

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

324

CRA-S-1828-SB-2003 (O&M)

Reserved on:-01.12.2022

Date of Decision: 21.12.2022

Sukhdev Singh and others

...Appellants

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Rahul Vats, Advocate
as Amicus Curiae for the appellants.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.SHEKHAWAT, J.

The present appeal is directed against the judgment of conviction and order of sentence dated 29.07.2003 passed by the Court of learned Additional Sessions Judge, Hoshiarpur, whereby, they were convicted under Section 304 Part-II read with Section 34 and Section 397 of the IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 2000 each under both the sections alongwith default clauses.

The brief facts of the case are that on 11.06.2001, Balbir Singh son of Bachan Singh, was admitted in an injured condition in the Civil Hospital and on receipt of the information, ASI Ravi Dutt obtained the opinion of the doctor regarding the fitness of the injured to make a statement and he was declared fit to make the statement. As per the complainant/injured, Balbir Singh, he went to Amrik Singh resident of Budho Barkat on 11.06.2001 in the morning and they both

had gone to the house of Jodh Singh Lamberdar of the same village. Later Amrik Singh went to his house, but Balbir Singh started towards his village on his scooter. At about 07.00 a.m., he reached near the shop of Ashwani Kumar, and in the meantime, Ravel Singh, Sukhdev and Arjan Singh all appellants/accused were standing there armed with *dangs* (clubs) in their hands. Ravel Singh signalled Balbir Singh to stop and on this Balbir Singh asked him as to what was the matter. The accused threatened him to withdraw the case, which was filed by him, otherwise, he would face dire consequences. Sukhdev Singh accused exhorted his companions to catch hold of Balbir Singh and stated that he should not be allowed to go unharmed. Arjan Singh gave a blow with *dang* on the back of his right shoulder and one more blow on his right elbow. Ravel Singh accused, inflicted a *dang* blow on his right foot; second blow a little above his right ankle and third blow on his right foot. Ravel Singh stated in a loud voice that Ajit Singh had directed the accused to make Balbir Singh physically crippled and Sukhdev Singh inflicted a *dang* blow on the back of the right leg and second blow on the back of the left leg. He also inflicted third injury with the *dang* on his right arm. Later Arjan Singh and Ravel Singh caught hold of Balbir Singh and Sukhdev Singh removed the golden *Karra* from his wrist weighing about 3 grams and Ravel Singh asked that golden ring of Balbir Singh and cash amount from his pocket be also removed. On this Sukhdev Singh removed the ring

from the finger of the right hand and also took away a cash amount of Rs. 5000/- from his pocket. They also stated that they would utilize the looted property in a case, which Balbir Singh had filed against them. As per the complainant, the occurrence was witnessed by Kashmir Singh and Rajwant Singh. After this, the accused fled from the spot with their respective weapons. Kashmir Singh arranged a vehicle and shifted the complainant to the hospital. During the course of the investigation, the injuries on the person of Balbir Singh were declared dangerous to life on 18.06.2001 and ultimately Balbir Singh died, while under treatment, on 23.06.2001. In pursuance to the disclosure statement suffered by Sukhdev Singh accused, the recovery of the golden *Karra* of Balbir Singh was effected vide memo Ex.BS, whereas the golden ring was recovered from Arjan Singh, on the basis of the disclosure statement suffered by him. Apart from that, the postmortem on the dead body of Balbir Singh complainant was also got conducted and the doctor gave the opinion that cause of death in this case was due to septicemic shock as a result of multiple injuries, which were sufficient to cause death in ordinary course of nature.

After completion of the investigation, final report under Section 173 Cr.P.C., was presented against the present appellants as well as Ajit Singh. It also requires mention that Ajit Singh was later on acquitted by the learned trial Court.

The copies of the challan were supplied to the learned counsel for the appellants and the case was committed to the Court of Sessions.

After finding a prima facie case against the present appellants, the learned trial Court ordered framing of charge under Section 120-B IPC against all the accused and present three appellants were charged under Section 304/397 IPC also.

In support of the charge, the prosecution examined 13 witnesses.

Doctor Emmy Grewal was examined as PW1, who had sent the intimation regarding the death of Balbir Singh on 23.06.2001. Dr. Ashok Raswant, Medical Officer, Civil Hospital, Ludhiana, was examined as PW2. He alongwith Dr. U.S. Sud, had conducted the postmortem examination on the dead body of Balbir Singh on 24.06.2001. They noticed the following injuries on the dead body:-

1. *Healed abrasion 3/4" x 3/4" in front and left side of chest.*
2. *Healed abrasion 1/2 X 1/2" on the back of left elbow.*
3. *Stitched wound 3" long on the lower and back left arm.*
4. *Septic wound 17 1/2 X 4" on the posterior lateral aspect of right leg. Skin subcutaneous tissue was absent. Muscle and bones were exposed with profuse puss coming out. There was fracture of right fibula.*
5. *Healed abrasion 1/2" X 1/2" on the posterior aspect of right elbow.*

On exploration of the body, both the lungs were found to be pale and the puss was oozing out. As per their opinion, the cause of death in the present case was due to septicemic shock, as a result of multiple injuries, which were sufficient to cause death in ordinary course of nature and the injuries were ante-mortem in nature. He proved on record the copy of the postmortem report as Ex.PB and pictorial diagram as Ex. PB/1. As per his opinion, injury No. 4 was sufficient to cause death individually and it could be without septicemia. There was a compound fracture underlying injury No. 4. Further, Dr. Cherian T. Sanjiv, Nephrologist was examined as PW3, who proved on record the bed head ticket of Balbir Singh, since deceased. As per him, the patient was suffering from acute renal failure on his investigation and the copy of the bed head ticket is Ex.PC. The cause of renal failure was due to multiple injuries on the person of the patient and he had developed septicemia on account of injuries. Consequently, the main cause of death in this case was septicemia with shock which was due to multiple injuries. The prosecution had also examined Dr. N.K. Singh, Medical Officer, Civil Hospital, Dasuya, as PW4, who had found the following injuries on the person of the deceased on 11.06.2001:-

1. *Reddish bruise on the back of the chest 10 Cm x 3 Cm on right side of chest middle part obliquely present. Advised x-ray.*

2. *Abrasion 2 in number 1 Cm & 1 Cm and $\frac{1}{2}$ Cm X $\frac{1}{2}$ Cm on right elbow posterior aspect surrounded by diffuse swelling over an area of 3 Cm X 2 Cm with oozing of blood.*
3. *Abrasion on the right foot 3 Cm X 2 Cm, 5 CM distal of ankle joint on anterior aspect of foot surrounded by diffuse swelling. Advised X-ray.*
4. *Abrasion 5 Cm X 2.05 Cm on lateral aspect of lower end of right leg 3 Cm above and front of lateral malleolus surrounded by diffuse swelling. Advised X-ray.*
5. *Abrasion on lateral aspect of foot 2 in number of size 3 Cm X 0.05 Cm and 1.5 Cm X 0.5 Cm 2.05 Cm apart. Advised X- ray.*
6. *Reddish contusion on right leg 6 Cm X 2 Cm horizontally placed on posterior aspect in middle $\frac{1}{3}^{rd}$ part surrounded by diffuse swelling. Advised X-ray.*
7. *Diffuse swelling present on lower part of left leg. Advised X- ray.*
8. *Diffuse swelling present on middle $\frac{1}{3}^{rd}$ part of right forearm. Advised X-ray.*

He proved on record the copy of the MLR Ex.PE and after obtaining the fitness certificate from him, the police had recorded the statement of the injured. Kashmir Singh was examined as PW5, who was the eye witness of the occurrence. He supported the story of the prosecution, as narrated by the complainant in his statement initially. Similarly, PW6 Rajwant Singh was also an eye witness, who supported the case of the prosecution in all material particulars. PW7 Daljit Singh was examined by the prosecution to prove the conspiracy of the appellants with Ajit Singh, co-accused. The prosecution further examined PW8 Ajit Kumar, who prepared one golden *Karra* and one gold ring for Balbir Singh (since deceased) and he had produced the receipts Ex.P1 and Ex.P2 in this regard. Naval Kishore Draftsman PW9 proved on record the site plan Ex.PG, whereas Simarajit Kaur widow of Balbir Singh (since deceased) was examined as PW10. She also supported the case of the prosecution with regard to the receipts Ex.P1 and Ex.P2. The prosecution examined ASI Ravi Dutt as PW11, who conducted the initial investigation in the present case. He obtained the doctor's opinion with regard to the fitness of the injured and recorded the statement initially. He also sent *ruka* for registration of the case and the formal FIR Ex.PK/2 was recorded. He also arrested the accused, recorded the statements of various prosecution witnesses and supported the case of the prosecution relating to the present case. Sub Inspector Jastinder

Singh was examined as PW12, who had taken over the investigation on 27.06.2001. He arrested the accused and made recoveries of various incriminating substance from all the accused. Amrik Singh, Member of the Gram Panchayat, resident of village Budho Barkat was examined as PW13. He had identified the dead body of Balbir Singh and in his presence, various recoveries were made from all the accused and they were again arrested after the death of Balbir Singh due to the injuries.

After the closure of the evidence, the statements of all the accused were recorded under Section 313 Cr.P.C., and they pleaded their false implication. It was stated by them that they had been falsely implicated in the instant case at the behest of Kashmir Singh and Rajwant Singh. The statement of Balbir Singh was prepared by ASI Ravi Dutt in consultation with Rajwant Singh and Kashmir Singh. ASI Ravi Dutt did not record the statement of Balbir Singh nor he got the statement of Balbir Singh injured recorded from the Magistrate in spite of the specific direction of the SHO.

In support of their case, the appellants had also examined Mohan Singh as DW1. He was the Secretary of Passi Bet Cooperative Agricultural Service Society Limited, Safdarpur. He stated that their society deals with the sales and purchase of the fertilizer and the fertilizers are sold only to the members and not to any other private person. Daljit Singh son of Puran Singh was a non agriculture

member and he could not have purchased the fertilizer under the Rules. In June 2001, Daljit Singh never purchased fertilizers from their society. After examining one witness, the defence closed its evidence.

I have heard learned counsel for the parties and perused the trial Court record with their able assistance.

Learned counsel for the appellants vehemently argued that while convicting the accused, learned trial Court has wrongly placed reliance on the dying declaration of the deceased. The deceased was admitted in the hospital for more than 10 days, yet, the statement was not recorded before the Magistrate. Still further, the Investigating Agency, during the entire period when the deceased was admitted in the hospital, did not make any efforts to get the statement recorded before the Magistrate and no reliance can be placed on such a dying declaration.

On the other hand, learned counsel for the State submitted that the trial Court has correctly treated the statement of the deceased to be dying declaration and there is no requirement of law that the dying declaration should be recorded before a Magistrate. Further, even the injured/complainant had no reason to falsely involve the appellants and to screen the real culprits, he had given a true account of the entire occurrence in his statement made to the police.

I find no force in the arguments raised by the learned counsel for the appellants. The learned trial Court has rightly held that the statement Ex.PK of Balbir Singh, injured/complainant recorded by ASI Ravi Dutt is to be given full weightage as a dying declaration and it contains full and complete particulars of the offence. Even the trial Court had rightly held that the statement had been promptly recorded by ASI Ravi Dutt and it could not be held that the statement was made after due deliberations. I have also gone through the record in this regard and the trial Court has recorded valid reasons for the acceptance of the statement made by Balbir Singh injured/complainant (since deceased). Balbir Singh had described the role of each of the appellants in the said statement and the learned trial Court had correctly placed reliance on the same.

Learned counsel for the appellants has assailed the statement of PW5 Kashmir Singh and PW6 Rajwant Singh by alleging that they were inimical towards the accused/appellants and had a reason to falsely involve them in a criminal case. Kashmir Singh PW5 had admitted that he had appeared as a witness in a case registered against Ajit Singh accused for the offences under Sections 354 and 379 IPC. He had appeared as a witness against the accused in 5/6 cases. Still further, Rajwant Singh PW6 admitted that a case is pending against him, Balbir Singh and Kashmir Singh for causing a grievous hurt to Hans Raj, Sarpanch of the village.

The submissions made by learned counsel for the appellants have been opposed by learned State counsel on the ground that both the witnesses were natural witnesses and had been searchingly cross-examined but nothing material could be elicited from the same.

I have heard learned counsel for the parties and the arguments raised by learned counsel for the appellants are untenable. I have gone through the testimonies of both the witnesses, i.e. PW5 Kashmir Singh and PW6 Rajwant Singh and both the said witnesses had given a truthful account of the entire occurrence and their testimonies inspire confidence. Even, during the cross-examination of these two witnesses, it is apparent that there are no grounds to disbelieve their testimonies. Still further, the presence of Kashmir Singh has also been recorded in the hospital record, which proves that he had witnessed the occurrence.

The learned trial Court had rightly regarded the statement made by Balbir Singh, since deceased, as a dying declaration. The ocular version was duly corroborated by the statement of PW2 Dr. Ashok Rajwant, who conducted the postmortem examination on the dead body of Balbir Singh. He clearly stated that cause of death in this case was septicemic shock, as a result of multiple injuries, which was sufficient to cause death in ordinary course of nature and the injuries were anti-mortem in nature. As per him, injury No. 4 was

sufficient to cause death individually and it could be without septicemic shock. There was a compound fracture underlying injury No. 4. Apart from that, his statement is further corroborated by PW4 Dr. N.K. Singh, who proved on record the MLR Ex.PE of the injured Balbir Singh, who died later on. Still further, the prosecution examined PW3 Dr. Cherian T. Sanjiv, Nephrologist, who had treated Balbir Singh and stated that the cause of renal failure was due to multiple injuries on the person of the patient. As per him, the main cause of death in this case was septicemic shock, which was due to multiple injuries. Apart from that, the prosecution examined PW11 ASI Ravi Dutt, who had conducted the initial investigation and his testimony is duly corroborated by PW12 Sub Inspector Jaswant Singh, who had taken over the investigation on 27.06.2001. Both the said witnesses have deposed the facts regarding the arrest and recoveries from the present appellants. Thus, the statements of the eye witnesses were duly corroborated by medical evidence as well as by the Investigating Officer and the learned trial Court has rightly placed reliance on the same and the impugned judgment is liable to be upheld.

Apart from that, during the course of investigation, Sukhdev Singh appellant suffered a disclosure statement on 28.06.2001, in pursuance of which, the recovery of golden *Karra* belonging to Balbir Singh was effected vide memo Ex.PS and on

similar lines, a golden ring on which letters 'BS' were engraved was effected from Arjan Singh, appellant, on the basis of disclosure statement made by them and consequently, the learned trial Court had rightly convicted the appellants under Section 397 IPC.

As per the custody certificates, which are already on the record, Sukhdev Singh appellant No. 1 had undergone three years, eight months and six days (including remissions); Ravel Singh appellant No. 2 had undergone three years, eight months and sixteen days (including remissions) whereas Arjan Singh appellant No. 3 had undergone three years, eight months and six days (including remissions). Even further the custody certificates show that no criminal case was registered against the present appellants and they have never indulged in any criminal activity. Even, the sentence of imprisonment imposed on the present appellants was suspended by this Court on 09.02.2004 and in the last more than 18 years, they have never misused the said concession granted to them by this Court. Learned State counsel also could not dispute these facts. Apart from that, the appellants were agriculturist and no purpose will be served by sending the appellants behind the bars once again after a period of 18 years.

This Court also placed reliance on a judgment passed by a Co-ordinate Bench of this Court in a case titled as **Rajinder Singh @ Lala and another Vs. State of Punjab, 2017(4) Law Herald**

3121 and in that case also conviction was under Section 304 IPC and appellant therein had undergone one year, eight months and five days of actual custody out of total sentence of four years and a Co-ordinate Bench of this Court was pleased to reduce the sentence to the one already undergone.

Reliance can also be placed on a judgment dated 07.01.2022 passed by a Co-ordinate Bench of this Court in CRA S-2478-SB-2018 titled as Jaipal Vs. State of U.T., Chandigarh, whereby the sentence was reduced to the period already undergone by the appellant.

Consequently, it is apparent that the incident pertains to June 2001 and the appellants are facing the agony of trial/appeal since last more than 21 years. Even, the sentence imposed on the present appellants was suspended by this Court vide order dated 09.02.2004 and in the last more than 18 years, they did not misuse the said concession and are not involved in any other criminal case. The appellants are sole bread earners of their families and ends of justice would be suitably met if their sentence of imprisonment is reduced to the one already undergone by them.

However, amount of fine is enhanced to Rs. 1 lac each, i.e. total Rs. 3 lacs, which shall be deposited by the appellants with the Chief Judicial Magistrate, Hoshiarpur, within a period of three months from today, failing which, the appellants shall undergo further

rigorous imprisonment for a period of one year. The Chief Judicial Magistrate, Hoshiarpur, is directed to issue notices to the legal representatives of Balbir Singh, since deceased, and the amount of compensation shall be paid to them as per law.

In view of the above, the impugned judgment of conviction is ordered to be upheld, whereas the order of sentence is liable to be modified to the extent indicated above and the appeal stands disposed of accordingly.

All pending applications, if any, are disposed of, accordingly.

The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

Records of the Court below be sent back.

In the end, I record my appreciation for Mr. Rahul Vats, learned Amicus Curiae, who had rendered able assistance to this Court.

21.12.2022
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking	:	Yes/No
Whether reportable	:	Yes/No