

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CRA-D-801-DB-2017

Naib Singh @ Gurnaib and others

... Appellants

Versus

State of Punjab

... Respondent

2. CRA-D-748-DB-2017

Harbans Singh @ Bansa

... Appellant

Versus

State of Punjab

... Respondent

Reserved on : 06.05.2019
Date of decision : 24.05.2019

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

Present: Mr.APS Deol, Senior Advocate with
Mr.Vishal Rattan Lamba, Advocate
for the appellants in CRA-D-801-DB-2017.

Mr.A.S.Khinda, Legal Aid Counsel
for the appellant in CRA-D-748-DB-2017.

Mr.S.P.S.Tinna, Addl.A.G. Punjab.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the
aforesaid appeals, therefore, these are taken up together and disposed of by
a common judgment.

2. These appeals are instituted against judgment and order dated 13.06.2017 rendered by the Additional Sessions Judge, Mansa, in Sessions Case No.09 of 30.05.2013. The appellants along with co-accused Amar Singh, were charged with and tried for offences punishable under Sections 302, 148, 149 of the Indian Penal Code (in short 'IPC'). The appellants have been convicted and sentenced as under:-

Name of Convict	Under Section	Sentence
Harbans Singh @ Bansa Singh	302 IPC	Rigorous imprisonment for life and to pay fine of Rs.13,000/- (thirteen thousand) and in default of payment of fine to further undergo two months rigorous imprisonment.
	148 IPC	Rigorous imprisonment for three years and to pay fine of Rs.2000/- (two thousand) and in default of payment of fine to further undergo ten days rigorous imprisonment.
Naib Singh @ Gurnaib	302 read with Section 149 IPC	Rigorous imprisonment for life and to pay fine of Rs.13,000/- (thirteen thousand) and in default of payment of fine to further undergo two months rigorous imprisonment.
	148 IPC	Rigorous imprisonment for three years and to pay fine of Rs.2000/- (two thousand) and in default of payment of fine to further undergo ten days rigorous imprisonment.
Pargat Singh @ Parga	302 read with Section 149 IPC	Rigorous imprisonment for life and to pay fine of Rs.13,000/- (thirteen thousand) and in default of payment of fine to further undergo two months rigorous imprisonment.
	148 IPC	Rigorous imprisonment for three years and to pay fine of Rs.2000/- (two thousand) and in default of payment of fine to further undergo ten days rigorous imprisonment.
Geeta Singh @ Gurmit	302 read with Section 149 IPC	Rigorous imprisonment for life and to pay fine of Rs.13,000/- (thirteen thousand) and in default of payment of fine to further undergo two months rigorous imprisonment.
	148 IPC	Rigorous imprisonment for three years and to pay fine of Rs.2000/- (two thousand) and in default of payment of fine to further undergo ten days rigorous imprisonment.
Labh Singh @ Labha	302 read with Section 149 IPC	Rigorous imprisonment for life and to pay fine of Rs.13,000/- (thirteen thousand) and in default of payment of fine to further undergo two months rigorous imprisonment.

Name of Convict	Under Section	Sentence
	148 IPC	Rigorous imprisonment for three years and to pay fine of Rs.2000/- (two thousand) and in default of payment of fine to further undergo ten days rigorous imprisonment.

Kali Singh @ Manprit Singh	302 read with Section 149 IPC	Rigorous imprisonment for life and to pay fine of Rs.13,000/- (thirteen thousand) and in default of payment of fine to further undergo two months rigorous imprisonment.
	148 IPC	Rigorous imprisonment for three years and to pay fine of Rs.2000/- (two thousand) and in default of payment of fine to further undergo ten days rigorous imprisonment.

All the sentences were ordered to run concurrently. Co-accused Amar Singh had been given benefit of doubt and was acquitted.

4. The case of the prosecution, in a nutshell, is that on 03.02.2013 Gurpreet Singh got recorded his statement with SHO, Police Station Kot Dharmu that he was a labourer. He had two brothers and two sisters. Eldest one was Binder Singh and sisters were Beant Kaur and Amandeep Kaur. His brother Binder Singh was a labourer. On 02.02.2013 complainant along with Binder Singh was coming back to his village after attending the marriage of daughter of *Mossi* (sister of their mother). It was 9.00 P.M. When they reached near the house of Bansa Singh, Harbans Singh @ Bansa Singh armed with *gandasa*, Naib Singh, Pargat Singh @ Parga, Geeta Singh, Labh Singh, Kali Singh and Amar Singh armed with respective *dangs* were standing there. On spotting Binder Singh, a *lalkara* was raised by Harbans Singh @ Bansa Singh that Binder Singh be taught a lesson for keeping bad eye on his wife. All the accused pounced upon Binder Singh. He was dragged inside the house of Harbans Singh @ Bansa Singh. The complainant ran away from the spot. Thereafter he along with uncle

Rajinder Singh and Kala Singh came back in front of the house of Harbans Singh @ Bansa Singh. They witnessed Harbans Singh @ Bansa Singh giving *gandasa* blows on the left side of head and another *gandasa* blow was given on the left side of forehead of Binder Singh. Naib Singh gave two *dang* blows on the left wrist. Pargat Singh gave *dang* blow on the back side of left thigh of Binder Singh. Binder Singh collapsed on the ground. Geeta Singh gave *dang* blow on the left leg and Labh Singh gave the *ghotna* blow on the left ankle and left calf area of Binder Singh. Kali gave two *dang* blows on his right knee and below the right knee. Amar Singh also gave *dang* blows on the person of Binder Singh. The incident was witnessed by the complainant and other eye witnesses in the light of courtyard of house of Harbans Singh @ Bansa Singh. They raised alarm. Accused ran away from the spot along with their weapons. Body was sent for post-mortem examination. FIR was registered. Challan was put up after completing all the codal formalities.

5. The prosecution examined a number of witnesses. Statements of accused were recorded under Section 313 Cr.P.C. They denied the case of prosecution. Accused examined five witnesses in their defence. The appellants were convicted and sentenced, as noticed hereinabove. Hence these appeals.

6. Learned counsel appearing on behalf of the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

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

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

9. PW-2 Gurpreet Singh testified that on 02.02.2013 he along with his brother Binder Singh was coming back after attending marriage of daughter of his maternal aunt. When they reached near the house of Harbans Singh @ Bansa Singh at 9.00 P.M., Bansa Singh, Naib Singh, Geeta Singh, Labh Singh, Pargat Singh, Kali Singh and Amar Singh were present in the street. Harbans Singh @ Bansa Singh stated to his brother that he would teach a lesson for keeping bad eye on his wife. All the accused caught hold of his brother Binder Singh. Binder Singh was taken inside of the house of Harbans Singh @ Bansa Singh. He ran away from the spot. He narrated the entire incident to his uncles Kala Singh and Rajinder Singh. He came back along with his uncles Kala Singh and Rajinder Singh. Harbans Singh @ Bansa Singh gave *gandasa* blow on the head of his brother Binder Singh. Harbans Singh @ Bansa Singh gave another *gandasa* blow on forehead of Binder Singh. Naib Singh gave two stick blows on the left wrist of Binder Singh. Pargat Singh gave two stick blows on the back of thigh of Binder Singh. His brother collapsed. Geeta Singh gave two stick blows on the left leg of his brother below the knee. Labh Singh gave two *ghotna* blows on the left leg, one below the knee and the other on the left knee. Kali Singh gave two stick blows on the right leg of his brother below the knee. Light was on. He along with Rajinder Singh and Kala Singh had witnessed the occurrence. They raised alarm. Accused escaped from the spot along with their weapons. They approached Binder Singh. Blood was oozing from the head of his brother Binder Singh. There was fracture on left wrist and lower portion of left leg. They took his brother to government hospital.

However, he died on the way. The motive of enmity was that Harbans Singh @ Bansa Singh and other accused had suspicion that his brother was having illicit relations with the wife of Bansa Singh. He got recorded his statement Ex.PD. Investigating Officer was informed. Accused were arrested. Harbans Singh @ Bansa Singh made disclosure statement Ex.PF. Naib Singh made disclosure statement Ex.PG. Geeta Singh made disclosure statement Ex.PH. Pargat Singh made disclosure statement Ex.PI. Labh Singh made disclosure statement Ex.PJ. Kali Singh made disclosure statement Ex.PK. Weapons of offence were got recovered by the accused on the basis of their disclosure statements. He identified the parcel of *gandasa* Ex.MO-1, parcel of stick Exs.MO-2 to 4, parcel of *ghotna* Ex.MO-5, parcel of bamboo Ex.MO-6. In his cross-examination, he admitted that parcels were torn and weapon from the parcel could be taken out without breaking any seal. The deceased received ten injuries. The clothes of his brother were torn with the infliction of injuries. The deceased had already received 8/10 injuries prior to his arrival at the spot. They did not try to grapple or apprehend the accused. No neighbour had come out near the house of accused Bansa Singh. They had no knowledge at the time of occurrence that wife of Harbans Singh @ Bansa Singh was having illicit relation with deceased Binder Singh. He came to know regarding illicit relations when his brother was killed by the accused within five minutes. He came to know regarding illicit relations from accused Harbans Singh @ Bansa Singh when he was inflicting injuries to his brother. The wedding cards of marriage of his cousin sister were printed. He had not produced any wedding card regarding said marriage before the police. Binder Singh had purchased two tickets of bus on the day of occurrence. Police had searched

the clothes worn by the deceased in the hospital after his statement. He did not know whether any document or paper was found in the said search from the clothes. There was no street light in the bricks paved street from bus stand upto their house. He was called for further cross-examination. He also admitted that accused had not chased him rather he fled away from the place of occurrence. He also deposed that they had not taken any weapon like stick, *gandasa*, *ghotna* etc. from the house of Rajinder Singh at that time. They reached in the house of Harbans Singh @ Bansa Singh within 5-10 minutes. They had not tried to rescue Binder Singh from the clutches of accused when they had gone to the house of Harbans Singh @ Bansa Singh. They were empty handed. He admitted that his uncle Rajinder Singh was leader of Congress Party. He was close associate of Moffar MLA. All the accused were active members of ruling Akali Dal.

10. PW-3 Rajinder Singh deposed that on 02.02.2013 at about 9.05 P.M. he was present in the house. His nephew Binder Singh and Gurpreet Singh were coming back home after attending the marriage of their cousin. When they reached near the house of Harbans Singh @ Bansa Singh, Gurpreet Singh ran away from there due to fear. He disclosed to him that Harbans Singh @ Bansa Singh armed with *gandasa*, Naib Singh armed with stick, Pargat Singh armed with stick, Geeta Singh armed with stick, Labh Singh armed with *ghotna*, Kali Singh armed with stick, Amar Singh armed with stick were standing in the street. Harbans Singh @ Bansa Singh raised *lalkara*. He proclaimed that he would teach a lesson to Binder Singh for keeping bad eye on his wife. All the accused took Binder Singh to the house of Harbans Singh @ Bansa Singh. He along with his brother Kala Singh and nephew Gurpreet Singh reached near the house of Harbans Singh @ Bansa

Singh. They saw Harbans Singh @ Bansa Singh giving *gandasa* blow on the head of Binder Singh. He gave another blow of *gandasa* on the head of Binder Singh. Naib Singh gave two stick blows on the left wrist of Binder Singh. Pargat Singh gave two stick blows on the left thigh of Binder Singh. Binder Singh collapsed on the ground. Then Geeta Singh gave two stick blows on the left leg of Binder Singh. Labh Singh gave two *ghotna* blows on the person of Binder Singh. Kali Singh gave two stick blows on the right leg of Binder Singh below the knee. Amar Singh also caused injuries on the head and legs of Binder Singh. Light was on. They raised alarm. All the accused ran away from the spot. In his cross-examination, he admitted that he was active member of Congress Party. The house of Geeta Singh was situated in different street from the house of Harbans Singh @ Bansa Singh. When they were going to the house of Harbans Singh @ Bansa Singh, mother and sister of Binder Singh did not accompany them. The house of Harbans Singh @ Bansa Singh was at a distance of 4 acres from the house of Binder Singh. When accused were attacking Binder Singh, they had not tried to rescue him from the clutches of accused because accused were having weapons at that time. Volunteered they had raised alarm. When they reached at the place of occurrence, Binder Singh was lying on the ground. When they reached at the spot, accused had already inflicted 7-8 injuries on the body of Binder Singh. Police visited the spot next day. All the accused were members of Akali Dal.

11. PW-5 SI Jaskaran Singh deposed that he along with police officials reached Civil Hospital, Mansa. He recorded the statement of Gurpreet Singh vide Ex.PD. Ruqa was prepared. FIR Ex.PW5/B was recorded. The body was sent for post-mortem examination. Accused were

arrested. They made disclosure statements on the basis of which recoveries were got effected from them. In his cross-examination, he deposed that he had not obtained marriage card of daughter of aunt of Gurpreet Singh. It had not come to his investigation that there was illicit relation of Binder Singh with the wife of Harbans Singh @ Bansa Singh. He had not enquired from anybody regarding illicit relations of Binder Singh with the wife of Harbans Singh @ Bansa Singh.

12. PW-1 Dr.Manav Jindal had conducted the post-mortem examination. He had noticed following injuries on the body of deceased:-

“1. Incised wound 6 x 0.5 cm bone deep with sharp margins present over left temporal bone 7 cm. Above left ear, 15 cm above posterior hairline. On dissection, underlying bone is fractured and clotted blood was present in cranial cavity. Meninges and brain matter were lacerated.

2. Incised wound 7 x 0.5 bone deep with sharp margins present 3 cm. On dissection, underlying bone is fractured and clotted blood was present in cranial cavity. Meninges and brain matter were lacerated.

3. Lacerated wound bone deep 3 x 0.5 cm with irregular margins were present over left wrist over dorsal aspect. On dissection underlying bone were fracture along with infiltration of blood.

4. Lacerated wound 3 x 2 cm. Present below right knee over anterior aspect of leg, 15 cm below right knee joint.

5. Lacerated wound 1.5 x 0.5 cm present 5 cm below left knee joint on the anterior aspect of left lower limb.

6. Lacerated wound 4 cm x 1.5 cm present over leg, 1.5 cm above left ankle. On dissection underlying both bones leg were fractured along with infiltration of

blood.”

Duration between death and post-mortem was within 24 hours. In his opinion, injuries No.1 and 2, i.e. injury to vital organ (brain matter) were sufficient to cause death in ordinary course of nature. He proved post-mortem report Ex.PA.

13. DW-1 Mohinder Singh testified that his house was situated in front of Water Works at Bhame Kalan. He knew Harbans Singh @ Bansa Singh accused. He had seen the house of Harbans Singh @ Bansa Singh. The common wall of the house of Manga Singh and Harbans Singh @ Bansa Singh was about four feet in height and the common wall was broken. There was no street light where the house of Harbans Singh @ Bansa Singh was situated. In his cross-examination he admitted that he did not know if the death of Binder Singh occurred in the house of Harbans Singh @ Bansa Singh accused. He did not visit the house of Harbans Singh @ Bansa Singh during the night of occurrence.

14. DW-2 Darshan Singh has proved entry regarding dead body of Binder Singh as Ex.DW2/A.

15. DW-5 Gurmit Singh deposed that his shop was in front of house of Harbans Singh @ Bansa Singh. No murder was committed in the house of Harbans Singh @ Bansa Singh. He came to know after 2/3 days that Binder Singh was murdered. In his cross-examination, he deposed that police did not record his statement. Volunteered he was interrogated.

16. The FSL report is Ex.PX. Blood could not be detected on the exhibits contained in parcel “A”, i.e. soil alleged to be simple. Exhibit contained in parcel “B”, i.e. soil alleged to be stained with blood, was stained with human blood. As per Ex.PY, exhibits *gandasa* and sticks were

stained with human blood. The site plan is Ex.PN/1.

17. The case of the prosecution precisely is that deceased Binder Singh and PW-2 Gurpreet Singh were coming back after attending marriage. When they reached near the house of Harbans Singh @ Bansa Singh at 9.00 P.M., Harbans Singh @ Bansa Singh raised *lalkara* that Binder Singh should be taught a lesson for keeping bad eye on his wife. Thereafter accused inflicted injuries on him. Binder Singh collapsed. PW-2 Gurpreet Singh fled to his house. He came back to spot along with his uncles, i.e. PW-3 Rajinder Singh and Kala singh. They raised alarm. Accused ran away from the spot with their weapons. Weapons were recovered on the basis of disclosure statements made by accused.

18. The motive attributed to the accused is that deceased Binder Singh was keeping bad eye on the wife of Harbans Singh @ Bansa Singh. PW-2 Gurpreet Singh has categorically deposed in his cross-examination that they were not having knowledge at the time of occurrence that wife of Harbans Singh @ Bansa Singh was having illicit relation with deceased Binder Singh. However he came to know regarding illicit relations when his brother was killed by accused within five minutes. He came to know with regard to this illicit relationship from accused Harbans Singh @ Bansa Singh when he was inflicting injuries to his brother as he was shouting regarding illicit relationship of deceased with his wife. However he had not so stated in his statement recorded by the police that Harbans Singh @ Bansa Singh while inflicting injuries to his brother was shouting that the deceased was having illicit relations with his wife. PW-5 Jaskaran Singh, Investigating Officer in his cross-examination has specifically stated that it had not come to his investigation that how long there were illicit relations

between deceased Binder Singh with wife of Harbans Singh @ Bansa Singh. He had not enquired from anybody regarding the illicit relations of Binder Singh with wife of Harbans Singh @ Bansa Singh. PW-2 Gurpreet Singh deposed that he was with his brother Binder Singh at 9.00 P.M. when Harbans Singh @ Bansa Singh exhorted co-accused to teach a lesson to him for keeping bad eye on his wife. He instead of saving his brother, ran away from the spot. He came back with his uncles PW-3 Rajinder Singh and Kala Singh. PW-2 Gurpreet Singh has specifically deposed in his cross-examination that they did not try to apprehend the accused. They had only raised alarm but did not intervene at that time as the accused were having weapons and they were empty handed. Accused had not chased him rather he had fled away from the place of occurrence. They had not taken any weapon like sticks, *ghotna* etc. from the house of Rajinder Singh. He went back to the spot. PW-3 Rajinder Singh has also deposed that when accused were attacking Binder Singh, they did not try to rescue him from the clutches of accused since the accused were armed with weapons. Volunteered they raised alarm. It has come on the record that accused belong to Akali Dal and the complainant party were supporters of Congress Party. The conduct of PW-2 Gurpreet Singh and his uncle PW-3 Rajinder Singh was unusual. When Gurpreet Singh had seen accused armed with weapons, he should have informed his uncle about the same. It was not expected from them to go without any weapon like stick etc. PW-2 Gurpreet Singh, PW-3 Rajinder Singh and Kala Singh reached on the spot. They should have tried to save Binder Singh from the accused by intervening in the matter. Though the motive attributed is that Binder Singh was keeping bad eye on the wife of Harbans Singh @ Bansa Singh but no cogent

evidence has been led by the prosecution. PW-2 Gurpreet Singh came to know about illicit relations, only at the spot. The Investigating Officer has not made any inquiry about illicit relation of Binder Singh with the wife of Harbans Singh @ Bansa Singh. PW-2 Gurpreet Singh and deceased had gone to attend marriage of their aunt's daughter. Though PW-2 Gurpreet Singh stated that Binder Singh had purchased bus tickets but these were not got recovered from the possession of deceased. However, the fact of matter is that injuries were caused to Binder Singh. He died on the way to the hospital. The assailants and the complainant party belong to two different political parties. The genesis as projected by the prosecution is not made out from the record. No reasonable person would ever openly proclaim that a particular person had illicit relation with his wife.

19. Learned counsel appearing on behalf of the appellants have vehemently argued that the appellants had no *mens rea* to cause death of Binder Singh. They further argued that the appellants can be convicted only under Section 304 Part II IPC.

20. We are not convinced with this plea. The appellants had intention to cause death of Binder Singh since all of them were armed with *gandasa*, sticks and *ghotna*. Thus they are liable to be convicted under Section 304 Part I IPC.

21. Accordingly, the appeals are partly allowed. The conviction of appellants is altered from Section 302 IPC read with Section 149 IPC to Section 304 Part I read with Section 149 IPC. Their conviction and sentence rendered by the trial Court under Section 148 IPC is, however, upheld.

22. Appellant Harbans Singh @ Bansa Singh is on bail. He is directed to appear in Court on 30.05.2019 to be heard on the quantum of

sentence under Section 304 Part I read with Section 149 IPC. The other appellants are in custody. They are ordered to be produced in Court on the abovesaid date to be heard on the quantum of sentence.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 24, 2019.
Davinder Kumar

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