# Gurwinder Singh @ Sonu vs State Of Punjab on 8 May, 2018

## Author: R. Banumathi

## Bench: Chief Justice, R. Banumathi, Navin Sinha

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 2301-2302 OF 2014

GURWINDER SINGH @ SONU ETC. …Appellant(s)

Versus

STATE OF PUNJAB AND ANR. ...Respondent(s)

JUDGMENT

R. BANUMATHI, J.

These appeals arise out of the judgment dated 17.12.2012 passed by the High Court of Punjab and Haryana at Chandigarh in CRA No.1176 DB of 2010 and CRA No.1222 DB of 2010 in and by which the High Court affirmed the conviction of the appellants under Section 302 IPC read with Section 34 IPC and sentence passed by the trial Court.

2. Case of the prosecution is that Sukhwinder Singh (PW-6) is the son of deceased Harbhajan Singh. Satnam Singh who is the younger brother of deceased Harbhajan Singh is residing separately in the village and other two younger brothers of Harbhajan Singh have gone to Italy. The land falling to other brothers' share is being cultivated by Satnam Singh; but they desired that their land should be cultivated by Harbhajan Singh. For amicable settlement, the matter went to the Panchayat several times; but could not be solved. Few days prior to the occurrence, dog of Satnam Singh went missing, who blamed the family of Harbhajan Singh for missing of the said dog. On 02.11.2007 at about 04.00 p.m., both families gathered to discuss the issue regarding the land and missing of dog. Complainant-Sukhwinder Singh, deceased Harbhajan Singh, his uncle Satnam Singh, Gurwinder Singh alias Sonu son of Satnam Singh and other villagers namely Sandeep Singh, Makhan Singh also participated in the said gathering, which took place on the tubewell situated near village Dasupur. During discussion for settlement, there was exchange of hot words and the appellants Satnam Singh and Gurwinder Singh gave fist and kick blows to them. Satnam Singh also raised 'Lalkara' to catch hold Harbhajan Singh to teach him a lesson for partitioning the land. In the meanwhile, appellant Gurwinder Singh brought an axe from the room near the tubewell and Satnam Singh held Harbhajan Singh from the arms. Gurwinder Singh gave axe blow to Harbhajan Singh which hit him on his head and Harbhajan Singh became soiled with blood.

3. The complainant-Sukhwinder Singh took his father to Civil Hospital, Kartarpur. After the first aid, Harbhajan Singh was referred to Joshi Hospital, Jalandhar where he was admitted for further treatment. Even after the incident, since the talk for compromise was going on, no complaint was lodged about the incident. Since the matter could not be settled, Sukhwinder Singh lodged the complaint on 07.11.2007, based on which FIR No.178 of 2007 was registered under Section 307 IPC read with Section 34 IPC. Initial investigation was taken up by the investigating officer. Harbhajan Singh succumbed to injuries on 01.12.2007 and the case was altered into Section 302 IPC read with Section 34 IPC. Dr. M.B. Bali, Medical Officer (PW-1) conducted the autopsy on the dead body of Harbhajan Singh. Further investigation was completed and charge sheet was filed against the appellants/accused persons under Section 302 IPC read with Section 34 IPC.

4. To bring home the guilt of the accused, prosecution has examined Sukhwinder Singh (PW-6), Sandeep Singh (PW-7), Dr. M.B. Bali, Medical Officer (PW-1) and other witnesses. The appellants/accused were questioned under Section 313 Cr.P.C. about the incriminating evidence and circumstances and the accused denied all of them. On the side of the accused, defence witnesses Dr. Mohinderjit Singh (DW-1) and Kuldeep Kaur (DW-2) were also examined.

5. Upon consideration of evidence, the trial court held that by the evidence of Sukhwinder Singh (PW-6) and Sandeep Singh (PW-7), the prosecution has established the guilt of the accused beyond reasonable doubt. The trial court rejected the defence version that Mithu, servant of the accused, caused injuries to deceased Harbhajan Singh as unbelievable. On such findings, the trial court convicted the appellants/accused Gurwinder Singh under Section 302 IPC and Satnam Singh under Section 302 IPC read with Section 34 IPC and sentenced them to undergo life imprisonment and also to pay a fine of Rs.10,000/- each. Being aggrieved, the appellants preferred appeal before the High Court and the High Court confirmed the conviction and the sentence imposed upon the appellants by the trial court. Hence, this appeal.

6. Assailing the verdict of the conviction, learned counsel for the appellants submitted that since there was a delay of five days in lodging the First Information Report, serious doubts arise as to the prosecution case. It was contended that the appellants/accused also sustained injuries for which the prosecution has offered no explanation and that the prosecution has suppressed the genesis of the occurrence. Learned counsel for the appellants inter alia contended that even if the accusations of the prosecution are accepted in toto, offence under Section 302 IPC is not made out in view of the circumstances emerging from the evidence as the attack was in a sudden quarrel when parties have assembled for settling the land dispute.

7. In reply, learned counsel for the State submitted that considering the evidence adduced by the prosecution and the nature of head injuries inflicted on the deceased, the trial court was justified in recording the conviction under Section 302 IPC and the High Court has rightly dismissed the appeal.

8. Evidence of eye witnesses Sukhwinder Singh (PW-6) and Sandeep Singh (PW-7) were corroborated by the medical evidence. Prosecution has established that accused were responsible for causing death of Harbhajan Singh. In the same incident, appellant Satnam Singh also sustained

injuries. On the same day i.e. 02.11.2007 at 04.45 p.m., Dr. Mohinderjit Singh (DW-1), Medical Officer examined accused Satnam Singh and noted the following injuries on the person of Satnam Singh:-

1. An incised wound 6.0 cm × 0.5 cm on the frontal region;

2. An incised wound 5.5 cm × 0.5 cm on the left frontal region.

The patient was discharged after treatment.

On the same day, Dr. Mohinderjit Singh (DW-1) also examined accused Gurwinder Singh and noted the following injuries on the person of Gurwinder Singh:-

1. An incised wound 3.0 cm × 0.5 cm right temporal parietal region;

2. Abrasion right side frontal region 0.5 cm × 0.5 cm;

3. Lacerated wound forearm 3.0 cm × 0.5 cm.

9. Contention of the appellants is that prosecution has not explained the injuries on the person of the accused and only the complainant party attacked the accused and the complainant party are the aggressors. In his statement, Sukhwinder Singh has stated that he attacked on the head of Satnam Singh and caused injury to him.

Arguments advanced on behalf of the appellants is that the complainant party were the aggressors and that the prosecution failed to explain the injuries on the persons of the accused and therefore, the case of prosecution should be disbelieved.

10. It cannot be held as an invariable proposition that as soon as the accused received the injuries in the same transaction, the complainant party were the aggressors - it cannot be held as a rule that the prosecution is obliged to explain the injuries and on failure of the same, the prosecution case should be disbelieved. It is well settled that before placing the burden on the prosecution to explain the injuries on the person of the accused, two conditions are to be satisfied:- (i) the injuries were sustained by the accused in the same transaction; and (ii) the injuries sustained by the accused are serious in nature.

11. This Court considered the effect of non-explanation of injuries sustained by the accused person in Takhaji Hiraji v. Thakore Kubersing Chamansing and others (2001) 6 SCC 145 and held as under:-

“17. The first question which arises for consideration is what is the effect of non-explanation of injuries sustained by the accused persons. In Rajender Singh v. State of Bihar (2000) 4 SCC 298, Ram Sunder Yadav v. State of Bihar (1998) 7 SCC 365 and Vijayee Singh v. State of U.P. (1990) 3 SCC 190, all three-Judge Bench

> decisions, the view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: ( i) that the injury on the person of the accused was of a serious nature;
>
> and (ii) that such injuries must have been caused at the time of the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case." (underlining added)

12. In the present case, the incident had taken place near the tubewell where both the parties assembled to settle the land dispute. When there was exchange of words, there was a scuffle between both the parties. In the same transaction where Harbhajan Singh was attacked, the accused party also sustained injuries. Apart from the stray, the statement made by the complainant-Sukhwinder Singh in the FIR, the prosecution has not offered any explanation for the injuries sustained by the accused. Since both the accused sustained injuries in the incident, non-explanation of injuries sustained by the accused assumes significance. Having regard to the injuries sustained by the accused, the trial court and the High Court ought to have made an effort in searching out genesis of the occurrence.

13. From the evidence, it is clear that both families have assembled and they were talking near the tubewell to resolve the land dispute. There was no provocation from either side. In his evidence, Sukhwinder Singh (PW-6) has clearly stated that there was exchange of words which resulted in scuffle between both the parties. It has come from the evidence of Dr. Mohinderjit Singh (DW-1) that Harbhajan Singh was drunk at the time of the incident. While examining Harbhajan Singh at the time of his admission in the hospital, Dr. Moninderjit Singh (DW-1) observed that "there was alcoholic smell present in the breath of the patient". It is in this circumstance, appellant Gurwinder Singh had gone inside the room adjacent to the tubewell and brought an axe and hit on the head of deceased Harbhajan Singh. As pointed out earlier, accused also sustained injuries in the same incident.

14. There is no clear evidence as to who started the attack. Both the parties were unarmed. When there was exchange of words between both the parties, accused Gurwinder Singh went inside the room and brought an axe and caused head injuries to Harbhajan Singh. From the post-mortem certificate (Ex.PA), it is seen that deceased Harbhajan Singh sustained head injuries with multiple

fractures, right fronto temporal and temporo parietal region in the right fronto temporo parietal region of the brain, haemorrhagic contusions in bilateral temporal region and right parietal region. However, deceased Harbhajan Singh survived for about one month and he succumbed to injuries on 01.12.2007. Though accused Gurwinder Singh used the axe which is a formidable weapon, but Harbhajan Singh survived for about one month. The appellants therefore cannot be said to have taken undue advantage of the same. There was also a delay of five days in lodging the FIR; the reason being, talks were still going on for settling the matter. Considering the totality of the circumstances, in our view, the act of the accused would fall under "Exception 4" to Section 300 IPC.

15. For bringing in operation of "Exception 4" to Section 300 IPC, it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

16. Considering the scope of "Exception 4" to Section 300 IPC, in Sridhar Bhuyan v. State of Orissa, (2004) 11 SCC 395, it was held as under:-

> "8. The fourth exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and

> in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage"." (underlining added)

17. The question falling for consideration is the nature of the offence whether it would fall under Section 304 Part-I IPC or Part-II IPC. The third clause of Section 300 IPC consists of two parts. Under the first part, it must be proved that there was an intention to inflict the injury that is present and under the second part, it must be proved that the injury was sufficient in the ordinary course of nature to cause death. As discussed earlier, deceased Harbhajan Singh was attacked with axe on the head and he sustained multiple fractures, right fronto temporal and temporo parietal region infarct in the right fronto temporo parietal region of the brain, haemorrhagic contusions in bilateral temporal region and right parietal region. The head injury caused to Harbhajan Singh was sufficient in the ordinary course of the nature to cause death. The accused intended to inflict that injury on Harbhajan Singh which is sufficient in the ordinary course of nature to cause death. In Nankaunoo v. State of Uttar Pradesh (2016) 3 SCC 317, it was held as under:-

> "12. The emphasis in clause three of Section 300 IPC is on the sufficiency of the injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary course of nature. When the sufficiency exists and death follows, causing of such injury is intended and causing of such offence is murder. For ascertaining the sufficiency of the injury, sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused and sometimes both are relevant. Depending on the nature of weapon used and situs of the injury, in some cases, the sufficiency of injury to cause death in the ordinary course of nature must be proved and cannot be inferred from the fact that death has, in fact, taken place."

18. Keeping in view the above principle, when we examine the facts of the present case, the deceased sustained head injuries with multiple fractures, right fronto temporal and temporo parietal region infarct in the right fronto temporo parietal region of the brain, haemorrhagic contusions in bilateral temporal region and right parietal region. The weapon used in the manner in which the injury was inflicted clearly establish that the appellants intended to cause the injury which is sufficient in the ordinary course of nature to cause death. Having regard to the facts and circumstances of the case, we are of the view that the conviction of the appellants under Section 302 IPC to be modified as conviction under Section 304 Part-I IPC.

19. In the result, the conviction of the appellants under Section 302 IPC read with Section 34 IPC is modified as conviction under Section 304 Part-I IPC and the appellants are sentenced to undergo imprisonment for seven years and the appeals are partly allowed. Appellant Gurwinder Singh is said to have undergone imprisonment for more than ten years, he is ordered to be released forthwith unless his presence is required in any other case. Appellant Satnam Singh is directed to surrender to serve the remaining period of sentence, failing which, he shall be taken into custody.

.....J. [RANJAN GOGOI] .....J. [R. BANUMATHI] New Delhi;

May 08, 2018