

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

Crl. Appeal No.D-138-DB of 2003 (O&M)

Date of Decision: February 10, 2020

Balwinder Singh @ Binder Singh

...Appellant

VERSUS

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Ms.Baani Chhibber Mahajan, Amicus Curiae
for the appellant.

Mr.A.A.Pathak, Addl. Advocate General, Punjab
for the respondent-State.

ARCHANA PURI, J.

Challenge in the present appeal, is to the judgment of conviction and order of sentence dated 18.12.2002 passed by learned Addl. Sessions Judge (Adhoc), Faridkot, whereby accused Amar Singh and Balwinder Singh @ Binder Singh (present appellant) were held guilty and convicted under Section 302 read with Section 34 IPC, whereas, other two accused namely Harjinder Singh and Gurmel Singh were acquitted of the charges framed against them, while giving benefit of doubt to them.

The background facts in nutshell are, as follows:-

That, complainant Hakam Singh s/o Karnail Singh, is an agriculturist. He has two daughters and three sons and all of them are married. On 19.10.1997, at about 8.00 p.m., when complainant along with

his sons Baldev Singh, Sukhdev Singh and Iquatter Singh, with their

families, was present in the house, then Amar Singh s/o Sadhu Singh r/o Gholia Khurd, who has raised his house in the fields in the area of village Gholia Khurd, had come to the house of the complainant and had taken Baldev Singh along with him to his house, while saying that they shall have meals in his house and then Baldev Singh will return. Since, Baldev Singh did not return till midnight, then complainant became suspicious and then he along with Sukhdev Singh had reached the house of Amar Singh, to know about the whereabouts of his son Baldev Singh. On reaching his house, he saw Amar Singh armed with '**dah**' and Binder Singh armed with screw driver along with one Harjinder Singh and Gurmail Singh Sadh, both empty handed, were quarreling with Baldev Singh. Amar Singh raised *lalkara* that he be not spared today. Gurmel Singh and Harjinder Singh had caught hold of Baldev Singh from his arms and made him fall on the floor of the *baithak*. Then Amar Singh had caused several blows with *dah* from its sharp as well as reverse side, on head, face and back of Baldev Singh. Binder Singh had given thrust-wise blows with the screw driver, on chest and stomach of Baldev Singh. The complainant and his companion raised alarm '*marta marta*' and all the aforesaid assailants along with weapons of offence, had fled away towards the fields. When complainant had gone near Baldev Singh, he found blood to be oozing out from the head of Baldev Singh and soon thereafter, Baldev Singh succumbed to his injuries. After leaving his other son Gurdev Singh near the dead body of Baldev Singh, complainant Hakam Singh had returned to his house and he had then apprised Sarpanch Mohar Singh about the occurrence and thereafter, proceeded to inform the police. The motive for causing the occurrence is

that complainant is cultivating land of Mukhtiar Singh, who is elder paternal

uncle of Amar Singh and on this account, Baldev Singh was on visiting terms in the house of Amar Singh. Amar Singh used to have suspicion about his wife Baljit Kaur to be having illicit relations with Baldev Singh. On earlier occasion, Amar Singh had caused injuries to his wife Baljit Kaur on this account. A case was registered against him but he was acquitted as compromise had been effected between Baljit Kaur and Amar Singh. With this motive, Amar Singh, in connivance with Binder Singh, Harjinder Singh, Gurmel Singh, had murdered Baldev Singh. Proceedings in the present case were initiated, on the basis of the statement got recorded by Hakam Singh. During the course of investigation, post-mortem examination was got conducted and it was opined that death in this case is due to shock and haemorrhage caused by injuries to the vital parts which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. Statements of the witnesses were recorded. Spot of the occurrence was inspected. Blood-stained earth was lifted from the spot. On 02.11.1997, all the four accused were arrested in the present case and weapons of offence were recovered. On completion of the investigating, the accused were sent up to face trial.

On presentation of challan, compliance of Section 207 Cr.P.C. was made and thereupon, case was committed to the Court of Session.

In pursuance of the commitment proceedings, on the basis of material coming forth, charge under Section 302 read with 34 IPC was framed against all the accused, to which they pleaded not guilty and claimed trial.

In endeavour to establish its case, the prosecution examined as

many as 11 witnesses, besides adducing documentary evidence.

PW-1 Hakam Singh, is the complainant, at whose instance, the ball went rolling. He has deposed about the manner in which Amar Singh had taken his Baldev Singh (since deceased) to his house about one year and one month back at about 8.00 p.m. He further deposed about the manner in which he (this witness) along with Sukhdev Singh had gone to the house of Amar Singh when Baldev Singh had not returned back. He also deposed about Amar Singh to have raised *lalkara* that Baldev Singh should not escape on that day as he has ruined his house and then, Amar Singh, Binder Singh, Harjinder Singh and Gurmel Singh had caught hold of Baldev Singh. He further deposed about the manner, in which, injuries were inflicted by Amar Singh with *dah* on the person of Baldev Singh and also deposed that Binder Singh had inflicted injuries on the person of Baldev Singh with screw driver. He also deposed that they raised alarm '*mar ditta mar ditta*', upon which, all the four accused escaped from the house, with their respective weapons. Baldev Singh had succumbed to his injuries soon thereafter. He further deposed about the manner in which, he had got recorded his statement to the police, which led to the registration of the FIR. This witness also deposed that Amar Singh had suspicion that his son had illicit relations with his wife Baljit Kaur. He further deposed that two years prior to this occurrence, Amar Singh had given beatings to his wife and regarding the same, a case was registered against Amar Singh but was compromised with the intervention of the Panchayat.

PW-2 Sukhdev Singh, is other son of the complainant, who was accompanying the complainant, at the relevant time, when he had visited the house of Amar Singh on the day of occurrence. He has deposed

persons, vis-a-vis Baldev Singh, his brother and also deposed about the detail of the injuries, so given, on the person of Baldev Singh, which proved fatal. He further deposed about having accompanied the police to the house of Amar Singh alongwith Sarpanch Mohar Singh, his father etc. Police had lifted blood from the floor, which was put in a plastic container, which was sealed and taken into possession vide memo Ex.PB, which was attested by him.

PW-3 Dr.Ashok Kumar, Medical Officer, has deposed about conducting of post-mortem examination on the dead body of Baldev Singh on 20.10.1997. The said doctor has deposed about the detail of injuries found on the dead body, which are herein given as under:-

1. *An abraded contusion of 7½” x 8/2 present on right temporal region starting from just below right elbow and ending just in front of right pinna. The whole segment was depressed. Vertically it started 8 cm x from midline and ended near zygomatic arch. On dissection depressed fracture of temporal region, outer, zygomatic arch and maxilla was present. Under it lacerated lacerated brain matter mixed with blood was present.*
2. *One lacerated wound 3cm x ½cm present on the outer orbital margin. Clotted blood was present.*
3. *Around outer edge of injury No.1 lacerated wound of size .2 cm x ½ cm vertically placed was present 1 cm in front of right pinna. Clotted blood was present.*
4. *Right eye ball was depressed and over there was no injury to eye ball.*
5. *4 cms x 1½ cms lacerated wound placed on right side of forehead vertical in direction and lower edge of wound and near the outer edge of wound and near the outer edge of right eyebrow. On dissection left side of frontal bone was fractured underlying brain was lacerated.*
6. *Fracture of left side of mandible was present.*
7. *Upper all incisors were missing, sockets and buccal mucosa were covered with clotted blood.*

8. *Contusion 2 cm x 1 cm was present on the buccal surface of right side of lower lip.*
9. *Abraded contusion of size 6 cm x 2 cm was present on left side of back of lower chest.*
10. *Two abraded contusion 5 cms x ½ cm and 3 cms x ½ cms were present on the top and front of left shoulder, respectively.*
11. *Abraded contusion 3 cm x ½ oblique in direction was present on the outer aspect of left upper arm on its lower half.*
12. *3 stab wounds punctured of size ½ cm x ½ cm were present on the front of lateral aspect of left chest on its upper portion in an area of 8 cms. Clotted blood was present. On dissection middle part of left lung was lacerated and blood was present.*
13. *Multiple lacerated wound 1 x 2 cms skin deep were present on the front of left chest in its upper part. Lateral to nipple.*
14. *3 lacerated wound 1 x .3 cm, 1 x .5 cms were present on the left side of abdomen .6 cm above and outer to umbilicus. Clotted blood was present.*
15. *2 stab punctured wounds of skin deep were present on left side of abdomen size ½ x ½ each.*

He further deposed that in his opinion, death in this case was due to shock and haemorrhage caused by injuries to the vital parts which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. He proved the post-mortem report Ex.PC and pictorial diagrams Ex.PC/1 and Ex.PC/2. He also proved the application Ex.PD for conducting post-mortem examination. Ex.PE is the inquest report. He deposed that injuries No.12 and 15 can be caused by a screw driver, if caused thrust-wise.

PW-4 Constable Bikkar Singh, PW-5 Head Constable

Gurpreet Singh and PW-6 Constable Kuldeep Raj, have tendered into

evidence their affidavits, Ex.PF, Ex.PG and Ex.PH, which is formal evidence. **PW-7 Gursewak Singh, Draftsman**, deposed about preparation of scaled site plan Ex.PJ, at the instance of Sukhdev Singh. **PW-8 Head Constable Baljit Singh**, on the basis of the record brought by him had proved the true photocopy of FIR No.30 dated 07.03.1995, registered on the basis of the statement of Ajaib Singh under Section 307 IPC etc.

PW-9 ASI Ram Singh, deposed about joining police party headed by Joginder Singh, SHO, Investigating Officer on 20.10.1997. He deposed about preparation of the inquest report and lifting of the blood-stained earth from the floor of the *baithak* and lying underneath the dead body, which was converted into parcel and taken into possession vide recovery memo Ex.PB. He has also deposed about arrest of all the four accused, having effected by Joginder Singh, SHO, on 02.11.1997, when they were produced by Iqbal Singh Sarpanch. He further deposed about disclosure statement made by accused Amar Singh, which is Ex.PL, on the basis whereof '*dah*' was got recovered, which was blood-stained. Rough sketch of the same was prepared and same was taken into possession and taken into vide memo Ex.PN, which was attested by him. He also deposed about Balwinder Singh @ Binder Singh, during the course of interrogation, having suffered disclosure statement Ex.PO, on the basis whereof, screw driver was got recovered by him, which was also taken into possession . It was blood-stained. Rough sketch of the same was prepared, which is Ex.PP. The same was converted into parcel and taken into possession vide recovery memo Ex.PQ.

PW-10 DSP Joginder Singh, is the Investigating Officer of the

instance of Hakam Singh. Thereafter, he along with Sarpanch Mohar Singh, had reached the spot of occurrence and prepared site plan of the spot. He further deposed about preparation of inquest report Ex.PE. He also deposed about lifting of the blood-stained earth and having converted the same into parcel and taken into possession vide memo Ex.PN. He further deposed about picking up of blood lying on the floor vide memo Ex.PB. Furthermore, he deposed about taking into possession clothes of the deceased. He also deposed about conducting of the post-mortem examination on the dead body of Baldev Singh. He further deposed about having effected arrest of all the four accused on 02.11.1997. He deposed about disclosure statements made by Amar Singh and Balwinder Singh @ Binder Singh, on the basis whereof, recovery of *dah* and screw driver was effected and rough sketch of the same were prepared and same were taken into possession after converting into parcel. He also deposed about preparation of rough site plan of the place of occurrence.

PW-11 Sukhdev Singh, AEE, who was posted at 132 KV Sub Station, Smadh Bhai, has deposed about village Manuke to be falling in their jurisdiction and on the basis of the log-sheet of sub station of 19/20.10.1997, he deposed that electricity supply was normal on the intervening night of 19/20.10.1997. There was no break down on the said night. Village Gholia Khurd also falls in the same sub station and electricity supply was also there on the said night. He proved true copy of the log sheet, which is Ex.PV.

Thereafter, learned Public Prosecutor closed the evidence after tendering Expert report Ex.PX.

On closure of the prosecution evidence, all the incriminating

circumstances, appearing in the prosecution evidence were put to accused in their respective statements under Section 313 Cr.P.C. The accused denied those allegations and pleaded innocence. Accused Amar Singh took the plea, which for the convenience of the discussion, is herein given:-

“I am innocent. I have been falsely implicated in this case. I went to my sister to see her at V. Madheke. And I returned unexpectedly to my house at about 9.30/10 P.M. on 19.10.97. In my absence Baldev Singh was enjoying with my wife and I found both of them in compromising position. I lost my control and caused injuries to Baldev Singh with a dang having sua (nail) fitted in it, as I was provoked by the circumstances at the spot. I reported the matter to the police, by taking the respectables of the village there. Later on, the police called me and my family members. After fabricating the false story, the police brought the PWs on the next morning from their houses and concocted the false story, and falsely implicated me in this false case.”

Remaining three accused had pleaded innocence, simpliciter and alleged false implication. However, no evidence was led in defence.

After hearing learned Public Prosecutor, learned defence counsel and on appraisal of the evidence brought on record, vide impugned judgment dated 18.12.2002, accused Harjinder Singh and Gurmel Singh were acquitted of the charges levelled against them, while giving benefit of doubt. However, accused Amar Singh and Balwinder Singh @ Binder Singh (present appellant) were convicted under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life and to pay fine of ₹4,000/-, in default of payment of fine, to further undergo rigorous imprisonment for six months.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, the appellant Balwinder Singh @ Binder Singh, has filed

the present appeal.

Even the lower Court record was requisitioned.

We have heard learned counsel for the appellant as well as learned State counsel and have perused the record.

So far as, fact of death of Baldev Singh is concerned, the same stands amply established from the medical evidence brought on record. **PW-3 Dr.Ashok Kumar Singla**, has proved the post-mortem report **Ex.PE**. Besides deposing about the detail of injuries, found on the person of Baldev Singh, he has opined that death in this case was due to shock and haemorrhage caused by injuries to the vital parts which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. As such, the fact of death of Baldev Singh, stands duly established.

At this juncture, it is pertinent to mention that though prosecution version was relating to involvement of four accused namely Amar Singh, Balwinder Singh @ Binder Singh, Harjinder Singh and Gurmel Singh in causing the occurrence, while inflicting the injuries on the person of Baldev Singh, which proved fatal, but however, vide impugned judgment, while extending benefit of doubt, accused Harjinder Singh and Gurmel Singh were acquitted of the charged levelled against them, whereas, accused Amar Singh and Balwinder Singh @ Binder Singh were held guilty and convicted for the offence punishable under Section 302 read with Section 34 IPC. However, Amar Singh has not filed the appeal to challenge the judgment of conviction. The present appeal has only been filed by Balwinder Singh @ Binder Singh challenging the impugned judgment of conviction. In these circumstances, the observations further to be made in the judgment, are circumscribed only qua the role assigned to Balwinder Singh @ Binder Singh, without prejudice to rights of fellow accused.

Before adverting to the incriminating role of the appellant, certain facts, which are straightened from the evidence brought on record are that occurrence had taken place at about midnight at 12.30 p.m., on the intervening night of 19/20.10.1997, in the house of Amar Singh accused. In view of the plea, so taken by Amar Singh, in his statement under Section 313 Cr.P.C., admittedly that Amar Singh was present in his house on the said night. He had motive against Baldev Singh, as, he used to visit his house and had illicit relations with Baljit Kaur, his wife. About 2½ years prior to the occurrence in question, Amar Singh had given beatings to his wife Baljit Kaur relating to which a criminal case was registered against Amar Singh for causing injuries to Baljit Kaur. However, at a later stage, compromise was effected between Baljit Kaur and Amar Singh and consequently, Amar Singh was acquitted by the trial Court. Ex.PK is copy of the FIR lodged by Ajaib Singh vis-a-vis injuries caused to Baljit Kaur by Amar Singh. Even, Amar Singh, in his statement under Section 313 Cr.P.C. had admitted that he suspected his wife to be having illicit relations with Baldev Singh deceased and on that fateful night, after visiting the house of his sister, when he returned, he found Baldev Singh and Baljit Kaur to be in a compromising position and he lost control and caused injuries to Baldev Singh with the *dang* having sua. Thus, his involvement in the murder of Baldev Singh, as such, is admitted by Amar Singh, though, he had taken the plea of having lost control and then having caused injuries to Baldev Singh. But however, there is no necessity to dilate further on this assertion, as Amar Singh has not come in appeal qua his conviction.

So far as, present appellant Balwinder Singh @ Binder Singh is

concerned, it is pertinent to mention that Hakam Singh complainant and his

son Sukhdev Singh, who was accompanying him, while he had gone to the house of Amar Singh, have given a vivid description of the manner of occurrence caused by Balwinder Singh @ Binder Singh and his companions. They have specifically deposed about the manner of Balwinder Singh @ Binder Singh having caused injuries with screw driver on the person of Baldev Singh, as a result whereof, he was done to death. Amar Singh had also caused injuries, which fact is admitted by Amar Singh in his statement under Section 313 Cr.P.C.

The ocular version, so coming forth, also finds corroboration from the medical evidence, brought on record, as already detailed aforesaid. PW-3 Dr.Ashok Kumar Singla had conducted post-mortem examination on the dead body of Baldev Singh on 20.10.1997. As many as 16 injuries were caused on the person of Baldev Singh. Injury No.12 is three stab wounds punctured and injury No.15 is two stab punctured wounds skin deep. Dr.Ashok Kumar Singla, has categorically stated in his examination-in-chief that injuries No.12 and 15 can be caused by screw driver, if caused thrust-wise. It is pertinent to mention that even the complainant, in his statement, which forms the basis of the present case, has categorically stated about the screw driver to have been used thrust-wise to inflict injuries. Thus, keeping in view the nature of the injuries, more particularly, injuries No.12 and 15, which are attributed to Balwinder Singh @ Binder Singh, corroborates the ocular version of the manner of inflicting of injuries to Baldev Singh. Besides the same, even additional credence is lent to the version of the prosecution, on the basis of the recovery of the screw driver, having effected at the instance of Balwinder Singh @ Binder Singh, in pursuance

interrogation, which stands duly proved from the testimonies of Investigating Officer PW-10 DSP Joginder Singh and PW-9 ASI Ram Singh, who was accompanying the Investigating Officer, at the relevant time, who had attested the documents relating to the said disclosure statement and the recovery memo.

Besides the aforesaid, it is also pertinent to mention that occurrence had taken place at about midnight and soon thereafter, the FIR was lodged at 4.00 a.m. Thus, the same was lodged with promptitude, which rules out, weaving of a false story with deliberations and consultations. Even, the police had reached the spot at 6.00-6.30 a.m. The prompt action, so taken, also rules out the false implication of the present appellant, as now asserted.

Considering the evidence in entirety, learned trial Court has rightly reached the conclusion that the prosecution has successfully established the guilt of the appellant, beyond shadow of doubt. As such, the impugned judgment merits no interference.

As such, appeal sans merit and the same is hereby dismissed.

Accused-appellant namely Balwinder Singh @ Binder Singh, is stated to be on bail. A copy of the judgment be sent to concerned Chief Judicial Magistrate, to get the accused-appellant re-arrested, so as to serve the remaining part of the sentence.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

February 10, 2020
Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No