

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

CRA-239-DB-2010 (O&M)
Reserved on : March 12, 2020
Date of Decision: September 03, 2020

Manjit and another

...Appellants

Versus

State of Punjab

...Respondent

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

Present: Mr. Ranjit Singh Ghuman, Advocate for the appellants.
Mr. H.S.Grewal, Addl. AG, Punjab.

HARINDER SINGH SIDHU, J.

1. This appeal is instituted against the judgment and order dated 28.01.2010 passed by the Additional Sessions Judge (Adhoc), Fast Track Court, Hoshiarpur in Sessions Case No.RBT 27/2008 whereby the appellants (Manjit Singh and Baljit Kaur), who were charged with and tried for offence punishable under Sections 302, 325, 324, 323, 506 read with 34 of the Indian Penal Code, have been convicted and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.10,000/- each and in default of payment of fine to further undergo RI for a period of three months, each.

2. Challan was also filed against Pritam Kaur and Harjinder Singh. However, they expired during the pendency of the trial and the proceedings against them were abated.

3. The case of the prosecution in a nutshell is that on 4.7.2006, one chit without number, in respect of Manjit Singh was received in the Police Station from Civil Hospital, Tanda. On this SI Gopal Singh visited Civil Hospital, Tanda where the doctor told him that the injured has been referred to Ludhiana Hospital. On

4.7.2006, one telephone was received from Ludhiana that injured Manjit Singh is admitted in DMC Hospital, Ludhiana. On this SI Gopal Singh alongwith other members of the police party visited DMC, Ludhiana and obtained ruqa No. 3740/4.7.2006 from the Hospital. On the application of the Investigating Officer , the injured was declared unfit to make the statement. On 11.7.2006, SI Gopal Singh again visited DMC, Ludhiana. Once again the doctor declared Manjit Singh unfit to make the statement. On 12.7.2006 again SI Gopal Singh visited DMC Hospital Ludhiana. Manjit Singh was declared fit to make the statement by doctor. The statement Ex. PO of Manjit Singh was recorded by SI Gopal Singh. Manjit Singh stated that he was an agriculturist. On the intervening night of 3/4.7.2006, at about 00.30/1.00 AM he was coming back from the fields to his house. When he reached near the house of Harjinder Singh, Harjinder Singh, Manjit Singh son of Harjinder Singh, Pritam Kaur wife of Harjinder Singh and Baljit Kaur wife of Manjit Singh armed with dangs and rods were standing there. They immediately started beating him and caused number of injuries on his person. He raised raula. On this Raghbir Singh came there from his nearby Haveli. On seeking him the accused ran away from the spot. He was taken to Civil Hospital, Tanda by Raghbir Singh from where he was referred to Civil Hospital, Hoshiarpur. From Hoshiarpur, he was referred to DMC, Ludhiana and was under treatment there. The reason behind the attack was that the ridge (Wutt) of his fields was joint with the accused. They used to cut the ridge everyday. As he objected to this they caused injuries to him in connivance with each other. He stated that he was making the statement in the presence of his brother Surjit Singh. On the basis of the statement FIR u/s 325, 324, 506/34 IPC was registered at P.S. Tanda. On 26.07.2006 the injured Manjit Singh died. Thereafter offence u/s 302 IPC was

added. The post mortem of the dead body of Manjit Singh was got conducted at Civil Hospital, Dasuya. On 31.07.2006 the accused were arrested. After completion of investigation report under Section 173 CrPC was filed against Manjit Singh and Baljit Kaur – appellants and Harjinder Singh and Pritam Kaur. As stated above, Harjinder Singh and Pritam Kaur died during the pendency of the trial and proceedings against them were abated.

4. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. They denied the allegations levelled against them and pleaded false implication. It was stated that alleged statement of Manjit Singh Ex.PO was a fabricated statement which was prepared subsequent to the death of Manjit Singh. However, they did not lead any evidence in their defence.

5. The appellants were convicted and sentenced as referred to above. Hence, this appeal.

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

7. PW1 Dr. Mohinder Singh, Medical Officer, Civil Hospital, Dasuya deposed that on 27.7.2006 he was deputed to conduct the autopsy of dead body of Manjit Singh son of Chanan Singh by the SMO, Civil Hospital Dasuya. The dead body was brought from DMC Ludhiana. The dead body was received on 27.7.2006 at about 4 pm. He observed as under :-

“1. Bandage and adhesive tape present over the abdomen in the upper half of abdomen. Below the bandage stitched wound was present with 13 stitches with gaping on the opening the abdomen, blood present in the paritoneal cavity. Stitched wound was present in the jejunam near the duduno jejunal flexure.

2. Bandage over the neck on its right side was present and

below this bandage, needle mark was present.

3. *Bandage over the right and left thigh on the anterior aspect present. Below it needle mark was present.*

4. *Bandage and adhesive tape was present on the lateral aspect of abdomen on the left side, 7 cm from the anterior superior illiac spine. Below the bandage two stitched wound 1/2x1 cm in size just near to each other was present.*

5. *POP was present on the left leg, extending from foot to thigh. Two windows were present on it. One on the upper part of left lower leg, 6x4 cm in size. Others in front of left knee, 6x5 cm in size, bandage and adhesive tape applied on the windows. On opening the POP two wounds were present 1½ x 1½ cm and other 3 x 1 ½ cm in size. On further opening the wounds fracture of tibia was present.*

6. *Wound over the right temporal region of 4 cm x 2 cm in size was present.*

7. *Right periarbital wound was present of 2 x 1 cm in size.*

8. *Stitched wound was present over the right elbow joint on the dorsal aspect.*

9. *Wound 3x1 cm in size, 3 cm above the injury no. 8.*

10. *Wound 1x1 cm was present on the base of left thumb.*

11. *Wound 1x1 cm was present on the right metacarpal of right hand of the middle finger.*

Dead body was of a middle aged male moderately built and nourished, rigor mortis was present, post mortem staining were present on the dependant parts. Meninges and brain congested. Similarly pleural cavities lungs, kidneys, were congested. Walls, ribs and cartilages and organ of generation were healthy. Bladder was empty. The cause of death in this case was in my opinion was septicemia with renal failure due to multiple injuries.

The probable time that elapsed between injury and death was 23 days and between death and post mortem examination was within 24 hours."

He brought the original PMR. Ex.PB was the correct carbon copy of the same.

Pictorial diagram showing the seat of injuries was Ex.PB/1. The opinion with regard to the cause of death was given by him after going through the entire medical record of DMC and Hospital Ludhiana. Manjit Singh never remained under his treatment. Septicemia was the direct and proximate cause of the injuries. The injuries observed by him at the time of autopsy could be possible by dang and iron rod blows which could be termed to be heavy weapons. He had conducted autopsies of about 20 dead bodies. He was MBBS.

8. In cross examination by Counsel for the accused he stated that deceased remained under treatment at DMC and Hospital for 23 days. He could not say when the septicemia developed in that case. Development of septicemia was not possible due to natural causes. However it was possible with an infection. He admitted that as per the autopsy report the wounds were treated and dressed. He could not tell the nature of weapon used as he did not conduct the MLR nor did he treat the deceased. He admitted that a punctured wound is caused with a Sua, Barcha or knife. He had not gone through the contents of the MLR at the time of conducting the post mortem on the dead body of Manjit Singh.

9. PW2 Dr. Mukta Duggal, Medical Officer/Junior Resident, DMC and Hospital, Ludhiana deposed that Manjit Singh was admitted in DMC and Hospital Ludhiana on 4.7.2006 at about 1 PM. He was referred from C.H. Tanda to their Hospital via Civil Hospital Hoshiarpur where he got first aid and suturing. She observed the following injuries :

- “1. *Sutured wound on right temple, 5 cm extending from right eyebrow, lateral edge, superiorly to hair line.*
2. *Right periorbital ecchymosis and sub conjunctival haemorrhage, was present.*
3. *Contused lacerated wounds 1x1 cm upper and lower lip on lateral edge of right side of lips.*

4. *Punctured wound 1x1x cm on dorsal aspect of right elbow was present.*
5. *Contused lacerated wound 1 cm just 3 cm above injury No. 4.*
6. *Superficial abrasion on right arm 2x1 cm 3 cm above the injury no. 5.*
7. *Contusion over right arm was present.*
8. *Contusion over left hypochondrium and tenderness over left lower chest, left side was present.*
9. *1 cm contused lacerated wound on base of left thumb was present.*
10. *Contused lacerated wound 2x1 cm on metacarpophalangeal joint of middle finger of right hand.*
11. *Tenderness was present over right elbow.*
12. *Sutured wound lacerated about 3x1.5 cm over medial aspect of left knee was present, swelling over left knee was present, tenderness was present.*
13. *Punctured wound 0.5 cm in diameter about 5 cm below left tibial tuberosity.*
14. *Another punctured wound 1 cm in diameter, 4 cm below injury no. 13 abnormal crepitus, mobility and tenderness was present.*

She had brought the original MLR. Ex.PD was the correct carbon of the same. The pictorial diagram showing the set of injuries was Ex.PD/1. She stated that the possibility of sustaining the injuries appearing on the person of Manjit Singh with dang or iron rod could not be ruled out. Manjit Singh did not remain under her treatment except at the time of admission in the emergency.

10. In cross examination by Counsel for the accused she admitted that injuries No. 4, 13 and 14 were punctured wounds. Punctured wounds were mostly caused by Sua, knife or Barcha. She could not admit or deny if the punctured wounds in the instant case were possible with iron rod or dang. Generally iron rod

and dang cause blunt injuries. She denied the suggestion that under no circumstances injuries No. 4, 13 and 14 were possible with a dang or iron rod. Manjit Singh was brought to DMC & Hospital by his brother Surjit Singh. As per the history disclosed by Surjit Singh at the time admission, the injury was sustained by way of assault by 3-4 people early morning at 12.30 AM on 4.7.2006 at village Ranipind. He had not given the names of the persons who assaulted Manjit Singh hence their names were not incorporated in the record. Injuries No. 13 and 14 were grievous in nature. Some of the injuries could not be investigated. She proved the report Ex. DA which was in her hand. (As per this report injury No. 8 was dangerous to life. Injury No. 3 was simple. The nature of the other injuries could not be assessed.)

11. PW3 Dr. Savinder Singh, Registrar Surgery, DMC and Hospital Ludhiana deposed that Manjit Singh was admitted in DMC and Hospital, Ludhiana as per admission no. 17143. He remained under his supervision in ICU from 4.7.06 till the date of his death i.e. 26.7.06. On 12.7.06 on the basis of request, Ex.PE, Manjit Singh was declared fit to make statement vide his endorsement Ex.PE/1 on 12.7.06 at 8 pm. He also prepared death summary of Manjit Singh. He had brought the original. Its correct photostat copy was Ex.PF. Dr. Subash Goyal, Dr. Mohammad Yamine treated Manjit Singh during his admission in the hospital.

12. In cross examination by Ld. Counsel for the accused he stated that as per record brought by him to Court the name of Raghbir Singh finds mention as attendant. As per Bed Head Ticket Manjit Singh was operated upon on 4.7.06. The operation was successful. He admitted that there was an entry in the Bed Head Ticket dated 25.07.2006 at 9.45 PM to the effect that the attendants of the patient

were not willing for the operative procedure. There were signatures in Punjabi of one Gurprit Kaur. He proved the photocopy of the Bed Head Ticket Ex. DB. There was also another entry in the Bed Head Ticket dated 26.07.2006 at 9.00 PM that the attendants of the patient were not willing for surgery.

13. PW4 HC Tulsi Ram tendered affidavit Ex.PH regarding deliver of Special Reports to the JMIC and Senior police officers on 27.07.2006.

14. PW5 Arjan Khanna Draftsman deposed that on 15.7.2006 he prepared the scaled site plan Ex PJ at the demaraction of PW Raghbir Singh.

15. PW6 Dr. Preet Mohinder Singh, Medical Officer, CHC Tanda District Hoshiarpur deposed that on 4.7.06 at 2 AM patient Manjit Singh son of Chanan Singh was admitted in C.H. Tanda. He was referred to C.H. Hoshiarpur the same day at 3.45 am. He proved his Bed Head Ticket Ex.PK. He further deposed that information regarding the admission of Manjit Singh aforesaid was also sent by him to SHO PS Tanda at 2.30 AM on 4.7.06. He proved the letter in this regard Ex.PL.

16. In cross examination he stated that as per entry in the Bed Head Ticket the patient was brought by Chanan Singh his father. The names of the assailants were not disclosed at the time of his admission.

17. PW7 Raghbir Singh S/o Dalip Singh deposed that on the night intervening 3/4.7.06 he was present in his haveli as he was sleeping there. At about 00.30/1.00 AM he woke up on hearing noise. He came out of the haveli and saw Harjinder Singh, Manjit Singh, Pritam Kaur and Baljit Kaur giving beatings to Manjit Singh son of Chanan Singh with dangs and iron rods. Manjit Singh accused is son of Harjinder Singh accused. Pritam Kaur is wife of Harjinder Singh and Baljit Kaur is wife of Manjit Singh accused. He raised raula. Then they ran

away from the spot along with their respective weapons. Manjit Singh son of Chanan Singh was given multiple injuries. He was bleeding profusely. The accused while leaving the spot also extended threats to him saying that they have killed Manjit Singh and further that they will settle score with him also. After making arrangement for conveyance by him, Manjit Singh was rushed to Civil Hospital, Hoshiarpur. Then he was referred to DMC and Hospital, Ludhiana.

18. The injuries were caused to Manjit Singh (deceased) by the accused as there was a dispute with regard to demolishing of common Wutt (a ridge separating two fields). The accused Manjit Singh and others were demolishing the common Wutt. Manjit Singh (deceased) used to ask the accused to desist from demolishing the common Wutt. There used to be an exchange of hot words between them. His land also adjoins the land of Harjinder Singh accused. His statement was recorded by the police in connection with this case on 12.7.06 in the premises of DMC and Hospital Ludhiana. The police visited the place of occurrence on 13.7.06. Spot inspection was conducted by the police in his presence as well as in the presence of Iqbal Singh, Chanan Singh etc. He had shown the place of occurrence to the police and they prepared the site plan of the place of occurrence. All the points depicted in the site plan were incorporated in it as per his demarcation. A site plan was also prepared by draftsman on 15.7.06 in his presence. He also prepared the site plan as per his demarcation. An electric bulb was on near the place of occurrence and outside his haveli. There is a street abutting his haveli. Across the street, there is the house of Harjinder Singh accused. The injuries were caused to Manjit Singh (deceased) in the street in front of the house of Harjinder Singh accused. Manjit Singh succumbed to the injuries in DMC and Hospital, Ludhiana on 26.7.06.

19. In cross examination he stated that generally he used to sleep at his

house with his family consisting of his wife and three children. But since their servant had left service about a week before the occurrence he used to sleep in the haveli. Parents of Manjit Singh(deceased) as well as his wife used to reside in the village. When he raised raula parents and wife of the deceased came to the place of occurrence. He had disclosed the names of the assailants to them. Near the place of occurrence there were some houses at the back of the house of Harjinder Singh. There was no other house adjoining the house of Harjinder Singh. 10/20 persons were attracted to the place on hearing his raula. Chanan Singh (father of the deceased), Gurprit Kaur (wife of Manjit Singh), he himself and the driver of the vehicle had accompanied Manjit Singh to Civil Hospital, Tanda. Police Station Tanda was at a distance of about 500/600 metres from Civil Hospital, Tanda. He did not visit the Police Station to report about the occurrence. However information regarding admission of Manjit Singh was sent to the Police Station by the concerned Medical Officer. Neither he, nor Chanan Singh nor the wife of Manjit Singh disclosed the names of the assailants to the Medical Officer at the time of his admission. Volunteered that the doctor had not asked for the names. They had reached DMC & Hospital at about 3.30/4.00 PM on 4.7.2006. Surjit Singh brother of Manjit Singh was Assistant Sub-Inspector in Punjab Police and posted at Kapurthala at the time of the occurrence. He was informed about Manjit Singh having sustained the injuries. Surjit Singh reached DMC and Hospital on 4.7.2006. He had disclosed the names of the assailants to Surjit Singh on 4.7.2006. He (PW 7) remained in the Hospital at Ludhiana till 7/ 8 AM on 5.7.06 where after he returned. He did not ask Surjit Singh to report the matter to the police as the police did not visit the Hospital at Ludhiana. He again went to DMC & Hospital on 12.07.2006 to enquire about the well being of Manjit Singh. He did not make

any effort till 12.07.2006 to get the case registered at the Police Station. Except the family members of Manjit Singh he did not narrate about the incident to any one else.

20. He stated that he had got recorded in his statement to the police that an electric bulb was on outside his haveli. It was also got recorded by him that the accused while leaving the spot extended threats to him that they had killed Manjit Singh and further they would kill him. He was confronted with his statement Ex. DC where these facts were not mentioned. It was also stated by him to the police that the injuries were caused to Manjit Singh in his presence. He was confronted with his statement Ex. DC where it was stated that when he reached the spot he saw the accused standing in the street with dangs and rods and they had caused injuries to Manjit Singh.

21. He was an agriculturist. He admitted that in the month of July, 2006 electric supply was available only for eight hours a day in his village Ranipind. It was from midnight to 8.00 AM on 4.7.2006. He had gone to the fields at mid-night to start the electric motor for irrigation. There was an automatic switch on the electric motor and generally he did not need to go time and again if there was interruption of electricity. No Panchayat was convened regarding the dispute of common Wutt. Nor was the matter reported to the police. There were two gates affixed to his haveli. One gate was towards the house of Harjinder Singh and another gate opens towards the metalled road.

22. PW8 Dr. Subash Goel, Professor of Surgery, DMC and Hospital, Ludhiana deposed that Manjit Singh son of Chanan Singh was admitted in DMC and Hospital Ludhiana on 4.7.06. He expired on 26.7.06. He remained under his treatment during the period he remained admitted in the hospital. At the time of

admission of Manjit Singh on 4.7.06 his condition was serious. He was taken for surgery under high risk consent. Consent was given by Narinder Singh his brother-in-law. On 25.7.06 at 9.15 PM the attendants of Manjit Singh were informed regarding high risk consent for anesthesia and post operative ventilatory support continuation. The note in this regard appears on page 193 of Ex.PJ which is under the signatures of Dr. Basjinder. The condition of patient Manjit Singh was very bad. The abbreviations appearing in the Bed Head Ticket Ex.PJ as CVS connotes Cardio Vascular System and RFT's means Renal Function Tests. Similarly LFT means Liver Function Test. GTC means Generalized Tonic Convulsions.

23. In cross examination by Counsel for the accused he stated that on 12.07.2006 Dr. J.S. Sandhu Nephrologist was consulted in respect of the condition of Manjit Singh. The test reports of serum/ creatinine was 7.3 against the normal range of 0.4 to 1.4. Potassium was 6.5. Dr. Sandhu advised urgent haemodialysis. The test report was indicative of renal failure.

24. PW9 Dr. Gurbachan Singh, SMO- cum- Surgical Specialist, Civil Hospital, Hoshiarpur stated that Manjit Singh son of Chanan Singh was admitted in Civil Hospital Hoshiarpur on 4.7.06 at 6.15 am and was discharged on 4.7.06 as he was referred to DMC and Hospital Ludhiana for further management. He was medically examined on 4.7.06 at 10.10 am. General condition of patient was serious. Abdomen of the patient was distended, guarding and rigidity was present. Vowel sounds were absent. BP of patient was 110/70 mmgh. Pulse of patient was 110 per minute. Ultrasound whole abdomen of patient revealed Pneumo Peritonium with peritonitis haemorrhagic. So the case was referred to DMC and Hospital, Ludhiana for further management. He proved the Bed Head Ticket Ex.PM and the report of ultrasound Ex.PM/1.

25. In cross examination he stated that the seriousness of the patient was explained to Surjit Singh.

26. PW11 Surjit Singh s/o Chanan Singh, Assistant Sub Inspector, (Computer and Telecommunication) Punjab Police deposed that on 4.7.06 he was posted at Control Room Kapurthala. He has received a telephonic message on the intervening night of 3/4.7.06 that his younger brother Manjit Singh had been caused injuries and he was being rushed to Civil Hospital, Tanda. When he reached at C.H. Tanda he learnt that Manjit Singh had been referred to Civil Hospital, Hoshiarpur. Thereafter, he went Civil Hospital, Hoshiarpur. When he reached at Civil Hospital, Hoshiarpur, Manjit Singh was being medically examined by the doctors. The doctors also disclosed to him that the condition of Manjit Singh was serious. He was referred to DMC and Hospital Ludhiana. He was got admitted in emergency ward of DMC and Hospital Ludhiana by PW Raghbir Singh. He (PW 11) also followed them to DMC and Hospital after collecting the medical documents. He reached the Hospital between 1 PM to 2 PM on 4.7.06. At that time PW Raghbir Singh was also present there. Raghbir Singh disclosed to him that Manjit Singh was caused injuries by Harjinder Singh, Manjit Singh, Baljit Kaur and Pritam Kaur. He stayed in the Hospital till evening of 5.7.06 and reached Kapurthala the same evening. He again visited DMC and Hospital, Ludhiana on 7.7.06 and stayed there for 3 days. He attended his duty on 10.7.06. He again went to DMC and Hospital, Ludhiana on 10.7.06 in the evening and stayed there till 13.7.06. Manjit Singh expired on 26.7.06 in the said Hospital.

27. Police visited DMC and Hospital Ludhiana on 12.7.06 and recorded the statement of Manjit Singh injured. The statement of Manjit Singh was recorded by the police in his presence. The statement of Manjit Singh was read

over and explained to him by the concerned police official. He also appended his signatures on the statement of Manjit Singh. Manjit Singh also appended his signatures on his statement. He identified the signatures of Manjit Singh at point A as well as that of his own signatures at point B on Ex.PO. During inquest proceedings he identified dead body of Manjit Singh.

28. In cross examination he admitted that his statement Ex.DD had been recorded by the police during investigation of the case. It was disclosed by him to the police while getting the statement recorded that he had received a telephonic message on the intervening night of 3/4.7.06 that his younger brother Manjit Singh had been caused injuries and he was being rushed to Civil Hospital, Tanda. Further when he reached Civil Hospital, Tanda he learnt the Manjit Singh had been referred to Civil Hospital, Hoshiarpur. Then he went to Hoshiarpur and found that Manjit Singh was being medically examined by the doctors. He was confronted with his statement Ex.DD where it was not so recorded. He was also confronted with the statement where it was not recorded that the doctors disclosed to him that the condition of Manjit Singh was serious and then he was referred to DMC and Hospital, Ludhiana where he was got admitted in the Emergency Ward by PW Raghbir Singh and that he (PW 11) had followed them to DMC & Hospital, after collecting the medical documents and reached there between 1.00 to 2.00 PM. He was also confronted with the statement Ex.DD where it was not recorded that at that time Raghbir Singh was also present and that Raghbir Singh had disclosed that Manjit Singh had been caused injuries by Harjinder Singh, Manjit Singh, Baljit Kaur and Pritam Kaur. He was also confronted with the statement Ex. DD where the fact regarding his staying in the Hospital till the evening of 5.7.2006 was not mentioned. Nor were the facts regarding his stay from 7.7.2006 till 10.7.2006

mentioned in the statement Ex.DD. He stated that he had received the telephonic message on the night intervening 3/4.7.2006 on the landline installed at his residence. He had only sought verbal permission from his superior officer to leave the station. He had been shown to be on leave on 4.7.2006. His parents who were present in DMC & Hospital on 5.7.2006 had disclosed to him about the occurrence. He did not make any effort to report the matter to the police. His parents also did not report the matter to the police.

29. PW12 SI Gopal Singh, Incharge Litigation Branch, SSP Office, Hoshiarpur deposed that on 4.7.06 he was posted as Addl. SHO PS Tanda. On that day he received chit Ex.PL from Civil Hospital, Tanda regarding the admission of Manjit Singh in hospital. He alongwith HC Kewal Krishan went to C.H. Tanda where he was told by doctor that Manjit Singh has been referred to C.H. Hoshiarpur. He was telephonically informed by the relations of Manjit Singh that they were taking Manjit Singh to DMC Ludhiana. On 4.7.06 he went to DMC & Hospital, Ludhiana. He submitted application Ex.PP to doctor who declared Manjit Singh unfit to make statement. He had made a request to doctor to supply copy of MLR. However, copy of MLR was not supplied. On 7.7.06 he received a telephonic message from Surjit Singh, brother of Manjit Singh injured, that Manjit Singh was not yet fit to make statement. Report to this effect was made in the roznamcha. On 11.7.06 he again went to DMC & Hospital and submitted application Ex.PQ. The doctor declared Manjit Singh unfit to make statement vide endorsement Ex.PQ/1. On 12.7.06 he along with HC Kewal Krishan, C. Bhajan Lal and PHG Paramjit Singh went to DMC & Hospital in connection with the recording of statement of Manjit Singh. He submitted application Ex.PR to the doctor. Manjit Singh was declared fit to make statement by doctor vide

endorsement Ex.PE/1. The MLR of Manjit Singh was given to him by that doctor on 12.7.06. There were as many as 14 injuries mentioned in the report but result of injuries was not given. It was only mentioned that injuries were to be assessed. He had requested the doctor in writing that nature of injuries of Manjit Singh be given. He had submitted an application on 12.7.06 but that application was retained by the doctor. Only its carbon copy was in the police file. He recorded the statement Ex.PO of Manjit Singh which was read over to him. Manjit Singh signed the same in token of its correctness. He got his statement recorded in the presence of his brother Surjit Singh who had also signed on it. He made his endorsement Ex.PO/1 and sent it to the police station for registration of a case where a formal FIR Ex.PO/2 was recorded. On 13.7.06 he went to the spot and prepared the rough site plan Ex.PS with correct marginal notes. He formally arrested all the accused on 14.7.06. On 27.7.06 he received information regarding death of Manjit Singh vide Ex.PT. At the time of arrest of accused on 14.7.06 Manjit Singh s/o Harjinder Singh had produced one dang which was taken into possession vide recovery Memo PU. Accused Harjinder Singh produced a Saria which was also taken into possession vide memo Ex.PV. Ex.P1 is dang and Ex.P2 is saria.

30. On receiving information on 27.7.06 regarding death of Manjit Singh, he alongwith other officials went to DMC & Hospital, Ludhiana. He prepared the inquest report Ex.PC and got the post mortem of dead body of Manjit Singh conducted. On 29.7.06 he again went to DMC & Hospital to collect the X-ray reports, injury report, Bed Head Ticket but was told that the same will be supplied after 10 days. The clothes of deceased were handed over to him by C. Bhajan Lal. They were reduced into parcel and handed over to MHC. He identified the

parcel Ex.P3.

31. On early morning of 31.7.06 accused Harjinder Singh, Baljit Kaur and Pritam Kaur were arrested. The same day Manjit Singh accused was also arrested. After death of Manjit Singh offence under Section 302 IPC was added. He was transferred on 10.8.06.

32. In cross examination he stated that the statement of Manjit Singh (deceased) was not recorded in the presence of the doctor because the doctor had already declared him fit to make the statement. He did not obtain any separate certificate from the doctor that Manjit Singh remained conscious while recording the statement. He did not make any attempt to get the statement of Manjit Singh recorded from a Magistrate from 12.7.2006 till the date of his death. He denied the suggestion that the statement was fabricated. He stated that he had come to know during investigation that Raghbir Singh had got the injured admitted in DMC & Hospital, Ludhiana.

33. Ld. Counsel for the appellant has primarily raised the following contentions:

- (i) The prosecution story is not credible. There is an unexplained delay of nine days in lodging the FIR.
- (ii) Medical evidence is in conflict with the ocular evidence.
- (iii) Dying declaration cannot be relied upon. It is a fabricated document.

There is no merit in any of the contentions of the Ld. Counsel.

Regarding delay in recording of the FIR.

34. The incident occurred at about 00.30/1.00 hours on the night intervening 3/4.7.2006. The FIR came to be recorded on 12.07.2006 after the statement of injured Manjit Singh was recorded by SI Gopal Singh at DMC &

Hospital, Ludhiana i.e., about 9 days after the incident.

35. It has come in the deposition of PW 7 Raghbir Singh who claims to have witnessed the incident that immediately thereafter he arranged a vehicle and took the injured to the C.H. Tanda and reached there at about 2.00 AM. As per his deposition Chanan Singh (father of the deceased), Gurprit Kaur (wife of Manjit Singh), he himself and the driver of the vehicle had accompanied Manjit Singh to Civil Hospital, Tanda. He deposed that neither he, nor Chanan Singh nor the wife of Manjit Singh disclosed the names of the assailants to the Medical Officer at the time of his admission. But added that the doctor had not asked for the names. As per his deposition they had reached DMC & Hospital at about 3.30/4.00 PM on 4.7.2006. Surjit Singh brother of Manjit Singh who was Assistant Sub-Inspector in Punjab Police and posted at Kapurthala was informed about Manjit Singh having sustained the injuries. Surjit Singh reached DMC and Hospital on 4.7.2006. He had disclosed the names of the assailants to Surjit Singh on 4.7.2006.

36. PW11 Surjit Singh the brother of Manjit Singh deposed that he received a telephonic message on the intervening night of 3/4.7.06 that his younger brother Manjit Singh had been caused injuries and he was being rushed to Civil Hospital Tanda. When he reached at C.H. Tanda he learnt that Manjit Singh had been referred to Civil Hospital, Hoshiarpur. Thereafter, he went Civil Hospital, Hoshiarpur. When he reached at Civil Hospital, Hoshiarpur, Manjit Singh was being medically examined by the doctors. The doctors also disclosed to him that the condition of Manjit Singh was serious. He was referred to DMC and Hospital Ludhiana. He was got admitted in emergency ward of DMC and Hospital Ludhiana by PW Raghbir Singh. He (PW 11) also followed them to DMC and Hospital after collecting the medical documents. He reached the Hospital between

1 PM to 2 PM on 4.7.06. At that time PW Raghbir Singh was also present there. Raghbir Singh disclosed to him that Manjit Singh was caused injuries by Harjinder Singh, Manjit Singh, Baljit Kaur and Pritam Kaur. He stayed in the Hospital till evening of 5.7.06 and reached Kapurthala the same evening. His parents who were present in DMC & Hospital on 5.7.2006 had disclosed to him about the occurrence. He did not make any effort to report the matter to the police. His parents also did not report the matter to the police.

37. It is on the strength of those statements that it has been argued by the Ld. Counsel for the accused-appellants that even though the injured Manjit Singh may not have been in a fit condition to record his statement, yet the fact that neither PW 7 Raghbir Singh, nor the parents, nor the brother of the deceased made any effort to lodge an FIR in respect of the serious injuries sustained by the deceased despite the names of the assailants being known to PW 7 Raghbir Singh who in turn had disclosed their names to the parents and brother of the deceased casts serious doubt as to whether the appellants are the real assailants.

38. On the face of it this argument may appear attractive. But on consideration of the of facts and circumstances of the case this does not appear to be such a serious infirmity as to dent the prosecution case.

39. What needs to be seen is that the injured Manjit Singh suffered serious injuries in a sudden attack by three-four assailants at about 12.30 AM on 4.7.2006. He was immediately rushed to C. H.Tanda where he was admitted at about 2. 00 AM. From there he was referred to Civil Hospital, Hoshiarpur at 3.45 am as deposed by PW6 Dr. Preet Mohinder Singh, Medical Officer, CHC Tanda. After being attended to he was further referred to DMC & Hospital, Ludhaiana considering his serious condition. He was admitted in DMC & Hospital, Ludhiana

on 4.7.2006 at about 2.00 PM. At DMC & Hospital he remained in the ICU from 4.7.2006 till his death on 26.7.2006 as deposed by PW3 Dr. Savinder Singh, Registrar Surgery, DMC and Hospital Ludhiana.

40. The seriousness of his condition is evident from the deposition of PW9 Dr. Gurbachan Singh, SMO- cum- Surgical Specialist, Civil Hospital, Hoshiarpur who stated that Manjit Singh son of Chanan Singh was admitted in Civil Hospital Hoshiarpur on 4.7.06 at 6.15 AM and was discharged on 4.7.06 as he was referred to DMC and Hospital Ludhiana for further management. He was medically examined on 4.7.06 at 10.10 am. General condition of patient was serious. Abdomen of the patient was distended, guarding and rigidity was present. Vowel sounds were absent. BP of patient was 110/70 mmgh. Pulse of patient was 110 per minute. Ultrasound whole abdomen of patient revealed Pneumo Peritonium with peritonintis haemorrhagic.

41. PW8 Dr. Subash Goel, Professor of Surgery, DMC and Hospital, Ludhiana deposed that at the time of admission of Manjit Singh on 4.7.06 his condition was serious. He was taken for surgery under high risk consent. On 25.7.06 at 9.15 PM the attendants of Manjit Singh were informed regarding high risk consent for anesthesia and post operative ventilatory support continuation. His condition was very bad.

42. It is clear that ever since he suffered multiple injuries in the dastardly attack Manjit Singh was hovering between life and death. He was not in a fit condition to get his statement recorded till 12.07.2006. In these circumstances, if the attendants of Manjit Singh did not make any effort to lodge a report with the police, it cannot be said to be unnatural behaviour on their part. It is also possible that the parents and the brother of Manjit Singh were waiting for him to regain

consciousness and hear from him first hand as to who the assailants were, rather than rely on the version of PW 7 Raghbir Singh. But it is significant that though the names of the assailants were not given but in the history given at the time of admission in DMC and Hospital Ludhiana it has been recorded that Manjit Singh had been attacked by 3-4 person in village Ranipind at about 12.30 AM on 4.7.2006. It was so deposed by PW 2 Dr. Mukta Duggal, Junior Resident DMC & Hospital, Ludhiana who stated that Manjit Singh was brought to DMC & Hospital by his brother Surjit Singh. As per the history disclosed by Surjit Singh at the time admission, the injury was sustained by way of assault by 3-4 people early morning at 12.30 AM on 4.7.2006 at village Ranipind.

43. Thus, the delay in lodging the FIR is understandable. No sooner the patient was declared fit, his statemnt was recorded wherein he named the appellants and the other accused (who died during the trial) as the assailants.

Regarding the Medical Evidence being in conflict with Ocular Evidence.:

44. It has been argued that the Medical Evidence is in conflict with the Ocular Evidence which casts a serious dent in the prosecution case. As per the statement Ex.PO of Manjit Singh the four assailants were armed with dangs and rods and caused number of injuries on his person. PW 7 Raghbir Singh also deposed that he saw the accused giving beatings to Manjit Singh son of Chanan Singh with dangs and iron rods.

45. As per PW2 Dr. Mukta Duggal there were 14 injuries on the person of the deceased, out of which three, i.e., injury No. 4, 13 and 14 were punctured wounds. The other wounds were contusions. It is argued that the punctured wounds could only be caused by sharp edged weapon like Barcha, Sua or knife .

These punctured wounds could not be caused by blunt weapon like dang or iron rod with which the assailants were said to be armed and were used for inflicting injuries on Manjit Singh.

46. There is no doubt and was even admitted by PW 1 Dr. Mohinder Singh, Medical Officer Civil Hospital, Dasuya who conducted the post mortem of the deceased and PW 2 Dr. Mukta Duggal Medical Officer/ Junior Resident, DMC & Hospital, Ludhiana that punctured wounds were mostly caused by weapons like sua, Barcha or knife. But it is significant that PW 1 Dr. Mohinder Singh also stated that the injuries observed by him at the time of autopsy could be possible by dang and iron rod blows which could be termed to be heavy weapons.

47. PW2 Dr. Mukta Duggal also stated that the possibility of sustaining the injuries appearing on the person of Manjit Singh with dang or iron rod could not be ruled out. In cross examination she said that she could not admit or deny if the punctured wounds in the instant case were possible with iron rod or dang. She however denied the suggestion that under no circumstances injuries No.4, 13 and 14 were possible with a dang or iron rod.

48. It has been held by Hon'ble Supreme Court in various cases that unless the medical evidence rules out the possibility of the injury being caused in the manner as alleged by the prosecution the testimony of the eyewitness cannot be doubted on the ground of its inconsistency with medical evidence. (Ref. **Mallikarjun Vs. State of Karnataka (2019) 8 SCC 359, CBI Vs. Md. Parvez Abdul Kayuum (2019) 12 SCC 1.**

49. The present is not a case of that kind. Here the medical opinion does not absolutely rule out the possibility of the injury being caused in the manner alleged by the prosecution. Accordingly there is no merit in this contention on

behalf of the appellants.

Dying Declaration :

50. There is no merit in the contention that the dying declaration is a fabricated document created after the death of Manjit Singh and that it cannot be relied upon having not been recorded before a Magistrate or even in the presence of the doctor.

51. In the first instance, it is important to note the statement Ex. PO was not recorded as a dying declaration. It was merely the statement of the injured-Manjit Singh recorded by the Investigating Officer in the nature of a complaint. It is only because the injured Manjit Singh died subsequently that it has assumed the character of a dying declaration.

52. It has been settled by the Hon'ble Supreme Court in a number of cases that the statement of the deceased recorded by a police officer in a routine manner as a complaint and not as a dying declaration can also be treated as dying declaration after the death of the injured and relied upon if the evidence of the prosecution witnesses clearly establishes that the deceased was conscious and was in a fit state of health to make the statement. As the said statements is not recorded as a dying declaration there is no occasion for it to be recorded before a Magistrate. In this context reference may be made to **State of Rajasthan Vs. Wakteng (2007) 14 SCC 550, Jai Parkash Vs. State of Haryana (1998) 7 SCC 284, Salim Gulab Pathan Vs. State of Maharashtra (2012) 6 SCC 606.**

53. In **Paras Yadav v. State of Bihar, (1999) 2 SCC 126** Hon'ble Supreme Court observed as under:

“8. It has been contended by the learned counsel for the appellants that the investigating officer has not bothered to record the dying

declaration of the deceased nor is the dying declaration recorded by the doctor. The doctor is also not examined to establish that the deceased was conscious and in a fit condition to make the statement. It is true that there is negligence on the part of the investigating officer. On occasions, such negligence or omission may give rise to reasonable doubt which would obviously go in favour of the accused. But in the present case, the evidence of the prosecution witnesses clearly establishes beyond reasonable doubt that the deceased was conscious and he was removed to hospital by bus. All the witnesses deposed that the deceased was in a fit state of health to make the statements on the date of the incident. He expired only after more than 24 hours. No justifiable reason is pointed out to disbelieve the evidence of the number of witnesses who rushed to the scene of offence at Ghogha Chowk. Their evidence does not suffer from any infirmity which would render the dying declarations as doubtful or unworthy of the evidence. In such a situation, the lapse on the part of the investigating officer should not be taken in favour of the accused. It may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. For this purpose, it would be worthwhile to quote the following observations of this Court from the case of Ram Bihari Yadav v. State of Bihar (SCC pp. 523-24, para 13)

“In such cases, the story of the prosecution will have to be examined dehors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice.”

PW12 SI Gopal Singh, Incharge Litigation Branch, SSP Office, Hoshiarpur has explained in detail the circumstances under which the statement Ex. PO came to be

recorded on 12.7.2006. He deposed that on 4.7.06 he was posted as Addl. SHO PS Tanda. On that day he received chit Ex.PL from Civil Hospital, Tanda regarding the admission of Manjit Singh in hospital. He alongwith HC Kewal Krishan went to C.H. Tanda where he was told by doctor that Manjit Singh has been referred to C.H. Hoshiarpur. He was telephonically informed by the relations of Manjit Singh that they were taking Manjit Singh to DMC & Hospital, Ludhiana. On 4.7.06 itself he went to DMC & Hospital, Ludhiana. He submitted application Ex.PP to doctor who declared Manjit Singh unfit to make statement. On 7.7.06 he received a telephonic message from Surjit Singh, brother of Manjit Singh injured, that Manjit Singh was not yet fit to make statement. Report to this effect was made in the roznamcha. On 11.7.06 he again went to DMC & Hospital and submitted application Ex.PQ. The doctor declared Manjit Singh unfit to make statement vide endorsement Ex.PQ/1. On 12.7.06 he along with HC Kewal Krishan, C. Bhajan Lal and PHG Paramjit Singh went to DMC & Hospital in connection with the recording of statement of Manjit Singh. He submitted application Ex.PE to the doctor. Manjit Singh was declared fit to make statement by doctor vide endorsement Ex.PE/1. He recorded the statement Ex.PO of Manjit Singh which was read over to him. Manjit Singh signed the same in token of its correctness. He got his statement recorded in the presence of his brother Surjit Singh who had also signed on it. He made his endorsement Ex.PO/1 and sent it to the police station for registration of a case where on its basis a formal FIR Ex.PO/2 was recorded. Manjit Singh died on 27.7.06. After death of Manjit Singh offence under Section 302 IPC was added.

54. In cross examination he stated that the statement of Manjit Singh (deceased) was not recorded in the presence of the doctor because the doctor had

already declared him fit to make the statement. He did not obtain any separate certificate from the doctor that Manjit Singh remained conscious while recording the statement. He did not make any attempt to get the statement of Manjit Singh recorded from a Magistrate from 12.7.2006 till the date of his death. He denied the suggestion that the statement was fabricated.

55. PW3 Dr. Savinder Singh, Registrar Surgery, DMC and Hospital Ludhiana deposed that Manjit Singh remained under his supervision in ICU from 4.7.06 till the date of his death i.e. 26.7.06. On 12.7.06 on the basis of request, Ex.PE, Manjit Singh was declared fit to make statement vide his endorsement Ex.PE/1 on 12.7.06 at 8 pm.

56. PW 11 Surjit Singh the brother of the deceased deposed that the police visited DMC and Hospital Ludhiana on 12.7.06 and recorded the statement of Manjit Singh. The statement of Manjit Singh was recorded by the police in his presence. The statement of Manjit Singh was read over and explained to him by the concerned police official. He also appended his signatures on the statement of Manjit Singh. Manjit Singh also appended his signatures on his statement. He identified the signatures of Manjit Singh at point A as well as his own signatures at point B on Ex.PO.

57. Thus, the statement Ex. PO has to be treated as a dying declaration. Its authenticity and its voluntary nature has been duly established. It is entitled to the greatest weight.

Conclusion:

58. Thus, the fact that the deceased had been inflicted injuries by the accused is proved by the statement Ex.PO of the deceased and the deposition of PW7 Raghbir Singh. There could not be any conceivable reason as to why the

deceased who had sustained serious injuries which ultimately resulted in his death would falsely implicate the accused if they were not actually the assailants. No such reason for their false implication has been suggested by the accused. Nor have the accused pointed out any reason for their false implication by PW7 Raghbir Singh. It has been established from the evidence that PW7 arranged to take the deceased to Civil Hospital, Tanda immediately after the assault where he along with the parents, and wife of the deceased reached at about 2.00 AM on 4.7.2006. He also took the deceased to Civil Hospital, Hoshiarpur and later to DMC & Hospital, Ludhiana. As per PW3 Dr. Savinder Singh, Registrar Surgery, DMC and Hospital, the name was Raghbir Singh was mentioned in the records as attendant of the patient.

59. Thus the prosecution has been able to bring home the guilt of the accused beyond reasonable doubt.

60. The accused have been rightly convicted by the Ld. Trial Court. We find no reason to interfere with the judgment of the Court.

61. Accordingly, this appeal is dismissed.

62. The sentence of the appellants was ordered to be suspended during pendency of the appeal. Accordingly, the police is directed to take the appellants into custody to undergo remaining sentence imposed by the trial Court vide judgment and order dated 28.01.2010.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

September 03, 2020

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No