

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

**CRA-D-536-DB of 2003
Date of Decision: 20.8.2019**

Ram Singh

.....Appellant

Vs.

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: - Mr. Nandan Jindal, Advocate
for the appellant.

Mr. H.S.Sullar, DAG, Punjab.

AJAY TEWARI, J. (ORAL)

1. Appellant Ram Singh along with his brother Ishar Singh were tried for committing the offence under Sections 302 read with Section 34 of the Indian Penal Code ('IPC' for short) in case FIR No. 225 dated 27.10.2000, registered at Police Station Malerkotla. Vide judgment and order dated 13.2.2003, the learned Additional Sessions Judge (Adhoc), Fast Track Court, Sangrur found appellant Ram Singh guilty for the offence under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 5,000/- and in default of payment thereof, to further undergo rigorous imprisonment for one month. However, co-accused Ishar Singh was acquitted of the charge framed against him.

2. As per the case of the prosecution, on 26.10.2000, deceased Major Singh and his brother Jarnail Singh were coming back to their respective houses after lightening the lamps on the *samadh* of their ancestors. When they both reached near the house of Gurcharan Singh, Jarnail Singh stopped to have small talk with Gurcharan Singh while the deceased went ahead. When deceased Major Singh reached in front of the house of the appellant, the appellant and his brother Ishar Singh attacked him and started abusing him. By the time, Jarnail Singh and Gurcharan Singh reached the spot. They found that the deceased was lying on the ground and the appellant was giving blows with brick continuously on the mouth and head of Major Singh. On seeing Jarnail Singh and Gurcharan Singh and hearing their alarm, the appellant and his brother Ishar Singh ran away after throwing the brick at the spot. The deceased was taken to Civil Hospital, Malerkotla but in view of seriousness of his condition, he was referred to Rajindra Hospital, Patiala and at the time of lodging of the FIR on 27.10.2000, he was still under treatment at Patiala. From Rajindra Hospital, Patiala, the deceased was referred to PGI on 28.10.2000 but he was admitted in D.M.C. Hospital, Ludhiana. On 3.11.2000, the deceased was got discharged from the hospital and he died on the way.

3. As per the post-mortem report, following injuries were found on the body of the deceased:-

1. *Stitched wound 5 cm long present o left side of forehead just above middle of left eyebrow.*
2. *Stitched wound 2 cm long just below injury No. 1.*
3. *Infected would 2 cm x 2 cm in front of left ear involving tragus.*

4. Chest tubes present on left and right side 6 cm lateral to nipple respectively.

4. The doctor had opined that the cause of death was due to injuries on the vital organs i.e. brain and lungs which were sufficient to cause death in the ordinary course of nature.

5. Both Ram Singh and Ishar Singh were sent up for trial. Ishar Singh was acquitted while appellant Ram Singh was convicted. The conviction is primarily based on the eye witness testimony of Jarnail Singh and the medical evidence about the nature of the injuries.

6. Learned counsel for the appellant has argued that actually the deceased could have been saved and the main reason for his death was that he was removed from the hospital against medical advice. In the circumstances as per learned counsel, it is at the worst a case under Section 325 IPC. He has further argued that Gurcharan Singh has admitted that he was not an eye witness and Jarnail Singh's testimony cannot be relied upon because he is an entrusted witness.

7. On the other hand, learned Deputy Advocate General has argued that it had come in the testimony of Jarnail Singh that they were poor people and, therefore, it is quite probable that the deceased was taken away because he was not improving and he continued to be in coma and they could not afford the charges of ventilator etc. As regard the attack on the testimony of PW-7 Jarnail Singh, learned Deputy Advocate General has argued that if a close relative is murdered, the survivors would be most interested that the guilty persons be punished and would have no interest in implicating an innocent person. He has further argued that the testimony of Jarnail Singh is clear, coherent and credible. The defence has not been able

to elicit anything from his cross-examination which may have an effect of reducing the evidentiary value of his testimony. He has argued that the kind of injuries which were inflicted by the appellant clearly show that the case under Section 302 IPC was fully proved.

8. We find ourselves in agreement with the Deputy Advocate General.

9. Jarnail Singh, who is the brother of deceased Major Singh has specifically stated that since Ram Singh appellant had illicit relations with Baljit Kaur, wife of Major Singh, and to remove the hurdle in his way, the appellant caused severe injuries to Major Singh.

10. Admittedly, it was Diwali day and it is ritual to place lamps (Divas) on Samadh of their ancestors and while going from Samadh to the house of complainant party, one has to pass from the house of the appellant. Thus, presence of the prosecution witness at the time of occurrence cannot be doubted.

11. As far as the delay in reporting the matter to the police is concerned, in the present case the occurrence took place on the night of 26.10.2000 and the deceased was taken to hospital at Malerkotla who was referred to Rajindra Hospital, Patiala and no police officer went to record the statement of the deceased. It was on the next day that ASI Sher Singh recorded the statement of Jarnail Singh PW-7. Condition of Major Singh was critical and he remained in coma till his death and first priority for Jarnail Singh was to get Major Singh treated so it cannot be said that there was any intentional delay in lodging the FIR.

12. The ocular version is supported by Gurcharan Singh who is an independent witness. Even otherwise he has no prior enmity with the

appellant as to falsely implicate him. Dr. Ashwani Kumar Chaudhary PW-14, who is Neurosurgeon, has admitted that the deceased was responding to the treatment and there was possibility of survival of the patient but during entire period the deceased remained in coma. The deceased had fracture of parietal temporal and frontal wound on left side and blackish red haematoma was present over front parietal region. Moreover, thorax and multiple ribs were fractured on the left side of the chest and a lacerated wound was there on left lung.

13. Serious injuries were on the vital parts of the body of deceased who ultimately died on 3.11.2000 i.e. after seven days of occurrence.

14. The Supreme Court in ***Dharmendra versus State of U.P., 2017 AIR (SC) 566***, has held that when the testimony of the eye witnesses is unblemished and trustworthy, regarding the manner of occurrence; crime committed by the accused and the weapon used therefor, the finding of guilt recorded by the Court(s) below need not be interfered with.

15. Still further, in ***Kirpal Singh versus State of M.P. and others, 2002 AIR (SC) 2547***, the Hon'ble Supreme Court held that where the medical evidence is consistent with the ocular version, the conviction recorded, deserves to be upheld.

16. We have gone through the testimonies of PW-7 Jarnail Singh and PW-14 Dr. Ashwani Kumar Chaudhary, Neurosurgeon who had treated the deceased. From a perusal of the testimonies of both these witnesses, we are not convinced that the judgment of conviction and order of sentence sentence require any interference by this Court.

17. The appeal is dismissed.

18. As a consequence of dismissal of the appeal, the appellant be

taken into custody to serve the remaining part of the sentence.

(AJAY TEWARI)
JUDGE

August 20, 2019
Gurpreet

(HARNARESH SINGH GILL)
JUDGE

Whether speaking /reasoned : Yes
Whether Reportable : Yes