

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

(1) CRA-D-395-DBA-2003 (O&M)

State of Punjab

...Appellant(s)

Versus

Balkar Singh and others

...Respondent(s)

(2) CRA-S-1424-SB-2002 (O&M)

Sukhdev Singh and another

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

Date of decision: 06.11.2019

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN
HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. A.A. Pathak, Addl. A.G., Punjab
for the appellant(s) in CRA-D-395-DBA-2003 and
for the respondent(s) in CRA-S-1424-SB-2002.

Mr. A.P.S. Mann, Advocate for the respondent(s)
in CRA-D-395-DBA-2003 and
for the appellant(s) in CRA-S-1424-SB-2002.

H.S. MADAAN, J.

In nutshell, the prosecution story is that on 12.10.1996 at about 9.00 am, Pooran Singh Ex.Sarpanch of Village Padhari Kalan, Tehsil Ajnala, District Amritsar along with his father Mohinder Singh and younger brother were returning home after paying obeisance at Gurudwara of the village. When they had reached near clinic of Dr. Surjit

Singh, they were intercepted by accused Balkar Singh son of Harbans Singh, Avtar Singh, Sukhdev Singh son of Pritam Singh, Kirpa Singh, Massa Singh, Sukhdev Singh, Balkar Singh son of Chanchal Singh, Kashmir Singh, Satnam Singh and Rajpal Singh who started hurling abuses upon them. Pooran Singh and persons accompanying him asked them not to do so, then, Avtar Singh gave a knife blow to Mohinder Singh hitting him on left shoulder. Balkar Singh accused picked up a brick bat and hurled it upon Mohinder Singh, hitting him near right eye. Sukhdev Singh and Massa Singh also picked up brick bats from there throwing those at Mohinder Singh, hitting him on head. Satnam Singh gave knife blow on nose of Pooran Singh. Balkar Singh gave a dang blow hitting Pooran Singh on his left arm. Satnam Singh gave a knife blow to Pooran Singh hitting him on right shoulder, whereas, Rajpal Singh gave a dang blow hitting him on his leg. Kirpa Singh, Kashmir Singh and Sukhdev Singh kept on standing there while abusing Mohinder Singh and others and they instigated their co-accused to cause injuries to them. After receiving injuries, Mohinder Singh became unconscious, then all the accused ran away from the spot along with their respective weapons. The injured were taken to Guru Nanak Dev Hospital, Amritsar, where they were admitted. On receipt of MLRs of the injured at Police Station Lopoke, ASI Partap Singh (for short 'the IO') from the said police station went to Guru Nanak Dev Hospital, Amritsar and recorded statement of injured Pooran Singh as Ex.PW5/A. He appended his endorsement upon such statement and sent ruqa to the police station, on the basis of which

formal FIR Ex.PE/1 was recorded. The IO went to the spot and prepared rough site plan of the place of incident as Ex.PG. He recorded statement of Kashmir Singh also. Accused were arrested in this case. A knife was recovered from the possession of accused Avtar Singh. The IO prepared rough sketch of the said knife as Ex.PH. When accused Balkar Singh was arrested, he was found to be in possession of a dang Ex.P2, which was taken into possession, vide memo Ex.PJ. A dang was recovered from the possession of accused Rajpal Singh, which was seized, vide memo Ex.PK. The IO could not record statement of Mohinder Singh injured, since as opined by the doctor, he was not in a fit condition to make the statement. Mohinder Singh had succumbed to the injuries suffered by him in the incident on 20.05.1997. As such, offence under Section 302 IPC was added and all the accused were re-arrested. The motive for the incident as suggested by the prosecution, was that about 1 ¼ months earlier, Balkar Singh and his partymen had caused injuries to Pooran Singh regarding which an FIR had been registered against them. Balkar Singh and others had employed Gurbax Singh son of Harnam Singh, resident of Padhri in the village Gurudwara to which Pooran Singh and his partymen had objected, since Gurbax Singh did not possess good moral character. Aggrieved by that, the accused had caused injuries to them.

After completion of investigation and other formalities, the challan against accused was prepared and filed in the Court of Illaqa Magistrate at Amritsar. Such Magistrate supplied copies of documents

relied upon in the challan to the accused, free of costs as provided under Section 207 Cr.P.C and then finding that the offence under Section 302 IPC for which the accused had been booked was exclusively triable by the Court of Sessions, vide detailed commitment order, committed the case to the Court of Sessions, from where, it was assigned to Addl. Sessions Judge (Adhoc), Amritsar.

Finding a prima facie case, charge for offences under Sections 148, 302/148, 324/149, 323/149 IPC was framed against the accused, to which, they pleaded not guilty and claimed trial.

During the course of prosecution evidence, it examined PW1-Dr. J. Gargi, PW-2 Dr. Vikramjit Singh, PW3-Rishi Ram, Draughtsman, PW-4 Dr. Ajay Mahajan, PW-5 Pooran Singh, PW-6 Kashmir Singh, PW-7 ASI Gurmit Singh, PW-8 ASI Partap Singh, PW-9 Dr. Ashwani Kumar, PW-10 Dr. S.S. Cheema, PW-11 ASI Sakattar Singh, PW-12 Onkar Nath and PW-13 Dr. Gurmanjit Rai.

After the prosecution evidence was closed, statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to them but they denied the same, contending that they are innocent and have been falsely involved in this case on account of party factionalism.

During their defence evidence, the accused examined Pooran Singh as DW1 and Gulzar Singh as DW2. DW1 Pooran Singh stated that on the day of occurrence, Mohinder Singh accompanied by some person had come to their locality for canvassing in connection with Gurudwara

Elections. At that time, Mohinder Singh was carrying a dang, Pooran Singh Ex.Sarpanch was having a kirpan, Kashmir Singh was armed with gandasi, Balbir Singh was armed with knife, Gurmit Singh and Swinder Singh were armed with dangs. All such persons wanted to cast their votes to the candidate of their choice to which they refused, therefore, they caused injuries to him and Gulzar Singh.

DW2 Gulzar Singh also deposed on those very lines.

After hearing arguments, learned Addl. Sessions Judge (Adhoc) Amritsar, found it to be a case of free fight, as such, accused were liable for their individual acts, since, it could not be said that there was pre-planning or any concerted attack was made by them. It was found that the prosecution had been able to prove grievous injuries by blunt weapons, having been caused to Mohinder Singh deceased by Sukhdev Singh son of Chuhar Singh and Massa Singh and accordingly, they were convicted under Section 325 IPC, whereas, other accused were acquitted under Sections 148, 302/149, 323/149 IPC and both the accused were sentenced to undergo rigorous imprisonment for 04 years and to pay a fine of Rs.2000/- and in default of payment of fine, to undergo further RI for 02 months, vide judgment dated 07.09.2002. It may be mentioned here that when the judgment was pronounced, Balkar Singh son of Harbans Singh and Avtar Singh son of Harbhajan Singh had expired.

Both the accused/convicts aggrieved by judgment of their conviction and sentence and have filed an appeal before this Court, notice of which was issued to the State and it has put in appearance through

counsel. It may be mentioned here that the State has also approached this Court under Section 378(3) Cr.P.C for permission to file appeal being aggrieved by the verdict of acquittal in favour of the remaining accused. Such leave was granted and notice was given to the accused/respondents who have put in appearance through counsel.

We have heard learned counsel for the parties besides going through the record.

The trial Court in the light of facts and circumstances of the case, on analysis of the legal and factual position, came to the conclusion as follows:-

- That the occurrence took place near clinic of Dr. Surjit Singh and as per case of the prosecution, Avtar Singh was having knife whereas other accused had picked up brick bats. Under the circumstances, it is quite possible that Avtar Singh was carrying knife with him as a routine matter. Thus, it came out to be a free fight where both the parties were aggressors.
- Injuries on the person of Pooran Singh PW-5 remained unproved and it is not mentioned in the FIR as to which accused had caused injuries to Kashmir Singh. The Court has observed that the medical evidence proved that Kashmir Singh had got himself medico-legally examined after more than six days, vide MLR Ex.PC and there is no evidence as to for how many days, Kashmir Singh had remained held up. Therefore, possibility of Kashmir Singh not suffering injuries as alleged by the

prosecution could not be ruled out.

- The trial Court had taken note of the fact that the medico-legal examination of Mohinder Singh was not conducted and his bed head ticked was not produced in evidence by the prosecution. Thus, the Court was deprived of an important piece of evidence to ascertain as to when Mohinder Singh was admitted in the hospital, when he was medico-legally examined and what was the nature of injuries on his person. The prosecution had just proved in evidence progress report of medical treatment of Mohinder Singh as Ex.PM which was proved by Dr. Ashwani Kumar-PW9 and further it comes out from the record that Mohinder Singh was admitted in Guru Nanak Dev Hospital, Amritsar on 12.10.1996 at 10.45 am i.e. within an hour or so at the time of occurrence and he had suffered head injury in the middle of skull, one stab wound on the outer aspect of the left shoulder and his mouth as well as nose were found bleeding. CT scan report shows multiple fracture from which it could be gathered that he had suffered grievous injuries by a blunt weapon. However, the post mortem report of Mohinder Singh proved by Dr. Gurmanjit Rai PW14 shows 13 ante-mortem injuries, injuries No.1 to 11 were suffered much later on. Dr. Gurmanjit Rai was unable to give definite cause of death and he had stated that it was practically not possible to co-relate the injuries with the cause of death. However, remote possibility of

death as a result of consequences of charoma could not be ruled out. The opinion regarding death given by Board of Doctors is to the effect that possibility of death resulting from accelluration of starvation and heart failure as a consequence of head injury could not be ruled out in this case, which as rightly observed by the trial Court was not sure and definite.

- The trial Court has further observed that Mohinder Singh was discharged from Guru Nanak Dev Hospital, Amritsar and he remained at his residence. He had been taken to Dr. S.S. Cheema, who was posted at PHC, Raja Sansi and who had stated that the deceased was admitted by him in the hospital and discharged on 29.11.1996 when he was referred to higher medical institute. The doctor could not trace out the bed head ticket of Mohinder Singh. The prosecution could not prove in evidence that from 29.11.1996 till date of death of Mohinder Singh on 20.05.1997, he had remained under any medical treatment. Therefore, inference could be drawn that Mohinder Singh had not died on account of injuries suffered by him in the incident at the hands of accused. He was an old man and he had remained at place of his residence for a considerable time and proper medical treatment was not provided.

The reasoning given by the trial Court is appropriate and convincing. The judgment can certainly be not termed to be perverse,

having any element of arbitrariness or any violation of settled judicial principles. In such an eventuality, interference by this Court, while exercising appellate jurisdiction, in our view is not called for. Accused Massa Singh and Sukhdev Singh were rightly convicted for offence under Section 325 IPC. The sentence of 04 years imprisonment imposed upon them is certainly not on the higher side. Though, learned counsel for the appellants has vehemently argued that the matter has since been compromised between the parties; they belong to the same village; the incident had taken place about 23 years ago and they had not been involved in any other quarrel thereafter, therefore, the quantum of sentence be reduced and they be sentenced to imprisonment already undergone by them in this case, which is stated to be of 5/6 months only but we are not inclined to accept that contention and reduce the sentence for such like reasons, lest that should send a wrong message in the society of being let off lightly for committing serious offences. Therefore, the appeal filed by accused/convicts lacks merit and is dismissed. As far as appeal filed by the State against acquittal of other accused, we do not find any ground to interfere with the verdict of the trial Court in that regard and convert the acquittal of such accused into conviction and sentence. Therefore, the appeal filed by the State is also dismissed.

(JITENDRA CHAUHAN)
JUDGE

06.11.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No