
(2006) 08 P&H CK 0270

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 363-DB-2003 and 1093 of 2003

Balbir Singh and Another

APPELLANT

Vs

State of Punjab
 Gursewak Singh Vs Balbir Singh and
Others

RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 323, 324, 34

Citation : (2006) 08 P&H CK 0270

Hon'ble Judges : Mehtab S. Gill, J; Baldev Singh, J

Bench : Division Bench

Advocate : T.S. Sangha, for the Appellant; S.S. Randhawa, D.A.G. and A.P.S. Deol, for the Respondent

Final Decision : Dismissed

Judgement

Mehtab S. Gill, J.—We shall be deciding Criminal Appeal No. 363-DB of 2003 and Criminal Revision No. 1093 of 2003, as they arise out of the same judgment/order of the learned Sessions Judge, Bathinda.

2. The learned Sessions Judge, Bathinda convicted Balbir Singh and Hamir Singh sons of Banta Singh and Iqbal Singh son of Gurpiar Singh under Sections 302/324/323/34 IPC and sentenced them to undergo various terms of sentences.

3. The case of the prosecution is unfolded by the statement Ex.PQ of Gursewak Singh, given to SI Sukhchain Singh at Civil Hospital, Maur. He stated that he has two brothers, namely Sikander singh and Bhim Singh. Their agricultural work is joint. Their father Gurdev Singh has three brothers, namely, Banta Singh, Gurjant Singh and Gurpiar Singh. Gurdev Singh and his brothers had installed a tubewell jointly in Dhabhanwala field. This tubewell was closed as it was not in working order. On 7.1.2001 at about 1.00 P.M. Gursewak Singh along with his brothers was hoeing the wheat crop in the Dhabhanwala field. Balbir Singh and Hamir Singh sons of Banta Singh and Iqbal Singh son of Gurpiar Singh armed

with kahis (spades) came there and tried to take out the pipes of the tubewell from beneath the ground. Gursewak Singh and his brothers went to them and asked them not to do so, as the pipes were installed jointly. He further told them that they should take out the pipes after consulting the elders. On this, all the three i.e. Balbir Singh, Hamir Singh and Iqbal Singh grappled with Gursewak Singh and his brothers. Balbir Singh gave a spade blow from the sharp side on the head of Sikander Singh, as a result of this blow, Sikander Singh fell down on the ground. Bhim Singh tried to intervene but Hamir Singh gave a spade blow on the left side of the head of Gursewak Singh. Iqbal Singh gave a spade blow on the head of Bhim Singh. Bhim Singh fell down, Iqbal Singh then gave a spade blow from the sharp side on his back. Balbir Singh then gave another spade blow from its reverse side on the left shoulder of Bhim Singh. Hamir Singh gave a spade blow on the neck towards the back of Bhim Singh. Gursewak Singh and Bhim Singh then raised an alarm. Balbir Singh, Hamir Singh and Iqbal Singh then fled away from there, with their spades. In the meantime Gurdev Singh their father came and put all the three injured in a tractor trolley and took them to the Civil Hospital, Maur. Sikander Singh had received a grievous injury and was referred to the hospital at Ludhiana. The grudge for the commission of offence is that Balbir Singh, Hamir Singh and Iqbal Singh felt insulted, as they were stopped from digging out the pipes of the tubewell. On the basis of this statement Ex.PQ, FIR Ex. PQ/1 was registered on 7.1.2001 at 5.00 P.M. The SDJM (duty), Talwandi Sabo received the special report on the same day at 2.27 P.M.

4. The prosecution to prove its case, brought into witness-box Dr. Deepak Rai as PW1, Dr. Manmohan Kumar as PW2, HC Sandhura Singh as PW3, Malkiat Singh, Patwari as PW4, ASI Gurdial Singh as PW5, Gursewak Singh as PW6, Bhim Singh as PW7, HC Inderjit Singh PW8 and SI Sukhchain Singh as PW9.

5. Learned Counsel for the appellants has argued that the complainant party and the appellants are closely related with each other. They all are first cousins. There is no previous enmity between the parties. Though the land was a joint holding, but the cultivation was being done separately without any interference by each other. The ownership of the piece of land wherein pipes were fitted, was that of the appellants. In fact, it is the complainant party who came forward and obstructed the appellants from doing their work and restrained them from pulling out the pipes. Grappling took place between both the parties. There was no common intention on the part of the appellants to inflict such like injuries which resulted in the death of Sikander Singh. There was no premeditation or the meeting of minds, occurrence had taken place suddenly. The Investigating Officer Sukhchain Singh, PW9 stated, that he did not collect any evidence as to who was the owner of piece of land where the tubewell was installed. The injuries on the persons of the Sikander Singh (deceased), Gursewak Singh PW6 and Bhim Singh PW7, are simple injuries. If prompt medical care had been given to deceased, the life of Sikander Singh could have been saved.

6. Learned Counsel for the State has argued that site plans Ex.PP and Ex.PT, prepared by Malkiat Singh, Patwari PW4 and Sukhchain Singh (I.O.) PW-9 respectively show that the land where the occurrence had taken place, was common land. If the land was common, then the tubewell installed in that land was also common. Gursewak Singh PW6 has clearly stated in his testimony, that all of them i.e. the complainant party and the appellants were standing on a common piece of land and the complainant party was standing at a distance of 3 to 5 karms (i.e. 16 to 35 feet). If this was the position, then it was clear that the appellants first came to the common piece of land to dig the pipes out. Appellants walked 3 to 5 karms and thereafter inflicted injuries to Sikander Singh, Gursewak Singh PW6 and Bhim Singh PW7. The single injury inflicted on the person of Sikander Singh proved fatal. Gursewak Singh PW6 and Bhim Singh PW7 tried to rescue the deceased from the appellants but they were also inflicted injuries. Dr. Manmohan Kumar PW2 has, after taking the X-ray report into consideration, found that the 12th rib of Bhim Singh PW7 was fractured. No sudden quarrel took place. Appellant Iqbal Singh is the son of Gurpiar Singh and appellants Balbir Singh and Hamir Singh are the sons of Banta Singh. It is clear from this that the appellants after due deliberations came to take out the pipes from the common piece of land.

7. We have heard the learned Counsel for the parties and perused the record with their assistance.

8. The relationship of the complainant party and the appellants is shown as under in the following pedigree table:

Roor Singh		_____				
Gurdev Singh	Gurjant Singh	Gurpiar Singh	Banta Singh			1. Sikander Singh
Iqbal Singh	1. Balbir Singh (Deceased)	(Appellant)	(Appellant)			2. Gursewak Singh
2. Hamir Singh (PW6)	(Appellant)		3. Bhim Singh (PW7)			

9. From the table above, it comes that the complainant and the appellants are first cousins. They are closely related to each other. All are from a common grandfather. As per site plans Ex. PP prepared by Makiat Singh, Patwari PW4 and Ex. PT prepared by Sukhchain Singh PW9 (I.O.), it shows, that the place of occurrence was in the common land owned both by the appellants and the complainant party. The tubewell of which the pipes were being taken out by the appellants, was also in the common piece of land. Sikander Singh was standing in the water-course Point B (Ex. PT). Complainant Gursewak Singh was standing in the common land Point C (Ex. PT) and Bhim Singh was standing at Point D (Ex. PT). It is the appellants who went 16 to 35 feet towards the complainants where deceased Sikander Singh and the other two witnesses Gursewak Singh PW6 and Bhim Singh PW7 were standing and thereafter attacked them. Gursewak Singh PW6 asked the appellants not to take out the iron and plastic pipes of the tubewell, but firstly to talk to the elders. Malkiat Singh, Patwari PW4, who is a key witness in regard to the ownership of the piece of land where the tubewell was installed, was not put any question regarding the ownership of the

common land.

10. Gursewak Singh PW6, in his testimony before the Court, has stated that the appellants on 7.1.2001 at about 1.00 P.M. armed with spades came to the tubewell and started removing the pipes, which was jointly owned by both the appellants and the complainant party. On being stopped, the appellants felt offended and attacked the complainant party. He (PW6) has further stated that there was no dispute regarding the joint property, but the appellants were not on visiting terms with them as far as social functions were concerned. Sikander Singh was attacked in the joint water channel and across the water channel there was the field of Gurpiar Singh, father of Iqbal Singh. After leaving the common piece of land where the tubewell was installed, rest of the land had been divided by both the parties and they were cultivating the land separately and peacefully. The complainant party did not have any weapons in their hands when they had gone to stop the appellants. This witness (PW6) has stated that they did not go near the appellants, but asked them not to remove the pipes. They were at that time standing at a distance of 5-6 karms. Bhim Singh PW7 has also reiterated the same. Gursewak Singh PW6 has stated, that Balbir Singh and Hamir Singh have their fields at a distance of about half a killa from the place of occurrence. Both these witnesses Gursewak Singh PW6 and Bhim Singh PW7 corroborate each other inter-se and also corroborate the FIR Ex.PQ/1.

11. The medical evidence also corroborates the statements given by the eye witnesses. Dr. Deepak Rai PW1 has stated in his testimony, that on examining Gursewak Singh he found that he had received one incised wound injury on the scalp left parietal area vertical in position. Similarly, on examining Bhim Singh, he found the first injury to be an incised wound. Second and third were abrasions on the left shoulder and neck. The fourth injury was a lacerated wound on the right parietal area of scalp. On the post-mortem conducted on Sikander Singh, an incised wound was found on the parietal area of the scalp, about 12 cms from right ear pinna backwards, traversing part of left parietal area of scalp to left occipital area. The medical evidence corroborates the ocular account.

12. Learned Counsel for the appellants has tried to make out a case u/s 304 IPC. He argued that there was no premeditation and the occurrence had taken place suddenly. Appellants did not have the common intention to inflict a fatal injury on the person of Sikander Singh. Injuries on the persons of Gursewak Singh PW6 and Bhim Singh PW7 are simple in nature. This argument of the learned Counsel for the appellants does not cut much ice. Appellants after due deliberations came to the common piece of land to dig out the iron pipes and the plastic pipes of the tubewell. It has come in evidence that the tubewell was installed on land jointly owned by both the parties. As pointed out earlier, two site plans Ex.PP and Ex.PT clearly show that the place of occurrence is a common piece of land. Nothing has been put to the witnesses and especially to Malkiat Singh Patwari, PW4 regarding the ownership of the tubewell and the common land. Appellants Balbir Singh and Hamir Singh are the sons of Banta Singh and appellant Iqbal Singh is the son of

Gurpiar Singh. They are cultivating their own land separately. It is after due deliberations that appellants Iqbal Singh, Balbir Singh and Hamir Singh made up their minds to pull out the iron and plastic pipes of the tubewell which though they knew, were jointly owned by them and the complainant party. It has come in evidence that the complainant party was standing at a distance of 16 to 35 feet from the appellants. They asked them not to pull out the pipes unless the elders meet and take a decision. Appellants were in no mood to listen, but instead of not going any further, attacked Sikander Singh, Gursewak Singh PW6 and Bhim Singh PW7 with spades. Sikander Singh died on the same day i.e. on 7.1.2001 at about 10.00 PM while being taken to Ludhiana. Gursewak Singh PW6 and Bhim Singh PW7 were admitted in Civil Hospital, Maur.

13. Criminal Revision filed by the complainant is dismissed with the observation that the dependents are at liberty to claim compensation as per law.