

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

**CRA-D-579-DB-2004
Reserved on : 28.01.2020
Date of decision : 31.01.2020**

Raghbir Singh @ Bhishi and another

... Appellants

Versus

The State of Punjab

... Respondent

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

Present: Mr. Ashish Verma, Advocate
for the appellants.

Mr.H.S.Grewal, Addl.A.G. Punjab.

RAJIV SHARMA, J.

This appeal has been instituted against the judgment and order dated 25.05.2004 rendered by the Sessions Judge, Hoshiarpur, in Sessions Trial no.10 of 12.02.2004 whereby the appellants were charged with and tried for the offence punishable under Section 302/34 of the Indian Penal Code (in short 'IPC'). The appellants were convicted and sentenced as under:-

Name of convict	Sentence	Under Section
Raghbir Singh	To undergo imprisonment for life and to pay a fine of Rs.10,000/- (Rs. Ten thousand only) or in default of payment of fine to undergo further rigorous imprisonment for a period of one year.	302 IPC
Avtar Singh	To undergo imprisonment for life and to pay a fine of Rs.10,000/- (Rs. Ten thousand only) or in default of payment of fine to undergo further rigorous imprisonment for a period of one year.	302/34 IPC

2. The case of the prosecution in a nutshell is that Harbans Singh

had lodged a report to the effect that on 23.09.2003, he, his wife Jaswinder Kaur and son Gurdip Singh after making telephone call were coming back from the house of Bittu son of Satnam Singh. When they reached in front of haveli of Raghbir Singh at about 07.30 P.M., they saw Raghbir Singh holding a kulhara (axe) in his right hand along with Avtar Singh @ Billa. Avtar Singh @ Billa, at once, caught hold of Jaswinder Kaur by her neck and forcibly took her inside the haveli of Raghbir Singh. Raghbir Singh gave 4/5 kulhara (axe) blows hitting Jaswinder Kaur on her face, head, neck and left arm while she was lying on the ground. He and his son Gurdip Singh raised alarm. Accused ran away from the spot. People assembled on the spot. He along with his brother Sarabjit Singh went to the police station to lodge the report. Police visited the place of occurrence. Police prepared the rough site plan. Police lifted the blood stained earth from the spot. The body was sent for post-mortem examination. Accused were arrested. Investigation was completed. Challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses. Statements of the appellants were recorded under Section 313 Cr.P.C. They denied the case of prosecution. According to Raghbir Singh, hired assassin had killed Jaswinder Kaur. He had illicit relationship with the deceased. He was also attacked by the assailants. According to Avtar Singh, he was falsely implicated in the case. The appellants were convicted and sentenced, as noticed hereinabove. Hence, this appeal.

4. Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove the case against the appellants.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

6. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

7. PW-1 Dr.Gian Chand conducted the post-mortem examination.

He noticed as many as five injuries on the person which are as under:-

“1. Incised wound 3.8 cm x 1 cm bone deep present on right side of forehead 7 cm above the bridge of nose extending downwards towards left 3 cm above and middle of right eye brow. Blackening of right eye brow present.

2. Incised wound 5.4 cm x 1.4 cm present on the right side of neck. It started below the lobule of right ear extending upwards and backwards, underlying muscle vessels, soft tissue cut. Clotted blood was present. A reddish brown colour abrasion 3 cm x .8 cm extending from injury no.2 inward and outwards corresponding to injury no.2.

3. Incised wound 2.5 cm x 0.8 cm on left side of face. Horizontally placed, middle portion 1 cm below the angle of mouth. Underlying bone fractured. Corresponding reddish brown bruise 8.5 cm x 0.8 cm extending to left.

4. Incised wound 3.8 cm x 0.4 cm present left side of chin. Horizontally placed. Clotted blood present. Underlying bone fractured. Corresponding bruise 7 cm x

0.4 cm on reddish brown colour. Extending horizontally on chin.

5. *Incised wound 5.8 cm x 1.5 cm bone deep on elbow joint 5 cm. proximal from oleclerom process. Fracture of bone present.”*

The cause of death was shock as a result of injuries no.1 & 2 which were sufficient to cause death in ordinary course of nature. All the injuries were ante mortem in nature. Probable time between injuries and death was few minutes to hour and between death and post-mortem was within 24 hours.

8. PW-2 Harbans Singh testified that Jaswinder Kaur was his wife. On 23.09.2003 at about 7.15 P.M. he accompanied by his wife and son Gurdip Singh went to the house of Bittu. After making a telephone call, they were coming back to their house. When they reached in front of haveli of Raghbir Singh accused at about 7.30 P.M., they noticed Raghbir Singh accused standing with kulhara (axe) in his right hand. Avtar Singh accused was also standing with him. Avtar Singh caught hold of his wife from her neck. He dragged her to the house of Raghbir Singh. Avtar Singh threw her on the floor. Thereafter, Raghbir Singh accused gave 4/5 kulhara (axe) blows on her neck, face and head and also on left arm. They raised alarm. Accused ran away from the spot. Raghbir Singh carried away kulhara with him. People collected on the spot. The report was lodged with the police. Raghbir Singh accused used to hurl bricks at their house. The matter was patched up with the intervention of Sarpanch Devinder Singh. The compromise deed is Ex.PH. In his cross-examination, he deposed that haveli of Raghbir Singh was surrounded by residential houses. When Avtar Singh accused hold his wife then he and his son made an attempt to rescue her by

intervening physically. When his wife was caught hold of by Avtar Singh, there was no one in the street. When he entered the haveli of Raghbir Singh accused, he saw his wife lying on the floor. Police came on the spot at about 11 P.M. Police did not enquire about the character of his wife from him. He denied the suggestion that Jaswinder Kaur had illicit relations with Raghbir Singh. He also denied the suggestion that assassins were killing Jaswinder Kaur, Raghbir Singh accused intervened and he was also given some injuries and in order to save his life, accused entered the room of his haveli and bolted the door from inside.

9. PW-3 Gurdip Singh is the minor witness. His statement was recorded by the trial Court after satisfying itself that the witness was mature to understand the sanctity of oath. He identified the accused in the Court. He was student of 7th class. On 23.09.2003 at about 7.30 P.M., he accompanied by his father and mother Jaswinder Kaur were coming back after making telephone call. When they reached in front of haveli of Raghbir Singh accused, they found Raghbir Singh accused standing along the wall. He was holding kulhara (axe) in his right hand. He did not have his left arm. Avtar Singh accused was also standing by his side. When they were about to pass by them, Avtar Singh accused caught hold of his mother and took her inside the haveli of Raghbir Singh accused by giving pushes. When Avtar Singh accused gave pushes to his mother, he was standing there. Avtar Singh accused pushed his mother inside the haveli. She fell down on the ground. Raghbir Singh accused gave 2/3 again said 4/5 kulhara (axe) blows on the head, face and back of his mother. He and his father raised alarm. Thereafter, both the accused ran away. The entire incident was witnessed by him and his father. He also deposed that accused Raghbir Singh used to hurl

bricks at their house. The matter was compromised. He identified kulhara Ex.P1 with which accused Raghbir Singh administered injuries to his mother. His statement was also recorded under Section 164 Cr.P.C. in the Court. In his cross-examination, he deposed that Raghbir Singh was bachelor. When Avtar Singh caught hold of his mother, he did not physically interven as he was gripped with fear . His father was also gripped with fear. Avtar Singh was empty handed. Avtar Singh did not enter the room of his haveli. Avtar Singh accused escaped from the spot by climbing upon roof of the house. He identified the signatures on his statement Ex.DA recorded under Section 164 Cr.P.C.

10. PW-4 ASI Ram Sarup testified that statement of Harbans Singh was recorded which led to registration of formal FIR Ex.PF/2. He inspected the spot. He prepared the inquest report. He prepared rough site plan. He lifted the blood stained earth. He put the same into box. The post-mortem examination was got conducted. He moved application Ex.PQ on 29.09.2003 before the JMIC, Hoshiarpur to record the statement of Gurdip Singh under Section 164 Cr.P.C. Harbans Singh produced before him compromise Ex.PH along with application Ex.PG. In his cross-examination, he denied the suggestion that there were injuries on the body of Raghbir Singh and he was got medically examined by him. Gurdip Singh was standing by the side of dead body when he reached there. In the case diary, he recorded that deceased Jaswinder Kaur and accused Raghbir Singh had illicit relations with each other for the last 8/10 years. He denied the suggestion that Jaswinder Kaur was not under the control of her husband. He also denied the suggestion that Harbans Singh had got Jaswinder Kaur murdered through hired assailants.

11. PW-7 ASI Gurdev Singh deposed that ASI Ram Sarup lifted blood stained earth from near the head of the dead body of Jaswinder Kaur. It was put into the box. ASI Ram Sarup also lifted the blood stained earth from verandah of the residential house of accused Raghbir Singh. On 24.09.2003 HC Raj Kumar produced the blood stained clothes removed from dead body before ASI Ram Sarup who converted the same into parcel. He arrested the accused Raghbir Singh on 14.10.2003 after his discharge from the hospital. He made disclosure statement that he could get recovered kulhara (Axe). The disclosure statement is Ex.PU. Blood stained kulhara was got recovered by him. It was taken into possession vide memo Ex.PV. Rough sketch of kulhara is Ex.PV/1. Kulhara is Ex.P1. He along with Ram Sarup had gone to the hospital to arrest accused Raghbir Singh on 24.09.2003.

12. PW-8 Jaswinder Singh deposed that he was running studio under the name and style "Jaswinder Singh Studio" at Gondpur. He clicked photographs Ex.P15 to P17.

13. CW-1 Dr.Satish Chander deposed that on 24.09.2003 at 7.30 AM he medically examined Raghbir Singh. He noticed the following injuries on his person:-

"1. One sharp wound 4.5 x 1 x skin deep on the left knee joint on the patella. Fresh bleeding was present on removing the clot. Movement of the left knee joint are restricted and painful. Advised opinion of Ortho. Surgeon.

2. One sharp wound 6 cm x 1.5 x skin deep on the left upper arm. 10 inches anterior below the left shoulder

joint. Fresh bleeding present on removing the clot.

Lower left arm has been already amputated at the level of the elbow joint.

3. *One abrasion 1.5 cm x 1 cm on the left lower leg in its middle anteriorly on the tibial bone.*

4. *One sharp wound 1.5 cm x 1 cm on the lower part of neck anteriorly 2 inches below the laryngeal prominence. Advised opinion of surgical specialist.*

5. *One sharp wound 1 cm x 0.5 on the lower part of the neck anteriorly. 2 cm below the injury no.4. Opinion of the surgical specialist sought.”*

The probable duration of the injuries was within 12 hours. He proved MLR Ex.C1.

14. The incident has been witnessed by PW-2 Harbans Singh and PW-3 Gurdip Singh. According to them, Avtar Singh caught hold of Jaswinder Kaur. She was pushed inside the haveli by Avtar Singh. Raghbir Singh accused gave kulhara (axe) blows on her body. According to the post-mortem examination, Jaswinder Kaur died due to shock as a result of injuries no.1 & 2 received by her. The injuries were ante mortem in nature. It has come on record that appellant Raghbir Singh was throwing brick bats at the house of Harbans Singh. The compromise in this regard had been arrived at with the help of Sarpanch. According to CW-1 Dr. Satish Chander, appellant Raghbir Singh had also received injuries. We have seen the nature of injuries. These were only skin deep. The defence taken by appellant Raghbir Singh is that he had illicit relations with Jaswinder Kaur.

According to him, Harbans Singh had hired assailants to kill Jaswinder

Kaur. He was also dragged. He tried to save her. He also received injuries. He went to room and locked from inside. This version cannot be believed. PW-2 Harbans Singh had grown up children. PW-3 Gurdip Singh who accompanied him at the time of incident was 13 years old. There is no evidence led by appellant Raghbir Singh that he had got himself locked in a room and opened it when police reached. The fact of the matter is that he got himself admitted in the hospital and was arrested on 14.10.2003. Recovery of kulhara (axe) was at his instance. The defence taken by appellant Avtar Singh is that his sister had come from abroad. They arranged *Akhand Path*. The family of complainant was not invited. Merely the family of the complainant was not called / invited for the religious ceremony could not be ground to falsely implicate Avtar Singh. Avtar Singh was seen by PW-2 Harbans Singh and PW-3 Gurdip Singh catching hold of Jaswinder Kaur and pushing her inside the haveli. The medical evidence is duly corroborated by the ocular version of PW-2 Harbans Singh and PW-3 Gurdip Singh. PW-2 Harbans Singh and PW-3 Gurdip Singh had categorically denied the suggestion that Raghbir Singh locked the room from inside. The prosecution has proved the case against the appellants beyond reasonable doubt.

15. Accordingly, there is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 31, 2020.

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No