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**(1994) 05 P&H CK 0014**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Appeal No. 48-DB of 1993

Pawan Singh and Chotta Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** May 11, 1994

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 357
- Penal Code, 1860 (IPC) - Section 302, 304, 34

**Citation:** (1995) CriLJ 609

**Hon'ble Judges:** S.S. Grewal, J; A.S. Nehra, J

**Bench:** Division Bench

**Advocate:** H.S. Gill, Adv and P.S. Tiwana, for the Appellant; S.S. Dhaliwal, DAG and Gilani Bachittar Singh, for the Respondent

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**Judgement**

S.S. Grewal, J.

This appeal as well as Criminal Revision No. 410 of 1993 filed by Major Singh complainant, are directed against the order of Additional Sessions Judge, Bamala, dated 29-1-1993 whereby Pawan Singh appellant was convicted u/s 302 of the Indian Penal Code and Chhota Singh appellant was convicted u/s 302 read with Section 34 of the Indian Penal Code for intentionally committing the murder of Jora Singh in furtherance of their common intention and both of them were sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/- each. In default of payment of fine each of them was sentenced to undergo rigorous imprisonment for one year. Gurdev Singh and Wakil Singh their co-accused were, however, acquitted by the learned trial Court.

2. In brief facts of the prosecution case as emerge from the first information reported lodged by Major Singh PW are that he along with his brother Darshan Singh and their father Jora Singh used to reside together whereas his four elder brothers were residing separately. 18 Killas of land fell to the share of Darshan

Singh, Major Singh and Jora Singh in partition which was under their cultivation. On 9-5-1990, at about 5.30 P.M. Darshan Singh PW was driving tractor at some distance from their tube-well. Jora Singh and his son Major Singh PW were mending Khal in their field known as Motorwala. Jora Singh was putting earth on the common Watt adjoining his fields and that of Karnail Singh whereas, Major Singh was mending the Watt with the earth on the other side. Pawan Singh, Chhota Singh appellants their brother Gurdev Singh and Wakil Singh son of Chhota Singh were sowing Narma (American cotton) with the help of tractor. At that time all the aforesaid four accused, who were armed with Kahi, Gandasa and Sotis attacked Jora Singh. Pawan Singh accused gave a Kahi blow from its blunt side on the head of Jora Singh and on receipt of the said injury Jora Singh fell down on the ground. Chhota Singh accused gave a Gandasa blow from its blunt side on the left shoulder of Jora Singh while the latter was lying on the ground. Wakil Singh who was standing near the tractor exhorted his other co-accused to finish Jora Singh. Thereafter Gurdev Singh accused gave soti blows to Jora Singh. Major Singh PW raised alarm "NA MARO NA MARO" hearing which Darshan Singh PW also reached there after leaving the tractor. Out of fear Major Singh PW stayed where he was. According to him, had he stepped forward he too would have been injured. After arrival of Darshan Singh, he and Major Singh PW came forward to rescue their father. Meanwhile after inflicting injuries to Jora Singh, all the accused ran from the spot along with their respective weapons. Major Singh PW and his brother Darshan Singh witnessed the entire occurrence. After arranging tractor trolley Jora Singh, who was lying unconscious with blood oozing out of his head, was taken to Civil Hospital, Barnala and was got admitted there. From there he was referred to Christian Medical College and Hospital, Ludhiana. Major Singh, Darshan Singh and their cousin Kaur Singh arranged for the car and removed Jora Singh injured to C.M.C. Ludhiana.

3. Motive for the crime was that Watt of the complainant party and that of Karnail Singh was common. That Watt got damaged when the complainant party tried to cultivate the land with the help of the tractor and Jora Singh was mending the Khal after the common Watt was damaged and the accused party inflicted injuries to Jora Singh.

4. On receipt of information Joginder Singh ASI went to C.M.C. Ludhiana and after ascertaining from the doctor that Jora Singh PW was unfit to make a statement, the said ASI recorded the statement of Major Singh PW at 1.30 P.M. on the next day of the occurrence. On the basis of the said statement formal first information report was registered at Police Station, Barnala at 4.10 P.M. As a result of the injuries received by Jora Singh he remained unconscious throughout till he died in C.M.C. Ludhiana on 22-5-1990 at 12.10 P.M. The offence was then converted to one u/s 302/34 of the Indian Penal Code. After completion of the investigation, Pawan Singh, Gurdev Singh and Chhota Singh were challenged whereas the name of Wakil Singh was shown in Column No. II of the report u/s 173 of the Code of Criminal Procedure, 1973. Later on Wakil Singh accused was summoned by the learned trial Court.

Pawan Singh and Chhota Singh appellants were convicted and sentenced as stated earlier while Gurdev Singh and Wakil Singh accused were acquitted by the learned trial Court.

5. Aggrieved against the order of their conviction and sentence passed by the learned trial Court, Pawan Singh and Chhota Singh appellants have filed Cri A. No. 48-DB of 1993 whereas Major Singh complainant has filed Cri R. No. 410 of 1993. As common questions of law and facts are involved in the appeal as well as in the Criminal Revision, both these are disposed of by one judgment.

6. The learned Counsel for the parties were heard.

7. Before dealing with the contentions raised by the learned Counsel for the appellants, it would be desirable to note the injuries received by the deceased.

8. Dr. Baldev Raj, Medical Officer, Civil Hospital, Barnala, medically examined Jora Singh on 9-5-1990 at 7.35 P.M. and found the following injuries on his person:--

1. Incised wound 16 cm x 1 cm x bone deep on the right side of the scalp, 9 cm from the pinna of ear, 4 cm from the mid line and five cm from the eye brow. Fresh bleeding was present X-ray was advised.

2. An incised wound 5 cm x 1 cm x bone deep with fresh bleeding present. Wound was present on the back of right fore-arm 4 cm proximal to wrist joint.

3. Contusion 15 cm x 2 1/2 cm reddish in colour present on the lateral and back on right side 8 cm below the inferior angle of the scapula. Crepitus felt on the right side of the chest just below the clavical. X-ray was advised.

4. Abdomen on right side was distended. X-ray was advised.

5. Reddish contusion 7 cm x 2 1/2 cm present on the lateral surface of the right thigh.

6. Reddish contusion 10 cm x 2 1/2 cm on the back of right leg 5 cm below the popliteal fossa. Injuries Nos. 1 and 2 in the opinion of the said doctor were caused by sharp edged weapon and the rest with blunt weapon.

9. Dr. Tara Chand PW. 10, General Surgery, C.M.C. Ludhiana noted the following injuries on the person of Jora Singh when the latter was brought to casualty department on 9-5-1990 at 10.40 P.M.:

1. 6-7 cms long laceration on right parietotemporal region with brain matter coming out.

2. Blunt trauma chest with fractured ribs and haemopneumo-thorax.

3. 3.5 cm superficial laceration on right wrist.

Injuries Nos. 1 and 2 in the opinion of the said doctor were dangerous to life.

10. Dr. Shalini Cleophas, who conducted medicolegal examination of Jora Singh on 9-5-1990 found:

Open head injury, depressed fracture right frontal and parietal bone, 6 cms long, fronto parietal scalp laceration, cerebral laceration, fracture ribs 8th and 9th on the right side, haemopneuma thorax, surgical emphysema 5 cm lacerated on the right wrist.

This injury according to the said doctor could be caused by blunt weapon and was grievous in nature and could prove dangerous to life.

11. Dr. Parveen Kumar Sikka, PW 1, who conducted post-mortem examination of the dead body of Jora Singh deceased found the following injuries:

1. Partly healed wound on right side of scalp extending antero-posteriorly in parietal and occipital region 4" above the ear. The wound was 6" in length.
2. Stitched wound 1" long over front and middle of right upper arm.
3. Partly healed wound 2" long over the back of right wrist joint.
4. Tracheostomy wound in front and lower part of neck in the mid-line.

On exploration of skull, parietal and frontal bones on right side were fractured. Underlying brain tissue was lacerated. There was extra dural as well as sub dural haematoma on right side of skull. On exploration of chest 8th and 9th ribs on right side were found fractured. Incised wound 2 cm long was present on right axillary region 3" below the axilla. The wound extended into the pleural space. Right lung was collapsed. The cause of death in the opinion of the said doctor was shock as a result of head and chest injuries which were sufficient to cause death in the ordinary course of nature. All the injuries were ante-mortem. Time that elapsed between injuries and death was about two weeks. In the opinion of the said doctor injuries Nos. 1 and 2 were individually and collectively sufficient to cause death in the ordinary course of nature.

12. The learned Counsel for the appellants assailed the prosecution story mainly on the ground that neither Darshan Singh nor Major Singh made any effort to rescue their father at the time of the occurrence. Nor any of them received even a scratch during the occurrence; that the first information report was lodged after 19 hours of the occurrence. Thus, there was ample time for the complainant party to make due deliberations and consultations to introduce a coloured version of its own choice with the help of the investigating agency. It was further submitted that there is no mention either of Major Singh or of Darshan Singh PWs accompanying the injured first to Civil Hospital, Barnala and subsequently from there to C.M.C. Ludhiana. Reference was also made to the case history in the bed head ticket maintained in C.M.C. Ludhiana according to which Jora Singh was found lying injured in the fields with multiple injuries. On this basis, it was also submitted that it is a case of blind

murder and that presence of Major Singh and Darshan Singh PWs at the spot at the time of the occurrence is highly doubtful.

13. It is true that in the hospital record it was mentioned that Jora Singh was accompanied by Balaur Singh who is son of Jora Singh and elder to Major Singh and Darshan Singh PWs. It is common practice with the hospital authorities not to mention the names of all the persons who accompany the injured when they are brought to the hospital for treatment. Normally hospital authorities only record, the presence of one of the persons accompanying the injured. Since Balaur Singh was the oldest out of the three brothers, it seems that the hospital authorities only preferred to record his name. Nor from this omission it can be reasonably inferred that Major Singh and Darshan Singh PWs did not accompany their father when the latter was taken to C.M.C. Ludhiana for treatment.

14. Different human beings react differently. Both Major Singh and Darshan Singh were empty handed when the occurrence took place. Thus omission on their part not to rescue their father from the clutches of the accused in the circumstances of the case cannot be said to be inconsistent with natural human conduct.

15. After the occurrence the complainant party removed Jora Singh injured in a tractor trolley to Civil Hospital, Barnala where he was got medically examined by Dr. Baldev Raj at 7.35 P.M. on the same day. ASI Joginder Singh went to Civil Hospital, Barnala and sought the opinion of the said doctor as to whether Jora Singh was fit to make a statement. The said doctor at 7.50 P.M. on the same day i.e. on 9-5-1990 opined that the injured was not fit to make a statement. Jora Singh was referred by the doctor to Rajindera Hospital, Patiala. However, it seems that in order to provide better medical aid Jora Singh who was unconscious because of head injuries was taken during the night to C.M.C. Ludhiana where there is a separate department of Neurosurgery and a competent Neuro Surgeon was available. There Jora Singh was actually medically examined by Dr. Shalini Cleophas at 11 P.M. on 9-5-1990. On the next morning of the occurrence ASI Joginder Singh again went to Civil Hospital, Barnala in order to record the statement of Jora Singh injured. At that stage he learnt that Jora Singh had been referred to Rajindra Hospital, Patiala. However, on receipt of intimation that Jora Singh had actually been taken to C.M.C. Ludhiana, ASI Joginder Singh went to the said Hospital. On reaching there the doctor opined that Jora Singh was unfit to make a statement and so ASI Joginder Singh recorded the statement of Major Singh PW at 1.30 P.M. and sent the same to Police Station, Barnala where formal first information report was subsequently registered at 4.10 P.M. In view of the circumstances referred to above, delay in lodging the first information report in this case has been explained to a larger extent. However, in our view it would be prudent to seek independent corroboration on material aspects of the ocular account given by Major Singh and Darshan Singh sons of the deceased.

16. It is true that in the case history of the patient recorded in the bed head ticket of Jora Singh in C.M.C. Hospital, Ludhiana, on 10-5-1990 it is mentioned that the patient

was found lying in the field unconscious with multiple injuries when first seen. It is pertinent to note that the case history referred to above was prepared on 10-5-1990 whereas Jora Singh had actually been admitted in C.M.C. on 9-5-1990. Normally the case history of the patient would be prepared at the time of admission and not at a subsequent stage. Even otherwise, the doctor who prepared the case history has not specifically mentioned or named the individual who gave him the information concerning the case history relied upon by the defence. No reliance can be placed on the case history of the patient which amounts to heresay evidence.

17. Both Darshan Singh and Major Singh PWs have given cogent reasons for their presence at the spot at the time of the occurrence. The complainant party as well as the accused party were working in their fields and were busy in carrying out agricultural operations for cultivating or sowing Kharif crop. The presence of Major Singh and Darshan Singh PWs at the spot at the time of the occurrence is thus quite natural, probable and convincing. The defence plea that it is a case of "blind murder is hardly tenable in view of the circumstances of the case referred to above.

18. The next question which arises for determination is as to whether the testimony of Major Singh and Darshan Singh PWs the two eye-witnesses is credible and trustworthy. No legal infirmity worth the name has been pointed out in the testimony of the two eye-witnesses produced by the prosecution so far as presence and participation of Chhota Singh and Pawan Singh appellants at the spot at the time of the occurrence is concerned. Mere fact that the trial Court acquitted Gurdev Singh and Wakil Singh co-accused of the present appellants can hardly be considered sufficient ground for disbelieving the ocular account given by Major Singh and Darshan Singh PWs in its entirety. Mere fact that Darshan Singh and Major Singh sons of Jora Singh who were working at some distance from the place where Jora Singh was mending Khal at the time of the occurrence or the fact that Darshan Singh and Major Singh did not inform any person in the village before removing Jora Singh to the hospital, in our view, would not be sufficient to disbelieve the testimony of Darshan Singh and Major Singh PWs about the manner in which Jora Singh received injuries in their presence at the hands of Pawan Singh and Chhota Singh appellants. Pawan Singh opened the attack and gave a Kahi blow from its blunt side on the head of Jora Singh who fell down on receipt of the said injury and thereafter Chhota Singh gave a Gandasa blow from its blunt side on his left shoulder and during the last stages of the occurrence Gurdev Singh since acquired it alleged to have given Soti blows to Jora Singh. The only infirmity pointed out in the ocular account was that both Darshan Singh and Major Singh PWs deposed that after Jora Singh fell down on receipt of first blow given by Pawan Singh appellant from the reverse side of Kahi, Chhota Singh appellant gave two Gandasa blows from its reverse side on the left shoulder of Jora Singh on the other hand the medical evidence on the record does not show any injury on the left arm. Rather the medical evidence shows contusion 15 cm x 11/2 cm on the lateral and back on right side 8 cm below the inferior angle of the scapula. This injury was received by Jora Singh

while he was lying on the ground and both Major Singh and Darshan Singh PWs were present at some distance and were not in a position to know with certainty about the exact seat of the injury. The medical evidence on the record, in our view, lends independent corroboration to the ocular account given by Darshan Singh and Major Singh PWs so far as presence and participation of Pawan Singh and Chhota Singh appellants is concerned. 19. Taking into consideration the over all circumstances of the case particularly the fact that there was no previous ill-will between the parties and the occurrence took place while Jora Singh was mending the common Watt between the fields of the accused and the complainant party which admittedly had been damaged when Major Singh PW was using the tractor in his fields; that the occurrence took place all of a sudden without any premeditation; that without taking any undue advantage. Pawan Singh appellant who too was working in his nearby fields gave a single Kahi blow from its reverse side on the head of Jora Singh deceased whereas Chhota Singh appellant gave two Gandasa blows from its reverse side to Jora Singh deceased while he was lying on the ground near the right side of his shoulder, the prosecution in our view has only been able to bring home charge u/s 304 Part I of the Indian Penal Code against Pawan Singh and Chhota Singh appellants and we convict them accordingly and each of them is sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 5000/- each. In default of payment of fine they are ordered to undergo further rigorous imprisonment for the year. Out of the fine, if realised, the entire amount shall be paid as compensation to Bachan Kaur widow of Jora Singh deceased as envisaged u/s 357 of the Code of Criminal Procedure, 1973.

20. Both the appeal as well as Criminal Revision No. 410 of 1993 are partly allowed to the extent indicated above.