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**(2006) 08 P&H CK 0545**

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

**Case No:** Criminal Appeal No. 683-DB of 2003

Baghela Singh and another

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** Aug. 9, 2006

**Acts Referred:**

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

**Citation:** (2007) 1 RCR(Criminal) 333

**Hon'ble Judges:** Virender Singh, J; A.N. Jindal, J

**Bench:** Division Bench

**Advocate:** A.P.S. Deol, for the Appellant; M.S. Sidhu, D.A.G. Punjab, for the Respondent

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**Judgement**

A.N. Jindal, J.

Baghela Singh and his son Kala Singh faced trial for committing murder of Kaka Singh on 6.11.2000 at village Burj Hari, P.S. Sadar Mansa. Consequently, they were convicted under Sections 302/324 read with Section 34 of IPC and were sentenced as under :-

Baghela Singh

U/s 302 IPC

:

To undergo imprisonment for life and to pay fine of Rs. 5,000/-. In default of payment of fine to further undergo rigorous imprisonment for one year.

U/s. 324/34 IPC	:	To undergo rigorous imprisonment for a period of one year.
Kala Singh		
U/s 302/34 IPC	:	To undergo imprisonment for life and to pay fine of Rs. 5,000/-. In default of payment of fine to further undergo rigorous imprisonment for one year.
U/s. 324 IPC	:	To undergo rigorous imprisonment for a period of one year.

2. All the substantive sentences were ordered to run concurrently.

3. The facts as culled out from the prosecution evidence are that Gurdeep Singh son of accused Baghela Singh and brother of accused Kala Singh was married to Raj Kaur at village Burj Hari. Kaka Singh deceased and Balbir Singh were also married to the sister of Raj Kaur. Darshan Singh-complainant is the brother-in-law of Kaka Singh etc. aforesaid. Relations between Gurdeep Singh and Raj Kaur were strained, therefore, Raj Kaur was residing in her parental house at village Moosa. Litigation between them was also going on. The accused (i.e. father-in-law and husband's brother) and their family were assuming that Kaka Singh had illicit relations with Raj Kaur.

4. Since Raj Kaur wanted winter clothes, therefore, on 6.11.2000, deceased Kaka Singh along with his brother-in-law Darshan Singh came to the in-law's house of Raj Kaur at Buri Hari in a jeep to bring clothes and met mother-in-law of Raj Kaur and asked her to deliver clothes of Raj Kaur but she told them that she would call persons from the fields and only thereafter they could take the clothes. Then she went to the fields to take her husband Baghela Singh and son Kaka Singh (accused) whereas Darshan Singh and Kaka Singh waited (for) them in front of the house of Baghela Singh.

5. At about 5.30 p.m. Baghela Singh armed with Kahi and his son Kala Singh arrived there. Baghela Singh exhorted Kaka Singh that he was not allowing Raj Kaur to settle in their house and he should be killed. Thereafter, he inflicted Kahi blow on the head of Kaka Singh. Consequently, he fell down, then Kala Singh also gave a Takwa blow from its sharp side on the wrist of Kaka Singh. The complainant Darshan Singh raised hue and cry, then accused ran away with their respective weapons. The

turban of Kaka Singh had fallen down from his head. He removed Kaka Singh in a jeep and took him to Civil Hospital, Mansa from where he was shifted to DMC, Ludhiana where police reached and recorded his statement Ex. PA.

6. On completion of the investigation, challan against only Baghela Singh was presented in the Court whereas Kaka Singh was mentioned in column No. 2. However, after recording statement of Darshan Singh-complainant, on an application filed by the State u/s 319 Cr.P.C. Kala Singh was also summoned to face trial. Consequently, both the accused were charged under Sections 302/324/34 IPC to which they pleaded not guilty and claimed trial.

7. To substantiate the charges against the accused, the prosecution examined Dr. Naresh Bansal, PW-1, Darshan Singh-complainant PW-2, Dr. Puneet Gupta PW- 3, HC Baldev Singh PW-4, C. Kulwant Singh PW-5, Dr. R.K. Kaushal PW-6, ASI Gurmeet Singh Investigating Officer PW-7, ASI Harpal Singh PW-8, Dr. Seerat Sandhu PW-9, Kulwant Singh PW-10, ASI Lalinder Singh PW-11, Dr. A.K. Kansal, PW-12 and Dr. K.K. Mukherjee PW-13.

8. After giving up HC Sukhmander Singh, SI Kesar Singh, Dr. H.S. Parmar, Dr. Kulwant Singh, Dr. Rakesh Chauhan being unnecessary and PWs Surinder Parkash, Makhan Singh, Sukhdev Singh, Mithu Singh, Karnail Singh and Surjit Singh as having been won over and after tendering into evidence report of the Forensic Science Laboratory Ex. PNN, the prosecution closed its evidence.

9. On closure of the prosecution evidence, both the accused were examined u/s 313 of Cr.P.C. in which they denied all the incriminating evidence appearing against them and pleaded their false implication in this case. However, they further pleaded that the relations between Raj Kaur alias Rajwinder Kaur and Gurdeep Singh were strained on account of which they had moved an application against ASI Sukhdev Singh in Police Station Sadar Mansa and Kaka Singh (deceased) as they were apprehending danger from them, therefore, they were involved in this case. Accused Baghela Singh also tendered into evidence copy of the petition u/s 13 of the Hindu Marriage Act titled as Raj Kaur v. Gurdeep Singh Ex. DA and closed their defence evidence.

10. Learned Additional Sessions Judge, Mansa, on evaluation of the prosecution evidence, found that both accused in furtherance of their common intention had caused injuries to Kaka Singh deceased. Consequently, he convicted them under Sections 302/324/34 IPC and sentenced them accordingly. Hence this appeal.

11. We have heard learned counsel for the appellants, Mr. M.S. Sidhu, Sr. DAG, Punjab and have scrutinized the record with their able assistance.

12. It has been vehemently contended on behalf of the appellants that there is inordinate delay in lodging the FIR which had led to introduction of the witnesses and addition of the accused. The occurrence did not take place in the manner as

alleged by the prosecution. The blood-strained earth, clothes of the accused, jeep and its registration certificate were not taken into possession. Though the occurrence took place in thickly populated area, yet none from the locality was joined as an independent witness by the Investigating Officer to support the prosecution version. It has been further urged that solitary statement of Darshan Singh PW-2 unless corroborated by any independent witness evidence cannot be placed reliance. Darshan Singh being interested as well as inimical witness could go to any extent to depose against the accused. Therefore, the prosecution case cannot be said to be proved.

13. Having made re-appreciation to the evidence on record we do not continuance (countenance ?) the aforesaid arguments advanced by the learned counsel for the appellants in toto. There is no denying fact that the relations between Raj Kaur and Gurdeep Singh were strained on account of which Raj Kaur was staying at her parental village Moosa. Since the winter season had set in, therefore, she must be requiring winter clothes as the circumstances reveals that there was no hope for early compromise between them. It has come in evidence that despite the Panchayat was convened during the day of occurrence, the parties could not reach any settlement. Thus, it was quite natural that Raj Kaur must have sent her brother along with her sister's husband to bring winter clothes from her in-laws' house.

14. It is also a matter of common experience that in case where the relations go strained between the couple, then the women on the country side do not take lead and urge forward the heads of the family for an dialogue in case of need. Therefore, this story of the prosecution that mother-in-law of Raj Kaur had gone to call her husband and son for handing over the clothes of Raj Kaur to the deceased Kaka Singh and Darshan Singh, also does not suffer from any abnormality.

15. There is no challenge to the murder having taken place at village Burj Hari in front of the house of the accused Baghela Singh which has been duly proved by PW-7 ASI Gurmeet Singh Investigating Officer of this case and corroborated by Darshan Singh P-2. PW-7 ASI Gurmeet Singh has deposed that he visited the spot, prepared the site plan showing the place of occurrence, recorded statement of Darshan Singh. Similarly, Darshan Singh PW-2 has deposed about the occurrence disclosing that on 6.11.2000, he accompanied by Kaka Singh (deceased) went to village Burj Hari for fetching winter clothes for Raj Kaur. They asked the mother-in-law of Raj Kaur for supplying them the clothes. At this, she replied that she would bring Baghela Singh and Kala Singh from the fields and only then clothes could be handed over to them. At around 5.30 p.m., both the accused came there armed with kahi and takwa respectively. Baghela Singh-accused raised Lalkara that Kaka Singh was not allowing Raj Kaur to rehabilitate in their house and he should be done to death. Simultaneously, he inflicted kahi blow on his head whereas Kala Singh gave takwa blow on the right arm of Kaka Singh. On raising hue and cry, both the accused escaped with their respective weapons. This witness has been

cross-examined at length. Besides (Despite ?) the scorching cross-examination conducted upon him nothing fruitful could be elicited from his testimony which could be helpful to the prosecution case. Learned counsel for the appellants has challenged the testimony of Darshan Singh PW-2 on the ground that he is interested and inimical witness. Even otherwise his testimony does not stand corroborated by any other evidence and that he was not present at the time of occurrence.

16. Having considered the aforesaid arguments, we do not find ourselves in agreement to it. After closely scrutinizing the testimony of Darshan Singh PW-2, it can well be observed that presence of Darshan Singh PW-2 at the spot cannot be doubted as we have already observed that there was no reason to discard his presence at the spot as due to the setting of winter season he along with Kaka Singh (deceased) had gone to take clothes of Raj Kaur from her in-laws' house. It is well settled by now that the evidence of the witnesses has to be weighed and not accounted inasmuch as the quality matters more than quantity in whom affairs. Prudence, however, requires that some corroboration should be sought from the other prosecution evidence in support of the testimony of the solitary witness particularly where such persons happen to be closely related to the deceased or the accused is one against whom some motive or ill-will is suggested. In this case, Darshan Singh may be a relation witness but he would be the last person to substitute the accused in place of real culprits and involve his own sister's father-in-law without any rhyme or reason and also against whom they had a hope that they will rehabilitate her sister. However, while probing deep into the matter, it is observed that occurrence in this case took place on 6.11.2000 at about 5.30 p.m. whereas the case was registered at Police Station Sadar, Mansa on the next day i.e. on 7.11.2000 at about 4.05 p.m. Proper explanation was put forth to explain this delay. As such we are unable to doubt this witness as wholly unreliable.

17. While urging forward the contradictory medical evidence, it has been conversed (canvassed ?) before us that the complicity of Kala Singh in the commission of the crime is doubtful in this case. Having given our thoughtful consideration to this contention, we find some substance in it and consider it essential to take note of medical evidence from it. Dr. Naresh Bansal, who medico-legally examined Kaka Singh (deceased) on 6.11.2000 at about 6.10 p.m. observed the following injuries on his person :-

1. Incised wound 10 cms x 1 cm x 1 cm on right side of scalp placed anterior posteriorly in direction, 12 cms above the right ear and anterior and 4 cms behind anterior hair margin. Fresh bleeding was present. Advised x-ray and kept under observations.

2. Incised wound 5 cms x 1 cm x 1/2 cm on the right forearm 3 cms above the wrist on posterior surface. Fresh bleeding was present. Advised x-ray.

18. Dr. Naresh Bansal, PW-1, kept both the injuries under observation and subject to x-ray examination. He gave probable duration of the injuries as six hours and kind of weapon used given as sharp. After x-ray report Ex. PB, he vide his endorsement Ex. PB/1 opined that injury No. 2 was simple. The story set up by the prosecution as coming from the mouth of Darshan Singh PW-2 is that first of all Baghela Singh accused inflicted a kahi blow from its sharp edge on the head of Kaka Singh. Kaka Singh fell down and thereafter Kala Singh inflicted takwa below on the right forearm of the deceased Kaka Singh. This injury was declared as simple in nature appears to be a little bit improvement over the original version obviously in order to throw the net wider. In FIR Ex. PG/2, he stated that injury was launched by Kala Singh on the writ joint whereas injury No. 2 is on the right forearm 3 cms above the wrist on the posterior side. It is also improbable that had Kala Singh been present at the spot he would have left Kaka Singh after causing minor injury. Rather if he would have been present then he would have caused more serious injury than even his father. He could not have left any chance for Kaka Singh to survive and would have traced back after causing a minor injury on the non-vital part of the body of Kaka Singh. This circumstance does not fit in the normal human behaviour of the accused. Had he been present at the spot he would have caused more injuries, therefore, we do not hasten to hold that presence of Kala Singh at the spot is doubtful.

19. As regards arguments for non-examination of Raj Kaur, it is observed that neither Raj Kaur was present at the spot nor she played any role during the occurrence. Since Raj Kaur has been slapped with serious allegations of illicit relationship with Kaka Singh, therefore, she may be reluctant to become witness knowing that by doing so she will be maligned and dragged badly for nothing. As regards the non-lifting of blood-stained earth or not taking into possession blood-stained clothes, it may be observed that the turban which Kaka Singh was wearing, was taken into possession. The lifting of blood-stained earth and taking into possession blood-stained clothes of the deceased or the witness by itself are no grounds to doubt the testimony of the witness or to discard the prosecution case as a whole when there is other direct evidence of Darshan Singh PW-2 corroborated by the medical evidence and also evidence of recovery of the weapons of offence from the accused.

20. Mr. A.P.S. Deol's last argument that the accused after causing only one injury and that too out of heat of passion and that Kaka Singh died after four months of the occurrence, the case does not fall within the category of Clause III of Section 300 of IPC but has same substance.

21. In order to reach the right conclusion, it will be essential to reproduce the medical aspect of the case. The injuries on the person of Kaka Singh were caused on 6.11.2000 at 6.10 p.m. PW-1 Dr. Naresh Bansal vide MLR report Ex. PA observed the injuries on his person. The solitary injury which proved fatal on the person of Kaka Singh was on the right side of the scalp. Dr. Puneet Gupta PW-3 confirmed that on

the police request Ex. PI, Ex. PJ, Ex. PK and Ex. PL, he made his endorsements Ex. PI/1, Ex. PJ/1, Ex. PK/1 and Ex. PL/1 declaring Kaka Singh unfit to make statement. Kaka Singh was admitted in Civil Hospital, Mansa on 6.11.2000 and thereafter he was shifted to DMC, Ludhiana where he remained admitted up to 20.11.2000 and he was discharged on 21.11.2000. Thereafter, he was again admitted to DMC, Ludhiana on 18.12.2000 for right parietal craniotomy and drainage of brain abscess. As per Dr. K.K. Mukherjee PW-13, Kaka Singh (deceased) was admitted in the PGI, Chandigarh vide CR No. 248638, admission No. 97308 dated 14.2.2001 and was discharged from the PGI on 18.3.2001. As per discharge summary Ex. PKK, Kaka Singh (deceased) was referred from DMC, Ludhiana with the alleged history of assault followed by severe brain infection which was controlled but he remained unconscious. However, when he became stable he was discharged on 18.3.2001 vide discharge booklet Ex. PKK/1 but he succumbed to his injuries on 19.3.2001. Post-mortem was conducted upon his body by PW-12 Dr. A.K. Kansal, Assistant Civil Surgeon, Ferozepur. He opined that cause of death of Kaka Singh was respiratory failure due to brain infection as a result of injury No. 7 which was sufficient to cause death in the ordinary course of nature.

22. From the aforesaid evidence, the following facts have come to the surface :-

(i) The accused had suspicion that Kaka Singh had illicit relations with their daughter-in-law i.e. Raj Kaur. He was backbone of the entire dispute between the couple and he was not allowing Raj Kaur to rehabilitate in their house. The accused were also annoyed at him that as to who he was to visit their house in connection with taking of the clothes.

(ii) The accused Baghela Singh had the agricultural equipment i.e. kahi in his hand. He did not come prepared with any other specified weapon for the commission of the offence. He traced back only after causing single injury and did not make any effort to repeat the same.

(iii) Baghela Singh caused solitary injury that too with the sharp edge side.

23. It may further be observed that Kaka Singh died after four months and 12 days of the occurrence due to respiratory failure on account of brain infection as a result of injury No. 7. The above features positively suggest us that since the parties had strained relations, Raj Kaur had filed a petition u/s 13 of the Hindu Marriage Act, copy of which is Ex. DA, in the Court of Additional District Judge, Mansa (Exercising the Powers of District Judge, under the Hindu Marriage Act, 1955), therefore, visit of Kaka Singh to the house of the accused may not have appealed to him and he could not digest the same particularly when he was doubting his conduct on suspicion that he was having illicit relations with his daughter-in-law and was not allowing her to rehabilitate in their house. As such, the accused on seeing Kaka Singh must have become infuriated, therefore, under the heat of passion, inflicted injuries to the deceased without any intention to kill him.

24. In the scheme of Indian Penal Code culpable homicide is the genus and murder is its specie. All murders may be culpable homicide but all culpable homicides are not murder. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, Indian Penal Code practically recognizes three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the gravest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second degree" which is punishable in first part of Section 304. Then there will be "culpable homicide of the third degree" which is punishable under Part-II of Section 304.

25. There exists no hard and fast rule, nor there can be any such rule that by inflicting a single blow, the offence would not fall within the provisions of Section 300 and must always fall within Section 304-I or 304 Part-II. The various features, such as, weapon of offence, intention of the assailants, the seat and nature of injuries, the behaviour of the accused, before, during and after the offence and also the motive, if any would indicate to enable the Court to make out as to in which specie of the culpable homicide a case falls. Here it would be apt to refer to a judgment of the Hon"ble Supreme Court in Virsa Singh and v. State of Punjab, AIR 1958 SC 465 wherein the Apex Court elaborated the ingredients of Section 300 as under :-

The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness or intended serious consequences, is neither here or there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness but whether he intended to inflict the injury in question and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion.

26. While referring to the Virsa Singh's case (supra), the Apex Court in case Shanker Narayan Bhadolkar v. State of Maharashtra, 2004 (2) RCR (Cri.) 508 : 2004 (2) AC 648 (SC) : 2004 (3) AI CLR 327 observed as under :-

These observations of Vivian Bose, J., have become locus classicus. The test laid down by Virsa Singh case (supra) for the applicability of clause "thirdly" is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder if both the following conditions are satisfied, i.e. (a) that the act which causes death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that



there was an intention to inflict that particular bodily injury which, in the ordinary course of nature was sufficient to cause death, viz., that the injury found to be present was the injury that was intended to be inflicted.

27. The observations given by the Apex Court in the aforesaid judgments lead us to the conclusion that if the intention of accused was limited to the infliction of bodily injury sufficient to cause death in the ordinary course of nature and did not extend to the intention of causing death, offence would be murder. Illustration (c) appended to section clearly brings out this point. Shanker Narayan Bhadolkar's case (supra) was again approved by the Apex Court in case Raj Pal v. State of Haryana, 2006 (3) RCR (Cri.) 38 (SC) : 2006 (2) AC 253 (SC) : 2006(3) RCC 209.

28. Thus, the essential difference between an offence u/s 304-I and 304-II is intention. If intention to cause such an injury as is likely to cause death is established, the offence would fall under Part-I, but where no such intention is established and only knowledge that the injury is likely to cause death is established, it would fall under Part-II.

29. Taking the totality of the evidence into consideration and the special features noticed, the conclusion is irresistible that death was caused by the acts of the accused done with the intention of causing such bodily injury as is likely to cause death and, therefore, the offence would squarely fall within Part-I of Section 304 of IPC.

30. Under these circumstances, while disagreeing with the trial Court qua the complicity of Kala Singh in the commission of the crime, we partly accept the appeal, modify the judgment and convict the accused Baghela Singh for the offence u/s 304-I of the IPC and consequently reduce his sentence to six years. However, fine awarded against him will remain intact. The sentence already undergone by him will be deducted from the substantive sentence awarded against him. At the same time, we acquit Kala Singh of the charges framed against him and he be set at liberty if not required in any other case.