

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRA-S-2057-SB-2005 (O&M)

Date of decision: 05.12.2019

Naib Singh and another

...Appellants

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN**

Present: Mr. Dharambir Sobti, Advocate,  
and Ms. Rishu Bajaj, Advocate,  
for the appellants.

Mr. A.A. Pathak, Addl.A.G., Punjab.

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**Jitendra Chauhan, J.**

The instant appeal has been filed assailing the judgment of conviction dated 23.08.2005 and order of sentence dated 24.08.2005 (hereinafter referred to as the impugned judgment'), passed by learned Additional Sessions Judge, Barnala (for short, 'the trial Court'), thereby, convicting both the appellants under 304 Part I read with Section 34 of the Indian Penal Code (for short, 'the IPC') and sentencing them to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rupees ten thousand with default stipulation.

Brief facts of the case as recorded by learned trial Court in the impugned judgment read thus:-

*“That on 30.10.2003 around 7 P.M. when police*

*party headed by SI Bahadur Singh from Police Station,*

*Sehna, were on private gypsy bearing registration No.PB-4-7056 on routine patrolling duty as well as for checking of bad elements and thus happened to be present at bus stop, Sehna when the complainant Karnail Singh r/o Kothe Pancham De Gill Dohri Patti of village Sehna had met them and made a statement which was reduced into writing. The brief capitulation of the allegations as has been detailed in his statement are that he alongwith his six brothers were carrying on agricultural pursuits and were residing in their fields of village Sehna and that on the day of the occurrence i.e. 30.10.2003 the complainant alongwith his younger brother Sukhdev Singh @ Bukha (now deceased) and their Chacha Sewak Singh's son, namely, Maingal Singh were going on foot from village Sehna towards their houses when around 5 P.M. they reached near the house of Gurnam Singh (now accused) Sukhdev Singh told them to wait while he went to the house of sons of Gurnam Singh to fetch sapling of cauliflower and spices crops and at which the complainant and Maingal Singh stood outside and the deceased went into the house of Gurnam Singh and while he was in the courtyard of the house of Naib Singh son of Gurnam Singh (now accused) who was in a drunken condition started altercation with the deceased by questioning for what purpose the deceased had come to their house and meanwhile as is*

*alleged by the complainant both the accused Naib Singh and Gurnam Singh caught hold of the deceased Sukhdev Singh @ Bukha and took him inside the room at which the deceased raised Raula Mar Ditta Mar Ditta and at which the complainant and Maingal Singh rushed and saw Sukhdev Singh lying on the floor and was held by Gurnam Singh from the legs whereas Naib Singh was giving blows of his Dattar near the neck and on which the complainant alleges that both of them raised Raula Na Maro Na Maro and on which both the accused ran away with the weapon and before the injured could be rushed to the hospital he died and after leaving Maingal Singh near the dead body the complainant informed about this incident to Jagtar Dass @ Jagga and Dharam Pal and in their company while coming to the police station met the police.*

2. *The statement was read over to the complainant who after admitting its correctness thumb-marked the same and after necessary endorsement the I.O. SI Bahadur Singh sent ruqa through C-Kulwinder Singh to the police station leading to the registration of the present case by ASI Nahar Singh and thus the investigations into this crime got initiated.*

3. *That thereafter the I.O. alongwith the complainant and others went to the place of occurrence and saw the dead body of Sukhdev Singh and prepared rough site*

*plan and lifted blood stained earth from the spot and prepared into parcel and took into police possession alongwith articles consisting of wrist watch from the dead body and recorded the statements of the witnesses, prepared inquest report thereafter handed over the dead body to HC Sadhu Singh alongwith request for Post-Mortem Examination and on return to the police station the articles were handed over to MHC. That after the Post-Mortem Examination H.C. Sadhu Singh handed over the belongings of the deceased by way of parcel to the I.O. which was taken into police possession through memo and ultimately the articles were deposited with the MHC. The I.O. which was taken into police possession necessary documents and the articles were sent to F.S.L. for their determination and meanwhile on 06.11.2003 the I.O. received a secret information that Naib Singh was sitting near the canal bridge in the are of village Badhata and on raid the accused was apprehended and during the course of interrogation accused Naib Singh suffered disclosure statement which was reduced into writing and as a consequence of which got recovered Dattar alongwith his blood-stained clothes from the grove of trees and which were taken into police possession through a Memo after the preparation of the rough sketch of the weapon and thereafter on this revelation of Naib Singh accused Gurnam Singh was*

*apprehended near the canal bridge in the area of village Ghunga, who was formally arrested. That during the course of investigations the police got prepared scaled site plan of the place of occurrence and on completion of investigations challan against the accused was presented in the Court of Illaqa Magistrate.....”*

In order to prove its case, the prosecution examined Dr. Tirloki Nath, Medical Officer, Civil Hospital, Barnala as PW-1; Karnail Singh, complainant as PW-2; Maingal Singh as PW-3; Constable Jagdish Singh as PW-4; HC Pargat Singh as PW-5; HC Sadhu Singh as PW-6; Rakesh Bansal, Draftsman as PW-7; SI Bahadur Singh as PW-8; ASI Jasbir Singh as PW-9; and Constable Sukhjit Singh as PW-10.

When examined under Section 313 Cr.P.C., the accused pleaded that deceased Sukhdev Singh came in drunken condition to their house and had tried to commit rape on the wife of Gurnam Singh (mother of Naib Singh). However, Naib Singh happened to reach there by chance and was thus able to save her mother's honour. In a fit of rage, they attacked the deceased, thus taking the plea of self-defence. In defence, the accused examined Ajmer Singh as DW-1 to prove that Gurnam Singh was not present at the time of occurrence.

After hearing learned counsel for the parties and perusing the evidence on record, learned trial Court convicted and sentenced the appellants as narrated at the outset of this judgment.

Hence the instant appeal.

Vide order dated 02.12.2019, the instant appeal qua appellant

No.1-Naib Singh, stands abated.

Learned counsel for the appellants while advancing arguments on behalf of appellant No.2, Gurnam Singh, contends that he was more than 80 years of age at the time of the alleged occurrence, whereas, the deceased was of hale and hearty. It is highly improbable that a person of such ripe age was able to immobilize the deceased. Further, the plea of *alibi* taken by the appellant has been wrongly rejected by learned trial Court by discarding the truthful version given by DW-1, Ajmer Singh. Lastly, learned Counsel has prayed for a lenient view in the matter of sentence, in case, his conviction is maintained.

On the other hand, learned State counsel submits that the case of the prosecution is fully proved. All the prosecution witnesses have fully supported its case.

Heard learned counsel for the parties and perused the record.

As per the case of the prosecution, the incident in question took place at 5.00 p.m. The formal FIR was registered at the behest of eye-witness Karnail Singh at 7.00 p.m. Even the special report was received by learned *Illaq*a Magistrate at 9.30 p.m. on the same day. Thus, the prompt registration of the FIR is a strong indicator of the truthfulness of the prosecution version. As far as the motive is concerned, it has come on record that Naib Singh suspected that Sukhdev Singh had illicit relations with his mother. The accused, on the other hand, have projected it as a case of attempt to commit sexual assault on the mother of Naib Singh at the hands of the deceased. Thus, there was a strong motive with the accused to commit the offence. Even otherwise, the accused themselves have admitted to the occurrence having taken place. The plea of self-defence also is not

available to the accused as it is settled principle that the right of private defence in no case, extends to inflicting of more harm than it is necessary for the purpose of defence. Admittedly, the deceased was not armed with any weapon and the alleged attempt of sexual assault had been rendered unsuccessful, thus, the accused exceeded their right of private defence by inflicting multiple and fatal injuries upon the deceased. It has come in the testimony of PW-1, Dr. Tirloki Nath that as many as eight injuries were noticed on the person of the deceased. In this background, this Court is of the considered opinion that the conviction of the accused appellant No.2 under Section 304-I IPC with the aid of Section 34 IPC has been rightly recorded and does not call for any interference by this Court and the same is hereby, maintained.

As regards the question of quantum of sentence, this Court feels that the appellant deserves some leniency for the reasons that he is more than 90 years of age; has already lost his son, co-accused Naib Singh; and suffering the agony of protracted trial.

Consequently, the sentence of imprisonment qua appellant No.2, Gurnam Singh, is reduced from RI of 10 years to the period already undergone by him. However, the sentence of fine shall remain unchanged. The appellant is stated to be on bail. His bail bonds shall stand discharged.

With the above modification in the order of sentence, the instant appeal is dismissed on merits.

05.12.2019

*atulsethi***(JITENDRA CHAUHAN)**  
**JUDGE**

Whether speaking / reasoned :      Yes      No

Whether Reportable :      Yes      No