

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CRA-D-189-DB-2003

Gurbaj Singh

... Appellant

Versus

State of Punjab and another

... Respondents

2. CRA-D-288-DB-2003

Davinder Singh

... Appellant

Versus

State of Punjab

... Respondent

3. CRA-D-658-DBA-2003

Jaspal Singh

... Appellant

Versus

Amarjit Singh

... Respondent

Reserved on : 01.07.2019
Date of decision : 03.07.2019

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

Present: Ms.Baljit Mann, Advocate
for the appellant in CRA-D-189-DB-2003.

None for respondent no.2/complainant
in CRA-D-189-DB-2003.

Mr.Premjit Singh Hundal, Advocate
for the appellant in CRA-D-288-DB-2003.

None for the parties in CRA-D-658-DBA-2003.

Mr.H.S.Grewal, DAG, 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. The appeals were instituted against the judgment and order dated 06.02.2003 rendered by the Sessions Judge, Amritsar, in Sessions cases no.71 of 1999 and no.80 of 2000 whereby the appellants in CRA-189-DB-2003 & CRA-D-288-DB-2003 along with co-accused Kulwinder Singh, Amarjit Singh and Sukhwinderpal Singh were charged with and tried for offences under sections 120-B, 302 read with Section 34 IPC.

3. Co-accused Kulwinder Singh was convicted and sentenced to undergo imprisonment for life and to pay fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months for offence punishable under Section 302 IPC. Appellants Gurbaj Singh and Davinder Singh were convicted and sentenced to undergo imprisonment for life and to pay fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months for offence punishable under Section 302 read with Section 34 IPC. Co-accused Kulwinder Singh has not filed any appeal against his conviction. One of the co-accused Sukhwinderpal Singh died during the pendency of trial. However, co-accused Amarjit Singh was acquitted. Complainant Jaspal Singh has filed an appeal (CRA-D-658-DBA-2003) against acquittal of Amarjit Singh.

4. The case of the prosecution in a nutshell is that Jaspal Singh son of Darbara Singh made statement before Suba Singh, Sub Inspector /

Station House Officer, Police Station Sadar Tarn Taran. The gist of the complaint made before Suba Singh, Station House Officer was that there was a land dispute between Mukhtar Singh and Kulwinder Singh. On 10.07.1999 in the morning, Mukhtar Singh (brother of the complainant Jaspal Singh) was going on his bicycle with drums of milk to Tarn Taran as usual. The complainant (Jaspal Singh) and his mother Jasbir Kaur were going on a separate cycle behind him. Jasbir Kaur was going to get the medicines. When his brother Mukhtar Singh reached near the land of Laddu son of Mukhtar Singh in the area of village Bagrian, Kulwinder Singh armed with a knife, Gurbaj Singh and Davinder Singh emerged from the *chari* field. Davinder Singh and Gurbaj Singh had raised *lalkara*. After raising *lalkara*, they forced Mukhtar Singh to come down from the bicycle. Kulwinder Singh gave knife blows on the person of Mukhtar Singh. Mukhtar Singh fell down. The complainant and his mother tried to rescue Mukhtar Singh. They raised alarm. Accused ran away from the spot. Mukhtar Singh succumbed to his injuries. FIR was recorded. The body was sent for post-mortem examination through Constable Sucha Singh. Rough site plan was prepared. Blood stained earth was lifted from the place of incident. Clothes on the person of deceased were also taken into possession. Kulwinder Singh accused was arrested on 26.07.1999. He made disclosure statement, on the basis of which, a knife was recovered. It was taken into possession. Investigation was completed. The 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 had also examined one witness in support of their case. The appellants along with their co-accused Kulwinder Singh were convicted and sentenced, as noticed hereinabove.

6. Learned counsel appearing on behalf of the appellants in CRA-189-DB-2003 & CRA-D-288-DB-2003 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-1 Dr. Inder Mohan Gupta had conducted the post-mortem examination. He had noticed following injuries on the body of the deceased:-

“1. A stab wound of the size 2.5 cm x 1.0 cm present on the left side of the neck, just below and behind the left external ear. The depth of the wound was 3.0 cms and clotted blood was present.

On dissection: the underlying vital blood vessels were healthy with clotted blood present.

2. A stab wound of the size of 2.5 cm x 1.0 cm present on the left side of the neck and was 10.0 cms below injury no.1 and 5.0 cms from the midline. The depth of the wound was 2.0 cms.

On dissection: Clotted blood was present. The underlying vital organs were intact.

3. There was a stab wound in the chest of the size of 3.5 cms x 1.0 cm present in the centre and going obliquely towards the left side of the chest. Clotted blood was present. Depth of the wound was 8.0 cms and on dissection: The injury was penetrating the wall of the heart.

4. *There was a stab wound of the size of 3.5 cms x 1.0 cm on the left lateral wall of the chest and was 5.0 cms away and lateral to the left areola and on dissection : the underlying soft tissue was cut intercostal muscles were cut. The blood was present in the pleural cavity and the middle lobe of the left lung was injured. The depth of the wound was 8.50 cms.*
5. *There was a stab wound of the size of 3.5 cms. X 1.0 cm vertically placed in the centre of the chest and was 5.0 cms below the injury no.3. The wound was going downwards and inwards and on dissection: the wound was penetrating the abdominal cavity and had pierced the superior surface of the right lobe of the liver.*
6. *There was a stab wound of the size of 3.50 cm x 1.0 cm on the left side of the abdomen. 5.0 cms from the centre and on the left hypogastrium. The wound was penetrating the abdominal cavity and also the stomach.
On dissection: The stomach was having about 50 ml of the semi digested material.*
7. *A stab wound of the size of 3.0 cm x 1.0 cm and was vertically placed in the centre of the abdomen, just above the umbilicus. The wound was superficial.*
8. *There was a superficial stab wound of the size of 3.5 0 cm x 1.0 cm on the anterior aspect of the right upper arm.*
9. *There was an incised wound longitudely placed over the extensor aspect of the left upper arm. The under lying muscle was cut and clotted blood was present.*
10. *There was an incised wound of the size of 2.50 cm x 1.0 cm horizontally placed just below the injury no.9.”*

The cause of death was due to shock and haemorrhage on account of injuries sustained by the individual which were sufficient to cause death in an ordinary course of nature. Probable time between injuries and death was immediate and between death and post-mortem was between 9 to 24 hours.

10. PW-3 Jaspal Singh is the material witnesses. According to him,

accused Gurbaj Singh and Davinder Singh were husbands of sisters of Kulwinder Singh. Accused Amarjit Singh and Sukhwinderpal Singh had land near their land. The land of Kulwinder Singh was purchased by him and his three other brothers including his brother Mukhtar Singh, deceased. A house was constructed on the land purchased by them. His brother Mukhtar Singh was residing in the said house. The land of sister of Kulwinder Singh was purchased by accused Amarjit Singh and Sukhwinderpal Singh. Accused Amarjit Singh and Sukhwinderpal Singh used to threaten them. His father had married twice. His brother Mukhtar Singh was born from first wife of his father while he and his brothers Kuldeep Singh and Jagjit Singh were born from second marriage of his father. The name of his mother was Jasbir Kaur. On 10.07.1999, Mukhtar Singh was going to Tarn Taran to sell milk. He was also following Mukhtar Singh on another bicycle for getting medicines for his mother from Tarn Taran. He was 10/15 karams behind Mukhtar Singh. When Mukhtar Singh reached near the field of Laddu, accused Kulwinder Singh, Gurbaj Singh and Davinder Singh came out from the field. Accused Kulwinder Singh was armed with a knife. Gurbaj Singh was armed with a kirpan. Accused Davinder Singh came forward and stopped the bicycle of Mukhtar Singh. Davinder Singh caught hold of Mukhtar Singh from his long hair and threw him on the ground. Accused Kulwinder Singh gave 7/8 knife blows to Mukhtar Singh. Accused Gurbaj Singh gave 2 kirpan blows to Mukhtar Singh. He raised alarm. Accused ran away from the spot. When they went near Mukhtar Singh, they found that he had already died. He left his mother near the dead body of Mukhtar Singh and proceeded to lodge report with police. His statement Ex.PG was recorded. Police prepared inquest report.

When he read the statement Ex.PG, he found that it was wrongly recorded by the police. The police had not recorded the names of accused Amarjit Singh and Sukhwinderpal Singh in the statement. He filed criminal complaint Ex.PH against all the accused in the Court of Illaqa Magistrate at Tarn Taran. In his cross-examination, he admitted that village Timmowal was at a distance of 4/5 kilometers from his village Bagrian. Accused Kulwinder Singh was living at his in-laws house in village Timmowal. Accused Davinder Singh was residing in village Saido Lehal. It was at a distance of 10/12 kilometers from his village. Accused Gurbaj Singh was resident of village Sangna. It was at a distance of 20/22 kilometers from his village. His brothers Kuldeep Singh and Jagjit Singh were living with him in the same house. Tarn Taran town was at a distance of 4/5 kilometers from his village. His mother Jasbir Kaur fell ill about two days before the day of occurrence. He had disclosed the police that Gurbaj Singh was armed with a kirpan. The attention of witness was drawn to Ex.PG wherein it was not so recorded. He had stated before the police that Gurbaj Singh had given two kirpan blows to Mukhtar Singh. He was confronted with Ex.PG wherein it was not so recorded. In his further cross-examination by learned defence counsel appearing on behalf of accused Amarjit Singh and Sukhwinderpal Singh, he admitted that litigation regarding partition of land was going on between them and accused Amarjit Singh and Sukhwinderpal Singh.

11. PW-4 Jasbir Kaur also deposed the manner in which the knife blow was given by accused Kulwinder Singh on the right shoulder of the deceased. She further testified that accused Gurbaj Singh had given two kirpan blows to Mukhtar Singh. They were at a distance of less than 20 karams from Mukhtar Singh when he was assaulted by the accused.

Accused had threatened to kill them. They raised alarm. They saw Mukhtar Singh. He was dead. Police came on the spot. Police took into possession the soil from the spot. She was confronted with her statement Ex.DA made under Section 161 Cr.P.C. wherein it was recorded that Gurbaj Singh and Davinder Singh were empty handed and they had run away from the spot along with Kulwinder Singh. She had not deposed before the police that Gurbaj Singh had given two kirpan blows to Mukhtar Singh deceased. After 5/10 minutes of occurrence, few persons came on the spot.

12. PW-8 SI Suba Singh had recorded statement Ex.PG of Jaspal Singh. He prepared inquest report. The body was sent for post-mortem examination through Constable Sucha Singh. The clothes of deceased were taken into possession. Accused Kulwinder Singh was arrested on 26.07.1999. His disclosure statement was recorded on the basis of which one knife was recovered. In his cross-examination, he deposed that statement of Jasbir Kaur Ex.DA was recorded by him at her dictation without any addition, alteration and omission including portion marked therein.

13. DW-1 Baldev Singh testified that he was *Granthi* for the last about 21 years. On 09.07.1999 *Akhandpath* was going on in the *gurudwara* in the name of Gurpartap Singh. Accused Gurbaj Singh was one of the *pathis* who was reciting the *Akhandpath*. The native village of accused Gurbaj Singh was village Sanghna which was at a distance of 13/14 kilometers from *gurudwara*.

14. The incident had taken place on 10.07.1999. The statement of complainant Jaspal Singh PW-3 was recorded vide Ex.PG on 10.07.1999 on the basis of which FIR Ex.PD was registered. What is mentioned in

statement Ex.PG and FIR Ex.PD is that Mukhtar Singh was going on bicycle. He was followed by his brother and his mother. Gurbaj Singh and Davinder Singh raised *lalkara*. Kulwinder Singh gave knife blows on Mukhtar Singh. Mukhtar Singh died. However, when PW-3 Jaspal Singh appeared in the Court, he deposed that Gurbaj Singh had given kirpan blows on the person of deceased. Private complaint was also filed by PW-3 Jaspal Singh vide Ex.PH on 09.08.1999. Similarly, the statement of PW-4 Jasbir Kaur was recorded vide Ex.DA. She also deposed in the manner in which Kulwinder Singh gave knife blows on the person of deceased Mukhtar Singh. It is not mentioned in Ex.DA that Gurbaj Singh had given two kirpan blows on the person of deceased.

15. According to the prosecution, PW-3 Jaspal Singh and PW-4 Jasbir Kaur were present on the spot. They were bound to disclose in their statements Ex.PG and Ex.DA that the deceased was given kirpan blows by Gurbaj Singh. The private complaint itself was filed on 09.08.1999. No kirpan was recovered from Gurbaj Singh. Surprisingly though knife was recovered from the accused Kulwinder Singh, it was not sent for FSL examination. PW-3 Jaspal Singh and PW-4 Jasbir Kaur have made improvements in their statements. The villages of Gurbaj Singh and Davinder Singh were at a considerable distance from the place of occurrence. They are husbands of sisters of Kulwinder Singh. Gurbaj Singh belonged to village Sangha. Davinder Singh belonged to village Saido Lehal. PW-8 SI Suba Singh has admitted in his cross-examination that he had recorded the statement of PW-4 Jasbir Kaur under Section 161 Cr.P.C. at her dictation. In statement under Section 161 Cr.P.C. Ex.DA, it is stated that Gurbaj Singh and Davinder Singh were empty handed. PW-4 Jasbir

Kaur has admitted in her cross-examination that she had not stated before the police that Gurbaj Singh had given two kirpan blows to deceased Mukhtar Singh. It has come on record that civil litigation was going on between the parties.

16. The prosecution has failed to prove the charges against the appellants Gurbaj Singh and Davinder Singh beyond reasonable doubt. Accordingly two appeals bearing nos. CRA-189-DB-2003 & CRA-D-288-DB-2003 are allowed. The judgment and order dated 06.02.2003 are set aside qua appellants namely Gurbaj Singh and Davinder Singh. They are on bail. Their bail bonds and surety bonds are discharged.

17. Complainant Jaspal Singh also filed criminal appeal bearing no.CRA-D-658-DBA-2003 against acquittal of accused Amarjit Singh. The prosecution has not led any evidence qua the involvement of Amarjit Singh in the actual commission of crime. He was rightly acquitted by the learned trial Court after correct appraisal of evidence. Accordingly there is no merit in the appeal bearing no.CRA-D-658-DBA-2003 and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 03, 2019.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No