
(2006) 01 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 437-DB of 1997

Surinder Pal and others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 18-01-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 324

Citation : (2006) 01 P&H CK 0017

Hon'ble Judges : Uma Nath Singh, J; Mehtab Singh Gill, J

Bench : Division Bench

Advocate : R.S. Ghai, with Mr. Vinod Ghai, S.S. Dinarpur, for the Appellant; Ravi Dutt Sharma, DAG, for the Respondent

Final Decision : Allowed

Judgement

Uma Nath Singh, J.—This Criminal Appeal arises out of a judgment dated 23.4.1997 passed by learned Additional Sessions Judge,

Yamunanagar at Jagadhri, in Sessions Case No. 50 of 18.8.1994, holding accused-appellants Surinder Pal and Bijinder guilty of offence under

Sections 302 IPC, and sentencing them to undergo RI for life with a fine of Rs. 1,000/- each, in default of payment of fine, to undergo further RI

for six months. Besides, they were also held guilty of offence u/s 27 of the Arms Act and were sentenced to undergo RI for one year with a fine of

Rs. 500/- each, in default of payment of fine, to undergo further RI for three months. Accused- appellant Tej Pal was convicted u/s 307 IPC and

sentenced to the imprisonment already undergone with a fine of Rs. 1,000/-, in default of payment of fine, to further undergo RI for six months.

And accused-appellant Narinder was convicted only u/s 324 IPC and he was also sentenced to the imprisonment already undergone.

2. The FIR (Ex. PF/1) is based on the statement of Birbal Singh (PW-7). He stated that four months prior to the incident, he had purchased a bara (enclosure) in Abadi Deh (village), measuring 17 marlas, from one Kanwar Pal. Ram Singh and Tara Singh sons of Achpal Singh and their sons, namely, Surinder son of Tara Singh and Bijinder son of Ram Singh, had objected to the purchase of the aforesaid bara. That was the motive for commission of offence. On 16.3.1994 at about 8.00 A.M., Tej Pal, another son of Tara Singh, came to the spot with a Tractor bearing No. UMU/7397 (make Messey-295) with a tiller attached to it for ploughing the aforesaid bara. By doing so, he wanted to establish his possession over the disputed premises. Molar, brother of Birbal Singh, complainant, came to stop Tej Pal from ploughing the bara, whereupon, Tej Pal picked up an axe (kulhari), being kept in his Tractor and gave an axe blow on the head of Molar. Complainant Birbal Singh, Punnu Ram son of Mam Raj, Mohinder son of Molar, Punnu son of Surjit, and Ramesh son of the complainant, resident of the same village, were standing near khera on the metaled road. They went to rescue Molar. At that stage, Narinder son of Ram Singh reached there running being armed with an axe (kulhari) and on his arrival, he gave an axe blow on the left arm of Punnu Ram. As a result, Punnu Ram fell down there itself. At that time, accused-appellants Bijinder son of Ram Singh and Surinder son of Tara Singh residents of the same village were seen standing on the roof of their house, situated near the bara towards the north, with double barrel guns in their hands. On seeing the complainant side, they aimed their guns and accused-appellant Bijinder at once fired a shot, hitting (hitting ?) deceased Mohinder Singh son of Molar in his head. In the meantime, accused-appellant Surinder son of Tara Singh also fired a shot on deceased Mohinder Singh, hitting him on his face and neck towards the right side. Mohinder Singh fell down instantly. Complainant side took shelter behind the Tractor to save themselves. Complainant Birbal Singh found deceased Mohinder Singh bleeding profusely from his mouth, nose and ear, who succumbed to the injuries on the spot itself. Thereafter, both the accused-appellants, Bijinder and Surinder, fired 2-3 shots and jumped down from the roof of their house. Thereafter, they fired about 10 shots through the holes in the walls of their house. On hearing the gun shots being fired, the residents of the village also gathered there. Other members of

the complainant side also came there for their rescue, but Ved Pal son of Chajju Ram stopped them on gun point (a country made pistol).

Thereafter, all the accused-appellants ran away from the spot with their respective weapons, leaving the Tractor with its engine on. Molar was

taken to the hospital by witness Ramesh son of complainant Birbal Singh. Complainant's nephew Mohinder Singh succumbed to the injuries on the

spot, caused by accused-appellants Bijinder and Surinder with their guns. Tej Pal inflicted injuries with an axe (kulhari) to Molar and Narinder also

caused axe injuries to Punnu Ram.

3. After investigation, a challan was laid against the accused. All the accused were tried upon the charges under Sections 148 and 302 read with

Section 149 IPC, Section 307 IPC read with Section 149 IPC and also u/s 324 IPC read with Section 149 IPC. Accused-appellants Surinder

and Bijinder alternatively were also charged with substantive offence u/s 302 IPC. Besides, they were also charged u/s 27 of the Arms Act. They

pleaded not guilty to the charges and claimed trial.

4. We have heard learned counsel for the parties and perused the records.

5. The prosecution examined as many as 10 witnesses. Dr. J.P. Singh (PW-1) medically examined Molar, father of the deceased. Constable Om

Parkash (PW-2) delivered a special report to Additional Chief Judicial Magistrate, Jagadhri. Rajinder Kumar (PW-3) is the Photographer, who

took the photographs of the dead body at the scene of occurrence. ASI Hoshiar Singh (PW-4) recorded the formal FIR (Ex. PF/1). Om Parkash

(PW-6) is the Draftsman, who prepared the site plan (Ex. PK). Birbal Singh (PW-7) is an eye witness, on whose statement, the FIR was

registered. Molar (PW-8) is the father of the deceased. ASI Ramesh Chand (PW-9) recorded the statement of complainant Birbal Singh (PW-7).

ASI Hari Ram (PW-10) arrested the accused. Defence side produced Richhpal Singh (DW-1), Ahlmad of Civil Court, to prove a pending civil

litigation between the parties.

6. It appears that there was a dispute over a bara purchased by the complainant side and the accused-appellants side was objecting to that

transaction. A civil litigation was also filed by the appellants side, wherein, the Court had directed maintenance of status quo. From the

photographs of the Tractor, it appears that the disputed bara was an uncultivated

piece of land. Initially, the quarrel started on an attempt to plough the disputed land by the accused-appellants side. On being objected, accused Tej Pal caused an axe blow on the head of injured witness Molar.

Accused-appellant Narinder caused the second axe blow which landed on the left arm of witness Punnu Ram. Thereafter, the gun-shots were fired. Accused- appellants Bijinder and Surinder fired the gun shots from their double barrel guns from the roof and also through the holes. In the evidence of complainant Birbal Singh (PW-7), it is noticed, that, firstly, accused Bijinder fired a gun shot which hit deceased Mohinder Singh on his fore-head. He was followed by accused-appellant Surinder, who also fired a gun shot which hit the right portion of the face of deceased Mohinder Singh, including his neck and chest. According to this witness, both these accused thereafter fired 3-4 shots. The shots could not hit anyone on the complainant side. They had taken shelter behind the Tractor. Accused-appellants Bijinder and Surinder came down the shed thereafter. The villagers, who had started gathering on the spot on hearing about the incident of gun shots, were stopped on a pistol point by Ved Pal. Accused-appellants Surinder and Bijinder went inside the cattle shed, created holes in the walls by removing the bricks, and again fired 8-10 shots from inside through the holes. The accused were, later on, surrounded from all the sides by the villagers, hence, fled away from the spot with their respective weapons. PW-7 has admitted that on asking of the villagers, he brought his rifle from his house and fired two shots in the air. The police, while accompanying PW-7 and other witnesses, went to the house of the accused-appellants. 5 live cartridges (4 of red colour and 1 of green colour) were recovered and seized from the spot. PW-7 has also admitted that when they went to the roof of the cattle shed, one shawl and an empty cartridge were found lying there. This was the place, from where accused-appellants Bijinder and Surinder had fired shots. The empty cartridge was also seized. Injured Punnu Ram was sent to hospital with a Police Constable. Deceased Mohinder Singh was standing about 5-7 feet away from this witness when accused Surinder and Bijinder fired gun shots. He could not say as to whether any pellet had also hit the tractor. According to him, deceased Mohinder Singh had received pellet injuries on his chest, although this fact was not recorded in his police statement.

This witness is related to the deceased. He has admitted to have fired gun shots, which did not hit anyone. Throughout in his testimony, there is no any reference to the injuries sustained by Tara Chand father of accused Surinder and Tej Pal. Molar (PW-8) is an injured witness. He has stated that he was assaulted by accused-appellants Tej Pal and Narinder. Punnu son of Mam Raj also received injury on the left arm. He saw accused-appellants Bijinder and Surinder firing gun shots from the kotha of Tara Chand. The gun shot fired by accused-appellant Bijinder hit deceased Mohinder Singh on his forehead. The gun shot fired by accused Surinder landed on the right side of face, neck and chest of deceased Mohinder Singh. Further gun shots were fired, thereafter, by these accused-appellants. He has also not stated anything about the injury received by Tara Chand. He has admitted the presence of Birbal Singh (PW-7) on the spot. Like PW-7, he has denied the suggestion that the complainant side was the aggressor. ASI Ramesh Chand (PW-9) submitted that on a wireless message from Police Station Sadar, Jagadhri, about the incident, he set out for the scene of occurrence in a police jeep. He met complainant Birbal Singh at 11.30 AM on the way. He recorded his statement (Ex. PF) and sent it to the Police Station for registration of an FIR. At his instance, a Photographer took the photographs of the place of incident. He collected the blood-stained earth and other articles from the spot and sealed them. He recovered 5 live cartridges of 12 bore from the Ghair of accused Tara Chand and made a parcel. Significantly, he has stated that he noticed two bullet marks on the 9th Step of the stairs of the house of accused Tara Chand. He seized one empty cartridge of 12 bore and a black shawl from the roof. He sealed the articles. He prepared the inquest of deceased Mohinder Singh. He sent injured Punnu Ram for medical examination with a Police Constable, who was brought back to the sport thereafter. He recorded the statements of the witnesses u/s 161 Cr.P.C. At that stage, he received a wireless message from Police Station Sadar, Jagadhri, about the admission of injured Tara Chand in the Civil Hospital, Jagadhri. He went to the hospital and recorded his statement. On return to the Police Station, he handed-over the investigation to SI/SHO Hari Ram. He did not ask PW-7 to produce his document of title of the disputed bara. The blood stains were also lying at other places but he did not lift it. His evidence does not contain any explanation about the gun

shot marks noticed on the 9th step of the stairs and the outer wall of the ghair of Tara Chand. He had admitted that the statement of accused Tara

Chand, who was lodged in Civil Hospital, Jagadhri, disclosed the commission of an offence u/s 307 IPC but he did not register a separate case.

He recorded a cross-version in the same FIR. The same day, he again visited the place of occurrence accompanied by SI Hari Ram. He inspected

the old bethak of injured Tara Chand and the place of occurrence also on the next date, i.e. 17.3.1994. He lifted the blood-stained earth from the

place of occurrence and also two broken pieces of bullets from the old bethak of Tara Chand. He also noticed marks of firing in the jali (room net)

of the bethak. He sealed the articles into a parcel. PW-10 is Inspector Hari Ram. He has also stated that during investigation, in the presence of

PW Ram Singh, he had lifted two broken pieces of bullet from the old bethak of Tara Chand. In his cross-examination, he has stated that on

17.3.1994, he lifted the blood-stained earth of blood stains of Tara Chand. A site plan was also prepared in the cross-case u/s 307 IPC registered

against PW Birbal Singh etc., in respect of the injuries of Tara Chand. He has also stated that he had noticed marks of bullet on the 9th step of the

stairs of the ghair of Tara Chand. There were bullet marks on the wall of the bethak and two broken pieces of bullet were lying there. According to

him, the jali of the bethak also had the holes caused by bullet. There were bullet marks also in the holes of the wall of the room, where a fodder

cutting machine was installed. That room was a part of the bethak of Tara Chand. He had arrested PW Birbal Singh in the cross-case on

17.3.1994 itself and recovered a .315 bore rifle pursuant to his disclosure statement. he had deposited the broken pieces of bullet as well as the

rifle of PW Birbal Singh with Moharrir Head Constable on different dates. He had also arrested Ramesh in the cross-case on 26.3.1994 and had

recovered an unlicensed gun from his possession with two empties. Those empties and the gun were also deposited with Moharrir Head Constable

in sealed condition. The rifle, the gun, the empties and the broken pieces of bullet were sent in sealed parcels to the FSL. He had also obtained the

x-ray report of injured Tara Chand and the opinion of the Doctor on the basis of that x-ray report.

7. In his statement u/s 313 Cr.P.C., accused-appellant Surinder has stated that the accused side was in possession of the disputed plot. According

to him, the complainant side (Molar, Punnu and deceased Mohinder Singh) came there, armed with gandasis and kulharies for dispossessing them.

According to him, when Tara Chand, his father, went with tractor in the bara, deceased Mohinder Singh climbed over and threw him from the

tractor. Mohinder Singh tried to give kulhari blow to Tara Chand. Tara Chand gave a kulhari blow to Molar after lifting it from the Tractor. At that

time, PW Birbal and Ramesh, who were standing with rifle and gun, fired at Tara Chand, hitting him in his chest, flank and shoulder. Accused-

appellant Surinder had admitted to have picked up his gun lying in the ghair and fired a shot towards them to save the life of his father Tara Chand.

According to him, the shot hit Mohinder Singh and he fell down from the tractor. According to him, his father Tara Chand went away to his house,

whereas, PW Birbal and his son Ramesh continued firing gun shots, hitting at various places, including the stairs and the walls of the ghair and

residential kotha. The complainant party was the aggressor. They were stopped only when the police had arrived. Appellant-accused Bijinder son

of Ram Singh had stated that he is innocent. He was not present at the alleged place of occurrence. Accused Ved Pal Singh has also given a similar

explanation in his statement u/s 313 Cr.P.C. Accused-appellants Narinder and Tej Pal have also stated that they are innocent. Dr. (Mrs.) Neelam

Gupta (PW-5), who conducted the post mortem of the dead body of Mohinder Singh, recorded the report as under:-

Multiple punctured marks were present on the lateral part of right side of chest in its upper part in right axilla, right upper arm on lateral surface, on

right side of the neck, right side of the face and right side of the skull in frontal and temporal part. Size of each punctured wound was 1/2 x 1/2 cm.

They were black colour. On dissection, surgical emphysema was present on right side of chest, right lung was punctured and torn at many places

(corresponding with the punctured marks). The chest cavity was full of blood. Skull in frontal temporal region on right side corresponding with

punctured marks was fractured. Underlying brain was injured and filled with blood in the skull cavity.

On dissection multiple pellets were found lodged in underlying tissues with surrounding haematomas, few of them were taken out and were sealed

for examination.

In her opinion, the cause of death was due to haemorrhage and shock due to injury to vital organs caused by fire arm. All the injuries were ante-

mortem in nature and could cause the death in ordinary course of nature. She has stated that blackening of punctured wound was due to clotting of

blood. 9 pellets in total were recovered from the body of deceased Mohinder Singh (Ex. P-33 to Ex. P-41). PW-5 also examined Tara Chand at

4.00 PM on the same date, i.e., 16.3.1994, and found the following injuries :-

1. A lacerated wound of size of 2 cm x 1 cm was present on right side of chest in anterior axillary line 3 cms above and 1 cm lateral to the nipple.

Soft tissues were protruding out. Underlying defused swelling of right side upper side chest was present. X-ray was advised for chest.

2. A lacerated wound star shaped with irregular margins on lateral side of upper part of right shoulder, underlying defused swelling was present all

over the upper part of right arm. Underlying swelling was present. Fracture of the underlying bone was present. X-ray of right shoulder was

advised.

3. A lacerated wound of 2 cm x 1 cm size was present 5 cms below the right anterior superior iliac spine. Soft tissues were protruding out. X-ray

was advised.

4. Two parallel lacerated wounds of the size 2 cm x 1 cm each were present on the right side of the back of chest in scapular region, 6 cms above

the angle (angle ?) of scapula. Fresh bleeding was present. X-ray chest was advised.

According to the Doctor, there were corresponding holes on the clothes and their edges were partially burnt.

8. Thus, on careful analysis of the aforesaid evidence, it appears that deceased Mohinder Singh succumbed to the gun shot injury fired by accused-

appellant Surinder. Only 9 pellets were taken out from the dead body although the single empty cartridge recovered from the roof was of a 12

bore gun. Accused-appellant Surinder had admitted to have fired the gun shot in self- defence in his statement u/s 313 Cr.P.C. Both the parties

were laying claim over the disputed bara. The police did not seize any document during the investigation to ascertain the title. In the civil suit filed

by the accused side, only a status quo order had been passed. Thus, neither of the parties could have claimed title over the disputed land. Now

looking to the number of injuries sustained by Tara Chand and admission of PW-7 Birbal Singh that he fired gun shot, though in the air, from his

rifle .315 bore, it is evident that both the parties used the fire arms and there was an exchange of firing. The injuries sustained by Tara Chand are

not explained by the prosecution in the testimonies of PW-7, PW-8, PW-9 and PW-10. The prosecution has admitted to have registered a cross-

version u/s 307 IPC and arrested the complainant side, namely, Birbal and Ramesh etc. There weapons were also seized in that connection. PW-9

and PW-10 have admitted to have seen marks of firing on the 9th step of the stairs of the premises of Tara Chand. They also admitted to have

recovered two broken pieces of bullet and noticed two holes in the iron net of the wall, and some gun shot marks on the wall itself. Thus, the

prosecution has utterly failed to explain the gun shot injury sustained by Tara Chand, the gun shot marks and recovery of broken pieces of bullets.

This is itself is sufficient to discard the prosecution evidence. That apart, in the cross-case u/s 307 IPC against acquittal, the State has not even

preferred leave to appeal. Hon''ble the Apex Court in a judgment reported in 1976 Supreme Court Cases (Crl.) 671 (Lakshmi Singh and others v.

State of Bihar), has laid down as under :-

In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a

very important circumstance from which the Court can draw the following inferences :

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and, therefore,

their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on

the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the

evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the

prosecution one.

9. Accordingly, following the ratio of the aforesaid judgment, all the four accused-appellants deserve to be acquitted. Moreover, accused-

appellants Surinder and Bijinder have remained in custody for a substantial period of 11 years and 10 months. Accused-appellant Tej Pal was

convicted under Sections 307 IPC and sentenced to the period (more than three years) already undergone with a fine of Rs. 1,000/-, in default of

payment, to further undergo six months" RI. Other convicted accused-appellant Narinder was convicted u/s 324 IPC and sentenced to the period

(about two months) already undergone. The fifth accused Ved Pal was acquitted of the charge.

10. Thus, in view of the preceding discussion of the evidence and the ratio of the law in the above judgment, the impugned judgment, holding the

accused- appellants Surinder, Bijinder, Tej Pal and Narinder guilty of charges framed against them, is set aside and they are acquitted accordingly.

Resultantly, Criminal Appeal No. 437-DB of 1997 is allowed.