

(2006) 07 P&H CK 0239

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 52-DB of 2004

Harpartap Singh alias Goldi and
another

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision: July 12, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 34

Hon'ble Judges: Mehtab S. Gill, J; Baldev Singh, J

Bench: Division Bench

Advocate: T.S. Sangha and Mr. I.P. Sidhu, for the Appellant; S.S. Randhawa, D.A.G., for the Respondent

Final Decision: Allowed

Judgement

Mehtab S. Gill, J.

This is an appeal against the judgment dated 9.12.2003 of the Sessions Judge, Faridkot whereby he convicted Harpartap Singh alias Goldi and Kanwarpartap Singh alias M.P. u/s 302 read with Section 34 IPC and sentenced them to undergo RI for life and to pay a fine of Rs. 10,000/- each, in default to undergo further RI for one year.

2. The case of the prosecution is unfolded by the statement Ex.PM given by Gurpartap Singh alias Dimpy to ASI Jagsir Singh at Guru Gobind Singh Medical College at Faridkot at 4.15 P.M. on 22.5.2000. Gurpartap Singh alias Dimpy has stated, that he is a resident of Kotkapura. He has two brothers. He is the eldest. Younger to him is Kanwarpartap Singh alias M.P. and younger to him is Harpartap Singh alias Goldi. The name of his mother is Gurmail Kaur. He has a wife named Sarabjit Kaur. The three brothers had partitioned the land. Gurpartap Singh's father namely Surinderjit Singh alias Surinder owned 18 killas of land and two houses. His father had partitioned the land. Both younger brothers of Gurpartap Singh alias

Dimpy i.e. Harpartap Singh alias Goldi and Kanwarpartap Singh alias M.P. were bachelors. In the partition, their old house had fallen to the share of Gurmail Kaur and both the younger brothers of Gurpartap Singh alias Dimpy. The two resided there along with their mother. Gurpartap Singh alias Dimpy and his wife and children along with his father started residing in the new house. Out of the land owned by Surinderjit Singh alias Surinder he gave four acres of his land to his wife Gurmail Kaur and to his younger sons Harpartap Singh alias Goldi and Kanwarpartap Singh alias M.P. in the partition. The remaining land was with his father and him. On 22.5.2000 at about 11 A.M. Gurpartap Singh along with his father and one Kuldip Singh son of Bhola Singh along with their Seeri and a mason by the name of Chanan were constructing a small room for motor (tubewell) in their fields. Younger brothers of Gurpartap Singh i.e. Harpartap Singh and Kanwarpartap Singh were sowing cotton crop in the land which had fallen to their shares. Surinderjit Singh alias Surinder felt thirsty. He went to drink water on the passage near the road. Within the sight of Gurpartap Singh and the others, Harpartap Singh alias Goldi armed with a spade and Kanwarpartap Singh alias M.P. empty handed reached the hand pump. Both of them started exchanging hot words with their father Surinderjit Singh alias Surinder and abused him. On hearing the noise, Gurpartap Singh along with others went that side. Before they could reach there, Kanwarpartap Singh alias M.P. caught hold of his father from his arms and Harpartap Singh gave two consecutive blows with the spade on the head of Surinderjit Singh. After giving these blows, both Harpartap Singh and Kanwarpartap Singh ran away from the spot. Surinderjit Singh was taken to Civil Hospital, Kotkapura. On seeing his condition, the doctor referred him to Guru Gobind Singh Medical College, Faridkot. Surinderjit Singh alias Surinder was taken in an ambulance to Faridkot, but on reaching the hospital, he breathed his last. The cause of grudge is that Harpartap Singh alias Goldi and Kanwarpartap Singh alias M.P. were nursing a grudge for giving less land to them by their father. This is the reason that in connivance with each other they had murdered Surinderjit Singh alias Surinder.

3. On the basis of this statement, FIR Ex.PM/2 was recorded on the same day at 5 P.M. Special report reached JMFC Faridkot at 7.30 P.M. on 22.5.2000.

4. Prosecution to prove its case brought into the witness Dr. K.K. Aggarwal as PW1, Gursewark Singh as PW2, LC. Bhupinder Singh as PW3, MHC Muhktiar Singh as PW4, Dr Manjit Singh as PW5, Khem Cband as PW6, HC Harpal Singh as PW7, Dalip Singh as PW8, Gurpartap Singh complainant as PW9, Kuldip Singh as PW 10, ASI Jagsir Singh as PW 11 and Darshan Singh SI/SHO as PW 12.

5. Learned counsel for the appellants has argued that there is no motive, nor any grudge to commit the murder of their own father as he had given them a house and land as per their share. Deceased Surinderjit Singh alias Surinder Singh had 18 acres of land, out of which, he had given four acres to the appellants and the rest he had

kept for himself and the complainant. PW8 Dalip Singh is no other person than the brother of the mother of the appellants ("Mamma") has stated in his testimony, when he appeared in the witness-box, that the land was divided between the father and sons in the year 1999, amicably. All the parties were happy.

6. Next argument of the learned counsel for the appellants is that Jagsir Singh alias Seera and Chanan Singh mason, who were building a room at the tubewell of the deceased, were not produced as prosecution witnesses for the sole reason that they would have told the truth about deceased Surinderjit Singh first attacking appellant Harpartap Singh. It has come in the evidence of Dr.Manjit Singh PW5 that Jagsir Singh alias Seera is the one who brought deceased Surinderjit Singh, but as his condition was serious, he was referred to Guru Gobind Singh Hospital, Faridkot. Gurpartap Singh PW9 has stated in his testimony, that he also accompanied Seera to the hospital, was in fact not present at the place of occurrence, nor did he take Surinderjit Singh to the hospital. The other eyewitness to the occurrence, Kuldip Singh PW 10 is the father-in-law of complainant Gurpartap Singh PW9. He lives 6-1/2 Kms away. No reason has been given by him, as to what was doing in the fields of deceased Surinderjit Singh, when the occurrence had taken place. In fact on the day of occurrence, as per document Ex.D1, he was present in a Court at Faridkot. In his testimony before the Court, Gurpartap Singh PW9 does not mention that Kuldip Singh PW 10 was also present when the occurrence had taken place. If appellants Harpartap Singh and Kanwarpartap Singh had wanted to take revenge and inflict injuries on their father, then both would have been armed with weapons. As per the prosecution case, Kanwarpartap Singh was empty handed and the role attributed to him was that he caught hold of his father. If the attack on deceased Surinderjit Singh was premeditated, then appellant Kanwarpartap Singh would also have been armed with some weapon. What happened on the day has been spelt out by appellant Harpartap Singh in his statement u/s 313 Cr. PC. He has stated that he was attacked by his father Surinderjit Singh and it was in self-defence, that he inflicted injuries on Surinderjit Singh. At the most, it is a case of a sudden fight and only appellant Harpartap Singh could be held liable for the offence u/s 304 Part II, IPC.

7. Learned counsel for the State has argued that as per the site plan Ex.PF, Mark-A is the place where appellant Harpartap Singh caused injuries to Surinderjit Singh. Mark-B is the place where Kuldip Singh PW 10, Gurpartap Singh PW9 and Jagsir Singh were present. Mark-C is the place where the hand pump is fitted. Mark-D is the place where appellants Harpartap Singh and Kanwarpartap Singh were allegedly sowing cotton crop in the fields. Distance between mark-C and D is 120 karams i.e. about 200 yards away from the place of occurrence. Both the appellants came to point C and then thereafter, appellant Harpartap Singh inflicted injuries on Surinderjit Singh at point A. It is a clear case of pre-meditation. Both appellants after due deliberations walked 200 yards to inflict injuries on Surinderjit Singh. Appellant Harpartap Singh was at that time armed with a Kahi. If we take the case of appellant Harpartap Singh that he was attacked by his father Surinderjit Singh, we cannot

overlook this fact that appellant Harpartap Singh was a young boy of 22 to 24 years old while his father was a middle aged person of 50 years. If appellant Harpartap Singh was attacked he could have easily run away. There was no motive for deceased Surinderjit Singh to attack appellant Harpartap Singh. In fact the grudge was on the side of appellants Harpartap Singh and Kanwarpartap Singh, as less land had been given to them by their father. It was natural for Gurpartap Singh PW9 to be present in the fields. A room was being built by one mason Chanan Singh, who was also being helped by a labourer by the name of Jagsir Singh. There is no delay in the lodging of the FIR. In fact the promptness of the FIR is going a long way in proving the case of the prosecution. Gurpartap Singh PW9 would not falsely implicate his own real brothers for the murder of his father and let the actual culprits go scot free.

8. We have heard the learned counsel for the parties and perused the record with their assistance.

9. It has come in the evidence of Gurpartap Singh PW9 that his father Surinderjit Singh had 18 killas (acres) of land, out of which he had given four acres to his brothers for the purpose of cultivation about three years back. Dalip Singh PW8, who is the brother of the mother of Gurpartap Singh PW9 (Mamma), has stated in his testimony that his brother-in-law i.e. deceased Surinderjit Singh had 10/11 acres of land. He had given the share of land to his sons i.e. the appellants. There was no dispute; about the land, among the deceased and the appellants. He (Dalip Singh PW8) had intervened in the year 1999 and settled the dispute between Surinderjit Singh and his sons. Four acres of land was given to appellants Harpartap Singh and Kanwarpartap Singh in equal shares including the share of their mother. After going through the statement of Dalip Singh PW8 we cannot overlook the fact that Dalip Singh is a prosecution witness and what he has stated the prosecution is bound to stand by it. He was declared hostile at any stage of his testimony. He has clearly stated that there was no dispute between the father and the sons i.e. the appellants. In fact Gurpartap Singh PW9 has also stated that partition had taken place about three years earlier. Thus showing that there was no recent dispute between the appellants and their father.

10. Dr. Manjit Singh PW5 has stated in his testimony that Surinder Singh was brought to the hospital with multiple injuries, allegedly sustained due to quarrel and he was brought by Seera Singh son of Dalip Singh. It is strange that though Gurpartap Singh PW9 has stated that he also accompanied Seera he did not come forward and to tell the deceased that Surinderjit Singh is his father but talk Seera who was a labourer was one who went to the doctor and got Surinderjit Singh admitted. If Gurpartap Singh PW9 had been present in the hospital and had taken Surinderjit Singh to the hospital, he was the one who the doctor would have marked as having admitted Surinderjit Singh being the son of the deceased. From the testimony of Gurpartap Singh PW9, it comes out that he is not a truthful witness. His

presence at the place of occurrence, though cannot be doubted as the room was being built in his land and a mason Chanan Singh and a labourer Jagsir Singh were working there when the occurrence took place. Kuldeep Singh PW10 the other eyewitness to the occurrence was not present at the time of occurrence as though his name figures only in the FIR but Gurpartap Singh PW9 in his testimony before the court has stated that only Jagsir Singh alias Seera and Chanan Singh mason were present when his father was attacked by the appellants. Kuldeep Singh PW 10's residence is 6/7 Kms away from the place of occurrence. Document Ex.D1 clearly shows that on the day of occurrence i.e. on 22.5.2000, Kuldeep Singh was present in the Court of Assistant Collector 1st Grade (S.D.O.) where a case titled Sukhdeep Singh Brar Versus Kuldeep Singh etc. was being heard. In the order the Assistant Collector has stated that parties are present with their counsel. Kuldeep Singh PW 10 in his testimony before the Court has not given any worthwhile reason as to what he was doing and what was the reason of he being present in the fields of deceased Surinderjit Singh and Gurpartap Singh PW9 at 11 A.M. on 22.5.2000, when the occurrence had taken place. This witness is an implanted witness. His testimony becomes even more suspicious as he is the father-in-law of Gurpartap Singh PW9.

11. No reason has been given by the prosecution as to why the two independent witnesses i.e. Jagsir Singh alias Seera and Chanan Singh mason were not brought before the Court. They have not been cited as witnesses by the prosecution. We are left with the only eyewitness i.e. Gurpartap Singh PW9.

12. Gurpartap Singh PW9 has stated in his testimony that appellant Kanwarpartap Singh caught hold of his father by his arms and appellant Harpartap Singh thereafter gave two consecutive blows with his spade. Seeing the nature of injuries as spelt out by Dr. K.K. Aggarwal PW 1 in his post- mortem report Ex. PA, these injuries could not have been caused if Surindedit Singh had been held by his arms. There was all likelihood of appellant Kanwarpartap Singh also being injured in the process. Surinderjit Singh was a middle-aged man of 50 years. He would have resisted and would have tried to free himself from the clutches of appellant Kanwarpartap Singh. Kanwarpartap Singh alias M.P. if was angry would have also wanted to inflict injuries on his father. He would also have been armed with some weapon. As per prosecution, both the appellants walked 200 metres to attack their father Surinderjit Singh. They at that time were aware of the fact that Chanan Singh mason, Jagsir Singh alias Seera and Kuldeep Singh PW 10 were also present. Appellants would have avoided attacking Surinderjit Singh on that day as a number of persons were present. It seems that appellant Kanwarpartap Singh has been roped in and has been falsely implicated in the case.

13. Learned counsel for the appellants has vehemently argued that it is a case of a sudden fight between father and son on the fateful day. Partition had taken place three years back. Dalip Singh PW8 has categorically stated that partition had taken place amicably. Apart from the two houses one of which Surinderjit Singh had taken

for himself and the other was given to the appellants, the agricultural land has also been distributed. On the fateful day some sort of altercation had taken place. In FIR Ex.PM/2, it has been stated by Gurpartap Singh PW9 "both of them namely Harpartap Singh and Kanwarpartap Singh started exchanging hot words with my father and abused him." It is clear from this that some sort of altercation had taken place between appellant Harpartap Singh and deceased Surinderjit Singh and it is thereafter that Harpartap Singh inflicted injuries with a Kahi on the head of Surinderjit Singh his father, which proved fatal.

14. We are of the view that ends of justice would be met by convicting appellant Harpartap Singh alias Goldi u/s 304 Part II, IPC and by reducing his sentence to that of 10 years RI. His fine shall remain intact.

15. For the reasons recorded above, we find that appellant Kanwarpartap Singh alias M.P. has been falsely implicated. Benefit of doubt is given to him. His appeal is allowed. Conviction and sentence qua him is set aside. He is acquitted of the charges framed against him.

16. Appeal of Harpartap Singh alias Goldi is dismissed except for above modification in conviction and sentence. If he is on bail he is directed to surrender before CJM Faridkot, to undergo the remaining part of his sentence.