

Surinder Singh And Others vs State Of Haryana on 16 July, 2010

Author: A.N. Jindal

Bench: A.N. Jindal

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Crl. Appeal No. 2-SB of 2000

Date of decision: July 16, 2010

Surinder Singh and others

.. Appellants

Vs.

State of Haryana

.. Respondent

Crl. Appeal No.659-SB of 2000 State of Haryana .. Appellant Vs. Surinder Singh .. Respondent
Coram: Hon'ble Mr. Justice A.N. Jindal Present: Mr. J.S. Manipur, Advocate for the appellants in
Crl. A. No.2-SB of 2000 and for the respondent in Crl. A. No. 659-SB of 2000.

Mr. Rajiv Malhotra, Addl. A.G. Haryana for the respondent in Crl. A. No.2-SB of 2000 and for the
appellant in Crl. A. No.659-SB of 2000.

Mr. Rahul Rathore, Advocate with Mr. S.K. Chauhan, Advocate for Mr. R.M. Singh, Advocate for the
complainant.

A.N. Jindal, J This judgment of mine shall dispose of two connected Appeals No.2-SB of 2000 filed
by the accused-appellants against their conviction and Criminal Appeal No.659-SB of 2000 filed by
the State for enhancement of sentence against Surinder Singh.

Three accused-appellants namely Surinder Singh, Tara Singh and Raghbir Singh were tried for the
offence under Sections 304/325 read with Section 34 IPC. Consequently, vide judgment dated
20.12.1999 passed by the learned Additional Sessions Judge, Karnal, they were convicted and
sentenced as under :-

Crl. Appeal No. 2-SB of 2000 & Surinder Singh U/s 304-II IPC : Rigorous
imprisonment for seven years and to pay fine of Rs.2000/-.

U/s 323 IPC : Rigorous imprisonment for six months. Tara Chand and Raghbir Singh

U/s 325/34 IPC : Rigorous imprisonment for five years and to pay fine of Rs.1000/-

each.

The case relates to the death of step son. Kundan Lal had two marriages. From his first wife namely Giano, he had three sons namely Tara Chand, Suraj Bhan and Chanda, and two daughters namely Parkashi and Premo. From the womb of his second wife namely Krishna, he had three sons namely Isham Singh, Kala Ram and Ashok Kumar alias Chandi and a daughter namely Kalvi.

Kundan Lal had been living with his second wife namely Krishna along with Isham Singh, Kala Ram, Kalvi and Suraj Bhan jointly and they were cultivating the entire land of Kundan Lal to which the accused were nursing a grudge for depriving them of their share in the land. On the intervening night of 15/16.11.1991, at about 9.00 p.m. after returning from work, Isham Singh told Kundan Lal that he was to go to bring his wife in the following morning from her parental house at Ladwa, therefore, he needed a new shirt which he had given for stitching to Sukhbir Singh. Consequently, he went to the house of Sukhbir Singh for the said purpose. After about 45 minutes, on hearing the cries from the side of the house of Sukhbir Singh, Kundan Lal and his wife Krishna went running and saw that Tara Chand and his son Surinder Singh armed with lathi and Raghbir Singh and Dharambir sons of Chandgi empty handed were fighting with Isham Singh; abusing them for usurping the whole land and depriving them of their share. At this, Tara Chand exhorted Surinder Singh "maar saley ko lathi, yeh zameen ka hissa nahin deta". At this, his wife Krishna, Sukhbir Singh and his wife Biro tried to intervene. However, Surinder Singh inflicted a lathi blow on the head of Isham Singh. Tara Chand gave one injury to Kundan Lal so also Raghbir Singh gave fist blows on his nose. Isham Singh fell down, whereupon, complainant Kundan Lal (herein CrI. Appeal No. 2-SB of 2000 & referred as 'the complainant'), his wife Krishna, Sukhbir Singh and Biro lay over Isham Singh in order to save him. The accused caused injuries to them also and left the place. Thereafter, the injured Isham Singh and Kundan Lal were shifted to hospital. The doctor sent ruqa pursuant to which SI Bansi Lal went to the Civil Hospital and moved application Ex.PH on 16.11.1991 at about 8.45 a.m. whereupon vide report Ex.PH/2, the doctor opined that Isham Singh was unfit to make statement. As such, at 9.00 a.m. SI Bansi (PW9) without wasting any further time, recorded statement of Kundan Lal Ex.PN/1, on the basis of which FIR Ex.PN/3 was recorded at Police Station, Batana on 16.11.1991 at about 11.15 a.m. which was completed at 11.45 a.m. Kundan Lal produced blood stained shirt Ex.P7, chadara Ex.P8 before SI Bansi Lal which was taken into possession vide memo Ex.PO.

However, when Investigating Officer SI Bansi Lal was on his way to the place of occurrence, then he was informed that Isham Singh had died, therefore, he came back and handed over the investigation to SI/SO. SI/SO Sohan Lal prepared the inquest report Ex.PL/3, moved application Ex.PL/2 for postmortem examination. Dr. S.R. Ajmani (PW4) conducted the postmortem examination and submitted report Ex.PL. He also took into possession the clothes of Isham Singh vide recovery memo Ex.PR. The accused were arrested. Surinder Singh pursuant to his disclosure statement

Ex.PR/1 got recovered the lathi vide memo Ex.PR/2. He also got recovered another lathi from Tara Chand pursuant to the disclosure statement Ex.PS. While being shown to the doctor, he opined vide opinion Ex.PM/K that the injury on the person of Isham Singh could be the result of lathi blow. Various other articles were also taken into possession. On completion of the investigation, the accused were challaned.

It would be pertinent to mention here that Surinder Singh moved an application claiming himself to be juvenile, but, vide order dated 24.9.1993, his that request was declined. As such, he as well as Tara Chand were charged under Sections 304/325 read with Section 34 IPC, whereas, accused Raghubir Singh was charged under Section 325 read with Section 34 IPC. However, they pleaded not guilty and opted to contest.

In order to substantiate the charges, the prosecution examined Dr. G.S. Arora (PW1) who x-rayed the injuries on the person of Kundan Lal Crl. Appeal No. 2-SB of 2000 & and found fracture on the parietal bone. He proved his report Ex.PA and skiagrams Ex.PA/1 and Ex.PA/2. Dr. A.P. Bhatia (PW2) who had medico- legally examined the injured Isham Singh, Bhiri and Krishna alias Krishni on 16.11.1991, proved the MLR Ex.PB, Ex.PC, Ex.PE and Ex.PF respectively and found the following injuries on his person :-

"Injuries on the person of Kundan

1. A lacerated wound 1 cm x .5 cm on the occipital region running obliquely partially skin deep, oozing of blood was present.
2. There was reddish abrasion 1 cm x .5 cm on the bridge of the nose.

Both the injuries were kept under observation. Injuries on the person of Isham Singh

1. There was lacerated wound of 2 cms x 0.5 cm running obliquely on the right parieto occipital region. Wound was partially skin deep. X-ray skull was advised. Injury was kept under observation.

Injury on the person of Biro

1. There was parallel contusion of 3 cms x 1 cm running 1 cm apart from each other on posterior surface of right knee joint.

Injuries on the person of Krishna

1. Two parallel reddish contusions 4 cms x 1 cm on right shoulder joint in its ulterior surface running .5 cm apart from each other.
2. Parallel contusion of 7 cms x 1 cm running obliquely on the anterio medial aspect of left thigh in its middle running 1 cm apart from each other.

3. Parallel contusion of 5 cms x 1 cm on antero medial aspect of right thigh in its middle running obliquely and 1 cm apart from each other."

PW-3 Manohar Lal Draftsman prepared the scaled site plan Ex.PK depicting the place of occurrence.

Crl. Appeal No. 2-SB of 2000 & PW-4 Dr. S.R. Ajmani had conducted the postmortem examination of Isham Singh and prepared the inquest report Ex.PL/3 and his opinion Ex.PM/1 to the effect that injury on the person of Isham Singh could be the result of lathi (Ex.P2) and death was due to shock and hemorrhage, as a result of the said injury.

PW-5 HC Harpal Singh and PW-6 C. Satbir Singh are formal witnesses.

PW-7 Kundan Lal and PW-8 Krishna are the eye witnesses, whereas, PW-9 Inspector Bansi Lal is the investigator of the case.

When examined under Section 313 Cr.P.C. the accused denied all the incriminating circumstances appearing against them and pleaded their false implication in the case. Accused Tara Chand further explained that the occurrence had not taken place in the manner as described by the prosecution. Similarly, Raghbir Singh while pleading his innocence depicted that he had borrowed some cash and jewellery from his sister who is married to Lachhman Singh resident of village Basida for sending his son Kala abroad, but when his sister demanded jewellery as well as cash, Kundan Lal refused, consequently, a Panchayat was convened in that connection. On account of his active participation in the said Panchayat against Kundan Lal he implicated him falsely in the case.

In defence, the accused examined Chanda Singh (DW1), Harinder Singh Draftsman (DW2) and produced the following documents in defence:

Ex.DA	: Supplementary statement of Kundan
Ex.DB	: Statement of Krishna u/s 161 Cr.P.C.
Ex.DC	: Copy of the DDR No.37 dated 16.11.1991.
Ex.DD	: Copy of the site plan
Ex.DE	: Order dated 2.4.1985
Ex.DF	: Copy of the judgment dated 15.1.1991 in case State vs. Kala Ram and others

The trial ended in conviction.

Counter to the appeal filed by the accused, the State has also Crl. Appeal No. 2-SB of 2000 & filed an appeal for enhancement.

Arguments heard. Record perused.

There is no denying a fact that Kundan Lal had married twice, firstly with Giano and secondly with Krishna. Sufficient evidence has been led that Isham Singh deceased was born out of the womb of Krishna and loins of Kundan Lal. He was having matador and was living with Kundan Lal. It is also in evidence that Isham Singh and his other brothers from the second wife were deriving the fruits out of the land owned by Kundan Lal. There is no denying a fact that Surinder Singh accused is the grand son of Kundan Lal i.e. son of Tara Chand who is son of Kundan Lal from his first wife. Both, Kundan Lal (PW7) and Krishna (PW8) are consistent in their statements that on hearing cries when they went towards the house of Sukhbir Singh where Isham Singh had gone to collect his shirt, they saw that Tara Chand accused was exhorting to his son Surinder Singh that Isham Singh and his brothers were swallowing the entire produce of the land themselves and were not giving them anything, therefore, they should be killed. Both of them have consistently stated that Surinder Singh accused inflicted lathi blow on the head of Isham Singh which was declared to be dangerous to life by the doctor. Tara Chand had also inflicted a lathi blow on the head of Kundan Lal when he tried to intervene in the fight. In the meantime, Bhira and Krishna also intervened but they also suffered injuries at the hands of Surinder Singh accused. Raghbir Singh also gave fist blows with force on the nose of Kundan. Suraj Bhan had also come there and thereafter the accused went away along with their respective weapons.

Learned counsel for the appellants has strenuously contended that the conviction of the accused is based solely on the testimony of two interested witnesses without finding corroboration from any independent source, therefore, no implicit reliance could be placed upon them. In this regard it may be observed the presence of the witnesses cannot be doubted as the occurrence took place at odd hours of the night and the people were in the process of going to their beds. Since it was a family feud, therefore, generally villagers remain aloof as if they help one party then they would annoy the other party. Since the wife of Isham Singh was away to her parental house, therefore, she was not impleaded as a witness. The persons CrI. Appeal No. 2-SB of 2000 & who were available in the house and were attracted to the occurrence by way of cries were impleaded as witnesses. The perpetrators of the crime are none else but the son and grand son of the injured father and the third is their neighbour. Kundan Lal would be the last person to replace his son and grand son as the assailants in place of the real culprits. They being the stamped witnesses would have no reason to implicate their own kith and kin falsely in the case. There is no hard and fast rule that the relation witnesses could not be placed reliance merely on the ground of their relationship, however, in such cases the court should come at guard and scrutinize the statements of the witnesses so closely as to rule out any false implication.

The motive is not far fetched. The deceased as well as the injured being the son and wife of the complainant living separately from the children of their first wife, would always be their target of attack when the opportunity arises. As such, the accused at that hour of night finding Isham Singh alone had the courage to avail the opportunity thereby causing fatal blow to Isham Singh, they were also not afraid of causing the injuries to their own father Kundan Lal, mother Krishna and one Bhira i.e. two ladies when they tried to intervene. While putting their testimonies on the parameters as set down from time to time in order to adjudge their reliability and trustworthiness, they have proved the occurrence while depicting the particulars in minute and they have withstood the test of cross examination. As such, no exception could be made to challenge their veracity and it has to be

believed that they reflect the true circumstances leading to the occurrence.

The learned counsel for the appellants has tried to build his case stating that since Isham Singh was entangled with one Santro, therefore, being annoyed over this alliance some interested persons opposing their alliance caused injuries due to darkness, however, Kundan Lal implicated them falsely in the case. The prosecution has also brought on record a photograph showing Isham Singh and Santro together.

Having given my thoughtful consideration to this contention, I do not agree with the same. Had there been any grievance to Babu Singh regarding his alliance with Santro then he would have come forward to lodge the complaint but no such complaint has been brought on record. Crl. Appeal No. 2-SB of 2000 & indicating that Babu Singh was annoyed at the alliance between Santro and Isham Singh. Their relationship has also not been proved on record. No doubt, a photograph has been produced but the same has not been duly proved by proving his negatives or the photographer who had photographed them together.

It has been next contended that no implicit reliance could be placed on the testimony of Kundan Lal (PW7) because he has made a statement while stating that his wife Krishna and daughter Parkashi Devi were not summoned in a case under Sections 323/447 IPC and under Section 24/25 of the Cattle Trespass Act, irrespective of the fact that an order has been placed on record indicating the implication of Krishna, Tara Chand and Parkashi Devi in a criminal case, yet, the same is hardly sufficient to belie his statement qua the occurrence particularly when he is a stamped witness.

As regards the test identification parade, it may be observed that the deceased and the injured are not strangers to the accused party. They being hailing from the same family could well identify their assailants, as such, no special identification parade was required.

The other plea set up by the accused Raghbir Singh is that he was falsely implicated on account of the fact that Kundan Lal (PW7) had borrowed some cash and jewellery from his sister, who was married to Lachhman resident of village Bazida in order to send his son Kala abroad but when she demanded back the jewellery as well as cash from Kundan Lal, he refused. Panchayats were also convened in this regard where he actively participated against Kundan Lal, therefore, the latter was nursing a grudge against them. But, the accused has not led any evidence in this regard except by putting suggestions in the cross examination. No person, who attended the Panchayats, was examined. Neither the sister of Raghbir Singh nor her husband were examined. Thus, this belated plea brought on record after seven years of the trial could be dubbed as an after thought.

As regards the argument with regard to delay in lodging the FIR, the documents prove that there is no delay which could be treated as sufficient to discard the prosecution version as a whole. The occurrence took place on 15.11.1991 at about 9.45 a.m. The records reveal that C.H.C. Crl. Appeal No. 2-SB of 2000 & Nilokheri was at a distance of 4-5 kms, FIR Ex.PN/3 was lodged on the next day i.e. 16.11.1991 at about 11.15 p.m. As per record, after receiving the injuries, Isham Singh was admitted at C.H.C. Nilokheri during the same night at 11.00 p.m. Dr. A.P. Bhatia (PW2) examined him at 11.30 p.m. on the same night and Kundan Lal was examined at 11.45 p.m. on 15.11.1991, Biro

was examined at 12.10 a.m. on 16.11.1991 and Krishna (PW8) was examined at 12.30 a.m. on 16.11.1991. Dr. A.P. Bhatia (PW2) sent ruqa as 12.20 a.m. to the police. SI Bansi Lal (PW9) reached the hospital and moved application Ex.PH for seeking the opinion of the doctor who recorded his report Ex.PH/1 at 10.00 a.m. on 16.11.1991 that Isham Singh was unfit to make the statement. Again he made the similar report Ex.PH/2 and thereafter he recorded the statement of Kundan Lal complainant without wasting any time. It is well settled by now that where delay is well explained then the same is not fatal to the prosecution case. It is also settled that when the witnesses are consistent to the time, place and the manner in which the occurrence took place, then the delay if any in lodging the FIR loses significance. In any case, in the present case, there is no such gross delay which could effect the substratum of the case. The injured witnesses have come forward to explain the circumstances leading to the occurrence. Their statements find corroboration from the medical evidence, as such, it could well be said that the delay having been explained does not effect the prosecution case.

Now coming to the offence under Section 304-II IPC. In order to prove the charge, the prosecution is required to prove the following essential ingredients, as provided under Section 299 IPC for culpable homicide which is punishable under Section 304 IPC :

1. Causing of a death of a human being.
2. Such death must have been caused by doing an act:
 - (i) with the intention of causing death; or
 - (ii) with the intention of causing such bodily injury as is likely to cause death; or
 - (iii) with the knowledge that the doer is likely, by such act, to cause death.

Crl. Appeal No. 2-SB of 2000 &

Intention is an important ingredient being a state of mind that can never be directly proved as a fact and this state of mind can be gathered from the surrounding circumstances and also from the conduct of the accused, such as, the type of weapon used, part of the body over which the injury was inflicted, number of injuries caused and the deliberation regarding the act committed. In the instant case, Surinder Singh inflicted lathi blow on the head of Isham Singh, Tara Chand accused inflicted lathi blow on the head of Kundan Lal, Raghbir Singh inflicted fist blow on the nose of Kundan Lal. Surinder Singh accused tried to inflict more lathi blows to Isham Singh but was saved by Biro and Krishna who lay over him and received injuries. The accused persons were armed with lathies and as such they could not be said to have the intention to kill Isham Singh.

However, the injury was caused on the vital part of the body i.e. head of Isham Singh and Kundan Lal, which indicates that both the accused were having the knowledge that by causing injuries on the head with lathies, these could prove to be fatal. Dr. S.R. Ajmani (PW4) has opined that such injury on the head of Isham Singh caused with lathi could prove fatal. His report is as follows :-

"There was haematoma 7 cms x 5 cms over the right parieto occipital area of the skull and in the centre of haematoma there was lacerated wound 2 cms x .5 cm on dissection sub cutaneous tissue was suffered with blood over the right parieto occipital area of skull. There was depressed fracture of right parietal bone present. There was sub-dural haematoma over the right parietal lobe of the brain."

He has further opined that the death was caused due to shock and haemorrhage. As such, the trial court has rightly held the accused Surinder Singh guilty for the offence punishable under Section 304 Part II of IPC.

Crl. Appeal No. 2-SB of 2000 & It has also come in evidence that Tara Chand inflicted lathi blow on the head of Kundan Lal (PW7) and Raghbir Singh inflicted fist blow on his nose. The M.L.R. Ex.PB of Kundan Lal reveals that he has suffered two injuries i.e. one on the occipital region and other on the bridge of the nose and on x-ray examination there was fracture of the parietal bone and the nasal bone. As such, the trial court has rightly convicted the accused Tara Chand and Raghbir Singh under Section 325 read with Section 34 IPC.

As regards the injuries suffered by Biro and Krishna, it may be observed that Dr. A.P. Bhatia (PW2) found three injuries on the person of Krishna. Krishna while appearing in the witness box as PW8 has explained that injuries were suffered by her at the hands of Surinder Singh. I do not find any merit in the contention raised by the learned counsel for the appellants that if Krishna laid over Isham Singh face-wise, how she could suffer injuries on the interior side of her thigh. Since she has categorically deposed that first she lay over Isham Singh face-wise but thereafter she turned her face in order to save herself, therefore, such injuries were possible. Since all the injuries were declared as simple in nature therefore, the trial court has rightly held Surinder Singh guilty for the offence under Section 323 IPC also.

No other argument has been advanced.

It may also be observed that keeping in view the nature of injuries and other circumstances of the case, the sentence awarded to the accused commensurate the offences committed by them and there is no room for its enhancement.

Consequently, finding no merits in the appeals, the same are dismissed.

July 16, 2010
deepak

(A.N. Jindal)
Judge