

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

**(1) CRA-D-542-DB of 2003 (O&M)
Date of Decision: 18.11.2019**

Phula Singh

.....Appellant

VS.

State of Punjab

.....Respondent

(2) CRA-D-644-DB of 2003 (O&M)

Bhupinder Singh

.....Appellant

VS.

State of Punjab

.....Respondent

**CORAM : Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mr. Justice H.S. Madaan.**

Present : Mr. Premjit Singh Hundal, Advocate,
for the appellant in CRA-D-542-DB-2003.

Mr. S.S. Majithia, Advocate,
for the appellant in CRA-D-644-DB-2003.

Mr. Bhupinder Beniwal, AAG Punjab.

JITENDRA CHAUHAN.J.

The captioned two appeals have been preferred against the common judgment and order dated 15.05.2003 passed by Sessions Judge, Amritsar, vide which the accused/appellants were convicted under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.1000/- each with default stipulation.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No. 2 are reproduced as under:-

“2. The prosecution story as detailed in the charge sheet filed

under Section 173 Cr.P.C at the hands of S.H.O, P.S. Mehta is that on 12.07.2000, a police party headed by Harpal Singh SI/SHO, P.S. Mehta happened to be present at bus stand Nathki-Khur in connection with patrolling, when Thakur Singh and Gurdip Singh Ex-Sarpanch had met them. Statement was made by Thakur Singh before the Sub Inspector to the effect that he was retired Constable and had four sons and one daughter; that his son Palwinder Singh was serving in 4th Bn. PAP and presently was deployed for duty at Butari Power House; that for the last few months, he was absent from duty; that that day, he (Thakur Singh) alongwith his son Palwinder Singh was coming from the house of his brother Arjan Singh through the passage approaching to their house. Palwinder Singh was going ahead of him; that at about 8.30 p.m., when Palwinder Singh had reached near the house of Bhupinder Singh son of Gurbachan Singh, electric bulb was on in front of the house of said Bhupinder Singh at that time. At that time Bhupinder Singh armed with a khokhri and his brother-in-law (wife's sister's husband) Phula Singh armed with a Thaapi were found standing there. Lalkara was raised by Bhupinder Singh saying "catch him and teach him a lesson for insulting/digracing his sister Narinder Kaur"; that Bhupinder Singh had attacked Palwinder Singh with khokhri causing injury on his head. Palwinder Singh had fallen down on the earth and Phula Singh had given Thaapi blow, when he was lying on earth, on his head. Hue and cry was raised by them and the assailants Bhupinder Singh and Phula Singh had then dragged Palwinder Singh inside the house of Bhupinder Singh and had given merciless beating to him; that his brother Amrik Singh and cousin Arjan Singh were attracted to the scene of occurrence. Bhupinder Singh and Phula Singh had fled away along with their respective weapons from the roof of the house of Bhupinder Singh; that Palwinder Singh was found dead with multiple injuries on his body in a pool of blood. So far as the motive part is concerned, it was said by him that Palwinder Singh had illicit relations with Narinder Kaur, sister of

Bhupinder Singh. Earlier also, there was some altercation between Palwinder Singh and Bhupinder Singh. After leaving Amrik Singh and Arjan Singh to guard the dead body of Bhupinder Singh, Bhupinder Singh along with Sarpanch Gurdip Singh started for the Police Station to lodge the report. Endorsement Ex.PJ/2 was made on that statement. Ex.PJ by Harpal Singh Sub Inspector and the same was sent to the Police Station for the registration of the case. Formal FIR Ex.PJ/3 was recorded on its basis by ASI Sawaran Singh whose signatures on the same were identified by Sub Inspector Harpal Singh when appearing as PW-9.”

After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court of Area Magistrate. As the offence punishable under Section 302 IPC is triable by Court of Session, the case was committed to the said Court.

Charges under Section 302 read with Section 34 IPC were framed against the accused to which the accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1, Dr. Gurmanjit Rai, PW-2 HC Jatinder Singh, PW-3 Constable Kuldeep Singh, PW-4 HC Balwinder Singh, PW-5 Constable Hardeep Singh, PW-6 Inspector Parminder Singh, PW-7 Thakur Singh, PW-8 Amrik Singh, PW-9 SI Harpal Singh, PW-10 Balwinder Singh retired Inspector, PW-11 Harjit Singh Photographer and closed the evidence.

The statements of the accused under Section 313 Cr.P.C were recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication. It was further stated by

accused Phula Singh that he was serving in the Army. On the alleged day of occurrence, he was present in his house. On 13.07.2000, a Police party of Police Station Majithia had reached his house and asked him to accompany with them. The Police had taken him to the Police Station Majithia and confined him there and after four days, they had challaned him in the present case.

No witness in defence was examined by the accused.

After appraisal of evidence, the learned trial court vide impugned judgment and order, convicted the accused/appellants under Section 302 read with Section 34 IPC and sentenced them to undergo imprisonment as narrated in the first paragraph of the judgment.

At the outset, it is worthwhile to mention that during the pendency of present appeals, accused/appellant Phula Singh had expired. Death certificate of Phula Singh has been placed on record and the same is taken on record as Mark-A. So, appeal qua him stands abated.

On behalf of accused/appellant, Bhupinder Singh, it is contended that the conduct of alleged eye witnesses, namely, Thakur Singh, PW-7, the father of the deceased and PW-8 Amrik Singh is unnatural because in their presence, Palwinder Singh (deceased) was done to death but they did not intervene during the scuffle.

It is further contended that there are material improvements in the depositions of the prosecution witnesses. PW-7 Thakur Singh while making statement before the Police under Section 161 Cr.P.C

did not mention that he came to learn that Narinder Kaur had died in the morning of 12.07.2000. It was also not mentioned by him that his son was ill and he absented from his duty.

It is further contended that PW-7 Thakur Singh, PW-8 Amrik Singh are relatives so, their testimonies cannot be relied upon. It is further contended that the alleged eyewitness Arjan Singh was not examined by the prosecution for the reasons best known to it. It is further contended that the deceased had received as many as 26 injuries but it seems improbable that the a person would inflict 26 injuries in less than a minute.

He cites *Prakash vs. State of Karnataka, 2014 AIR (SCW) 2354* to contend that in a murder case based on circumstantial evidence, absence of serological report will go in favour of the accused. In the present case, there is no serological report and the accused/appellants cannot be said to be connected with the murder of Palwinder Singh.

Lastly, it is contended that at the most, it is a case of culpable homicide as there was a provocation given by the deceased because the deceased had an affair with sister of the accused/appellant Bhupinder Singh.

On the other hand, on behalf of the State of Punjab, it is contended that the occurrence took place at 8.30 pm and the first version of the complainant was recorded at 10.30 pm, on the same day and further the special report was sent to the Area Magistrate at 1.30

a.m, therefore, there was no scope for any deliberation to frame the appellant in the present case. The instant lodging of FIR itself proves the genuineness of the case of the prosecution. PW-7 Thakur Singh had lost his son, there was no reason for him to falsely implicate the accused/appellant and protect the real culprit. The learned trial Court has rightly convicted and sentenced the accused/appellants.

We have heard the learned counsel for the parties and have gone through the case file.

The entire case of the prosecution hinges upon the testimonies of PW-7 Thakur Singh and PW-8 Amrik Singh, who gave the direct eyewitness account of the occurrence vividly. Thakur Singh while appearing in the Court as PW-7 has stated that on 12.07.2000 he and his son Palwinder Singh had gone to the house of Arjan Singh, his cousin. After meeting Arjan Singh, both of them were on their way to their house via street in village Chanake. It was about 8.30 pm, when they reached near the house of Bhupinder Singh, Bhupinder Singh along with Phula Singh were seen in the street. At that time, Bhupinder Singh was armed with a khokhri whereas, Phula Singh was armed with a Thaapi. Bhupinder Singh raised *lalkara* that Palwinder Singh be caught hold of as he had insulted his sister Narinder Kaur. Bhupinder Singh and Phula Singh then started grappling with Palwinder Singh and a hue and cry was raised by Thakur Singh and Palwinder Singh. Bhupinder Singh then gave a khokhri blow on the person of Palwinder Singh which hit him on his head and on receiving said injury,

Palwinder Singh fell down and Phula Singh gave a Thaapi blow which also hit on the head of Palwinder Singh and thereafter, the accused lifted Palwinder Singh and took him to the house of Bhupinder Singh and injuries were inflicted by both of them on the person of Palwinder Singh in the courtyard of the house of Bhupinder Singh. After hearing noise, Amrik Singh and Arjan Singh also reached there. Thakur Singh along with Amrik Singh and Arjan Singh entered the house of Bhupinder Singh and found his son Palwinder Singh lying there with multiple injuries on his person. His son Palwinder Singh suffered about 22/24 injuries at the hands of the accused. Both the accused then ran away along with their respective weapons from the room. Palwinder Singh died at the spot because of the injuries received by him.

It was further deposed by PW-7 Thakur Singh that the motive behind the death of his son was that his son had an affair with Narinder Kaur sister of accused Bhupinder Singh. The version put forth by PW-7 Thakur Singh stands fully corroborated by the testimony of PW-8 Amrik Singh, another eyewitness of the occurrence. Both the witnesses were subjected to test of cross-examination but nothing could be elicited from their testimonies to disbelieve the story put forth by the prosecution.

The factum of injuries having been received by the deceased has been proved by PW-1 Dr. Gurmanjit Rai, who deposed that while conducting post-mortem examination on the dead body of

Palwinder Singh he had noticed 25 injuries on his person. As per the ocular evidence, the injuries were inflicted on the head of the deceased which is corroborated by the medical evidence. Further, as per PMR Ex.PC, on the basis of the injuries, the doctor had opined that cause of death was hemorrhage and shock as a result of injuries which were sufficient to cause death in the ordinary course of nature.

Besides above, there is recovery of bloodstained khokhri Ex.PO and bloodstained Thaapi Ex.P-5, the weapons used in the commission of the offence, which undoubtedly connects the accused with the commission of crime.

So far as the arguments raised by the learned counsel for the accused/appellants that the conduct of the witnesses was unnatural is concerned, it has come on record that the age of father of the deceased was 60 years at the time of occurrence. So, in order to save himself he did not enter into the scuffle in which the accused were armed with weapons.

As regards the improvements in the deposition of the witnesses qua not disclosing the factum of death of Narinder Kaur and the health of the deceased, it is to be noticed that such improvements are not material improvements. As per explanation attached to Section 162 Cr.P.C, only those omissions are contradictions which appear to be significant. In the present case, when the prosecution witnesses have deposed regarding the material facts in details with specificity, the minor omission to the above effect pales into insignificance.

The next argument raised by the learned counsel for the accused/appellant is that the eyewitnesses being relatives, their testimonies cannot be relied upon, however, this Court finds it difficult to agree with the submission. Though, the witnesses are related to the deceased but the mere fact that they are related does not make them interested witness. A related witness cannot be said to be an interested witness merely by virtue of being a relative of the victim. A witness may be called interested only when he or she derives some benefit from the result of litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons. In the present case, the presence of the eyewitnesses on the spot is natural. Otherwise also, this Court has put itself on guard while scrutinizing their testimonies. The house of Amrik Singh was in the neighbourhood so he was a natural witness.

The argument regarding provocation does not impress this Court much as the provision must be sudden and grave. Learned counsel for the accused/appellant has not shown as to how the provocation was sudden and grave. Therefore, the argument is rejected.

The case law cited by the learned counsel for the appellants is distinguishable on facts of the present case because the cited case pertains to circumstantial evidence whereas, the instant case is based on direct eyewitness account.

In view of the above discussion, the prosecution has successfully established its case against accused/appellant Bhupinder Singh. There is no perversity in the impugned judgment and order. Consequently, the appeal filed by accused/appellant Bhupinder Singh is hereby dismissed. He is stated to be on bail. His bail bonds and surety bonds are ordered to be cancelled. He be taken into custody to serve the remaining part of the sentence.

Needless to say, the appeal filed by accused/appellant Phula Singh stands abated.

Photocopy of this judgment be placed on the file(s) of other connected case(s).

(JITENDRA CHAUHAN)
JUDGE

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No

18.11.2019

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