

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-220-DB-2017
Reserved on : 25.07.2019
Date of decision : 31.07.2019

Sukhchain Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM: *HON'BLE MR. JUSTICE RAJIV SHARMA*
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.S.P.S.Sidhu, Advocate
for the appellant.

Mr.Suveer Sheokand, Addl.A.G. Punjab.

RAJIV SHARMA, J.

This appeal is instituted against the judgment and order dated 07.01.2017 rendered by the learned Sessions Judge, Ferozepur, in Sessions Trial no.1 of 2017 whereby the appellant along with co-accused Gurdial Singh was charged with and tried for offences punishable under Sections 308, 302 read with Section 34 of the Indian Penal Code (in short 'IPC'). They have been convicted and sentenced as under:-

Name of convict	Under Section	RI	Fine	In default
Sukchain Singh	302 IPC	Life Imprisonment	Rs.20,000/-	20 months
Dayal Singh @ Gurdial Singh	323 IPC	Six months		

2. The case of the prosecution, in a nutshell, is that Jarmal Singh complainant was present with his father Sukhdev Singh in their fields on

31.08.2015 at about 10.00 A.M. They noticed Sukhchain Singh and his father Dayal Singh damaging the *watt* in their fields. Sukhdev Singh father of the complainant objected to it and tried to refrain them from doing so. Sukhchain Singh accused with an intention to kill him, inflicted spade blow on his head. Sukhdev Singh fell on the ground. He became unconscious. Dayal Singh also gave fist blows on the eyes of Sukhdev Singh. The complainant got admitted his father in Baghi Hospital, Ferozepur. Police reached the spot. Investigating Officer moved an application Ex.PS seeking opinion of the doctor whether the injured was fit to make statement. The doctor made endorsement Ex.PS/1 declaring the injured unfit to make statement. Jarmal Singh son of the injured met the police party and got his statement Ex.PM recorded. FIR Ex. PU was registered. The Investigating Officer prepared the site plan Ex.PV. Blood stained soil and simple soil were lifted. Mukhtiar Kaur wife of the injured also produced blood stained clothes of the injured. Sukhchain Singh accused was arrested on 11.09.2015. Investigation was completed. Challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses. Statements of accused were recorded under Section 313 Cr.P.C. They denied the case of prosecution. The appellant along with co-accused was convicted and sentenced, as noticed hereinabove.

4. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove the case against the appellant.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

6. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

7. PW-1 Dr.R.L.Taneja had examined Sukhdev Singh. He noticed following injuries on the person of deceased:-

“1. Lacerated wound of about 6 cm x 1 cm on the middle of forehead approximately. Fresh bleeding was present. Wound was bone deep. There was blackening on right eye. Advised CT scan.

2. There was blackening of right eye all around and swollen.”

According to him, weapon used was blunt for both the injuries and probable duration of injuries was within six hours.

8. PW-2 Dr.Anchal along with Dr.Gurmej Ram conducted the post-mortem examination on the dead body of Sukhdev Singh. She noticed the following injuries on the person:-

“1. A stitched wound measuring 6 cm x 1 with nine stitches was present on the forehead in the mid line, 3 cm from the bridge of the nose. On dissection, underlying tissues were found congested and infiltrated with blood. On further dissection fracture of frontal bone was present. Brain matter was found congested and infiltrated with blood.

2. Swelling 2 cm x 3 cm was present just below the right eye. On dissection, underlying tissues were found congested and infiltrated with blood.”

According to their opinion, the cause of death was due to injury to vital organ brain resulting in septicemia and acute renal failure which was ante mortem in nature and sufficient to cause death in the ordinary course of nature. The probable time between death and post-mortem was 12 to 24 hours.

9. PW-3 Dr.Jaswinder Singh had examined the CT scan reports pertaining to Sukhdev Singh. He noticed depressed fracture of overlying frontal bone involving the frontal sinuses and superior wall of right orbit. Soft tissue swelling was seen.

10. PW-5 Dr.Prveen Popli had conducted CT scan of Sukhdev Singh on 31.08.2015. He also conducted MRI of the patient on 08.09.2015. The CT scan report is Ex.PG and MRI report is Ex.PH.

11. PW-10 Dr.Manoj Kumar Sobti deposed that patient was admitted with alleged history of assault by someone at village Dulla Singh Wala. The patient died on 12.09.2015.

12. PW-8 Jarmal Singh deposed that they owned 8 acres of land. The land of his uncle (*taya*) namely Dayal Singh abuts their land. There was common embankment in between their lands. On 31.08.2015 at about 10.00 A.M. he was irrigating the fields along with his father Sukhdev Singh. Sukhchain Singh and Dayal Singh were present there. They started destroying the common embankment. His father stopped them. Sukhchain Singh gave a spade blow on the head of his father with an intention to kill him. His father fell down. He became unconscious. Dayal Singh gave fist blows on the eyes of his father. He and his mother Mukhtiar Kaur raised alarm. Accused ran away from the spot. His father was admitted in the hospital. He succumbed to the injuries on 12.09.2015. In his cross-examination, he deposed that he did not sustain any injury in the incident.

13. PW-9 Mukhtiar Kaur corroborated the statement of PW-8 Jarmal Singh. According to her, she was carrying tea to the fields. Her husband and her son were working in the fields. She saw Sukhchain Singh giving a spade blow on the head of her husband with an intention to kill

him. Her husband collapsed. He became unconscious. Dayal Singh gave fist blows on the eyes of her husband. She and her son Jarmal Singh raised alarm. Accused ran away from the spot. Her husband was admitted in the hospital. In her cross-examination, she deposed that she had not seen blood stained clothes of her husband.

14. PW-11 ASI Davinder Singh deposed that Sukhdev Singh was admitted in Anil Baghi Hospital, Ferozepur, in injured condition. He reached the hospital. He moved an application seeking opinion whether the injured was fit to make statement. He also went to the Sobti Hospital, Ludhiana. He moved an application Ex.PS seeking opinion of the doctor whether the injured was fit to make statement. Doctor declared the injured unfit to make statement. Jarmal Singh got recorded his statement vide Ex.PM. He along with police party visited the place of occurrence. He prepared site plan. Blood stained soil and simple soil were lifted. At the spot, Mukhtiar Kaur produced blood stained clothes of the injured which were converted into parcel. He also recorded the statements of the witnesses. Accused Sukhchain Singh made disclosure statement that he had concealed *kahi* (spade). He could get it recovered. The spade was taken into possession vide memo Ex.PZ. In his cross-examination, he admitted that spade produced in the Court was not stained with blood.

15. The FSL report is Ex.PHH. According to it, exhibits contained in parcels 'A' (soil alleged to be stained with blood) and 'C' (kameez marked as C-1, parna marked C-2, Parna marked C-3) were stained with human blood. However, no blood was detected on the exhibit contained in parcel 'B' (soil alleged to be simple soil).

16. The deceased had received one injury as per statement of PW-1

Dr.RL Taneja. The cause of death, as per post-mortem examination, was due to injury to vital organ brain resulting in septicemia and acute renal failure which was ante mortem in nature.

17. The case of the prosecution precisely is that PW-8 Jarmal Singh was on the spot with his father. Appellant Sukhchain Singh and co-accused Dayal Singh were also on the spot. Sukhchain Singh and Dayal Singh were destroying the common embankment. Deceased Sukhdev Singh requested them not to do so. Sukhchain Singh gave a spade blow on the head of Sukhdev Singh. He collapsed. This incident has also been witnessed by PW-9 Mukhtiar Kaur, wife of the deceased. It was not a premeditated act. It was sudden fight in the heat of passion upon a sudden quarrel. Appellant Sukhchain Singh had not taken any undue advantage or acted in a cruel or unusual manner. He had given only one single spade blow on the head of the deceased. The parties are closely related. The bone of contention was common embankment. PW-8 Jarmal Singh was on the spot but he did not make any effort to save his father except raising an alarm with his mother.

18. According to PW-1 Dr.RL Taneja, there was blackening of right eye all around and swollen. He had categorically deposed that injury no.2 could have occurred on account of injury no.1. The weapon used was blunt for both the injuries and probable duration of injuries was within six hours. Injury no.1 was declared as dangerous to life. PW-10 Dr.Manoj Kumar Sobti had also noticed black swollen right eye.

19. Learned counsel appearing on behalf of the appellant has vehemently argued that the appellant Sukhchain Singh has no intention to cause death of Sukhdev Singh.

20. The fact of the matter is that Sukhchain Singh had given single

blow with spade on the head of Sukhdev Singh. It proved fatal. Injury no.1 was opined to be dangerous to life. Thus, appellant Sukhchain Singh had the intention to cause death of Sukhdev Singh.

21. Accordingly, the appeal is partly allowed. The conviction and sentence of appellant Sukhchain Singh are converted from Section 302 IPC to Section 304 Part I IPC. Appellant is in custody. The State is directed to produce the appellant in Court on 07.08.2019 to hear him on quantum of sentence under Section 304 Part I IPC.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 31, 2019.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No