

(2008) 01 P&H CK 0172
In the Punjab And Haryana At Chandigarh

Gurmukh Singh and Others	Vs	APPELLANT
The State of Punjab Nachhattar Singh Vs Gurmukh Singh and Others		
		RESPONDENT

Date of Decision : 23-01-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 323

Citation : (2008) 1 RCR(Criminal) 972

Hon'ble Judges : S.D. Anand, J;A.K. Goel, J

Bench : Division Bench

Judgement

Adarsh Kumar Goel, J.—This judgment will dispose of Criminal Appeal No. 543-DB of 2005 filed by Gurmukh Singh, Gulzar Singh and Jaila against their conviction including conviction u/s 302 IPC and sentence of life imprisonment and other sentences and Criminal Revision No. 1354 of 2005 filed by the complainant Nachhattar Singh, challenging acquittal of Pyara Singh co-accused and enhancement of sentence of the appellants Gurmukh Singh, Gulzar Singh and Jaila.

2. Case of the prosecution is that on the night intervening 30.11.2001 and 1.12.2001 at 9.30 P.M., Nachhattar Singh (PW-1) and his son deceased Chamkaur Singh had gone to pay obeisance at Gopal Mochan Baba Tilla in village Dakala. Both of them went out to take tea on the main gate. Jagga Singh coaccused (who was declared juvenile to be tried by the juvenile Board) armed with knife, Gurmukh Singh armed with rod, Gulzar Singh armed with Takua, Jaila armed with spear and Pyara Singh (since acquitted), empty handed, encircled Chamkaur Singh. Jagga gave knife blow near testicles of Chamkaur Singh (which proved fatal) while Gurmukh Singh gave blow of rod on the left shoulder. Gulzar Singh gave Takua blow on right shoulder and Jaila gave spear blow on the head of Chamkaur Singh. Jaila also gave another blow on the right side of the chest of Chamkaur Singh. Pyara Singh raised lalkara that Chamkaur Singh be not left alive. Nachhattar Singh (PW-1) raised alarm, which attracted Hakam Singh

(PW-2), Naurang Singh and other persons.

3. The accused fled away with their weapons. Nachhattar Singh took the injured to Rajindra Hospital, Patiala. Chamkaur Singh died near the gate of the hospital. Nachhattar Singh leaving the deceased in the dead house in the care of Hakam Singh and Naurang Singh, proceeded to lodge report. ASI Darshan Singh met him on the way, who recorded his statement. The reason for the occurrence was that the accused were seeing the girls of the courtyard of the deceased with evil eyes, which was objected to by the deceased. Statement of Nachhattar Singh was recorded by Darshan Singh (PW-6), which led to registration of FIR. Darshan Singh (PW-6) went to the hospital, prepared inquest report, sent a request for post-mortem examination, recovered the clothes of the deceased and after completing the investigation, sent up the accused for trial. Post-mortem examination was conducted by Dr. S.S. Oberoi (PW-8) who found the following injuries:

1. Incised wound 2x1 cm. in the middle of left groin, 5 cm. away from the base of penis. On exploration the underlying blood vessels were cut, clotted blood was present in the sub-cutaneous and muscular tissues under the injury. The pelvic cavity contained about a litre of liquid blood.

2. Incised wound 2 x 0.2 cm. present on the front of right thigh in its middle.

3. Incised wound 1 x 0.5 cm. present on the lateral aspect of left upper arm just above its middle.

4. Abrasion 2 x 0.3 cm. in the upper part of right side of chest 8 cm. above the right nipple.

5. Abrasion 2.5 x 0.3 cm. on the front of left side of chest just above and medial to the left axilla.

6. Abrasion 2.04 cm. in the upper part of left deltoid region.

4. In his opinion, injury No. 1 was sufficient to cause death in the ordinary course of nature. The other injuries were ante mortem in nature. Time between death and injury was immediate and between death and post-mortem examination, 12 to 24 hours. In cross-examination, he stated that injuries No. 4, 5 and 6 could have been caused by falling on hard rough surface. Injuries No. 1, 2 and 3 could have been caused by a sharp-edged weapon like a sword. All the injuries other than injury No. 1, were superficial in nature.

5. The prosecution examined Nachhattar Singh as PW-1, Hakam Singh as PW-2, Indresh Khanna as PW-3, Gurjinder Singh, Constable as PW-4, Sohan Singh HC as PW-5, Darshan Singh, Inspector as PW-6, Subhash Chand, Constable as PW-7 and Dr. S.S. Oberoi as PW-8.

6. The accused denied the prosecution allegations and stated that they were involved on account of suspicion, enmity and party faction. The accused examined Amar Nath, Assistant Librarian of Rajindra Hospital, Patiala as DW-1,

Dr. Kuldeep Singh as DW-2, Amar Singh as DW-3 and Dr. Rajinder Garg as DW-4.

7. After considering the evidence on record, the trial Court convicted and sentenced the appellants. The reasons and observations of the trial Court can be summarised as under:

(i) Evidence of PW-1 Nachhattar Singh and PW-2 Hakam Singh, who were eyewitnesses, was reliable, which proved the case of the prosecution.

(ii) The evidence of the defence witnesses was not reliable. Injuries on Dara brother of accused Gulzar Singh being of no relevance, evidence of DW-1 Amar Nath, DW-2 Dr. Kuldeep Singh, DW-4 Dr. Rajinder Garg and DW-3 Amar Singh had no relevance.

(iii) Pyara Singh was a handicapped person and was alleged to be empty handed. He was entitled to benefit of doubt about his presence at the place of occurrence and sharing of common intention. Others formed unlawful assembly with common object to commit murder of Chamkaur Singh and irrespective of their individual role, they were liable for the act of any of them;

(iv) Delay was duly explained as the deceased had to be taken to the hospital;

We have heard learned Counsel for the parties and perused the record.

8. Learned Counsel for the appellants submitted that even according to the case of the prosecution the occurrence was not preplanned. Fatal injury has been attributed to Jagga accused who was declared juvenile and whose case has been separated to be tried by the Juvenile Board. In these circumstances, sharing of common intention by the appellants with Jagga co-accused, who caused the fatal injury, cannot be held to have been established. The motive is said to be objection of the deceased to teasing of girls by the appellants. The medical evidence shows that the injuries attributed to the appellants were superficial. The said injuries do not show use of any weapon by them.

9. Learned Counsel for the State and the complainant supported the conviction and sentence of the appellants.

10. We find merit in the contention raised on behalf of the appellants.

11. With a view to determine common intention, nature of injuries, background of the incident and nature of weapons, besides other factors, are required to be properly considered and appreciated.

12. Prior meeting of minds is required to be established though common intention may arise and be formed suddenly. Same intention independent of each other, is different from common intention. In the present case, occurrence took place all of a sudden and the medical evidence shows that all the appellants only caused superficial injuries. There is nothing on record from which their sharing of common intention of Jagga, who caused injury with knife which proved to be fatal, can be held to be established. In these circumstances, the appellants will

be liable only for their individual acts and will not be vicariously liable for the act of Jagga Singh.

13. Accordingly, we allow this appeal and alter the conviction of the appellants to Section 323 IPC and sentence them to the period of custody already undergone as it has been stated by learned Counsel for the appellants that they have already been in custody for about six years.

14. The revision petition is without any merit and is, thus, dismissed.

15. The appeal and the revision petition stand disposed of accordingly.