
(2015) 02 P&H CK 0225

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal D-662-DB of 2002 and CRR 2252 of 2002

Kehar Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Arms Act, 1959 — Section 25

Criminal Procedure Code, 1973 (CrPC) — Section 173, 174, 313, 319

Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 324

Citation : (2015) 02 P&H CK 0225

Hon'ble Judges : Gurmit Ram, J.; T.P.S. Mann, J.

Bench : Division Bench

Advocate : Vijay Kumar Jindal, Senior Advocate and Garima Jindal, for the Appellant; Baldev Singh, A.A.G, Vinod Ghai, Senior Advocate and Simrandeep Singh Sandhu, Advocates for the Respondent

Final Decision : Disposed off

Judgement

T.P.S. Mann, J.—The aforementioned appeal and the revision are being disposed of by one judgment as they arise from the judgment and order dated 14/16.8.2002 passed by the Additional Sessions Judge, Kaithal.

2. The seven appellants i.e. Kehar Singh, his sons Ramesh, Mahabir and Om Parkash, brother Nathu Ram and nephews Satbir Singh and Sukhbir were tried for the offences punishable under Sections 148, 302/149, 307/149 and 324/149 IPC on the allegations that they formed an unlawful assembly, the common object of which was to cause the murder of Dharam Singh and injuries to Raghbir Singh, Phoolwati and Urmila and in prosecution of common object of the said assembly, did cause murder of Dharam Singh besides causing injuries to Raghbir Singh, Phoolwati and Urmila. Appellant-Sukhbir was also charged for committing the offence punishable under Section 25 of the Arms Act for keeping in possession a DBBL gun without any permit or licence. Vide impugned judgment and order, all the seven appellants were held guilty for committing the offences

under Sections 148, 302, 307 and 324 IPC and sentenced as follows:-

3. Appellant-Sukhbir was also held guilty under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months. All the sentences were ordered to run concurrently. Whole of the fine to be recovered from the appellants was ordered to be paid as compensation to the legal heirs of deceased Dharam Singh and to injured Raghbir Singh in equal shares.

4. The case of the prosecution in nutshell is that on 26.3.1998 at 7.00 a.m., complainant Jai Pal Singh made a statement before ASI Jogi Ram of Police Station Dhand at PGI, Chandigarh wherein he stated that he was resident of village Kaul and posted as a teacher in Government Girls High School situated in the village. In all, they were six brothers. On 25.3.1998 at about 9.00 p.m. he was going towards his house after attending the call of nature. When he reached in front of the house of his brother Prem Singh, he saw that his two other brothers Dharam Singh and Raghbir Singh were coming towards the baithak of his brother Prem Singh and when they had reached in front of the house of Kehar Singh-accused, they found Kehar Singh standing there. On seeing Dharam Singh and Raghbir Singh, Kehar Singh proclaimed that enemies had arrived and they should not be allowed to go. On this, Sukhbir-accused carrying a gun, Satbir-accused with a lathi, Nathu Ram-accused with a gandasi, Mahabir-accused with a lathi, Om Parkash-accused carrying a gandasi and Ramesh-accused having a gandasi came out of their houses. First of all, Sukhbir opened fire at Dharam Singh. This was followed by Sukhbir firing at Raghbir Singh also. Om Parkash-accused gave a gandasi blow on the head of Raghbir Singh while Nathu Ram and Ramesh-accused caused injuries on the head and arm of Raghbir Singh. All the accused, thereafter, caused injuries with lathis and gandas to Dharam Singh. Sukhbir fired 2/3 gun shots but the complainant could not make out as to who was hit as a result thereof. On account of firing of gun shots and the gandas, the complainant stood in the corner of the house and witnessed the occurrence. Dharam Singh and Raghbir Singh raised an alarm which attracted Phoolwati wife of Raghbir Singh and Urmila Devi wife of the complainant but they were also caused injuries with lathis and gandas. A number of neighbours came out of their houses and on seeing them, all the accused ran away alongwith their respective weapons. The complainant noticed that his brother Dharam Singh had died while Raghbir Singh was in an injured condition. Accordingly, he took Raghbir Singh, Phoolwati and Urmila to Kaithal hospital in a jeep from where Raghbir Singh was referred to PGI Chandigarh.

5. Further case of the prosecution was that in the month of July, 1997, there was a dispute between the complainant party and Kehar Singh etc. in which Kehar Singh had received injuries. On that account, Kehar Singh and others had been nursing a grudge against the complainant party. Accordingly, in connivance with each other, all the accused murdered Dharam Singh besides causing injuries to

Raghubir Singh, Phoolwati and Urmila. The complainant sought taking of legal action against the accused.

6. On the basis of aforementioned statement made by complainant-Jai Pal Singh, FIR No. 56 dated 26.3.1998 came to be recorded at 10.15 a.m. at Police Station Dhand under Sections 148/149/307/302 IPC and Section 25 of the Arms Act.

7. During the investigation of the case, ASI Jogi Ram reached village Kaul and examined the place of occurrence. The dead body of Dharam Singh was found lying in the street and it was photographed by Baljinder Singh. The Investigating Officer prepared inquest report under Section 174 Cr.P.C. and sent the dead body for post-mortem. The investigation was, thereafter, handed over to Inspector Sant Ram, who verified the investigation conducted by ASI Jogi Ram. He also inspected the place of occurrence, prepared rough site-plan of the place of occurrence and lifted blood stained earth from two places. He took into possession sealed parcels containing clothes of the deceased and also all the pellets recovered from the dead body. Statements of the witnesses were also recorded. All the accused surrendered before the Illaqa Magistrate. The double barrel gun alongwith its licence which was in the name of Nathu Ram was entrusted to Inspector Sant Ram by Atma Ram, Naib Court which was produced by Sukhbir-accused at the time of surrender. On 30.3.1998, the police custody of the accused was sought. On 1.4.1998, Sukhbir-accused suffered disclosure statement and got recovered two empty cartridges which he had kept concealed in the bushes in front of the tubewell kotha of Kehar Singh. Nathu Ram-accused also got recovered a gandasi which he had concealed in the wheat crop field of Kehar Singh. Ramesh-accused, in pursuance of his disclosure statement, got recovered a gandasi which was kept concealed in the tubewell kotha in his fields. Satbir Singh and Mahabir-accused got recovered a lathi each. After completion of necessary investigation, report under Section 173 Cr.P.C. was prepared by Inspector Randhir Singh and submitted in the Court against all the accused except accused-Om Parkash, who was found innocent. Upon commitment of the case, even Om Parkash-accused was summoned under Section 319 Cr.P.C. All the seven accused were then charged for the various offences, as mentioned above, to which they pleaded not guilty and claimed trial.

8. In support of its case, the prosecution examined PW9 Jai Pal Singh and PW10 Raghubir Singh, who deposed regarding the ocular account of the occurrence. The medical evidence was brought on record through the testimonies of PW6 Dr. S.K. Jain, PW11 Dr. D.C. Thakural and PW16 Dr. M.K. Tiwari. In his testimony, PW6 Dr. S.K. Jain testified about the post-mortem conducted by him on the dead body of Dharam Singh during which he observed the following injuries:-

"1 Two linear abrasions 8 cm x.2 cm over the left arm medial aspect and left side of chest.

2. Multiple small lacerated wounds with blackening over the right side of chest, mainly in the mammary region varying from 1/4th cm to 1/2 cm and few of

3/4th cm diameter.

On exploration chest was having hole over the inner side of chest wall. Right lung was badly lacerated having pellets impacted in it. Six pellets recovered, sealed and handed over to police in a vial with sample of seal. Right side of haemothorax right side and haemopericardium was present there. Right side of chest was having multiple small holes with fractures of ribs.

3. Skull bone was having fracture on left temporal area and it was comminuted fracture and haematoma in the extra dural region of size 5 cm x 7 cm was present.

Stomach was having semi digested food material and small intestines were having digested food and large intestines were having faecal matter. Liver, spleen and kidney were pale and healthy. All other organs were pale and healthy.

In my opinion, the cause of death was due to shock and haemorrhage due to chest injuries (due to fire arm) and head injury. Both the injuries were ante-mortem in nature and were sufficient to cause death in normal course of life. Duration between injuries and death was immediate and between death and post mortem was 6 to 24 hours."

9. PW11 Dr. D.C. Thakural deposed that he medico-legally examined Raghbir Singh injured on 25.3.1998 at 10.50 p.m. and found the following injuries on his person:-

"1. There were multiple lacerated wounds penetrating type of varying size from .5 cm x .5 cm to .5 cm x .3 cm over left thigh. Left inguinal area. Pelvis, scrotum and penis. Profuse bleeding was present. X-ray was advised and also the Surgeon opinion.

2. Incised wound 12 cm x 1 1/2 cm over the left side of scalp on frontal and parietal area. Advised X-ray.

3. Incised wound 3 cm x 1 cm over base of right ring finger. Bleeding was present. X-ray was advised.

4. Abrasion 2 cm x 2 cm over back of right hand. Injuries No. 1 to 3 were kept under observation. Injury No. 1 was caused by gun shot injury, injuries No. 2 and 3 by sharp and injury No. 4 by blunt weapon. All the injuries were caused within the probable duration of six hours."

10. Dr. D.C. Thakural also deposed that he medico-legally examined Phoolwati wife of Raghbir Singh on the same day at 11.30 p.m. and found the following injury on her person:-

"1. A contusion 10 cm x 2 cm on upper and lateral side of left leg. It was tender and X-ray was advised.

The injury was caused by blunt weapon within the duration of six hours."

11. Dr. D.C. Thakural further testified that he examined Urmila on the same day at 11.30 p.m. and found the following injury:-

"1. There was an incised wound of 8 cm x.5 cm over left fronto parietal area of scalp. Bleeding was present. X-ray was advised. The injury was caused by sharp edged weapon and duration was within six hours." 12. PW16 Dr. M.K. Tewari deposed about the treatment of Raghbir Singh in PGI, Chandigarh. He stated that the patient was brought on 26.3.1998 at 3.15 a.m. and admitted vide CR No. 174864 and admission No. 83235/98. He was brought by complainant-Jai Pal Singh with alleged history of assault by sickle and pellet injury at 8.30 p.m. on 25.3.98 at his village in Kaithal as per his record. There was history of loss of consciousness and vomiting. His vitals were stable. There was a sutured wound in the left fronto parietal region about 13 cm long. Underlying depressed fracture was present. The patient underwent X-ray of skull, CT scan of head which revealed left frontal depressed fracture with underlying contusion and frontal aerocele (air in frontal region of brain). Accordingly, the injured was advised to undergo surgery and was operated on 28.3.1998. At the time of surgery, wound toileting, craniostomy (cutting of bone) evacuation of contusion and dura plasty was done by Dr. A.K. Sinha and Dr. S.Datta, under general anesthesia. The patient was discharged on 15.4.1998. Condition at the time of discharge was as follows:-

Patient was conscious, there was motor aphasia (inability to speak) and right hemiparesis (weakness of right half of body). The patient was advised to continue with the medication prescribed to him and to attend neurosurgery OPD after a period of four weeks. In the opinion of Dr. M.K. Tewari, the nature of injury was dangerous to life. 13. Apart from the ocular account and the medical evidence, the investigation part of the case was testified to by PW1 HC Ram Singh, PW2 Constable Surender Kumar, PW3 HC Prithvi Raj, PW4 HC Jai Lal, PW5 Constable Satbir Singh, PW7 HC Haveli Ram, PW12 HC Ram Dia, PW13 ASI Jogi Ram, PW14 Inspector Sant Ram and PW15 L.S. Yadav, Senior Scientific Officer (Ballistics), FSL, Madhuban. The scaled site-plan Ex. PL of the place of occurrence was brought in evidence by PW8 Rishi Pal.

14. When examined under Section 313 Cr.P.C., all the accused pleaded false implication due to party faction in the village. They further stated that on the day of the occurrence, Sukhbir and Om Parkash-accused were not present in the village. In defence, they produced DW1 Saroj Sharma, Superintendent, Research Branch, Haryana Vidhan Sabha and DW2 Anil Kumar, Watch and Ward Assistant, Haryana Vidhan Sabha about the plea of alibi taken by Om Parkash-accused. DW3 Urmesh Kumar Gupta, LDC, office of HSEB Operation, Sub Division, Dhand deposed about Rajinder son of Dharam Singh applying for electric connection on 8.2.1999 which connection was released to him on 8.11.1999. DW4 Om Parkash Sharma, Assistant Dean Students Welfare Office Kurukshetra University stated that the students of History Department went on study tour from 21.3.1998 to 25.3.1998 and their tour returned in the night of 25.3.1998. He proved the

record regarding payment of 50% of bus fare to M/s. Prince Tourist Service, Ambala City regarding the said tour. DW5 Dr.S.K. Chehal, Lecturer, Department of History, Kurukshetra University testified that the students tour of Department of History of Kurukshetra University was arranged from 21.3.1998 to 25.3.1998 and he had accompanied the students on the said tour. Sukhbir-accused remained with him on this tour and they returned at about 12 midnight on 25.3.1998. The bus had dropped the students at various hostels and he himself got down from the bus at about 12.45 during the night.

15. After hearing learned Public Prosecutor for the State assisted by learned counsel for the complainant, and learned counsel representing the accused, the trial Court believed the prosecution case and, accordingly, held all the accused guilty for the offences for which they were charged and sentenced them, accordingly.

16. This Court has heard learned counsel for the convicts, learned State counsel as well as learned counsel for the complainant and with their able assistance, minutely scanned the evidence brought on the record.

17. According to the prosecution, in the month of July, 1997, there was exchange of hot words between Dharam Singh, since deceased, on the one side and Kehar Singh-accused and his brother Mehar Singh, on the other, regarding discharge of water from a water tap in front of the residential house of Dharam Singh. In the said occurrence, injuries were received by deceased Dharam Singh on the one hand and Mehar Singh, on the other. There is no denial from the side of accused regarding the said incident and pendency of criminal case which was the outcome of the said occurrence. Thus, the prosecution has been able to establish that the accused party had been nursing a grudge against the complainant party and finding a suitable opportunity, the attack was launched upon Dharam Singh, Raghbir Singh, Phoolwati and Urmila and on account of the injuries received during the occurrence, Dharam Singh had died. It is true that the motive is a double edged weapon but when there is direct evidence available on the file regarding the incident in the present case, motive loses much of its importance. Moreover, the motive remains lying hidden in the minds of the accused and it is very difficult to lead direct evidence in support of the same.

18. As regards the ocular account of the occurrence, the prosecution has relied upon the testimonies of PW9 Jai Pal Singh, who had lodged the FIR and PW10 Raghbir Singh, who himself had received injuries during the occurrence. Both of them have stated in unambiguous terms about the manner in which injuries were caused to Dharam Singh, since deceased, as well as to three injured persons, namely, Raghbir Singh, Phoolwati and Urmila. Their testimonies are duly corroborated by the medical evidence in the shape of testimonies of PW6 Dr.S.K. Jain, who had conducted post-mortem on the dead body of Dharam Singh and opining that the cause of death was due to shock and haemorrhage due to the injuries received from a fire arm in his chest and also the injuries on his head, PW11 Dr.D.C. Thakural, who had medico-legally examined the three injured,

namely, Raghbir Singh, Phoolwati and Urmila, besides, PW16 Dr.M.K. Tewari, who had conducted surgery upon Raghbir Singh and opined the nature of injury found on his person as dangerous to life. The testimonies of the two eye witnesses have also been corroborated by PW15 L.S. Yadav, Senior Scientific Officer (Ballistics), who after examining the.12 bore DBBL gun concluded that it was a fire arm and its firing mechanism in working order. He also testified that two.12 bore empty cartridges which the Investigating Officer had recovered from the spot from the scene of crime, had been fired from left and right barrels of the aforementioned DBBL gun and not from any other fire arm. He also stated that there were holes in shirt and banian, which was of the deceased and caused by pellet projectiles and so also on the tehmad and kachha belonging to Raghbir Singh-injured. One deformed mutilated lead pellet taken out from the dead body of Dharam Singh was found to be fired lead pellet of size-I.

19. The occurrence in question was said to have taken place on 25.3.1998 at 9.00 p.m. in village Kaul and, that too, in front of the house of Kehar Singh-appellant. In the said occurrence, Dharam Singh, Raghbir Singh, Phoolwati and Urmila had received injuries and as a result of the injuries received by him, Dharam Singh died at the spot. Soon after the occurrence, PW9 Jai Pal Singh had arranged transportation for taking Raghbir Singh, Phoolwati and Urmila to the hospital at Kaithal. Finding the condition of Raghbir Singh to be serious, the attending doctor referred him to PGI, Chandigarh. ASI Jogi Ram, who, in the meantime, had learnt about the complainant party proceeding to PGI, Chandigarh, also reached PGI. While in PGI, Chandigarh, he came across complainant-Jai Pal Singh, who suffered statement Ex. PM before him on 26.3.1998 at 7.00 a.m. On its basis, formal FIR Ex. PM/2 came to be recorded at Police Station Dhand on 26.3.1998 at 10.15 a.m. The special report was, thereafter, entrusted to Constable Surender Kumar, who handed over the same to the Illaqa Magistrate, Kaithal at noon time on 26.3.1998. Thus, there was no delay whatsoever in the reporting of the matter by complainant-Jai Pal Singh to the police. Whatever delay occurred has been satisfactorily explained. Merely because complainant-Jai Pal Singh could have lodged the report on his way to Chandigarh from Kaithal hospital at Police Station Dhand, is no ground to hold that he had no version to offer at that time and had later on come up with a false narration of the occurrence. The main anxiety on his part at that time was to rush Raghbir Singh to PGI Chandigarh as there were serious injuries received by him on his head and there was history of loss of consciousness and vomiting which required surgery and, ultimately, he was operated upon on 28.3.1998 and finally discharged only on 15.4.1998. Even at the time of his discharge, Raghbir Singh was conscious but there was motor aphasia (inability to speak) and right hemiparesis (weakness of right half of body). Thus, no benefit whatsoever in this regard can be extended to the convicts.

20. The defence has tried to make capital of a minor discrepancy which crept in the testimonies of complainant-Jai Pal Singh and injured-Raghbir Singh regarding the direction from which the complainant party was returning at the time of the

occurrence. According to complainant-Jai Pal Singh, he was coming from the river side at the time of the occurrence whereas his brother Dharam Singh and Raghbir Singh were coming from the opposite direction. On the other hand, the case of Raghbir Singh before the police was that he was coming from the side of river at the relevant time and in front of the house of his brother Prem Singh, he found his brothers Dharam Singh and Jai Pal Singh coming from the side of their old house. However, this Court finds that the so called discrepancy is trivial in nature and need not be even looked into. Further, the same does not even weaken the very substratum of the prosecution case.

21. The plea of Om Parkash-accused that he had attended the office on 25.3.1998 and as per the instructions of the Speaker, he was to sit in the office on that day in the late hours and, accordingly, he had applied for compensatory leave on 26.3.1998 in lieu of the work done by him on different dates needs to be looked into. DW1 Saroj Sharma, who was posted as Superintendent, Research Branch, Haryana Vidhan Sabha has produced the attendance register as per which Om Parkash-accused had to sit in the office in the late hours on 25.3.1998 and for that reason and also on account of the work already done by him on different dates, he had sought compensatory leave on 26.3.1998. Even if the said evidence is accepted, it shows that Om Parkash-accused had remained in the office upto 7.00 p.m. on 25.3.1998 and could, thereafter, reach the spot at his native village within 2/2 1/4 hours. Similarly, DW2 Anil Kumar stated that on 25.3.1998, Om Parkash-accused remained with him and stayed in the night and on the next day both of them had gone together to Vidhan Sabha. However, as per his own showing, he was not informed by Om Parkash-accused that he was involved in the murder case and was to appear as a witness to support his plea of alibi. Moreover, Om Parkash-accused had his own independent accommodation at Chandigarh and there was no reason for him to stay with Anil Kumar. Thus, Om Parkashaccused has not been able to substantiate his plea of alibi.

22. Coming to the plea of Sukhbir-accused that he was on a study tour from 21.3.1998 to 25.3.1998 and was, thereafter, dropped at the hostel late in the night and, therefore, could not have been present in village Kaul on 25.3.1998 at 9.00 p.m., DW4 Om Parkash Sharma failed to disclose as to who were the students of History Department, who had undertaken the said tour. Furthermore, he also admitted that he did not accompany the tour. Moreover, DW5 Dr. S.K. Chehal admitted in his cross examination that all the students, who accompanied the tour could not be recognized by him. He also stated that the students, who had gone on tour, had taken pictures but he failed to identify the students in the various photographs excepting two of them. Thus, even Sukhbir-accused has not been able to establish the plea of alibi taken by him.

23. This Court is, however, not satisfied with the involvement of Kehar Singh, Mahabir and Satbir Singh-accused in the occurrence. Though in the earlier incident of July, 1997, there was a dispute between Kehar Singh-accused on the one hand and Dharam Singh, since deceased, on the other, yet at the time of the

occurrence in the present case, Kehar Singh was not shown to be armed with any weapon. On the other hand, he was said to be empty handed and exhorted his co-accused not to allow the complainant party go scot free. Mahabir-accused was said to be armed with a lathi at the time of the occurrence but no specific injury has been attributed to him. Satbir Singh-accused was also said to be armed with a lathi but in the FIR lodged at the instance of complainant-Jai Pal Singh, no specific role was assigned to him. In the Court, the two eye-witnesses of the occurrence stated that Satbir Singh-accused was carrying a lathi which he had used in giving an injury on the back of the right hand of Raghbir Singh. Four injuries were noticed on the person of Raghbir Singh at the time of his medico-legal examination. Injury No. 4 was on the back of his right hand and it was only an abrasion measuring 2 cm x 2 cm. Such like injury could have resulted in the process of Raghbir Singh falling on the ground after receiving fire arm injuries besides sharp edged weapon injury. Therefore, it cannot be said with certainty that it was Satbir Singh-accused, who had given the said injury to Raghbir Singh.

24. In view of the above, the conviction and sentences of Kehar Singh, Mahabir and Satbir Singh-appellants are set-aside and they are acquitted of the charges against them. The conviction and sentences of the remaining appellants, namely, Ramesh, Nathu Ram, Sukhbir and Om Parkash are maintained.

25. The appeal filed by the convicts and the revision filed by the complainant are, accordingly, disposed of.