh and Jagga Singh also gave beatings to the deceased with iron rods.

16. Learned counsel for the appellants have argued that the instant case is covered under Section 304 Part II IPC. We do not accept this submission. Appellant Ujjagar Singh gave blow with reverse side of axe on the vital part of Lal Singh. Appellants Jagga Singh and Darshan Singh administered beatings to Lal Singh with iron rods. Thus, the appellants had the intention to cause death of Lal Singh. Hence, the case would be covered under Section 304 Part I IPC.

17. Accordingly, both the appeals are partly allowed. Conviction of appellants Jagga Singh, Darshan Singh and Ujjagar Singh, recorded by the trial court for the offence under Section 302 read with Section 34 IPC is converted to Section 304 Part-I read with Section 34 IPC. The appellants are on bail. The State is directed to produce them before this Court on July 15, 2019 to be heard on quantum of sentence under Section 304 Part-I read with Section 34 IPC.

(RAJIV SHARMA)
JUDGE

July 05, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No