

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

**CRA-D-632-DB of 2003 (O&M)
Date of Decision: 04.12.2019**

Surinder Singh @ Shinda and others

.....Appellants

VS.

State of Punjab

.....Respondent

CORAM : **Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mr. Justice Vivek Puri.**

Present : Mr. P.S. Ahluwalia, Advocate,
for the appellants.

Mr. Bhupinder Beniwal, AAG Punjab.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment and order dated 22.07.2003 passed by Additional Sessions Judge (Adhoc), Jalandhar vide which the accused/appellants were convicted and sentenced as under:-

Kulwinder Singh

Offence	Sentence	Fine	In default
304 IPC	RI for life	Rs.1000/-	RI for one year

Baldev Singh, Surinder Singh & Kashmir Singh

Offence	Sentence	Fine	In default
304/34 IPC	RI for 10 years	Rs.1000/-	RI for one year

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No. 3 are reproduced as under:-

“3. As per version of said complainant Gagandeep in his

statement Ex.PA which is foundation of this case, he is resident of village Raunta and is an agriculturist. On 19.8.2002 (two days earlier to report) he along with his father Darshan Singh deceased had gone to their fields to switch on the electric motor on the arrival of the electricity supply at about 10.00 p.m. After switching on the electric motor when they were coming in the lane and were near the house of Mohinder Kaur, it was about 10.30 p.m. They saw accused Surinder Singh armed with a stick, accused Kashmir Singh @ Sheera son of Nama armed with Kirpan, accused Debi son of Bhajan (Baldev Singh) armed Dang and accused Raju son of Bhajan Singh (Kulwinder Singh) armed with Bahi (a wooden piece of side of cot). All of them belongs to village Raunta. Accused Surinder Singh @ Shinda raised Lalkara that Darshan Singh had come under their control and he should be killed. ON this accused Kashmir Singh @ Sheera son of Nama and accused Debi son of Bhajan had over powered the father of the complainant. Accused Raju son of Bhajan gave a wooden Bahi blow in order to kill him on his father Darshan Singh which hit on head on the left side. His father become unconscious. The complainant raised alarm Mar Ditta Mar Ditta and people had assembled including Nirmal Singh son of Dalip Singh and on seeing them, the accused had ran away with their respective weapons. The complainant took his un-conscious father Darshan Singh after making the arrangement of conveyance to Civil Hospital, Shahkot from there, the doctor referred him to Civil Hospital, Jalandhar. He was taken to Civil Hospital Jalandhar and his condition had deteriorated and had been taken to Arora Nuero Hospital, Ludhiana where his father remained unconscious and remained under treatment. The motive of

this occurrence explained by the complainant in the above statement is that there was a collection of Panchayat members about one Geeta daughter of Tarsem of tehir village and the party of accused Tarsinder Singh (column No. 2) had suspected the father of the complainant who had nominated allegedly the nephew of the said Tarsinder Singh about allegation against the said Geeta. On this Tarsinder Singh and Nishan Singh son of Harcharan Singh (Accused in column No.2) of village Raunta had administered liquor to the accused and had instigated the accused to cause this murderous attack and this occurrence was witnessed by Nirmal Singh son of Dalip Singh and accordingly above statement was reduced into writing by ASI Bhupinder Singh.”

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

Charge under Section 302 read with Section 34 IPC was framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution had examined PW-1 Dr. Ajay Kumar, PW-2 Draftsman Dalip Singh, PW-3 Gagandeep, PW-4 Shamsheer Singh, PW-5 Constable Raj Singh, PW-6 Dr. Naresh Kumar Anand, PW-7 Sarabjit Singh, PW-8 ASI Bhupinder Singh, PW-9 Nirmal Singh, PW-10 HC Sukhjit Singh 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 them to which they denied and pleaded false implication. It was further stated by accused Surinder Singh that on the day of occurrence, Darshan Singh deceased and his other companions had encircled him and Baldev Singh when they were returning to their house. They caused injuries to them with deadly weapons like *Kirpan*, *Takwa* and *Dangs*. On raising alarm by them, some persons gathered there and one of them gave brick injury to deceased Darshan Singh in order to save him and Baldev Singh from the hands of deceased Darshan Singh. Kashmir Singh and Kulwinder Singh were not present at the time of occurrence. Gagandeep and Nirmal Singh were not present at the time of occurrence and Sarabjit Singh PW is also a got up witness.

In defence, the accused had examined DW-1 Dr. Ramesh Kumar.

After appraisal of evidence, the learned trial court vide impugned judgment and order, convicted the accused/appellants under Section 304 IPC and sentenced them to undergo imprisonment as narrated in the first paragraph of the judgment.

Thus, the present appeal has been filed by accused/appellants Surinder Singh @ Shinda, Baldev Singh @ Debi, Kulwinder Singh @ Raju and Kashmir Singh @ Sheera.

It is contended by the learned counsel for the

accused/appellants that there is delay of two days in lodging the FIR as the occurrence is alleged to have taken place on 19.08.2002 at about 10.30 p.m whereas, the FIR was registered on 21.08.2002 at 6.55 p.m. It is further contended that the deceased is alleged to have received one injury which proved to be fatal whereas, the accused/appellants had received as many as ten injuries. Out of the said injuries, one injury on the person of accused Surinjder Singh is a punctured wound on the upper end of the left leg which was declared to be grievous as there was fracture of tibia. As per the medical record, the injuries received by the accused have been caused by different weapons. However, there is no explanation regarding the injuries sustained by the accused/appellants. Reliance in this regard has been placed on *Lakshmi Singh vs. State of Bihar 1976 SCC (Criminal) 671.*

It is further contended that as per the case of the prosecution, the motive behind the occurrence is that the appellants were instigated after serving alcohol by Tarminder Singh and Nishan Singh to attack the complainant party. However, as per the evidence on record the motive was found to be false as admitted by PW-8 ASI Bhupinder Singh.

Lastly, it is contended that the recovery of wooden *bahi* allegedly used in the commission of crime was not effected and further the recovered sticks were not bloodstained coupled. As per PW-1 Dr. Ajay Kumar, the injury on the person of the deceased is a result of blunt weapon and could be caused by a brick which proves the stand

taken by the accused/appellants in their statements recorded under Section 313 of the Code of Criminal Procedure.

On the other hand, on behalf of the State, it is contended the learned trial Court has rightly convicted the accused/appellants under Section 304 IPC. There is sufficient eye witness account on the record. PW-3 Gagandeep son of the deceased and PW-7 Sarabjit Singh another eye witness of the occurrence have fully supported the case of the prosecution and have narrated the occurrence with specificity which unerringly points out that the accused/appellants are the perpetrators of the crime.

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

Taking the first argument advanced by the learned counsel for the appellants that there is delay in lodging the FIR, it is clear from the record that the occurrence had taken place on 19.08.2002 at about 10.30 p.m whereas, the FIR was registered after a delay of about two days on 21.08.2002 at 06.55 p.m. After the occurrence, the Police party visited the hospital on 20.08.2002. In the hospital, no person had claimed himself to be an eye-witness of the occurrence. The said circumstance assumes significance because for one injury so suffered by the deceased, the complainant party nominated as many as four persons. So, it cannot be ruled out that the FIR was result of deliberations and consultations which had taken place from 19.08.2002 till 21.08.2002.

Further, the deceased had received one injury which proved to be fatal on the other hand, there are as many as ten injuries on the person of the appellants Surinder Singh and Baldev Singh. Out of the said injuries, one injury on the person of accused/appellant Surinder Singh is a punctured wound on the upper end of the left leg which was declared to be grievous as there was fracture of tibia as is evident from the testimony of DW-1 Dr. Ramesh Kumar. Besides, accused/appellant Baldev Singh has suffered an incised wound on the right side of his head. The injuries on the person of the accused have possibly been caused by different weapons as there are incised wound, punctured wound and abrasions. Neither in the FIR nor in the testimony of the PW-3 Gagandeep (complainant) nor PW-9 Nirmal Singh, any attempt was made to explain the injuries so suffered by the appellants. However, PW-3 Gagandeep Singh had stated that “He did not see any injury on the person of Surinder Singh and Baldev Singh nor he caused any injury to them”. To the same effect is the deposition of PW-9 Nirmal Singh. PW-8 ASI Bhupinder Singh, the Investigating Officer, admitted that the accused/appellants had received injuries and as per the investigation, the complainant party was also to be challaned for the injuries received by the accused. However, he could not explain as to why separate a challan was not filed against the complainant party. The relevant portion of the cross-examination of the I.O. is reproduced as under:-

“In this case MLRs of accused Surinder Singh and Baldev Singh were also received by me on 21.08.2002. I

investigated that version separately without registration of separate case, but investigation was done in this case about that version. It is correct that there is a mention in the final report about the injuries of Surinder Singh and Baldev Singh accused and separate challan was to be filed.”

Hon'ble the Supreme Court in Lakshmi Singh's case

(supra) held as under:-

It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence during the course of altercation is a very important circumstance from which the Court can draw the following inferences:-

“1. That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version.

2. That the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable.

3. That in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the persecution case.”

The failure to explain the origin and genesis of the occurrence also assumes significance because the entire motive behind the occurrence was found to be false both during the course of investigation as well as during the trial as is evident from the perusal of the FIR, the motive sought to be assigned to the appellants was that they had been instigated after serving alcohol by Tarminder Singh and Nishan Singh to attack the complainant party. It has emerged in the prosecution evidence that there was a tussle between the landlords of the village, wherein the appellants who were the labourers and working

as servants with Tarminder Singh and Nishan Singh had attacked the complainant party. During the course of investigation, the aforesaid allegations were found to be false as admitted by the Investigating Officer, namely, ASI Bhupinder Singh PW-8 who stated that the aforesaid allegations were found to be false by DSP Kulwinder Singh. During the course of trial, an application was moved under Section 319 Cr.P.C to summon Tarminder Singh and Nishan Singh as additional accused and the same was dismissed by the learned trial Court vide order dated 07.06.2003. Thus, the entire motive sought to be projected by the prosecution witnesses was found to be false and the failure to explain the injuries assumes greater significance as sustained attempts have been made to suppress the genesis of the occurrence. Even the recovery of wooden *bahi* was not effected and the sticks recovered were not bloodstained. PW-1 Dr. Ajay Kumar has admitted that the injury on the person of the deceased is a result of blunt weapon and could be caused by a brick. Therefore, it is held that the prosecution version has been coined at a belated stage after deliberations and consultations and it has suppressed the actual origin and genesis of the occurrence. It is apparent that a tainted and biased investigation was done to make the appellants scapegoat and to make sure the escalation of the complainant party from prosecution which has now resulted appellant Kulwinder Singh to serve incarceration of 4 years, 2 months and 19 days, appellant Surinder Singh, 1 year, 4 months and 21 days, appellant Baldev Singh 1 year, 4 months and 20 days and appellant

Kashmir Singh 1 year, 6 months and 21 days.

In view of the above, the present appeal is allowed. The appellants are acquitted of the charges framed against them. The State is directed to pay costs of Rs.1 lakh to each of the accused/appellants for tainted and partisan investigation resulting into long incarceration of the appellants.

(JITENDRA CHAUHAN)
JUDGE

(VIVEK PURI)
JUDGE

04.12.2019
SN

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