

CRA-D-399-DB-2006(O&M) and connected matter

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

CRA-D-399-DB-2006 (O&M)
Reserved on : February 25, 2020
Date of Decision: October 01, 2020

Kashmir Singh and others ...Appellants

Versus

State of Punjab ...Respondent

AND

2. **CRA-D-966-DBA-2006 (O&M)**

State of Punjab ...Appellant

Versus

Gurdev Singh and another ...Respondents

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

Present: Mr. Jagjit Singh Bedi, Senior Advocate with
Mr.Sonpreet Singh Brar, Advocate for the appellants.

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

HARINDER SINGH SIDHU, J.

Since common questions of law and facts are involved in the aforesaid cases these are taken up together and disposed of by a common judgment.

2. Criminal Appeal No.CRA-D-399-DB-2006 has been filed by the appellants against their conviction and sentence vide judgment and order dated

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17.05.2006 of the learned Additional Sessions Judge, Ferozepur in Sessions case No.52 of 2001, whereby they were charged with and tried for offences punishable under Sections 302/148/149 of the Indian Penal Code (in short 'IPC') and Sections 25 and 27 of the Arms Act along with Gurdev Singh and Gurprit Singh. The appellants were convicted and sentenced as under:-

Name of Convict-Appellant	Sentence
Kashmir Singh and Jarnail Singh	To undergo imprisonment for life and to pay a fine of Rs.10,000/-, each, and on default of payment of fine to further undergo rigorous imprisonment for three months, each, under Section 302 IPC.
Angrej Singh	To undergo imprisonment for life and to pay a fine of Rs.10,000/-, and on default of payment of fine to further undergo rigorous imprisonment for three months, under Section 302 read with Section 34 IPC.
Kashmir Singh	To undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, and on default of payment of fine to further undergo rigorous imprisonment for one month under Section 27 of the Arms Act.

The sentences of Kashmir Singh were ordered to run concurrently. Gurdev Singh and Gurprit Singh were acquitted.

3. Criminal Appeal No.CRA-D-966-DBA-2006 has been filed by the State of Punjab challenging the acquittal of Gurdev Singh and Gurprit Singh. Vide order dated 07.12.2006 the application bearing No.CRM-618-MA-2006 was allowed and leave to appeal was granted.

4. Cross-version in the FIR was also recorded and the accused therein were tried. However, they were acquitted vide separate judgment of the same date.

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5. The case of the prosecution in a nutshell was that a resolution was passed on 05.08.2000 by the Gram Panchayat of village Nawan Purba for having access to the house of Labha Ram. Jasbir Singh complainant was Sarpanch. This resolution was passed under his signatures. Jarnail Singh etc, the accused party was against carving out of this passage to the house of Labha Ram and resisted the same by closing the passage. As per the statement Ex. P 5 of the complainant -Jasbir Singh Sarpanch recorded by ASI Balkar Singh on the day of occurrence i.e., 07.10.2000 at 4.00 PM Jasbir Singh complainant and his younger brothers Punjab Singh and Jasbir Singh, Sukhchain Singh (since deceased) and Malak Dev were sitting in his house and were engaged in conversation. Accused Kashmir Singh armed with .315 bore rifle, Jarnail Singh Ex. Sarpanch armed with .12 bore gun, Gurpreet Singh, Angrej Singh and Gurdev Singh all armed with sotas came on the road in front of the street near the house of complainant Jasbir Singh. Angrej Singh raised a lalkara that Jasbir Singh Sarpanch should be allowed to escape and he be done to death. The complainant party then came out of the house into the street. Kashmir Singh fired a shot with his .315 bore rifle with the intention to kill Jasbir Singh which hit Sukhchain Singh in the abdomen. Jarnail Singh also fired gun shot which hit chest of Sukhchain Singh. Sukhchain Singh fell down. Kashmir Singh fired yet another shot from his weapon on the chest of Sukhchain Singh. Then Malak Dev fired a shot with his .12 bore gun in self defence to save the complainant party and Sukhchain Singh. On raising of hue and cry the accused party fled away with their respective weapons. Sukhchain Singh was admitted in the Frances Newton Hospital, Ferozepur Cantt. Information was given to the SHO of P.S Saddar Ferozepur. ASI Balkar Singh

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then visited the hospital and recorded the statement of Jasbir Singh-Sarpanch and FIR u/s 307/148/149 IPC & 25/27 of Arms Act was registered against the accused party. Sukhchain Singh expired at 8 pm due to fire arm injuries and vide rapat No.50 dated 08.10.2000 the offence under Section 302 IPC was incorporated.

6. Investigation in the case was commenced. ASI Balkar Singh visited the place of occurrence. He lifted blood stained earth and plain soil from there. Brick bats lying there along with two spent cartridges were taken into possession from the site. Accused Jarnail Singh was arrested on 06.11.2000. Kashmir Singh was arrested on 14.10.2000. On interrogation Kashmir Singh suffered disclosure statement pursuant where to he got recovered .315 rifle. The other accused were also arrested. During the course of investigation cross version was got recorded by accused Kashmir Singh on 09.10.2000 when he was lying admitted in Dayanand Medical College & Hospital, Ludhiana. Upon this separate challan was filed against the complainant party which was disposed of vide separate judgment.

7. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. They pleaded false implication. Accused Gurdev Singh and Angrej Singh stated that they have been involved being brothers of Jarnail Singh Ex.Sarpanch.

8. Accused Kashmir Singh stated that Jarnail Singh Ex. Sarpanch was brother of his wife. On 07.10.2000, he (Kashmir Singh) along with Jarnail Singh was from the house of Jarnail Singh to his house. At about 4.30 p.m when he and Jarnail Singh reached near the house of Amar Singh Retired Superintendent of DIG office, Jasbir Singh armed with kirpan, Punjab Singh armed with Takua, Jagbir Singh armed with Sota, Sukhchain Singh armed with dang, Malak Dev

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armed with .12 bore gun, Nachhatar Singh armed with kirpan and Pritam Singh armed with gandasi attacked them. On hearing alarm his son Gurprit Singh came to the spot. Then Malakdev fired a shot which hit Gurprit Singh. Then he (Kashmir Singh) went running to his house which was nearby and brought his rifle. Jasbir Singh snatched the gun from Malakdev and fired shot which hit him (Kashmir Singh). He (Kashmir Singh) fired in self defence. Complainant Jasbir Singh and others attacked them as he being Sarpanch gave passage of Labha Ram from the School to which Jarnail Singh Ex. Sarpanch objected and filed applications to the BDPO on 19.08.2000 and 21.08.2000 and the passage was closed by the B.D.P.O vide order dated 01.09.2000. Accused Gurprit Singh stated that on 07.10.2000 at about 4.30 PM, he was standing in front of his house on the road. He heard alarm from near the house of Amar Singh. He went running there and saw Jasbir Singh armed with Kirpan, Punjab Singh armed with Takua, Jagbir Singh armed with Sota, Sukhchain Singh armed with Dang, Malakdev armed with .12 bore gun, Nachhatar Singh armed with Kirpan and Pritam Singh armed with gandasi. They attacked Kashmir Singh (his father) and Jarnail Singh (his maternal uncle). Then Malakdev fired a shot which hit him. His father went running to their house which was nearby and brought his rifle. Then Jasbir Singh snatched the gun from Malakdev and fired shot which hit his father. His father Kashmir Singh fired in self defence. Complainant Jasbir Singh etc attacked them as he being Sarpanch had given passage to Labha Ram from the School to which Jarnail Singh, Ex-Sarpanch objected and filed applications to B.D.P.O on 19.08.2000 and 21.08.2000. That passage was closed by the B.D.P.O vide order dated 01.09.2000.

9. Accused Jarnail Singh took somewhat similar stand and stated that

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Kashmir Singh is his sister's husband. On 07.10.2000 he along with Kashmir Singh was coming from his house to the house of Kashmir Singh. At about 4.30 p.m, when they reached near the residence of Amar Singh retired Superintendent of DIG Office, Jasbir Singh armed with Kirpan, Punjab Singh armed with Takua, Jagir Singh armed with Sota, Sukhchain Singh armed with Dang, Malakdev armed with .12 bore gun, Nachhatar Singh armed with Kirpan and Pritam Singh armed with gandasi attacked them. On hearing alarm Gurprit Singh came to the spot. Then Malakdev fired a shot which hit Gurprit Singh. Kashmir Singh went running to his house which was situated nearby and brought his 315 bore gun. Then Jasbir Singh snatched gun from Malakdev and fired a shot which hit Kashmir Singh. Kashmir Singh fired in self defence. The complainant Jasbir Singh etc attacked them as he being Sarpanch had given passage to Labha Ram from the School to which he himself objected and filed application to BDPO and that passage was blocked by BDPO vide order dated 01.09.2000. In defence, the accused examined Dr. M.S. Tinna as DW 1 and Dr. Subhash Goyal as DW 2.

10. We have heard learned counsel for the parties and have gone through the judgment and record.

11. PW1- Dr. R.K Singal, Medical Officer, Civil Hospital, Ferozepur deposed that on 08.10.2000, he conducted post-mortem examination on the dead body of Sukhchain Singh. The body was brought from Mission Hospital, Ferozepur. The post-mortem examination was conducted at 2.45 p.m on 08.10.2000. Rigor mortis was fully developed. P.M staining was present on the back and was fixed. There was no mark or ligature on the neck. Following injuries were present on the body:

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“1. 22 cm long vertical stitched incised wound with 12 stitches in front and middle of anterior abdominal wall.

2. 1.5 cm x 0.5 cm lacerated punctured wound anteriorly on left side of chest in midclavicular line, 11 cm from left nipple. The margins of the wound were inverted. Blackening of the margins was present.

On dissection, there was small haematoma in subcutaneous tissues and the track led downwards and inwards into the abdominal cavity after perforating the stomach.

3. 1.5 cm x 0.5 cm lacerated punctured wound anteriorly on left side of chest, 0.5 cm below the second wound. The margins of the wound were inverted. Blackening of the margins was present.

On Dissection, there was small haematoma in subcutaneous tissues and the track led downwards and inwards into abdominal after perforating the stomach.

4. 3.5 x 2 cm irregularly shaped a lacerated wound with everted margins present on the back at the level of L-1 vertebra, 3 cm from midline on the left side. The wound was indirect communication with abdominal cavity.

On dissection and probing, the track of the wound passed through posterior abdominal wall left kidney, abdominal cavity and extended towards injury No.1 in anterior abdominal wall.

5. 3.5 cm x 1 cm lacerated wound irregularly shaped wound in left sacral region, 2 cm from natal left. Blackening was present all around the wound. The margins of the wound were inverted.

On dissection- the track of the wound led to sacrum which was fractured and then downwards in gluteal muscles for short distance from where two metallic pieces were recovered. The metallic pieces scaled in a glass vial and were handed over to the police.

On opening the abdominal cavity, it was full of blood. Big perforation were present in stomach. Stitches were present at one side (site). Intestines were

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repaired and sutured at many places. Left kidney was extensively lacerated and ruptured. All other organs were healthy. Bladder was healthy and empty.

12. In his opinion the cause of death in this case was haemorrhage and shock due to fire-arm injuries. All the injuries were ante-mortem in nature.

13. He handed over to the police (1) well re-sutured body after conducting the post mortem examination, (2) carbon copy of post mortem report, (3) original police papers No.1 to 28 duly initiated by him (4) one glass vial containing two metallic pieces recovered from the body properly sealed with two seals.

14. The time between the death and post-mortem examination was within twenty four hours.

15. PW2- Jasbir Singh deposed that on 07.10.2002 at about 4 pm, he himself and his younger brother Panjab Singh, Jagjit Singh and their uncle Sukhchain Singh and Malakdev Singh were sitting in the house and were talking to each other. From outside they heard the lalkara of Angrej Singh that Jasbir Singh Sarpanch was not to be left alive. When they came out, they saw that Jarnail Singh armed with .12 bore gun, Kashmir Singh armed with .315 bore gun, Sukhdev Singh, Angrej Singh and Gurprit Singh armed with sota were present there. Kashmir Singh fired a shot from the gun towards them which hit Sukhchain Singh below his navel. Jarnail Singh fired a shot from his gun which hit left side of chest of Sukhchain Singh as a result of which he fell down. Kashmir Singh after covering a distance of 1-1/2 karam again fired a shot from his gun which hit left side of the hip joint of Sukhchain Singh. Alarm was raised which attracted the other persons to the spot. Malakdev in order to save them fired from his .12 bore

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gun which hit Kashmir Singh and Gurpreet Singh. Thereafter the accused escaped from the spot. After arranging for a conveyance they took Kashmir Singh to Mission Hospital, Ferozepur Cantt. At about 7.30 p.m, he was going to the police station when the police party met him near Amar Hospital. He got recorded his statement Ex.P5.

16. At that time he was Sarpanch of the village. A resolution was passed vide which the passage was left for Labu Ram as there was no passage to his home. That passage was got closed by the accused. He had been pursuing case for opening of the passage. Passage was also left for going to dharam-shala which was shorter one. On the same day Sukhchain Singh died in Mission Hospital at 9.30 p.m.

17. PW3-Punjab Singh deposed that about two years back at about 4.00 pm he himself, his brother Jasbir Singh, Jagbir Singh, Sukhchain Singh and Malak Dev Singh were sitting in the house of Jasbir Singh. They heard the voice of Angrej Singh, who raised a lalkara that “not to be spared and be killed”. They came out on the street. Jarnail Singh armed with a .12 bore gun, Kashmir Singh armed with .315 bore rifle, Angrej Singh, Gurdev Singh and Gurpreet Singh armed with Sota were present there. Kashmir Singh fired a shot from his rifle towards them which hit near the navel of Sukhchain Singh. Then Jarnail Singh fired from his gun and that shot hit left side of the chest of Sukhchain Singh as a result of which he fell down. Kashmir Singh fired another shot which hit Sukhchain Singh on the left side of his hip joint. Malak Dev Singh fired a shot from his gun to save the complainant party from the accused. The pellets of that shot hit Kashmir Singh and Jasbir Singh. On alarm being raised and the accused ran away. Sukhchain

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Singh was taken to Mission Hospital on a motor car. He died at about 10.00 p.m. in the hospital. His statement was recorded by the police on the next day at the spot itself. He had shown the place of occurrence to the police.

18. PW4-Nishan Singh Constable, Traffic Staff Cantt, Ferozepur deposed that on 13.11.2000, he was posted in P.S. Sadar Ferozepur. On that day, Joginder Singh, MHC gave to him three sealed parcels for depositing the same in FSL Punjab, Chandigarh. On 14.11.2000, he took those parcels to FSL and deposited the same at that place with seal intact. During the period those parcel remained in his possession, he did not tamper with the contents thereof nor allowed any one to do so.

19. PW5- Mukhtiar Singh, ASI, P.S Mamdot deposed that on 07.10.2000 he was posted in P.S Sadar Ferozepur. That day he along with ASI Balkar Singh and other police officials were passing over the railway over bridge. Jasbir Singh Sarpanch met them on that bridge. He made his statement before ASI Balkar Singh. Then the police party went to Mission Hospital, Ferozepur where dead body of Sukhchain Singh was lying. ASI prepared the inquest report in respect of the dead body. The doctor produced before ASI Balkar Singh the wearing apparel found on the dead body and a sealed bottle containing the bullet. The doctor handed over to him one sealed bottle. On 08.10.2000, he produced two bottles duly sealed and the wearing apparels of deceased before ASI Balkar Singh which he took into possession vide memo Ex.P6.

20. On 15.10.2000 ASI Balkar Singh interrogated Kashmir Singh in his presence. On interrogation that accused made disclosure statement Ex.P7 that he had kept concealed one rifle of .315 bore in the iron box meant for clothes lying in

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his house pursuant where to he got recovered rifle of .315 bore and five live cartridges and his arm licence from the iron box which were taken into possession vide memo Ex.P8. The arms licence was Ex.P9.

21. PW6- Balbir Singh Patwari Halqa Malwal deposed that on 12.12.2000 he went to the place of occurrence. On the pointing out of ASI Balkar Singh and PW Punjab Singh he prepared the scaled map of that place Ex.P10.

22. PW7- ASI Balkar Singh deposed that on 07.10.2000, he was posted in Police Station Sadar Ferozepur. On that day, he himself, HC Mukhtiar Singh and other police officials had gone to Railway Station Feerozepur Cantt. In Mission Hospital Jasbir Singh Sarpanch met them. He got recorded his statement Ex.P5. He made his endorsement Ex.P5/A and sent the same to the Police Station on the basis of which FIR Ex.P5/B FIR was registered. In the hospital the doctor informed him that Sukhchain Singh had already died. He prepared inquest report Ex.P4 in respect of the dead body of Sukhchain Singh. He sent the dead body for post mortem examination. Then he went to the spot and after inspecting the same, prepared the rough site plan Ex.P11. He recorded the statements of the witnesses. He collected the blood stained earth and the ordinary earth from the spot and put the same in separate plastic boxes which were converted into parcels which were taken into possession vide memo Ex.P12. He collected the brick bats from the spot and took them into possession vide memo Ex.P13. He also collected two spent cartridges from the spot which were converted into a parcel and taken into possession vide recovery memo Ex.P14. The parcel containing those cartridges was MO 1. The cartridges were of .315 MM.

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23. On 09.10.2000, he went to DMC Ludhiana and recorded the statement of Kashmir Singh accused.

24. On 06.11.2000 he arrested Jarnail Singh accused. On 14.11.2000 he arrested Kashmir Singh accused who had surrendered. Same day Kashmir Singh made disclosure statement before him that he had kept concealed his rifle in his house. Kashmir Singh got recovered his .315 rifle from the box meant for the clothes lying in his house. The same was taken into possession vide memo Ex.P8. The sealed parcel containing the rifle was MO2. He also took into possession the Arms Licence Ex.P15. He arrested the other accused. He deposited the case property in the police station to the MHC. After completion of investigation, the accused were challaned by SHO Balbir Singh SHO whose signatures he identified. On the request of the Addl.P.P the witness was declared turned and allowed to be cross examined by the Add. PP.

25. In cross examination by the Ld. Add. PP he admitted that on 15.10.2000 he had interrogated Kashmir Singh and he made disclosure statement Ex.P 7. Pursuant to that disclosure statement he got recovered the rifle on 15.10.2000. He admitted that on 08.10.2000 HC Mukhtiar Singh produced before him two sealed bottles containing bullets and wearing apparel of the deceased which he took into possession vide memo Ex. P 6.

26. PW8 HC Joginder Singh tendered in evidence his affidavit Ex.P17 in which he deposed regarding deposit of the case property with him as MHC and further regarding the sending the case property for deposit with the FSL Chandigarh which was duly deposited there.

27. PW9-Dr. Cecil, Resident, General Surgery, CMC Ludhiana deposed

that on 07.10.2000, he was posted as House Surgeon in Mission Hospital, Ferozepur. He brought the Bed Head Ticket of Sukhchain Singh. He had sent written intimation Ex.P18 to the Officer Incharge of Police Station regarding admission of the patient to the hospital. He medico-legally examined this patient and found the following injuries on his person:

“1) Entry wound 11 cm below left nipple in the mid clavicular a milimeter in size;

2) Entry wound 1 cm below the first found.

3. 2.5 cm wound below the umbilicus in the midline.

4) 3.5 cm wound in the back, 3 cm from the mid line on the left side.

5. 3 x 2 cm the right sacral region 2 cm from mid line.

Operative findings: 1. large amount of blood in the paritoneal cavity. 2. Faecal contamination due to multiple rupture of intestines. 3. Intestines were ruptured at eight places. 4. Three areas in intestines had loss of segments of intestine. 5. Rupture of the stomach, 6. Extensive retro peritoneal haemorrhage on left side. 7. Shattered left kidney with uncontrolled bleeding. 8. One piece of metalic foreign body in the peritoneal cavity.”

He proved the carbon copy of the M.L.R Ex.P19. The pictorial diagram showing the seat of injuries was Ex.P19/A. The injuries found on person of patient were result of fire arm. The probable duration of injuries was thirty minutes. He expired on the same day at 7.30 p.m. About that he had sent written intimation Ex.P20 to the police.

28. As per FSL Report Ex. P 22:

“1. Two 8 m.m. K.F. Cartridge cases marked C/1 and C/2 contained in parcel 'A' have been fired from .315 inch bolt action rifle No. AB-

000834

2.No definite opinion can be given regarding firing of small pieces of jacket marked B/1 to B/3 contained in parcels marked 'B' and 'C' from .315 inch rifle No. AB- 000843 due to lack of sufficient individual characteristic marks."

29. DW1-Dr.M.S Tinna, SMO Incharge PHC Ferozeshah deposed that on 07.10.2000, he was posted as Medical Officer in Civil Hospital, Ferozepur. On that day at 6.45 p.m, he medico-legally examined Kashmir Singh. He found the following injuries on his person:

"1. 0.25 x 0.25 cm lacerated punctured wound on left side of to face 2 cm away from the outer angle of eye. Fresh bleeding was present. It was boned deep with inverted margins. Injury was kept under observation for x-ray.

2. 0.25 cm x 0.25 cm lacerated punctured wound on right cheek bone deep with fresh bleeding. Wound was 1.5 cm below the outer angle of right eye with inverted margins. Injury was kept under observation for x-ray.

3. 0.25 cm x 0.25 cm lacerated punctured wound on the right lower border of the mandible 5 cm in front of angle of mandible with inverted margins and fresh bleeding was present. The injury was kept under observation for x-ray.

4. Lacerated wound 1.5 cm x 0.25 cm on superficial skin deep only on right side of face 3 cm below the right angle of the mouth. Fresh bleeding was present. Injury was kept under observation.

Patient was conscious. B.P was 130/80 MMHG. Pulse was 86 per minute, Pupils were equal on both sides and were reacting to light. Probable duration of the injuries was within six hours. Kind of weapon was under observation."

He proved the photostat copy of the MLR Ex.D3 and the pictorial diagram

showing seat of injuries Ex.D4.

30. On the same day at 7.30 p.m, he medico-legally examined Gurprit Singh s/o Kashmir Singh aged 18 years. The patient came in the hospital at 6.45 p.m alongwith his father Kashmir Singh. He found the following injuries on his person.

“1. Lacerated punctured wound 0.3 x 0.25 cm on outer front middle right forearm. Fresh bleeding was present. Injury was kept under observation for x-ray.

2. Lacerated punctured wound 0.25 x 0.25 cm on the right side of forehead just above the right eye brow with inverted margins and fresh bleeding was present. The injury was kept under observation for x-ray.

The patient was conscious. B.P was 110/70 MMHG. Pulse was 90 per minute. Pupils were equal on both sides and were reacting to light. Injuries were caused within a probable duration of six hours. Kind of weapon was kept observation.”

He proved the photostat copy of the MLR Ex.D5 and the pictorial diagram showing the seat of injuries Ex.D6.

31. DW2 Dr. Subhash Goyal, Professor of Surgery, DMC Ludhiana brought the indoor patient admission record pertaining to Kashmir Singh and Gurprit Singh. Kashmir Singh was admitted in D.M.C hospital on 08.10.2000 at 10.28 p.m. He was brought by Daljit Singh. On 09.10.2000, he operated exploration of the gun shot bone under local anaesthesia. A single pellet was removed from the lateral side of left eye. All other wounds were sutured wherever they were required. The correct photostat copy of the report was Ex.D4. This patient was discharged from hospital on 11.10.2000.

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32. Gurprit Singh patient was admitted in hospital on 08.10.2000. He was brought by Daljit Singh. He operated upon him for exploration of gun shot wound and extraction of pellets under local anaesthesia. Single pellet was removed from the wound near the right eye. He proved the photostat copy of the operation notes Ex.D5. He was discharged on 11.10.2000.

33. Ld. counsel for the appellants has argued that it is a case of version and cross-version. It was a free fight in which both the sides suffered injuries. The complainant party was the aggressor in this case and the accused had acted in the exercise of the right of self defence. It is further argued that the prosecution has not been able to explain as to how the alleged eye-witnesses were present at the house of the complainant. In fact, their very presence at the house of the complainant demonstrates that the complainant party was ready and prepared to attack the accused. It was further argued that there is unexplained delay in registration of the case, which creates doubt about the prosecution version. The injuries on the person of the accused, namely Kashmir Singh and Gurpreet Singh have not been explained by the prosecution. It is further contended that the oral version of the prosecution is contrary to the FSL report.

34. We have considered the aforesaid arguments and find no force in the same.

35. Regarding the contention of the Ld. counsel that it was a case of version and cross-version, and that the complainant party was the aggressor which led to a free fight and the accused had acted only in self-defence, it needs to be noted that no evidence has been produced by the accused to show that the complainant party was the aggressor. No witness was examined to prove that it

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was the complainant party which opened the attack. The version of the accused has come only on 09.10.2000. To the contrary, the prosecution version, which is credible and fully substantiated had been lodged immediately after the incident . It clearly establishes that the accused were the aggressors.

36. In the present case, the occurrence is alleged to have taken place on 07.10.2000 at 4.00 PM. The FIR was lodged the same day at 8.16 PM. The Special Report reached the Ilaqa Magistrate the next day at 7.00 AM. In this case the complainant party suffered gun-shot injuries. The injured Sukhchain Singh was taken to Frances Newton Hospital, Ferozepur Cantt. From there information was sent by the doctor to the concerned Police Station Sadar Ferozepur, whereupon, PW7 ASI Balkar Singh went to the Hospital and recorded the statement Ex.P5 of Jasbir Singh. On the basis thereof, formal FIR was registered under Sections 307, 148 and 149 IPC and Sections 25 and 27 of the Arms Act. Sukhchain Singh died at about 8.00 PM, whereupon, a separate DDR No.40 dated 08.10.2020 was recorded and offence under Section 302 IPC was added. In these circumstances, it cannot be said that there is an unexplained delay in lodging the FIR.

37. No doubt, no credible explanation had been given by the prosecution as to the injuries suffered by the accused, however, it is well settled that merely for non-explanation of the injuries suffered by the accused, the evidence of the prosecution witnesses cannot be rejected. Hon'ble Supreme Court has held it is not as a matter of law or invariably that whenever the accused sustained an injury in the same occurrence the prosecution is obliged to explain the injury and on such failure the prosecution case should be disbelieved. Such a burden can be placed on the prosecution only if the injuries sustained by the accused are serious.

38. In **Gurwinder Singh v. State of Punjab, (2018) 16 SCC 525**

Hon'ble Supreme Court observed as under:

“10. The contention of the appellants is that the prosecution has not explained the injuries on the person of the accused and only the complainant party attacked the accused and the complainant party are the aggressors. In his statement, Sukhwinder Singh has stated that he attacked on the head of Satnam Singh and caused injury to him. Arguments advanced on behalf of the appellants are that the complainant party were the aggressors and that the prosecution failed to explain the injuries on the persons of the accused and therefore, the case of the prosecution should be disbelieved.

11. It cannot be held as an invariable proposition that as soon as the accused received the injuries in the same transaction, the complainant party were the aggressors—it cannot be held as a rule that the prosecution is obliged to explain the injuries and on failure of the same, the prosecution case should be disbelieved. It is well settled that before placing the burden on the prosecution to explain the injuries on the person of the accused, two conditions are to be satisfied:

(i) the injuries were sustained by the accused in the same transaction; and

(ii) the injuries sustained by the accused are serious in nature.

12. This Court considered the effect of non-explanation of injuries sustained by the accused person in Takhaji Hiraji v. Kubersing Chamansing and held as under: (SCC p. 154, para 17)

“17. The first question which arises for consideration is what is the effect of non-explanation of injuries sustained by the accused persons. In Rajender Singh v. State of Bihar, Ram Sunder Yadav v. State of Bihar and Vijayee Singh v. State of U.P., all three-Judge Bench decisions, the view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury

in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case.”
(emphasis supplied)

13. *In the present case, the incident had taken place near the tubewell where both the parties assembled to settle the land dispute. When there was exchange of words, there was a scuffle between both the parties. In the same transaction where Harbhajan Singh was attacked, the accused party also sustained injuries. Apart from the stray statement made by the complainant Sukhwinder Singh in the FIR, the prosecution has not offered any explanation for the injuries sustained by the accused. Since both the accused sustained injuries in the incident, non-explanation of injuries sustained by the accused assumes significance. Having regard to the injuries sustained by the accused, the trial court and the High Court ought to have made an effort in searching out the genesis of the occurrence.”*

To the same effect are the observations in **Dashrath v. State of Chhattisgarh, (2018) 4 SCC 428** :

“8. The next contention urged by the learned counsel is that the prosecution has not chosen to explain the injuries on the person of the appellants and this is fatal to the case of the prosecution. It cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so, the prosecution case should be disbelieved. Before holding that non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions:

(i) that the injury on the person of the accused was of a serious nature; and

(ii) that such injuries must have been caused at the time of the occurrence in question. (Vide Takhaji Hiraji v. Thakore Kubersing Chamansing, SCC p. 154, para 17.)

9. By going through the judgment of the trial court as well as the High Court, it is seen that the injuries sustained by the appellants were simple in nature and while so it was not incumbent upon the prosecution to explain those injuries. It is also relevant to note the answers elicited from the doctors that those injuries found on the accused could be self-inflicted.”

39. In the present case, neither DW1 Dr M. S. Tinna who medico-legally examined accused Kashmir Singh and Gurprit Singh at Civil Hospital, Ferozepur nor DW2 Dr. Subhash Goyal who treated them at DMC & Hospital, Ludhiana have given any specific opinion regarding the nature of injuries (simple or grievous) suffered by the accused nor about the weapon by which the same were

caused. In these circumstances, non-explanation of the injuries of the accused would not be fatal to the prosecution.

40. The case of the prosecution is fully supported by PW2 Jasbir Singh and PW3 Punjab Singh. Both have deposed about the incident that on the day of the incident, Angrej Singh raised *lalkara* that Jasbir Singh Sarpanch should not be spared. Thereupon, accused Kashmir Singh and Jarnail Singh fired shots from their gun and rifle, which hit the body of deceased Sukhchain Singh, as a result of which he died in the Hospital. The ocular version finds support from the medical evidence. PW9 Dr. Cecil has proved the medico-legal report Ex.P19. PW1 Dr.R.K.Singal, who conducted the postmortem proved his report Ex.P1. As per him, the deceased in this case died due to shock and hemorrhage due to fire arm injuries which were sufficient to cause death in the ordinary course of nature.

41. In the face of this clear and credible evidence the non-examination of Jasbir Singh and Malak Dev, who were also allegedly present with the complainant party at the time of the incident, no adverse inference can be drawn against the prosecution.

42. Ld. counsel for the accused argued that as per the prosecution, two empties were recovered from the place of occurrence, which were taken into possession vide Memo Ex.P14. Cartridge cases along with the rifle of the accused, metal piece of jacket of bullet, two small pieces of jacket of bullet were sent to the FSL and as per the FSL report Ex.P2, no definite opinion could be given regarding firing of the same from the rifle recovered on the disclosure statement of accused Kashmir Singh. It is argued that this falsifies the version of the prosecution. There is no merit in this argument. In the FSL report, it has been clearly stated

“Two 8 m.m. K.F. Cartridge cases marked C/1 and C/2 contained in parcel ‘A’ have been fired from .315 inch bolt action rifle No. AB-000834”.

43. It has come in the evidence of PW 7 ASI Mukhtiar Singh that the said rifle was recovered pursuant to the disclosure statement of accused Kashmir Singh. In fact, the Arms licence Ex.P9 for the said rifle was also got recovered by Kashmir Singh at the same time.

44. In this case as per both PW2 Jasbir Singh and PW3 Punjab Singh, the shots at Sukhchain Singh (deceased) were fired by Kashmir Singh and Jarnail Singh. Like Gurpreet Singh and Gurdev Singh, Angrej Singh was alleged to be armed with sotas. The only aggravating circumstance in his case is that he is alleged to have raised a lalkara that Jasbir Singh be not spared. He is not alleged to have inflicted any injury to the deceased or any other person from the complainant party. He, Gurdev Singh and Jarnail Singh are brothers. They are sons of Mangal Singh son of Wadhwa Singh.

45. It is well settled that evidence of exhortation/lalkara is in the very nature of things a weak piece of evidence. There is often a tendency to implicate some person in addition to the actual assailant by attributing to to him a lalkara.

46. A Division Bench of this Court in **State of Punjab v. Darshan Singh (1992) 3 RCR (Cri) 381**, referred to various decisions on this point:

“In Fatta v. Emperor, AIR 1931 Lahore 63, it was observed:—

“When the prosecution are unable to prove satisfactorily the intention or knowledge of an accused person they generally ascribe to him certain words which he is supposed to have spoken in order to supply the missing proof. This method is more often adopted in cases in which certain person is sought to be punished for constructive liability as regards the

commission of crime of violence. It is highly unlikely that the accused would be so foolish as to proclaim his intentions before committing the attack, as by doing so he was sure to be thwarted by the persons present.”

7. In *Garib Singh v. State of Punjab*, (1972) 3 SCC 418 : AIR 1973 Supreme Court 460, it was observed:—

“Allegations of participation by giving lalkaras are sometime; made only to show additional overt acts so as to take in at least five persons and make out the ingredients of an offence under Section 147 IPC against all of them”

8. In *Amar Singh v. State of Haryana*, (1974) 3 SCC 81 : AIR 1973 Supreme Court 2221, it was observed:—

“If the appellant had shouted lalkaras it would be difficult to sustain the conviction.”

9. In *Jainul Haque v. State of Bihar*, (1974) 3 SCC 543 : AIR 1974 Supreme Court 45, it was observed:—

“The evidence of exhortation is in the very nature of things a weak piece of evidence. There is quite often a tendency to implicate some person in addition to the actual assailant by attributing to that person an exhortation to the assailant to assault the victim.”

47. Thus, the case is not proved against Angrej Singh. His false implication cannot be ruled out. Accordingly, Angrej Singh is acquitted giving him the benefit of doubt.

48. However, as regards accused Kashmir Singh and Jarnail Singh, as their guilt has been proved beyond reasonable doubt, their conviction and sentence are maintained.

49. As regards accused Gurdev Singh and Gurprit Singh, it was noted by

the Trial Court that at the time of the occurrence, they were alleged to be armed with *sotas*. No injury has been attributed to them nor has any weapon been recovered at their instance. Merely because of their presence at the time of the occurrence, it cannot be said that they shared common intention with the accused to cause death of Sukhchain Singh. In these circumstances, the Trial court held that the involvement of these two accused in the crime was not proved. They were acquitted giving them benefit of doubt. There is no reason to interfere with the well reasoned findings of the Ld. Trial Court.

50. Thus, the appeal (CRA-D-399-DB-2006) qua Angrej Singh is allowed. He is acquitted of the charges framed against him. His sentence has already been suspended. His bail bonds and surety bonds stand discharged.

51. The appeal qua Kashmir Singh and Jarnail Singh is dismissed. Their conviction and sentence is maintained. They are on bail. They be taken into custody to undergo remaining part of their sentence.

52. Criminal Appeal No.D-966-DBA of 2006 is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

October 01, 2020
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No