

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-789-DB-2003 (O&M)
Date of decision: 26.11.2019

Nishan Singh and others

...Petitioner

Versus

State of Punjab

...Respondent

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

Present: Mr. SPS Sidhu, Advocate,
for the appellants.

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

Jitendra Chauhan, J.

Assailed in the instant appeal is the judgment of conviction and order of sentence dated 22.09.2003 (hereinafter referred to as the impugned judgment'), passed by learned Additional Sessions Judge, Faridkot (for short, 'the trial Court'), whereby, the appellants have been convicted and sentenced as under:-

Name of the accused	Conviction	Sentence	Fine	Default stipulation
Nishan Singh	Sections 302 IPC	Imprisonment for life	₹1,000/-	RI for 02 months
	Section 148 IPC	RI for 01 year	--	--
	Section 323/149 IPC	RI for 06 months	₹500/-	RI for 01 month
Dharampal Singh	Section 302/149 IPC	Imprisonment for life	₹1,000/-	RI for 02 months
	Section 148 IPC	RI for 01 year	--	--
	Section 323 IPC	RI for 06 months	₹500/-	RI for 01 month

Karam Singh @ Karni Singh	Section 302/149 IPC	Imprisonment for life	₹1,000/-	RI for 02 months
	Section 148 IPC	RI for 01 year	--	--
	Section 323 IPC	RI for 06 months	₹500/-	RI for 01 month
Gulzar Singh	Section 302/149 IPC	Imprisonment for life	₹1,000/-	RI for 02 months
	Section 323/149 IPC	RI for 06 months	₹500/-	RI for 01 month
	Section 148 IPC	RI for 01 year	--	--
Harjinder Singh	Section 302/149 IPC	Imprisonment for life	₹1,000/-	RI for 02 months
	Section 323/149 IPC	RI for 06 months	₹500/-	RI for 01 month
	Section 148 IPC	RI for 01 year	--	--

However, all the sentences were ordered to run concurrently.

Brief facts of the case, as noticed by learned trial Court, in paragraph No.2 of the impugned judgment, read thus:-

“2. That as per the allegations of the complainant Sukhpal Kaur that on 24.12.2001, evening she along with her son Gurjit Singh (deceased) were going to pay obeisance at the local village Gurudwara and at the gate of the Gurudwara they met Fauji Baltej Singh, a friend of the deceased and the deceased Gurjit Singh and Fauji Baltej Singh started talking to each other when it is alleged that Nishan Singh, Karam Singh alias Karni Singh, Dharampal Singh, present accused came there and the accused started levelling unwarranted insinuations against Fauji Baltej Singh and at which Sukhpal Kaur and Gurjit Singh, deceased intervened and parted both the sides after scolding the accused side and thereafter the complainant and her son went to the Gurudwara and paid obeisance there. It is alleged that around 7.30 P.M. while Sukhpal Kaur and her son were

returning back to their home and were passing through the land leading to their house when all of a sudden Gulzar Singh and Harjinder Singh present accused came out of their new house in the neighbourhood of the complainant's house and stopped their way and restrained them from proceeding ahead who were followed by accused Nishan Singh armed with 'Dusanga', Karni Singh @ Karam Singh, Dharampal Singh both armed with dangs came and entered into a heated debate with the complainant and her son and at which it is alleged that accused Harjinder Singh has given a Lalkara exhorting his co-accused to the effect that "Ki Dekhde Ho Fauji Nall Ral Ke Ihna Ne Apni Badnami Kiti Hai Sukke Nahi Jane Chahide Phar Lao" at which accused Karni Singh caught hold of deceased Gurjit Singh by means of left arm and accused Dharampal Singh caught hold of the deceased by right arm and accused Gulzar Singh caught hold of the deceased by neck and threw him down on the ground facing downwards and thereafter it is alleged that accused Nishan Singh gave a blow of his "Dusanga" hitting deceased Gurjit Singh on the right side of the back at which complainant Sukhpal Kaur gave Raula 'Namaro-Namaro' and thereafter accused Karam Singh alias Karni Singh gave a blow of his dang hitting Sukhpal Kaur on the right buttock and accused Dharampal Singh thereafter gave blow of his dang hitting Sukhpal Kaur on the stomach and meanwhile Gurcharan Singh, a paralytic, father of the deceased and husband of the complainant who was sitting in front of the gate of his house in the lane along with his relative Tek Singh raised Raula at which all the accused ran away with their respective weapons and after which the complainant side arranged for a conveyance and took

the injured to G.G.S. Medical College, Faridkot, where the doctor opined Gurjit Singh as dead and injured Sukhpal Kaur was medically examined.”

Charges under Sections 148, 302, 302/149, 323 and 323/149 of the Indian Penal Code were framed against the accused to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Baltej Singh Fauji as PW-1; complainant Sukhpal Kaur as PW-2; Tek Singh as PW-3; Dr. J.S. Dalal, Professor and Head in Forensic Medicines, Medical College, Faridkot as PW-4; Dharam Singh, Draftsman as PW-5; Dr. Sanjeev Goel, Registrar, Eye Department, G.G.S. Medical College, Faridkot as PW-6; Gurcharan Singh, Sub Station Attendant, Sub Station Deep Singhwala, Sub Division, Sadiq, Division Faridkot as PW-7; SI Balwinder Singh, the Investigating Officer as PW-8; HC Hardeep Kumar as PW-9; C-II Sukhmander Singh as PW-10; HC Sukhdev Singh as PW-11; and ASI Sukhdev Singh as PW-12.

When examined under Section 313 Cr.P.C., the accused denied all the allegations and pleaded false implication. All the accused took a plea that it was a blind murder and not such occurrence ever took place at their hands. Accused-appellants Nishan Singh, Dharampal Singh and Karam Singh @ Karni Singh further pleaded that they never produced any weapon before the police as alleged. Nishan Singh further stated that he never made any disclosure statement. However, the accused did not lead any evidence in defence.

After hearing learned counsel for the parties and appreciating the material produced on record, learned trial Court convicted and sentenced the accused-appellants as noticed at the outset of this judgment.

Hence, the instant appeal.

Learned counsel for the appellants contends that there was no motive with the accused-appellants to kill the deceased as no previous enmity has been pleaded or proved by the prosecution. It is highly improbable that neither the neighbours nor any other public person was attracted to the spot after hearing the noise. There is long and unexplained delay in the lodging the FIR. All the family members have been falsely implicated through a concocted version. The conduct of complainant-injured, Sukhpal Kaur is also doubtful as she did not inform any person from the vicinity about the incident. While on their way to the GGS Medical College, Faridkot, she did not inform the police despite the fact that the police station was located on the way to the hospital. The medical evidence also does not corroborate the prosecution version.

On the other hand, learned State counsel submits that there is no motive with the police to falsely implicate the accused-appellants. All the accused have been named and specific role has been ascribed to them. The fact that the accused were carrying weapons at the time of assault shows that it was a pre-planned attack with a motive to kill the deceased, owing to the verbal spat between the parties on the same day.

We have heard learned counsel for the parties and carefully examined the record with their able assistance.

It has come in evidence that in the morning of 24.12.2001,

accused-Nishan Singh had confronted PW-1, Baltej Singh Fauji in the presence of the deceased as the earlier suspected Baltej Singh Fauji was having illicit relations with one lady in his relations. Later in the day, while PW-1 Baltej Singh Fauji was coming from the village Gurudwara, he met Gurjit Singh, since deceased and his mother, Sukhpal Kaur, and started having conversation with them. At about 7/7.15 p.m., accused-appellants Nishan Singh, Karni Singh and Dharampal Singh, all empty handed, came there and started quarrelling with him. However, Deputy Singh, paternal uncle (chacha) of the deceased as well as PW-2 Sukhpal Kaur, intervened and smothered the quarrel. At about 7.30 p.m., when the deceased and his mother, PW-2, Sukhpal Kaur, were coming back home after paying obeisance in the Gurudwara Sahib, all the appellants obstructed them and launched an attack resulting into death of deceased Gurjit Singh, whereas, Sukhpal Kaur received injuries.

The case of the prosecution hinges on the testimony of two witnesses i.e. PW-1 Baltej Singh Fauji, PW-2, Sukhpal Kaur, complainant-mother of the deceased who is the injured-eyewitness and PW-3, Tek Singh, an eyewitness of the occurrence. PW-1 Baltej Singh Fauji is the star witness to prove motive behind the incident in question. It has come in his evidence that accused-appellant Nishan Singh suspected this witness of having illicit relations with his maternal uncle's (mama) daughter and on this count, Nishan Singh had took up the matter with this witness in the presence of deceased Gurjeet Singh, earlier on the same day i.e. 24.12.2001. To the same effect is the statement of PW-2, complainant Sukhpal Kaur. Therefore, the motive behind the occurrence is well proved in this case.

As regards the details of the assault, PW-2, complainant is the injured witness. She has testified that on their way to Gurudwara Sahib, PW-1 Baltej Singh Fauji met and while they were having conversation, accused-appellants Nishan Singh, Karni Singh and Dharampal Singh appeared on the spot and took up altercation with Baltej Singh Fauji. This witness along with her son, Gurjit Singh, since deceased intervened and made both the sides part. After 15 to 20 minutes, on their way back to home, all the appellants obstructed them. Accused Nishan Singh was armed with Dusanga while Karni Singh and Dharampal Singh were armed with dangs. Appellants Harjinder Singh and Gulzar Singh were empty handed. All the appellants launched an attack on them, killing her son Gurjit Singh while leaving herself injured. The version of PW-3, Tek Singh, lends credence to the version of PW-2, barring certain contradictions which will be dealt with later in the judgment.

As regards the argument with regard to delay in lodging the FIR is concerned, it is to be noted that the incident in question took place at around 7.30 p.m. In the assault, Gurjit Singh, since deceased, received fatal injury, whereas, PW-2 Sukhpal Kaur also received injuries. It is of common knowledge that for any prudent person, the first and foremost aim would be to save the injured and provide him/her with the medical aid at the earliest. The conduct of the complainant as well as other witness is natural as they immediately removed the deceased to a hospital. After they reached to the hospital, a message was sent by the hospital authorities to the police and the formal FIR came to be registered at 2.00 a.m. Thus, the delay, if any, in lodging the FIR, is duly explained.

The argument that no independent person was attracted to the spot is also of not much significance. It has come in the cross-examination of PW-2 Sukhpal Kaur that the incident lasted only for five minutes or so. The stand of the witness seems probable when seen in the light of the fact that the incident was an aftermath of the altercation which took place about half-an-hour prior thereto, coupled with the fact that the accused had come well prepared and armed.

In the instant case, the ocular evidence is duly corroborated by the medical evidence on record. It has come in evidence that the deceased was caught hold from the neck and thrown on the ground facing downwards upon which, appellant Nishan Singh gave a blow of his *Dosanga* (two teeth pitchfork) on the back of the deceased. It was a solitary blow which proved fatal. PW-4, Dr. J.S. Dala, MO, Professor and Head in Forensic Medicine, Medical College, Faridkot noticed the following injuries on the person of the deceased:-

1. A stab wound 2.5 cm X 2 cm was present on the back of right side of chest 7 cms from midline of back of chest and 22 cms below nape of neck. Corresponding cuts were present in the shirt and jacket and blood clots were present in the wound. On dissection the wound was deep and was going in the thoracic cavity cutting the muscle, pleura and right lung in the corresponding part.
2. A stab wound 2.5 cms X 2 cms was present on the back side of chest 8 cms below injury No.1 corresponding cuts were present in the shirt and jacket and clotted blood was

present in the wound. On dissection the wound was going deep inside the thoracic cavity cutting the muscle, plura and right lung. Clotted blood was present in the injured tissues.

It has also come in the evidence of this witness of PW-4, Dr. J.S. Dala, that both the above injuries can be caused by the weapon allegedly used in the crime i.e. *dosanga*.

Now coming to the role of each accused, the entire prosecution story consists of three important events. As per the prosecution story, accused-appellant Nishan Singh had confronted PW-1, Baltej Singh Fauji in the morning of 24.12.2001. Later in the evening at around 7.00 p.m., accused-appellants Nishan Singh, Dharampal Singh and Karam Singh @ Karni entered into a verbal spat with Baltej Singh Fauji near Gurudwara Sahib. After about half an hour later, Nishan Singh armed with *dosanga*, Dharampal Singh and Karam Singh @ Karni armed with *dangs* and Gulzar Singh and Harjinder Singh empty handed launched an attack on the complainant party. Nishan Singh has been attributed the fatal injury on the person of the deceased with *dosanga*, whereas, Karam Singh @ Karni caught hold of the deceased from left arm and Dharampal Singh caught hold of the deceased from his right arm. Appellant Karam Singh @ Karni also gave a blow of his *dang* on the right buttock of PW-2 Sukhpal Kaur, whereas, Dharampal Singh hit his *dang* on her stomach. The version of this witness is duly corroborated by the testimony of PW-3, Tek Singh, an eyewitness as far as the role of Nishan Singh, Dharampal Singh and Karam

Singh @ Karni is concerned. Moreover, the weapons were recovered from the respective accused. Thus, the presence and role of these three accused is made out.

However, the names of Gulzar Singh and Harjinder Singh appear to have been introduced only to implicate them in the matter being family members of the co-accused. In this regard, it is important to note that in the first two events which took place before the final assault, as described hereinabove, there is no mention of these two accused. Even in the third event, neither appellants Gulzar Singh and Harjinder Singh were alleged to be carrying weapons, nor any injury has been attributed to them. In the testimony of PW-2, Sukhpal Kaur, the role ascribed to Gulzar Singh is that he had caught hold of the deceased from his neck and threw him on the ground, whereas, appellant Harjinder Singh is said to have exhorted the co-accused to teach the complainant party a lesson. To the contrary, PW-3 Tek Singh, an eyewitness to the incident has stated that both these accused had raised the *lalkara*.

Thus, we feel that the prosecution case against appellant Nos.1 to 3, Nishan Singh, Dharampal Singh and Karam Singh @ Karni stands fully proved and they have been rightly convicted and sentenced by the trial Court. However, the prosecution version qua appellant Nos.4 and 5 is rendered doubtful in the peculiar facts and circumstances of the case, as narrated above, and they deserve the benefit thereof.

Consequently, the impugned judgment of conviction and order of sentence recorded by learned trial Court qua appellant Nos.1 to 3 is affirmed and the instant appeal qua them is hereby dismissed. They are

stated to be on bail. Their bail bonds shall stand forfeited. They be taken into custody forthwith to suffer the remainder of the sentence.

As regards appellant Nos.4 and 5, the judgment of conviction and order of sentence recorded by learned trial Court is set aside and they are acquitted of the charges framed against them. They are stated to be on bail. Their bail bonds shall stand discharge.

Resultantly, the instant appeal is dismissed qua appellant Nos.1 to 3, whereas, allowed qua appellant Nos.4 and 5.

(JITENDRA CHAUHAN)
JUDGE

(H.S. MADAAN)
JUDGE

26.11.2019

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Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No