

(2008) 07 P&amp;H CK 0122

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Criminal Appeal No. 522-DB of 1999

Sukhdev Singh alias Sukha

APPELLANT

Vs

The State of Punjab

RESPONDENT

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**Date of Decision:** July 4, 2008**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302, 304

**Citation:** (2008) 3 RCR(Criminal) 577**Hon'ble Judges:** S.D. Anand, J; A.K. Goel, J**Bench:** Division Bench**Advocate:** Ajay Kaushik, as Amicus Curiae, for the Appellant; Rajesh Bhardwaj, D.A.G., Haryana, for the Respondent**Final Decision:** Dismissed

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**Judgement**

S.D. Anand, J.

The appellant was convicted by then learned Additional Sessions Judge, Mansa (hereinafter referred to as the Trial Judge) for an offence u/s 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs. 1000/-. In default of payment of fine, the appellant was directed to further undergo imprisonment for a period of two months.

2. Gian Kaur deceased was joint in residence with her five sons including PW-5 Hargobind Singh. The Rasta in front of their house leads to Gurudwara Titarsar. There is a culvert enroute and towards the West of culvert, there is a pond.

3. On 5.8.1995, at about 7.00 P.M. Appellant Sukhdev Singh and the acquitted associate Tar Singh wanted to demolish the culvert. A quarrel between them on the one hand and Gian Kaur and her son Sukhdev on the other hand, ensued. Gian Kaur had the apprehension that demolition of culvert would lead to the flooding of her house. The obstruction offered by Gian Kaur enraged appellant Sukhdev Singh who felled down her on the ground by giving a Kahi blow on the left side of her forehead.

She was initially taken to the Civil Hospital, Sardulgarh. Therefrom she was referred to Civil Hospital, Mansa from where then she was referred to P.G.I., Chandigarh, where she died.

4. PW-5 Hargobind and PW-6 Gulab Singh, yet another son of deceased Gian Kaur, had witnessed the impugned occurrence along with their brother PW-8 Darshan Singh. The case was investigated by PW-10 Inspector Balbir Singh and PW-11 ASI Paramjit Singh. PW-4 Dr. Dalbir Singh, Associate Professor, Forensic Medicine, PGI, Chandigarh had conducted the post-mortem examination on the dead body of Gian Kaur and found the following injuries:-

"1. 10.5 X 0.10 cms partially healed wound with unhealthy granulation tissues present over the left frontal aspect of the scalp, starting from the lateral end of left eye brow going upwards and medially upto 6 cms above the medial end of left eye brow. Proximal 2 cm of the wound was gaping for 75 cms and under lying bone was exposed. Greenish yellowish pus was present over it.

2. Left eye ball was missing from the orbit and inner surfaces of orbit were having unhealthy granulation tissues."

5. He opined that the cause of death "Oedema of brain due to laceration of brain, subdural hamatoma extradural haematoma and fracture of skull following head injuries which were ante-mortem in nature."

6. Learned Trial Judge decreed conviction, after disbelieving the defence plea of innocence.

7. Learned counsel appearing for the appellant as Amicus Curiae argues that there is want of reliable evidence on the file to prove that there was any motive for the appellant to have murdered Gian Kaur. He also has a grievance that the witnesses examined to prove the charge are all sons of the deceased and their testimony is not corroborated by any independent evidence. The plea, raised by learned Amicus Curiae in the alternative is that conviction may be altered to an offence u/s 304 IPC in view of the fact that the appellant is alleged to have given a single blow which was not repeated.

8. We do not find any force in pleas advocated on behalf of the appellant.

9. There is categorical and almost un rebutted evidence that the appellant Sukhdev Singh did not like the objection taken by Gian Kaur to the demolition of the culvert by the former. As already noticed, Gian Kaur had the apprehension that the demolition of the culvert would lead to the flooding of her house. The present is, thus, a clear case in which Gian Kaur earned the ire of appellant Sukhdev Singh, who hit her forehead with a Kahi.

10. Though cases are conceivable in which the prosecution may not be able to adduce evidence to prove the motive on the part of the accused to commit the

relevant crime but the present is surely not a case of that category in view of the fact that there is clinching evidence to indicate that Sukhdev Singh felt irritated by the obstruction caused by Gian Kaur to demolition of the culvert by the former and that is precisely what actuated him to hit her forehead with a Kahi. It cannot, by any stretch of interpretation, be said that the prosecution has not been able to prove the motive on the part of the appellant to commit the crime for which he stands convicted.

11. We are unable to accept the proposition that the testimony of relation witnesses deserves to be ruled out altogether just because they happen to be relations of the deceased. Concededly though, if the testimony of relation witnesses is not found to be fully reliable, the Court would insist upon its corroboration by independent evidence. The testimony of relation witnesses may be discarded only if it is found that relations have proved themselves to be unreliable or they have endeavoured introduction of a false scenario to fix an accused. In the present case, it is not even the allegation that PW 5 Hargobind and PW-6 Gulab Singh had any previous score to settle with the appellant or that they have any other reason on account whereof they would have been inclined to falsely implicate the appellant. We do not, thus, approve of the view advocated by the learned Amicus Curiae in the context.

12. There is no law decreeing that a single blow which does not come to be repeated must invite the applicability of Section 304 IPC. As held by the Apex Court in [Murugan and Others Vs. State through Inspector of Police, Tamil Nadu](#), "the infliction of a single injury by itself is not a relevant factor to hold that appellant had no intention to commit the murder of the deceased." In the present case, the appellant gave a blow on forehead of the deceased which is a vital part of the body and the blow had been given by Kahi which is a sharp edged weapon. In that view of things, it cannot be said with any justification, that the appellant had no intention to commit the murder of the deceased.

13. It is pertinent to notice here that, in the course of statement Ex. PX, the deceased had attributed a categorical inculpatory role to appellant Sukhdev Singh. In the course of that statement, she had clearly indicated that the demolition of culvert would have flooded her house. She also stated, in the course thereof, that she pleaded with the appellant (and the acquitted associate of his) to desist from proceeding with the demolition of the culvert but they did not listen to her. Her statement in respect of seat of injury( and also the weapon with which it was inflicted) is supported by the testimony of PW-4 Dr. Dalbir Singh. Therefore, it cannot be denied that the statement aforesaid had been recorded by the police official, we do not find any fault with it. Initially, the Police Officer afore-mentioned filed an application (Ex. PH) before S.M.O., Civil Hospital, Sardulgarh to find out if the injured was fit to make a statement. The Medical Officer issued a certification (Ex. PH/1) on 5.8.1995 at 10.15 P.M., that the injured was not fit to make a statement on account of head injury. Thereafter that Police Officer again filed an application (Ex.

PJ) before the S.M.O., Civil Hospital, Sardulgarh to give the opinion in the matter of fitness or otherwise of the injured to make a statement. Again, the Medical Officer certified on 6.8.1995 at 10.00 A.M. that the patient was unfit to make a statement. It was ultimately when the injured was certified to be fit to make a statement that the police officer afore-mentioned recorded her statement Ex. PX. As there was no immediate danger to death, there was ostensible reason for him not to insist upon recording of her statement by a Magistrate. Thus, the contents of Ex. PX add to the ocular evidence to nail the appellant.

14. It also cannot be lost sight of that it was the appellant Sukhdev Singh who, in pursuance of a disclosure statement, led to the recovery of a Kahi. It also adds to the woes of the appellant in the context of accountability for having murdered Mst. Gian Kaur.

15. The testimony of DW-1 Babu Singh and DW-2 Nirmal Singh does not at all assist the defence plea of innocence. DW-1 Babu Singh claimed to have been told by Gian Kaur that she had not been able to identify the appellant. She allegedly furnished the information to Babu Singh when the latter visited her in the hospital. This witness was a member panchayat at that point of time. In his own showing, the Panchayat did not pass any resolution with regard to the innocence of the appellant. Neither this witness nor the Panchayat moved any application to the higher authorities against the false implication of the appellant in spite of the fact that he averred that he belongs to the faction of the appellant. If there was even an iota of truth in the statement of DW-1 Babu Singh, there is no reason why he would not have brought this fact to the notice of the higher police authorities.

16. DW-2 Nirmal Singh also claimed to have visited at Civil Hospital, Sardulgarh, Civil Hospital, Mansa, and also PGI, Chandigarh. His statement to the effect that Gian Kaur remained unconscious throughout the time she remained in the hospitals and that she was not fit to make a statement is falsified by the record as per which Inspector Gurdip Singh recorded her statement on 11.8.1995 only after she had been declared fit to make a statement. In the context, we may refer to Ex.PB/1 which is a certification to the effect that she was fit to make a statement. That certification was testified to at the trial by PW-3 Dr. R.K. Garg, Emergency Medical Officer, Civil Hospital, Mansa.

17. In the light of the fore-going discussion, we hold that there is no substance in the appeal.

18. Dismissed.