
(2005) 07 P&H CK 0134

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 566-DB of 1999

Karamjit Singh and another and Lakhbir Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 26-07-2005

Acts Referred:

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

Citation : (2005) 4 RCR(Criminal) 499

Hon'ble Judges : Pritam Pal, J;Mehtab S. Gill, J

Bench : Division Bench

Advocate : S.K. Garg, Amicus-Curiae, for the Appellant; A.S. Virk, Addl. A.G., Punjab assisted by Sh. S.S. Siao, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Pritam Pal, J.—Appellants Karamjit Singh and Gurdeep Singh sons of Mohinder Singh, have brought this Criminal Appeal No. 566-DB of 1999 against the judgment of conviction and order of sentence dated October 25, 1999, whereby they were convicted under Sections 302/324/34 of the Indian Penal Code and sentenced to undergo imprisonment for life with a fine of Rs. 5000/- each u/s 302/34 of the Indian Penal Code. Further, in default of payment of fine, they were ordered to undergo R.I. for two years each. Further, they were also ordered to undergo R.I. for six months each u/s 324/34 of the Indian Penal Code. Both the substantive sentences were, however, ordered to run concurrently.

2. Crl. Revision No. 132 of 2000 was also filed by Lakhbir Singh-complainant for enhancement of the substantive sentence and that of fine. Since the aforesaid Criminal Appeal and Criminal Revision arise out of one and the same judgment, thus, they are being disposed of by this common judgment passed in Crl. Appeal No. 566-DB of 1999.

3. In nutshell, the facts giving rise to the present appeal are as follows:

4. On June 5, 1994 at about 7.15 p.m., an `AKHAND PAATH" was being

organised at the gate of village 'PUADRA". At that time, PW-2 Lakhbir Singh-complainant alongwith his friend Ranjit Singh (40 years) since deceased was going towards the fields to answer the call of nature. Kuldip Singh, a 'PANCH" of the village was also following them. When they reached near the house of Gurnam Singh ex-'PANCH", both the Appellants and their father Mohinder Singh (since declared proclaimed offender) armed with weapons, emerged from a street. Appellant Karamjit Singh was carrying a 'DAGGER" (CHHURA) Ex. P12, his father Mohinder Singh was also carrying a 'DAGGER" whereas the Appellant Gurdeep Singh was carrying a 'HATHIA" (DATTAR). First of all, Appellant Gurdeep Singh raised a 'LALKARA" that Ranjit Singh should be taught a lesson for getting their house auctioned. Thereafter, Appellant Karamjit Singh gave two blows with his weapon on the person of Ranjit Singh, which hit on his shoulder and left flank. When Lakhbir Singh complainant came forward to his rescue, Appellant Karamjit Singh also gave two 'DAGGER" blows to him, which hit on his chest and left flank. At the same time, Mohinder Singh also gave 'DAGGER" blows to Ranjit Singh which hit on his left wrist and left flank. Thereafter, Lakhbir Singh-complainant and his companion raised an alarm. Thereupon, Paramjit Singh, who was coming from the bus stand side and Kuldip Singh 'PANCH" rescued the injured from the assailants. After the occurrence, the assailants fled away from the spot with their respective weapons. Lakhbir Singh-complainant/injured and Ranjit Singh, who had sustained serious injuries were first removed to Primary Health Centre, Bilga and after providing first aid, they were taken to Civil Hospital, Phillaur and ultimately, they were shifted to a private hospital known as 'DMC, Hospital, Ludhiana".

5. Motive behind the occurrence was that Mohinder Singh, father of the Appellants had taken a sum of Rs. 24,000/- against a pronote from Ranjit Singh deceased. When he failed to repay the same, Ranjit Singh filed a Civil Suit against him. It was on June 5, 1994 that Chowkidar of the village had held a 'MUNADI" in the village asking said Mohinder Singh to appear in the Court on June 11, 1994, failing which, that case would be decided against him. On account of said 'MUNADI" in the village against Mohinder Singh, they (the Appellants) had nourished a grudge against Ranjit Singh deceased.

6. Ultimately, said Ranjit Singh expired in the 'DMC Hospital, Ludhiana, on June 6, 1994 at 11.00 a.m. On receipt of a wireless message, PW-8 Balbir Singh ASI, who is the main Investigating Officer of this case, rushed to 'DMC" Hospital, Ludhiana and there, he recorded the statement Ex. P.A. of Lakhbir Singh injured/complainant PW-2 in the above narration of facts. ASI Balbir Singh then made his endorsement Ex. PA/2 on the basis of which, formal FIR Ex. PA/2 was recorded by ASI Iqbal Singh at Police Station Noor Mahal, District Jalandhar at 5.15 p.m. on the same day. He then took the investigation of this case in his hand, prepared the inquest report Ex. PE with regard to the death of deceased Ranjit Singh. Thereafter, clothes of the deceased and that of Lakhbir Singh injured were taken into possession vide recovery memo Ex. PG. The Investigation Officer then reached the place of occurrence and lifted the blood-stained earth from the spot

and took the same into possession vide recovery memo Ex. PH. At the spot, he also prepared the rough site plan Ex. PJ with its correct marginal notes in his hand. He also recorded the statement of P Ws Kuldeep Singh 'PANCH', Head Constable Kuldeep Raj and Paramjit Singh, u/s 161 of the Code of Criminal Procedure Thereafter, investigation of this case was taken into hand by Kuldeep Singh-PW 11 the then SHO (now DSP). The Appellants were arrested by the SHO. On interrogation, Karamjit Singh made a disclosure statement Ex. PK and in pursuance thereof, he got recovered 'DAGGER' (CHHURA), vide recovery memo Ex. P.M. Similarly, Mohinder Singh (proclaimed offender) also gave his disclosure statement Ex. PN and in pursuance thereof, he too got recovered 'CHHURA' vide recovery memo Ex. PP. It was on July 17, 1994 that Gurdeep Singh-Appellant was also arrested and interrogated. Whereupon, he gave his disclosure statement Ex. PR and in pursuance thereof, he also got recovered 'HATHIA' which was also taken into possession vide recovery memo Ex. PR/1.

7. After completion of the formal investigation of this case, the Appellants along with their father Mohinder Singh were challaned for commission of offences punishable u/s 302, 324/34 IPC. And ultimately they were charge-sheeted accordingly, by the learned trial Court vide order dated October 27, 1994, to which they pleaded not guilty and claimed trial.

8. Before we proceed further, it is pertinent to mention here that during trial, Mohinder Singh, father of the Appellants had failed to appear before the trial Court and ultimately, he was declared proclaimed offender in this case.

9. The prosecution in order to substantiate its case against the Appellants examined as many as 11 witnesses namely, PW1-Dalip Singh, Draftsman who prepared the scaled plan Ex. PA with its correct marginal notes; PW2-Lakhbir Singh, who is the complainant/injured; PW3-Paramjit Singh an eye-witness; PW4-Dr. Tarsem Singh, who had given first aid to the injured while posted in the Primary Health Centre, Bilga; PW5-Dr. Kuldeep Singh conducted the post-mortem examination on the dead body of Ranjit Singh; PW6-Varun Saggar, had declared Lakhbir Singh injured to be fit to give statement; PW7-Constable Ranjit Singh had accompanied ASI Balbir Singh (I.O.) and brought the dead-body of Ranjit Singh from DMC Hospital to Civil Hospital, Phillaur for post-mortem examination; PW8-Balbir Singh ASI had recorded the statement Ex. PA of Lakhbir Singh injured and completed the other formalities; PW9-Constable Harvinder Pal Singh simply tendered his affidavit Ex. PW9/A; PW10-Dr. Dinesh Gupta had medico-legally examined Ranjit Singh injured and PW11-Kuldeep Singh the then SHO (now DSP) had interrogated accused Mohinder Singh and Karamjit Singh.

10. After closure of the prosecution evidence, the Appellants were examined in terms of their statements u/s 313 Code of Criminal Procedure wherein they denied all the incriminating evidence which appeared against them in the prosecution case. They were also called upon to enter on their defence but they chose in negative.

11. The trial Court after appraisal of the prosecution evidence and hearing the learned Counsel for the parties convicted and sentenced the Appellants as indicated in the opening part of this judgment. This is how feeling aggrieved, the Appellants have now come up in appeal before this Court.

12. We have heard the learned Counsel for the parties and with their assistance have gone through the record carefully.

13. At the very outset of his arguments, Mr. S.K. Garg, learned Amicus-Curiae appearing on behalf of the Appellants attacked on the involvement of Gurdeep Singh, aged about 18 years falsely in this case. At the same time, he referred to the statements and material brought on the file by the prosecution and then contended that in this case, no injury is attributed to him. He is simply alleged to have given a 'LALKARA' for opening the attack on deceased Ranjit Singh, which fact is not believable. At the same time, he further argued that no recovery of any weapon could be proved from this Appellant. According to Mr. Garg, this Appellant (Gurdeep Singh) has been made a scape- goat in this case on account of due deliberations before recording of the delayed FIR.

14. At the second place, Mr. Garg has also assailed the findings of the learned trial Court whereby another Appellant Karamjit Singh, elder brother of Gurdeep Singh-Appellant was held guilty. In that behalf, he submitted that the disclosure statement of Karamjit Singh-Appellant and the alleged recovery had not been proved and finally, he again submitted that the FIR in this case is belated one and as such, the police had an ample time to involve Appellant Karamjit Singh falsely also in this case after having due deliberations at the instance of complainant Lakhbir Singh.

15. On the other hand, Mr. A.S. Virk, learned Addl. A.G. Punjab, did his best to repel all the aforesaid points of arguments raised on behalf of the Appellants and at the same time, he made reference to the statements of star witnesses, namely, PW2-Lakhbir Singh and PW3-Paramjit Singh another eye- witness as well as the evidence consisting in the statements of the Doctors, namely, PW5-Dr. Kuldip Singh; PW6-Dr. Varun Sagar and PW10-Dr. Dinesh Gupta. At the fag end of his arguments, he contended that in this case, ocular version of the star witnesses finds full corroboration from the medical evidence and as such, it hardly matters if some discrepancy is there with regard to the recovery of weapons of offence.

16. We have given our thoughtful consideration to the rival contentions of the learned Counsel for the parties and find that the above points of arguments of Mr. Virk qua Appellant-Karamjit Singh are not without merit inasmuch as PW2-Lakhbir Singh injured and PW3-Paramjit Singh are consistent throughout on all material aspects of the prosecution case. According to PW2-Lakhbir Singh, Karamjit Singh-Appellant was armed with a 'CHHURA' (DAGGER) Ex. P12 and he had given two blows with the said weapon on the person of Ranjit Singh which hit on his left shoulder and left arm flank. Further, it has also been

deposed by this PW that when he had stepped forward for the help of Ranjit Singh, Karamjit Singh-Appellant then also dealt with two 'CHHURA' blows, one on his chest and the other on the left arm pit. This aforesaid version of PW2-Lakhbir Singh has also been fully corroborated by Paramjit Singh-PW3. Not only that, the version of these two material witnesses of this case also finds corroboration from the medical evidence consisting the statement of PW5-Dr. Kuldeep Singh and PW10-Dr. Dinesh Gupta and these Doctors found the following injuries on the persons of Ranjit Singh deceased and Lakhbir Singh injured/complainant:

On the person of Ranjit Singh deceased as described in Post Mortem Report Ex. PC by Dr. Kuldeep Singh (PW-5):

1. Dressed wound on the top of left shoulder. Incised in nature and muscle deep measuring 4x2 cm;
2. Dressed wound incised measuring 3x2 cm on the fourth intercostal space lateral to nipple on dissection chest cavity on left side was full of blood.

Left lung was ruptured. Pericardial cavity was full of blood.

3. 3x2 cm incised dressed wound on the back of right lumbar region. On dissection, abdominal cavity was full of blood. Right kidney was ruptured. Missentry was injured large was injured.

4. 4x3 cm incised wound on the radial aspect of centre of left forearm. Bone deep. Underlying bone was normal.

Further, Dr. Kuldeep Singh also opined that injury Nos. 2 and 3 described above, were ante-mortem and sufficient to cause death in the ordinary course of nature.

17. PW10-Dr. Dinesh Gupta, had also examined Lakhbir Singh injured and found the following injuries on his person:

1. 3/4 cm stab in the left fourth inter costal space in para sternal region.
2. 3 cm stab wound in left 7th inter costal space in anterior axillary line.

Thus, a close perusal of the nature and seat of injuries as mentioned above goes a long way to vouch the safe ocular version consisted in the statements of PW2-Lakhbir Singh and PW3-Paramjit Singh. It is further evident that inspite of lengthy cross-examination on the aforesaid Doctors and the material witnesses in this case, nothing could be elicited so as to create any doubt in the prosecution story qua Appellant-Karamjit Singh, in this view of our foregoing discussion, we find nothing wrong with the impugned judgment and order passed by the learned trial Court qua the Appellant-Karamjit Singh.

Now adverting to the case of second Appellant-Gurdeep Singh.

18. In this regard, we first take the point of delay occurred in the lodging of the FIR. According to the prosecution, occurrence of this case had taken place at

about 7.15 p.m. on June 5, 1994, whereas statement Ex. PA of Lakhbir Singh injured was recorded by ASI Balbir Singh PW-8 at 3.30 p.m. on June 6, 1994 that too in the D.M.C. Hospital, at Ludhiana. Ultimately, FIR was recorded in the Police Station Nur Mahal at 5.55 p.m. vide D.D.R. Nos. 16 and 17 of the same day. According to PW-8, he had rushed to the D.M.C. Hospital at Ludhiana on receipt of a message regarding the death of Ranjit Singh on June 6, 1994 and prior to that, he was not aware about the occurrence of this case. But his this assertion stands belied by the statement of PW4-Dr. Tarsem Singh, who had first rendered the medical aid to injured Lakhbir Singh while posted as Medical Officer, P.H.C. Bilga. In his statement, it has been categorically stated that he had sent the information to the police on June 5, 1994 at 8.45 p.m. and the same was received in the Police Station at 9.30 p.m. on the same day. It is further stated by this doctor in his cross-examination that in the intimation sent by him to the police, it was also mentioned that the injured had also referred to Civil Hospital, Phillaur. In this view of the version of PW4-Dr. Tarsem Singh, it appears that PW8-ASI Balbir Singh did his best to explain the delay in lodging of the FIR in this case in Police Station, Nur Mahal which is at a distance of 6 k.m. only from the place of occurrence. In this view of our discussion, it is established that there was an ample time with the police to give a coloured version in the FIR at the instance of the complainant party. On the said account of lodging of the FIR at a belated stage, participation of Gurdeep Singh-Appellant in the occurrence of this case appears to be highly doubtful. As argued above by Mr. S.K. Garg, in this case, no injury is attributed to him. He is simply alleged to have carried a 'DATTAR' with him and moreover, recovery of the said weapon is also not proved on record before the learned trial Court. He was about 18 years of age at the time of alleged occurrence of this case.

19. Taking an over all view of the material brought on the file against this Appellant (Gurdeep Singh), we are of the considered opinion that he was roped in this case falsely after due deliberations/embellishments at the behest of the complainant party.

20. In view of the above, we hold that the prosecution has not been able to bring home the guilt of this Appellant (Gurdeep Singh) beyond any reasonable doubt. Accordingly, he is acquitted of the charges framed against him in this case.

21. Now adverting to Crl. Rev. No. 132 of 2000, it has been filed by Lakhbir Singh-complainant/injured for the enhancement of the substantive sentences as well as fine and further converting the same to be paid to him as a compensation.

22. We find no merit in this Criminal Revision Petition. However, 50% of the fine imposed upon Appellant-Karamjit Singh by the learned trial Court is directed to be paid as a compensation to complainant/injured Lakhbir Singh.

23. In the result, the judgment and order passed against Appellant-Karamjit Singh by the learned trial Court is upheld and consequently the appeal qua this Appellant (Karamjit Singh) is dismissed, whereas the appeal qua second

Appellant (Gurdeep Singh) is accepted and he is acquitted of the charges framed against him by the learned trial Court.

24. But for the above modification in the order converting 50% of fine into compensation to be paid to the complainant/injured Lakhbir Singh, his Crl. Rev. No. 132 of 2000 is dismissed.

Order accordingly.