

CRA-D-794-DB of 2003;
CRR-370-2004;
CRA-S-1801-SB-2003; and
CRR-158-2004

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

- (1)

CRA-D-794-DB of 2003

Gopal Singh and others

...Appellants

Versus

State of Punjab

...Respondent
- (2)

CRR-370-2004

Yaseen

...Petitioner

Versus

Gopal Singh and others

...Respondents
- (3)

CRA-S-1801-SB-2003

Yaseen and others

...Appellants

Versus

Gopal Singh and another

...Respondents
- (4)

CRR-158-2004

Gopal Singh

...Petitioner

Versus

CRA-D-794-DB of 2003;
CRR-370-2004;
CRA-S-1801-SB-2003; and
CRR-158-2004

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Yaseen and others

...Respondents

Date of decision:27.11.2019

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

Present : Mr. SPS Sidhu, Advocate
for the appellants in CRA-D-794-DB of 2003 and
for respondents No.1 to 3 in CRR-370-2004,
for respondent No.1 in CRA-S-1801-SB-2003 and
for petitioner in CRR-158-2004.

Mr.PS Brar, Advocate for
the appellants in CRA-S-1801-SB-2003,
for respondents in CRR-158-2004 and
for the petitioner in CRR-370-2004.

Mr.Bhupender Beniwal, AAG, Punjab.

H.S. MADAAN, J.

Vide this judgment, we propose to dispose of two appeals i.e. CRA-D-794-DB of 2003 filed by appellants Gopal Singh and others and CRA-S-1801-SB-2003 filed by appellants Yaseen and others and two criminal revisions i.e. CRR-158-2004 filed by petitioner Gopal Singh and CRR-370-2004 filed by petitioner Yaseen.

Briefly stated, facts of the case as per the prosecution story are that, on 28.4.1998, a police party from Police Station Jaitu headed by ASI Balwinder Singh was on patrol duty; at about 3:05 p.m., when the said police party had reached near bus-stand Jaitu,

then it came across complainant - Yaseen, resident of Jaitu, who got his statement recorded with the Investigating Officer. *Inter alia*, in the statement, he stated that he was resident of village Jaitu; the wife of his brother Saira had expired and since they belong to Muslim religion, they had dug a grave in the graveyard situated on Gurudwara Tibbi Sahib Road, Jaitu for her burial according to Muslim rites and ceremonies; Gopal Singh and (his son) Gurmit Singh, who had been in possession of some land belonging to Punjab Wakf Board for agricultural purposes were trying to fill up the graves and that he along with his nephew Charanjit alias Pamma, Mander Singh, Sema alias Tarsem besides 3-4 persons had gone to the graveyard at about 1:30 p.m.; Gopal Singh and Gurmit Singh were present and they were filling up the graves earlier dug out by them; when Yaseen and persons accompanying him dissuaded Gopal Singh and Gurmit Singh from doing so for the reason that woman from their family had passed away and they were to bury her as per the last rites, there took place exchange of hot words and abuses; Sukhdev Kaur wife of Gopal Singh and mother of Gurmit Singh exhorted her co-accused that the complainant party be caught hold of and taught a lesson for burying dead body in their land, hearing that Tarsem @ Sema (since dead) was caught hold by Gurmit Singh and accused Gopal Singh gave a blow of his *Barchha* (spear) hitting Tarsem @Sema on the right side of chest; he gave another blow of *barchha* to Tarsem @ Sema

hitting him on the left chin; all the persons accompanying complainant started raising alarm of *MAR-DITTA MAR-DITTA*, then accused Sukhdev Kaur ran and handed over a *KIRCH* to accused Gurmit Singh; he (Gurmit Singh) along with Gopal Singh assaulted Mander Singh and Charanjit Singh @ Pamma and on an alarm being raised by persons accompanying them, the accused ran away from the spot after the complainant and others intervened, in the melee; the accused party also received injuries.

The Investigating Officer read over the statement of complainant Yaseen to him, who thumb marked it after admitting the contents thereof to be correct. The Investigating Officer appended his endorsement below said statement and sent ruqa to the police station through Constable Gurjant Singh, on the basis of which formal FIR No.37 of 28.4.1998 for the offences under Sections 302, 323, 324 read with Section 34 of IPC was registered at Police Station Jaitu. Thereafter, the Investigating Officer went to Civil Hospital, Jaitu where the dead body of Tarsem @ Sema was lying. He carried out inquest proceedings with regard to unnatural death of such deceased preparing report in that regard. He got the postmortem examination conducted on the dead body by deputing HC Sham Lal to get the needful done. Thereafter, the investigation of the case was handed over to SI/SHO Darshan Singh, who moved an application before the concerned doctor to know about condition of injured Mander Singh and Charanjit Singh @ Pamma and to find

out as to whether they were fit to make statement(s). After obtaining opinion of the doctor that both the injured were fit to make statement(s), he firstly recorded statement of Charanjit Singh @ Pamma and then Mander Singh and also took into police possession bloodstained clothes of the injured. Thereafter, the police party went to the place of occurrence and carried out spot inspection. The Investigating Officer took into possession blood stained earth as well as simple earth after converting those into parcels. The Investigating Officer prepared rough site plan of the place of occurrence and during the investigation took into possession the bloodstained clothes of the deceased Tarsem @ Sema.

During the course of investigation, accused Gurmit Singh was arrested on 1.5.1998. He suffered a disclosure statement and got recovered a blood stained *KIRCH* from beneath the bed from his residential house in pursuance thereof. It was taken into possession by the Investigating Officer. After preparing its sketch, rough site plan of the place of recovery was prepared. Further, after being arrested and on interrogation Gopal Singh accused also suffered a disclosure statement and got recovered a *Barchha* from the room of his house. The Investigating Officer took into possession the *Barchha* also and carried out necessary formalities. On return to the police station, the Investigating Officer deposited the case property with the MHC. During the course of

investigation, reports from FSL were received.

After completion of investigation, challan against the accused Gopal Singh and Gurmit Singh was prepared and filed in the Court of Judicial Magistrate First Class, Faridkot.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Faridkot, he supplied copies of documents relied upon in the challans to both the accused free of cost as provided under Section 207 Cr.P.C. Then finding that the offence under Section 302 IPC exclusively triable by the Court of Sessions, learned Judicial Magistrate First Class, Faridkot vide his order dated 1.7.1998 committed the cases to the Court of learned Sessions Judge, Faridkot from where it was entrusted to Additional Sessions Judge, Faridkot.

On receipt of case in the Court of learned Additional Sessions Judge, Faridkot, he observing that charge for the offence under Section 302 read with Section 34 IPC was disclosed against accused Gopal Singh and Gurmit Singh, charge-sheeted them accordingly, to which, they pleaded not guilty and claimed trial. The cases were then fixed for evidence of prosecution. The statement of complainant Yaseen was recorded. Thereafter, the prosecution had moved an application under Section 319 Cr.P.C. for summoning of Sukhdev Kaur as an additional accused. Such application was accepted and Sukhdev Kaur was summoned as an additional accused. Thereafter, charge for the offences under

Sections 302 and 324 read with Section 34 IPC was framed against all the three accused, to which they pleaded not guilty and claimed trial. The case was then fixed for prosecution evidence.

During the course of its evidence, the prosecution examined as many as fourteen witnesses, namely, PW1 Yaseen, PW2 ASI Sham Lal, PW3 Charanjit alias Pamma, PW4 Dr.Hukam Chand Garg, PW5 Dr.S.S. Sandhu, PW6 Constable Iqbal Singh, PW7 Harmander Singh alias Mander, PW8 Gurtej Singh, PW9 Raja Ravinder Singh, Revenue Patwari, PW10 SI Balwinder Singh, PW11 HC Balwant Singh, PW12 HC Sukhjinder Singh, PW13 SI Darshan Singh and PW14 Tayyab Hussain, Rent Collector, Punjab Wakf Board.

With that the prosecution evidence stood closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations and set up a plea of due exercise of right of private defence contending that the complainant party was trying to illegally and forcibly grab the property belonging to their family and that it was the complainant party who duly armed had attacked them and that in the exercise of their right of private defence of person and property and accused Gopal Singh being a baptized Sikh with a view to save himself and property had taken out Siri Sahib (sword usually worn by the baptized Sikhs) from a scabbard

and had hit the other side; that they were innocent and had been falsely involved in this case further contending that it were they who had earlier lodged the report to the police.

However, the accused did not lead any defence evidence.

After hearing arguments, learned trial Court vide judgment dated 15.9.2003 concluded that on 28.4.1998 at 1:30 p.m. in the area of Jaitu, accused Gopal Singh with the common intention of his co-accused Gurmit Singh and Sukhdev Kaur had committed the murder of Tarsem Singh @ Sema by intentionally and knowingly causing his death and Gopal Singh and Gurmit Singh with their common intention with Sukhdev Kaur accused also caused injuries to Mander Singh and Charanjit Singh @ Pamma. They were held guilty and accused Gopal Singh was convicted under Sections 302, 324, 324/34 IPC, accused Gurmit Singh under Sections 302/34, 324, 324/34 IPC and accused Sukhdev Kaur under Sections 302/34, 324/34 and 324/34 IPC and sentenced as under:

Name of accused	Under Sections	Sentence
Gopal Singh	302 IPC	Imprisonment for life and to pay a fine of Rs.5,000/- and in default thereof, to further undergo rigorous imprisonment for one year.
-do-	324 IPC	Rigorous

		imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for two months.
-do-	324/34 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for two months.
Gurmit Singh	302/34 IPC	Imprisonment for life and to pay a fine of Rs.5,000/- and in default thereof, to further undergo rigorous imprisonment for one year.
-do-	324/34 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for two months.
-do-	324 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for two months.
Sukhdev Kaur	302/34 IPC	Imprisonment for life and to pay a fine of

		Rs.5,000/- and in default thereof, to further undergo rigorous imprisonment for one year.
-do-	324/34 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for two months.
-do-	324/34 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default thereof, to further undergo rigorous imprisonment for two months.

All the sentences were ordered to run concurrently.

The judgment of conviction and order of sentence left the accused/convicts aggrieved and they have filed CRA-D-794-DB of 2003 before this Court praying that the same be accepted, the impugned judgments of their conviction and sentence be set aside and they be acquitted of the charge framed against them. Whereas complainant Yaseen had also felt dissatisfied with the above-said judgment and order of sentence and he filed CRR-370-2004 for enhancement of sentence under Sections 324 IPC and 324/34 IPC and awarding of adequate compensation.

It may be mentioned here that though the accused side

had also received injuries in the incident but their counter version was not found to have any merit and the persons responsible for causing those injuries were not sent up to face trial by the police of Police Station Jaitu. As such, Gopal Singh had filed a private complaint against Yaseen, Jugraj Singh alias Khushi Mohamed, Paramjit Singh, Iqbal Mohammad alias Ghik, Kala Khan and Mander Singh for the offences under Sections 323, 324, 452 and 148 read with Section 149 IPC.

As per the version of the complainant Gopal Singh in the said complaint case, he was in possession of 25 kanals 6 marlas of land situated in the revenue estate of village Jaitu belonging to the Punjab Wakf Board; the said land was in his possession as lessee since 2.9.1982; that accused were trying to take illegal and forcible possession of that land, resultantly the complainant had earlier secured a decree of injunction on 28.2.1985 vide which the accused persons belonging to Muslim community were restrained from interfering with the possession of the complainant over the land in question; however, on 28.4.1998 at 11:00 a.m. while Gopal Singh complainant was busy in the fields tending to his vegetable crops and his wife and son were busy in the hut arranging vegetables in the baskets, he heard *RAULA* of *MARDITTA* – *MARDITTA* and saw accused Jugraj Singh raising *lalkaras* that give more injuries and break their bones and ribs and take possession over the land; the complainant saw accused persons

armed with *dangs* and hockey sticks intercepting his wife and son, who saw them giving injuries to those persons and thereafter the complainant to save his family from the assailants intervened and in the process took out small sword (ceremonial sword worn by baptized Sikhs) as the complainant is a baptized (*AMRITDHARI*) Sikh; the complainant gave injuries to the accused party in his self-defence. Thereafter, the accused ran away from the spot along with their respective weapons. His family reported the matter to the police, who did not pay any heed and subsequently involved them in a false case, thereby forcing the complainant to lodge the complaint in the Court.

After recording preliminary evidence, learned Magistrate summoned the accused to face trial for the offences under Sections 323, 324, 452 and 148 read with Section 149 IPC and considering the fact that the main case had been committed to the Court of Session, learned Magistrate committed this complaint case to be tried along with the main case from the Court where the trial of the main case was pending.

On receipt of complaint case, formal charge for the offences under Sections 148, 452, 323/149 and 324/149 IPC was framed against the accused, to which, they pleaded not guilty and claim trial. The complainant led evidence. After conclusion of the same, statements of accused under Section 313 Cr.P.C. were recorded and accused also led evidence in their defence.

After hearing arguments, learned trial Court vide judgment dated 15.9.2003 concluded that simple injuries were caused by the accused persons on the person of the complainant side. They were held guilty for the offence under Section 323/149 IPC and convicted thereunder, whereas the accused were acquitted of the offences under Sections 148, 324 and 452 IPC. The accused were sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- each and in default thereof, to further undergo rigorous imprisonment for one month under Section 323/149 IPC.

The judgment of conviction and order of sentence left the accused/convicts aggrieved and they have filed CRA-S-1801-SB-2003 before this Court praying that the same be accepted, the impugned judgment of their conviction and sentence be set aside and they be acquitted of the charge framed against them.

Whereas complainant Gopal Singh has also felt dissatisfied with the above-said judgment and order of sentence and he has filed CRR-158-2004 for modification that the accused be convicted for the offences under Sections 323, 324, 452, 148 and 149 IPC and further prayed for enhancement of sentence.

We have heard learned counsel for the appellants-accused- convicts and learned Assistant Advocate General for the State of Punjab besides going through the record.

The incident in this case is not much disputed. The

accused in the main case i.e. Gopal Singh, Gurmit Singh and Sukhdev Kaur also suffered injuries. Therefore, presence at the spot of Gopal Singh, Gurmit Singh and Sukhdev Kaur at the relevant time stands established. The fatal blow to deceased Tarsem Singh @ Sema is attributed to Gopal Singh, whereas as regards Gurmit Singh, the role assigned to him is that he had taken Tarsem Singh @ Sema in his *JAPHA*, whereas to Sukhdev Kaur the role attributed is that she had raised a *lalkara* to catch hold of Mander Singh and Paramjit @ Pamma and to teach them a lesson for burying the dead bodies there. Furthermore, Sukhdev Kaur is said to have taken out *KIRCH* and handed it over to accused Gurmit Singh, then both Gopal Singh and Gurmit Singh are said to have caused injuries to Paramjit @ Pamma and Mander Singh. The injuries on the person of Paramjit @ Pamma and Mander Singh are simple in nature. No specific injury has been attributed to Gurmit Singh. The involvement of Gurmit Singh and Sukhdev Kaur in the incident as assailants seems to be somewhat doubtful, though their presence at the spot comes out to be probable. As it transpires that Gopal Singh and his wife and son had objection to the complainant side burying dead body of Saira in the land since they claimed to be in legal possession of the land under authority of the Punjab Wakf Board, whereas the complainant side gave justification for digging up of the grave there stating that it was a graveyard where Muslim could burry their dead. In that way, a dispute had arisen between

the two parties.

The incident in which deceased lost his life does not come out to have been pre-planned by the accused and it comes out that it occurred at spur of the moment. It is case of prosecution itself that a fight had taken place between two groups in which the accused had also suffered injuries. PW1 Yaseen in his examination-in-chief itself had stated that Gora, Gala, Teja and Mithu had reached at the spot. They had removed wooden pegs installed there in defence and gave injuries with those to Gopal Singh and Gurmit Singh in self-defence. It seems that Gopal Singh was infuriated by complainant side digging up grave in the land for burial of Saira and it was he, who had assaulted Tarsem Singh @ Sema causing injuries to him, which proved fatal and injuries to other persons namely Paramjit Singh @ Pamma and Mander Singh were also caused by Gopal Singh. The wife of Gopal Singh namely Sukhdev Kaur and his son Gurmit Singh seems to have been roped in as a pressure tactic since it is normal practice in the region to do so. It is highly unlikely that a woman would raise *lalkaras* in such a manner and then hand over weapon to her son to assault the members of the other group. Similarly Gurmit Singh taking the deceased in his *JAPHA* while his father causing him injuries does not appear to be probable and plausible in view of the number of persons present there and atmosphere prevailing at the spot. Gopal Singh being in aggressive mood, Gurmit Singh taking *KIRCH* and causing simple

injuries to Paramjit Singh @ Pamma and Mander Singh also does not seem convincing. As observed earlier, it comes out to be a free fight. The prosecution has been able to prove conclusively and convincingly that Gopal Singh had assaulted Tarsem Singh @ Sema with a *BARCHHA* hitting him on vital parts thereby showing his intention to commit his murder but there is nothing to show that he shared a common intention to do so with his son Gurmit Singh and wife Sukhdev Kaur. The involvement of Sukhdev Kaur in the incident is not established convincingly. She was wrongly convicted by the trial Court. With regard to accused Gurmit Singh, we find that he also did not share common intention with his father to commit murder of Tarsem Singh @ Sema, though he is shown to have caused simple injuries to Paramjit Singh @ Pamma and Mander Singh for which he has been rightly convicted under Section 324 IPC.

It may be mentioned here that accused Gopal Singh is reported to have expired. Therefore, CRA-D-794-DB of 2003 filed on behalf of appellant/accused/convict Gopal Singh stands abated. Whereas such appeal filed on behalf of appellant/accused/convict Sukhdev Kaur stands allowed. The judgment of conviction and order of sentence passed against her are set aside and she is acquitted of the charges framed against her. With regard to accused Gurmit Singh, such appeal is allowed partly. His conviction and sentence under Section 302 read with Section 34 IPC is set aside,

whereas his conviction under Sections 324 and 324 read with Section 34 IPC is maintained.

However, since Gopal Singh is proved to have committed murder of Tarsem Singh @ Sema without any provocation coming from his side, the legal heirs of Tarsem Singh @ Sema said to be poor persons deserve to be compensated by grant of compensation. We hereby grant compensation of Rs.3,50,000/- to the family of deceased Tarsem Singh @ Sema payable within 90 days from the date of receipt of certified copy of the judgment. If the amount is not paid then the same be recovered from the estate of Gopal Singh and paid to family of the victim.

With these observations, CRR-370-2004 filed by complainant Yaseen stands disposed of accordingly.

As far as CRA-S-1801-SB-2003 filed by Yaseen and others against the judgment of their conviction and sentence, we find that the judgment of conviction and sentence passed by the trial Court are not sustainable. We find that the injuries on the person of Gopal Singh and his son Gurmit Singh and wife Sukhdev Kaur were of simple in nature. Since a close relative of Yaseen accused had expired and they had dug up a grave to bury her, in that eventuality in state of bereavement and grief, it is not possible that they had decided to launch any such attack to take forcible possession of the land, rather they had lost one of them, namely, Tarsem Singh @ Sema having been inflicted injuries by Gopal

Singh. Out of several persons gathered there some might have assaulted Gopal Singh, his son, in the process they received simple injuries and it is certainly not a case of accused forming an unlawful assembly having weapons committing rioting or trespassing in the land of Gopal Singh after having preparation to cause hurt to him, his son and wife. Therefore, the conviction and sentence of accused in the private complaint case is not justified.

Thus, CRA-S-1801-SB-2003 filed on behalf of appellants/accused/convicts is allowed. The judgment of conviction and order of sentence passed against them are set aside and they are acquitted of the charges framed against them.

Consequently, CRR-158-2004 filed on behalf of petitioner Gopal Singh (since dead) stands dismissed.

Appellant/accused/convict Gurmit Singh in CRA-D-794-DB of 2003 is stated to be on bail granted to him by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Faridkot is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

A copy of this judgment be sent to Sessions Judge, Faridkot for information and further necessary action.

(JITENDRA CHAUHAN)
27.11.2019 **JUDGE**
Brij

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No