
(2006) 01 P&H CK 0226

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 351-DB of 1997 Criminal Revision No. 577 of 1997

Buta Singh and another

APPELLANT

Vs

State of Punjab
 Kando Vs Buta Singh and another

RESPONDENT

Date of Decision : 20-01-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2006) 01 P&H CK 0226

Hon'ble Judges : Kiran Anand Lall, J;Amar Dutt, J

Bench : Division Bench

Advocate : K.S. Ahluwalia, for the Petitioner in Criminal Revision No. 577 of 1997 None, for the Appellant; S.S. Randhawa, D.A.G., Punjab For the Respondents in Criminal Revision No. 577 of 1997 Mr. K.S. Ahluwalia, for the Respondent

Final Decision : Dismissed

Judgement

Ms. Kiran Anand Lall, J.—Criminal Appeal No. 351-DB of 1997 Buta Singh and another v. State of Punjab is directed against the judgment dated 20.3.1997 vide which the learned Sessions Judge, Bathinda, convicted Buta Singh and Tek Singh appellants u/s 302 read with Section 34 IPC and sentenced them to undergo rigorous imprisonment for life and to pay a fine of Rs. 20,000/-. In default of payment of fine, the defaulter was to further undergo rigorous imprisonment for two years. Criminal Revision No 577 of 1997 Kando v. Buta Singh and another, is for enhancement of sentence and also for grant of compensation to Kando.

2. The case pertains to the murder of Makhan Singh. Buta Singh appellant is his brother and the other appellant, Tek Singh, is a relation of Buta Singh.

3. Lambardar Dalip Singh (resident of Village Gobindpura) owned eight acres of land. He had four children viz. Makhan Singh deceased, Buta Singh appellant and two daughters, Kando (PW5) and Basso. He had been putting up with Makhan Singh who was a bachelor. Kando and Basso were married. Kando who was married at Village Tarkhanwala, had come to see him (Dalip Singh). On 7.10

1995, at about 4.00 p.m., Jarnail Singh complainant who had cordial relations with Makhan Singh since childhood and who often used to come to his place, came to meet him. Since Makhan Singh was not present there, he inquired about him from Kando who was present there. She told him that Makhan Singh was away to Bathinda and was about to reach back. He, therefore, sat on a cot, near the entrance of the house and started discussing household matters with her. Meanwhile, Makhan Singh reached there, on scooter. He had hardly stopped the scooter that Buta Singh appellant emerged from his adjoining house, along with Tek Singh appellant, and exhorted "catch hold of him. He should not escape. Today, we would give him land after partition". Thereafter, he and Tek Singh appellant caught hold of Makhan Singh and took him near the wall of Jeet Singh's Bara. Both of them picked up one brick each from over the wall of the Bara. Buta Singh hit him with a brick on the back side of his head while Tek Singh gave brick blow near his right ear. He fell on ground, on receipt of blows. Thereupon, both the appellants gave brick blows on both sides and the centre of his head and also on face. Jarnail Singh and Kando made noise "mar- ta, mar- ta" (killed- killed), whereupon the appellants fled away from there, after throwing the bricks. When Jarnail Singh and Kando reached near Makhan Singh, he had already succumbed to his injuries. Jarnail Singh left Kando and Nek Singh Chowkidar near the dead-body, and himself went to inform Sarpanch Sat Pal Singh, at his house. After taking along Sat Pal Singh, he proceeded towards the police station, but Sucha Singh ASI/SHO, Police Station, Cantt Bathinda, met him on the way and recorded his statement, Ex. PF, wherein besides the details of occurrence, he also mentioned that Makhan Singh (deceased) was a bachelor and Buta Singh appellant killed him in order to take possession of his share of land, also. The case against the appellants was registered vide formal FIR, Ex. PF/2, on the same day at 6.30 pm.

4. ASI Sucha Singh accompanied Jarnail Singh and Sat Pal Singh to the spot where Kando and Nek Singh Chowkidar were present near the dead-body of Makhan Singh. He prepared the inquest report, Ex. PD, which was attested by Sadhu Singh and Sukhdev Singh. He lifted earth from there including the bloodstained and took the same into possession vide memo, Ex. PG, attested by Jarnail Singh and ASI Roop Singh. Two bloodstained bricks, Exs. P-9 and P-10, were also taken into possession, from near the spot vide recovery memo. Ex. PH. and so were black-turban, Ex. P-11, purse (containing Rs. 32/-). Ex. P-12, spectacles, Ex. P-13, Black-shoes, Ex. P-14, and a Bajaj Chetak Scooter No. PJT-9192. The ASI also prepared rough site plan of the place of occurrence, Ex. PN. He got the dead-body photographed from, different angles, from Sukhbir Singh Photographer, PW3 and took into possession the photographs (Exs. P1 to P8) along with their negatives (Exs P1/A to P8/A) vide memo, Ex. PE.

5. Post-mortem of the dead-body was conducted by PW2 Dr. Rachhpal Singh on 8.10.1995 at 1010 a.m. who found following injuries thereon :

1. Clotted blood on face, nostrils eyes and ears.

2. Vertical marks, reddish coloured on front of middle of neck.
3. Right pinna of the ear, cut at middle, 1 cm. in length.
6. The investigating officer raided the house of the appellants several times but they were not found available. They were, ultimately, produced before him on 18.10.1995 by Sarpanch Sat Pal Singh. He arrested them. On interrogation of Buta Singh appellant, he made a disclosure statement, Ex. PS. and got recovered a blood-stained shirt from the hole of a Ban tree, in pursuance thereof, in the presence of Sarpanch Sat Pal Singh and ASI Harnek Singh.
7. On completion of investigation, challan was filed in Court against both the appellants. They were charged by the trial Court u/s 302 read with Section 34 IPC. They pleaded not guilty to the same. The prosecution was, therefore, called upon to lead their evidence.
8. Prosecution examined seven witnesses viz. PW1 Des Raj, Junior Assistant, DTO office, Bathinda, PW2 Dr. Rachhpal Singh, PW3 Photographer Sukhbir Singh, PW4 Complainant Jarnail Singh, PW5 Kando, PW6 ASI Sucha Singh and PW7 Constable Malkit Singh, in support of their case.
9. Sarpanch Sat Pal Singh, Sukhdev Singh, Chowkidar Nek Singh and Sadhu Singh PWs were given up as having been won over by the appellants and the remaining (formal) witnesses were given up as unnecessary. Report of Chemical Examiner showing that blood was found on the (two) bricks, turban, shirt, and the sample of earth, Ex. PX, was also tendered in evidence.
10. On completion of prosecution evidence, statements of the appellants were recorded u/s 313 Cr.P.C. wherein, while disputing the correctness of the incriminating evidence put to them, Buta Singh appellant pleaded as under :

I am innocent. This case has been planted upon me by Basso and Kando who wanted to grab our property and have created a false will executed by my father in their favour in order to grab our property. Jarnail Singh has been procured/ paid by them to be a witness against me. After my arrest Basso and Kando tried to take forcible possession of our land and litigation regarding the same is pending in the revenue as well as Civil Courts at Bathinda, between Basso and Kando on one side and myself on other side. Makhan Singh my brother was of a loose character. Basso and Kando had been summoned from their respective villages through Lachhman Singh after the occurrence, and in consultation with the police involved us in this false case.
11. Tek Singh appellant also adopted the said (defence) plea of his co- appellant. It is also in his statement that the wife of Buta Singh appellant is granddaughter of his (of Tek Singh) maternal uncle (mama).
12. DW1 Lachhman Singh, Harnek Singh Chowkidar, DW3 Sarpanch Sat Pal Singh DW4 Sadhu Singh and DW5 Sukhdev Singh were examined in defence.
13. On the conclusion of trial, the appellants were convicted/sentenced, as

mentioned above. But, as they felt dissatisfied with the verdict of the trial Court, they challenged the same, by filing this appeal.

14. We have heard arguments addressed by both sides and have also carefully considered the evidence on record.

15. The trial Court believed the ocular account of the occurrence, narrated by PW4 Jarnail Singh and PW5 Kando, as per which the appellants caused the death of Makhan Singh, by hitting him with bricks on different portions of head and face etc. The evidence of these witnesses also found corroboration from the testimony of PW2 Dr. Rachhpal Singh who had conducted the postmortem examination of the deceased and found clotted blood on face, nostrils, eyes and ears, besides vertical marks of reddish colour on the front of middle of his neck. He also found the pinna of right ear of the deceased cut, at middle, 1 cm in length. On dissection, a wound over the right parietal region of the scalp which was bone deep, was found and the bone was depressed with multiple fractures. The brain was damaged at the wound-site, and haematoma was present. The larynx was damaged at the site of vertical mark, on front of neck. On cutting, multiple fractures of the larynx were found. Both lungs were congested. The death, according to the doctor, had occurred due to depressed multiple fractures over the skull and haematoma on brain, besides due to the damaged larynx, causing respiratory arrest. The medical evidence was, thus, in consonance with the ocular evidence of the eye-witnesses, PW4 Jarnail Singh and PW5 Kando. Both the eyewitnesses fully explained their presence at the spot. The FIR which was lodged, without loosing any time, also contained their names. No motive was attributed to them, even by the appellants while cross-examining them. PW Kando is none else but the real sister of Buta Singh appellant. Since out of her two brothers, Makhan Singh had already been killed, she would have been the last person to falsely implicate her sole surviving brother, Buta Singh, unless the occurrence had, infact, taken place in her presence, particularly when no motive was attributed to her, in her cross-examination. The investigating officer, who had reached the spot soon after the occurrence, had also found her present near the dead-body. There is no reason to disbelieve his testimony in this regard or on any other point, as even the appellants had not doubted his bonafides. They nowhere suggested to him that he had any motive to make a statement which was contrary to correct facts.

16. The deceased was a bachelor who was about 20 years senior in age to Buta Singh appellant. It was he who was looking after the aged father, Dalip Singh, who was putting up with hire. Therefore, it was quite natural for the father to have a more soft corner for him, as compared to Buta Singh appellant. He had, therefore, given 2/3rd share of his land to him (Makhan Singh) and only 1/3rd to Buta Singh appellant, for cultivation. The ownership of the entire land, however, continued in his (of Dalip Singh) name. Buta Singh appellant had been asking the deceased to tell the father to transfer his share in the land to him (Buta Singh). But, whenever he said so, the deceased told him that they would share the land

after their father's death who was quite old. He (Buta Singh) was a married man, having three small children viz. two sons and a daughter, whereas Makhan Singh was all alone and had no liability to discharge and still he was enjoying 2/3rd share of the family property. It was clearly lust for the land which appears to have prompted Buta Singh appellant to do away with his brother, Makhan Singh, with the help of Tek Singh appellant who is his (of Buta Singh) relation, in the fond hope of inheriting the entire property of Dalip Singh, on latter's death.

17. In so far as the PWs are concerned, the trial Court has rightly not placed reliance on their testimony. They were, initially, prosecution witnesses but were given up on account of their having been won over by the appellants. No value can be attached to the testimony of such type of witnesses. The fact that they deposed in favour of the appellants, while appearing as defence witnesses affirms the prosecution-stand that they had been won over by the appellants.

18. For the reasons stated above, we find no merit in the appeal and dismiss the same.

19. In so far as Criminal Revision No. 577 of 1977 is concerned, none appeared for the petitioner when it was taken up. Otherwise also, we do not find any merit in the plea of the petitioner for enhancement of sentence and/or grant of compensation to Kando. The revision shall also, therefore, stand dismissed.