

**(2007) 09 P&H CK 0174**

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

**Case No:** Criminal Appeal No. 828-DB of 2005

Sudagar Singh and Others

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** Sept. 12, 2007

**Acts Referred:**

- Arms Act, 1959 - Section 25
- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 300, 302, 304, 304II, 307

**Citation:** (2007) 4 RCR(Criminal) 769

**Hon'ble Judges:** Mehtab S. Gill, J; A.N. Jindal, J

**Bench:** Division Bench

**Advocate:** T.S. Sangha, for the Appellant; S.S. Bhinder, Addl. A.G. Punjab, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

A.N. Jindal, J.

Out of four accused, Nikka Singh was acquitted and the accused-Appellants namely Sudagar Singh, Najam Singh and Nahar Singh (hereinafter referred to as "the accused") were convicted u/s 302 and 302 read with Section 34 IPC, vide judgment dated 30.9.2005 passed by the learned Additional Sessions Judge, Bathinda and sentenced as under:

Nahar  
Singh

U/s 302  
IPC

To undergo life imprisonment  
and to pay fine of Rs. 3000/- and  
in default of payment of fine to  
further undergo rigorous  
imprisonment for two years.

Sudagar  
Singh &  
Najam  
Singh  
U/s  
302/34  
IPC To  
undergo  
life  
imprisonment  
and to pay  
fine of Rs.  
3000/-  
and in  
default of  
payment  
of fine to  
further  
undergo  
rigorous  
imprisonment  
for two  
years  
each.

2. The factual matrix of the case as unfolded by the prosecution is that Darshan Kaur wife of Teja Singh Tufan, Majhbi Sikh, resident of Amarpura Basti, Bathinda was a member of the Shromoni Gurdwara Parbhandak Committee (hereinafter referred to as "SGPC"). Gurdwara Sahib Baba Jiwan Singh is situated near railway crossing at Bathinda, where Sudagar Singh accused was working as Sewadar. Teja Singh (deceased) was the member of musical team. On the election of the complainant as member of S.G.P.C. about three years prior to 17.4.2002, she and her husband at the instance of neighbours removed Sudagar Singh from the post of Sewadar of the aforesaid Gurdwara, on account of which, he and his sons Nahar Singh and Najam Singh alias Roshan Singh developed a grudge against him. About 2-3 years prior to the present occurrence, accused Nahar Singh had inflicted injuries to Gurdip Singh son of the complainant, in respect of which a criminal case was also registered.

Again on 20.8.2001 Nahar Singh had fired at the deceased in respect of which FIR No. 373 dated 20.8.2001, under Sections 307 IPC and 25 of Arms Act was registered at Police Station Kotwali, Bathinda and in that case Nahar Singh was convicted and sentenced.

3. On 17.4.2002 at about 7.30 PM, the complainant along with the deceased was coming to their house situated at Amarpura Basti, when they were a little ahead of railway crossing on the turning, the accused Sudagar Singh came in front of the scooter and stopped the deceased. The complainant was sitting on the pillion seat. The street light was on. Immediately, Najam Singh alias Roshan Singh put a piece of cloth over the face of Teja Singh while Nahar Singh inflicted dagger blow in his abdomen. Then both the complainant and the deceased had fallen from the scooter. On raising hue and cry by the complainant, the accused fled away from the spot. The deceased was shifted to Civil Hospital, Bathinda. On receiving the QST message from the Police Post Civil Lines, Bathinda regarding the arrival of the dead body in the hospital, ASI Angrej Singh reached the hospital, recorded the statement of complainant Ex.PF, on the basis of which FIR Ex.PF/2 was registered. Investigation was set in motion. ASI Angrej Singh prepared the inquest Ex.PE; got conducted the postmortem examination; visited the place of occurrence; and prepared the rough site plan Ex.PG. On 19.4.2002, he recorded supplementary statement of the complainant in which she included Nikka Singh as an assailant, on the allegations he had also caught her husband from his arms when Nahar Singh inflicted injury in his abdomen. Further investigation was conducted by the Inspector/SHO Shiv Shambu Nath, who arrested the accused Nahar Singh on 25.4.2002 and got recovered the dagger on the basis of disclosure statement Ex.PJ made by him. He arrested accused Nikka Singh on 7.5.2002 and Najam Singh on 23.5.2002. On completion of the investigation, challan was presented against them.

4. Consequently, they were charged for the aforesaid offences to which they pleaded not guilty and claimed trial.

5. During trial, the prosecution examined HC Devinder Singh (PW1), HC Bikkar Singh (PW2), Dr. Satish Jindal (PW3), Darshan Kaur (PW4), ASI Angrej Singh (PW5) and DSP (Retd.) Shiv Shambu Nath (PW6). After tendering into evidence ruqa Ex.PS, the prosecution closed its evidence.

6. When examined u/s 313 Code of Criminal Procedure the accused denied all the incriminating circumstances appearing against them and pleaded their false implication in the case. They further stated that Teja Singh was killed by some unknown persons with whom he had enmity in the town.

In defence, they examined Mukhtiar Singh alias Malkiat Singh (DW1).

The trial ended in acquittal of Nikka Singh and conviction of the remaining accused. Hence this appeal.

7. We have heard Mr. T.S. Sangha, learned Counsel for the Appellants, Mr. S.S. Bhinder, learned Additional Advocate General, Punjab and scanned the record with their able assistance.
8. No force can be found in the arguments of the learned Counsel for the Appellants that there is a delay in lodging the FIR. The occurrence in this case took place at 7.30 PM and the injured was shifted to hospital. The complainant was busy in taking care of her husband. The record reveals that Dr. Satish Jindal (PW3), E.M.O. sent the ruqa to the Police Post Civil Lines, at 8.40 PM in turn QST message was sent. As per the endorsement made on the ruqa by the MHC, Police Post Civil Lines, Bathinda, it was received at 9.25 PM. Consequently, ASI Angrej (PW5), reached the hospital at 10.00 PM; FIR was recorded at 11.35 PM and special report reached the Illaqa Magistrate on the next date i.e. 18.4.2002 at about 3.30 AM. Thus, apparently, no delay in recording the FIR is traced.
9. As regards the other argument regarding the solitary testimony of the complainant, it may be observed that there is no hard and fast rule that the accused could not be convicted on the testimony of solitary eye witness but parameters for placing reliance on the solitary eye witness have been vividly depicted by the Apex Court in case AIR 1989 236 (SC) , wherein it was observed that as there is no rule of law that the testimony of a single witness cannot be accepted and the conviction cannot be based on such evidence, if believed. The testimony of a single witness, if it is straight- forward, cogent and if believed is sufficient to prove the prosecution case, the conviction can be made on the testimony of such a single witness. Similarly, Division Bench of this Court in case Jarnail Singh v. State of Punjab, 1994 (3) RCR (Cri) 228 (P&H) observed that even if the witness is the relation of the deceased, but if his testimony passed through the test of cross examination and stood sound if synchronized with the check of due caution, then mere fact that it was a case of sole eye witness does not in any way effect the prosecution case. It is the quality of the evidence that matters and not its quantity.
10. No doubt the occurrence took place near the railway crossing where there may be some people who could have been attracted towards the occurrence. However, Darshan Kaur complainant (PW4) has specifically deposed that no person had come to the place of occurrence from the nearby shops. The occurrence took place within 2-3 minutes even when the deceased was on the scooter itself, therefore, no occasion would have arisen for the people to come, intervene and save the deceased. It is also ordinarily seen that people from the public avoid entangling in the criminal matters as they want to keep themselves aloof from the harassment in the Courts due to complicated process of law. She in her prompt FIR has vividly depicted that she was going while sitting on the pillion seat of scooter with the deceased, when the accused Nahar Singh stabbed him with his dagger in the abdomen while Sudagar Singh accused stopped the scooter while coming in front of him. This witness has been put to the test of cross examination and she withstood

the same. Her testimony stands corroborated by the medical evidence wherein Dr. Satish Jindal (PW3) observed the following injuries on the person of the deceased:

1. A stab incised wound on right hypochondrium just below right costal margin 17 cms. below right nipple, transversally placed of size 4.5 x 1.5 cms. in its maximum width. Clotted blood was present. On dissection, sub cutaneous haematoma was present. Peritoneal cavity full of blood, Liver (right lobe), mesentery, small intestine, right renal pelvis injured, with large retro- peritoneal haematoma was present.

2. Abrasion reddish in colour 1.5 x 1 cms below left lateral angle of left eye.

3. An abrasion at the tip of nose 1 x .2 cms reddish in colour.

4. An abrasion 4 x .5 cms on lower half of left leg on its dorsal aspect. On dissection, underlying bone was intact. Scalp skull veritably. Brain spinal cord were healthy.

11. From the bare perusal of the injuries it could well be analyzed that injuries No. 2 to 4 could be the result of fall from the scooter after suffering fatal injury at the hands of the accused by the deceased. Injury No. 1 stab wound is stated to be the result of the sharp edged weapon like dagger, therefore, the medical evidence given by Dr. Satish Jindal (PW3) fits in with the ocular version.

12. The other circumstance that the accused are inimical to the deceased as he had snatched the bread of accused Sudagar Singh by getting him removed from the job of sewadar. The previous enmity stands proved from the fact that Nahar Singh son of Sudagar Singh had attacked Gurdip Singh, on the second occasion, Teja Singh and on both the times, cases were registered against him. As such, Sudagar Singh in order to have revenge from Teja Singh must be projecting his son as an instrument to attack Teja Singh for snatching his bread. Thus, strong enmity between the parties coupled with the other factors i.e. the medical evidence fits in with the ocular version and the FIR is a prompt one, impel us to hold that there is no reason as to why the solitary testimony of the complainant be not believed without insisting upon corroboration from the independent source.

13. As regards the common intention of both the accused to cause injuries on the person of the deceased, it may be observed that we cannot ignore the participation of Sudagar Singh and Nahar Singh in the commission of the crime in view of the strong motive and also that they fully knew about the movements of the deceased and his wife. They stopped the accused and attacked him in a planned manner. No weight could be given to the argument advanced by the learned Counsel for the Appellants that the scooter of the deceased was already slow on account of the railway crossing. As such, there was no necessity for Sudagar Singh accused to stop it because it has come in evidence that the scooter was stopped by Sudagar Singh as it was moving on a slow speed. As per evidence, since Sudagar Singh had come in front of the scooter, therefore, there was no occasion for Teja Singh to speed up the scooter and he had no option but to stop it. As soon as he stopped the scooter at

the instance of Sudagar Singh, Nahar Singh pounced upon him and inflicted dagger blow into his abdomen. At the same time, the act could not be handiwork of one person i.e. Nahar Singh alone as Sudagar Singh had direct enmity with Teja Singh for removing him from the job of Sewadai. Thus, common intention of both the accused in the commission of crime cannot be ruled out.

14. Now coming to the other argument that Najam Singh alias Roshan Singh did not participate in the commission of crime, we may observe that as an abundant caution and from the re-appreciation of the evidence, it comes out that attribution given to Najam Singh is that he placed piece of cloth on the face of the deceased. Had he been present at the spot, then he would not have left the place without causing any injury to the deceased. No piece of cloth was recovered from the spot. No injury has been attributed to him, therefore, benefit of doubt could be extended to him.

15-16. Now coming to the other argument that in case of single injury, the accused could not be convicted u/s 302 IPC and at the most the case could fall within the purview of Section 304 Part II of IPC. Before entering into the legal controversy, the facts which emerge out of the evidence are as under:

(i) the accused had history of previous enmity with the deceased.

(ii) The deceased was Dhadi (Musician) of the Gurdwara, whereas the complainant was elected as member of the S.G.P.C. and had a hold over the Gurdwara Baba Jiwan Singh situated at Amarpura Basti Bathinda.

(iii) The deceased got removed Sudagar Singh from the post of sewadar due to which he was nursing grudge against the deceased.

(iv) The sons of Sudagar Singh previously attacked Gurdip Singh son of Teja Singh and at the second time at Teja Singh, on account of the fact that his father had been removed by him.

(v) On the day of occurrence; the accused had come prepared with the dagger, stopped the deceased while he was coming on the scooter and gave a stab wound on the vital part of his body resulting into his instantaneous death.

(vi) The motive behind the commission of the crime is "revenge". It is now to be determined, if, in the aforesaid circumstances of the case, whether offence falls u/s 302 or 304 Part II IPC. The Apex Court while determining regarding intention of the accused, whether the act falls u/s 304 Part II IPC recommended to take into consideration various factors which have been enumerated in case Pulicherla Nagaraju alias Nagaraja Reddy v. State of A.P., 2006 (4) RCR (Cri) 95 : 2006 (3) AC 103 : (2007) 1 SCC 500, while observing as under:

29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls u/s 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of

cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed; jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable u/s 302, are not converted into offences punishable u/s 304 Part I/II or cases of culpable homicide not amounting to murder, are treated as murder punishable u/s 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may.

17. From the aforesaid observations of the Apex Court, we are persuaded to hold that causing of single blow may be one of the circumstance to take out the offence from the purview of Section 302 IPC but the only blow given by the accused by itself would not mitigate to one culpable homicide not amounting to murder. We have following cases, where the single blow inflicted by the accused resulting in death, have been found to be sufficient for conviction of the accused u/s 302 IPC:

1. [Virsa Singh Vs. The State of Punjab](#),

2. *Gudar Dusadh v. State of Bihar*, 1972 SCC (Cri.) 438;

3. *Vasanta v. State of Maharashtra*, 1983 SCC (Cri.) 535; and

4. *Jai Parkash v. State (Delhi Administration)*, 1991(1) RCR(Cri) 439: 1991 SCC (Cri.) 299.

18. While elaborating the legal position regarding single blow injury, the Apex Court in case [Jagrup Singh Vs. State of Haryana](#), observed as under:

6. There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting in death must always necessarily reduce the offence

to culpable homicide not amounting to murder punishable u/s 304 Part II of the Code. If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must in the absence of any circumstances negating the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either clause firstly or clause thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death.

While discussing the judgments as referred to above, the Apex Court in *Pulicherla Nagaraju alias Nagaraja Reddy v. State of A.P.*, 2007 (1) SCC (Cri.) 500 case (supra) observed that the single blow having been given with great force, causing injury on the vital part of the body, was sufficient to bring out the case out of the Exception fourth of Section 300 and the accused could be convicted u/s 302 IPC. In the instant case also, the accused attacked the deceased and stabbed him with sufficient force in the vital part of his body when he had not caused any provocation and was unarmed.

19. Having considered the medical evidence and while analyzing the facts on the parameters as laid down by the Apex Court in *Pulicherla Nagaraju alias Nagaraja Reddy's* case (supra), we could not convince our mind to hold that the single blow given by the accused, in the given circumstances of the case, particularly keeping in view the nature, size of weapon i.e. dagger, used by the accused, part of the body over which the injury was caused i.e. in the stomach, a vital part of the body, the nature of the injury resulted in an instantaneous collapse leading to death, leaves no room to doubt that the intention of the accused was to cause death or to cause such bodily injury which was sufficient, in the ordinary course of nature, to cause death. Thus, irresistible conclusion in this case, which could be drawn, is that provisions of Section 304-II IPC certainly could not be attracted and the accused could safely be held to have committed an offence u/s 302 IPC.

For the foregoing reasons, we partly accept the appeal, acquit the accused-Appellant Najam Singh alias Roshan Singh of the charges framed against him and direct that he be set at liberty forthwith if not required in any other case.

However, the appeal qua accused-Appellants Nahar Singh and Sudagar Singh, stands dismissed.