

**Sucha Singh and Another Vs. State of Punjab**

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**Court :** Punjab and Haryana

**Decided On :** Feb-13-2014

**Appellant :** Sucha Singh and Another

**Respondent :** State of Punjab

**Judgement :**

CRA-S No.1417-SB of 2003 1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CRA-S No.1417-SB of 2003 (O&M) Date of Decision:

13. 02.2014 Sucha Singh and another ...Petitioners Versus State of Punjab ...Respondent CORAM: HON'BLE MR.JUSTICE R.P. NAGRATH1 Whether Reporters of the local papers may be allowed to see the judgment?.

2. To be referred to the Reporters or not?.

3. Whether the judgment should be reported in the digest?. Present: Mr. Mandeep Kaushik, Advocate for the appellants. Mr. Deepak Garg, AAG, Punjab for the State. R.P. Nagrath, J.

(ORAL) Both the appellants faced trial for offences under Sections 307, 326, 324 read with Section 34 of Indian Penal Code (IPC) for causing injuries on the person of Kulwinder Singh PW2 and convicted thereunder. Appellant No.1 Sucha Singh (for short described as A-1) was sentenced to undergo, Rigorous Imprisonment for a period of ten years and to pay a fine of Rs.5,000/-; in default of payment of fine

to further undergo Rigorous Imprisonment for a period of two years under Section 307 IPC; Rigorous Imprisonment Kumar Suresh 2014.02.25 11:19 I attest to the accuracy and integrity of this document Chandigarh CRA-S No.1417-SB of 2003 2 for a period of seven years and to pay a fine of Rs.3,000/-; in default of payment of fine to further undergo Rigorous Imprisonment for a period of one year under Section 326 IPC; and Rigorous Imprisonment for a period of one year under Section 324 read with Section 34 IPC.

2. Appellant No.2 Amrik Singh (for short described as A-2) was sentenced to undergo Rigorous Imprisonment for a period of seven years and to pay a fine of Rs.3,000/-; in default of payment of fine to further undergo Rigorous Imprisonment for a period of one year under Section 307 read with Section 34 IPC; Rigorous Imprisonment for a period of five years and to pay a fine of Rs.2,000/-; in default of payment of fine to further undergo Rigorous Imprisonment for a period of six months under Section 326 read with Section 34 IPC; and to undergo Rigorous Imprisonment for a period of one year under Section 324 IPC. The substantive sentences of imprisonment were to run concurrently.

3. Prosecution against the appellants was launched by Gurdip Singh PW1 paternal uncle of the injured. On 17.3.1999 both Gurdip Singh and Kulwinder Singh were returning after paying obeisance in Gurdwara Achhal Sahib. At the bus stop of village Sekhwan, Gurdip Singh was getting air of the tyre of his scooter checked and Kulwinder Singh was sitting on the bench.

4. At about 2.30 p.m. both the appellants came on a motorcycle and each of them took out their 'Datars' and started causing injuries to Kulwinder Singh. A-1 inflicted a severe 'Datar' Kumar Suresh 2014.02.25 11:19 I attest to the accuracy and integrity of this document Chandigarh CRA-S No.1417-SB of 2003 3 blow to Kulwinder Singh chopping off his right forearm from the wrist. Kulwinder Singh had fallen on the ground. The second injury was inflicted by A-2 which hurt deep on the left leg of the injured. Thereafter the appellants inflicted more injuries to Kulwinder Singh with their respective weapons. The complainant and the nearby shopkeepers did not intervene because of fear of the appellants. Kuldeep Singh nephew of the complainant and many residents of nearby village came there and

the appellants fled from spot with their respective weapons.

5. The injured was taken to the Civil Hospital, Batala from where he was referred to CMC & Hospital, Ludhiana. The police party headed by Assistant Sub Inspector (ASI) Sukhwinder Singh, Incharge of Police Post, Sekhwan reached the hospital, where Ex.PA the statement of Gurdip Singh was recorded. The statement was sent to police station where the FIR Ex.PA/2 was registered.

6. Medico-legal examination of the injured was conducted by PW4 Dr. Gurmit Singh at 3.20 p.m. on the same day and the doctor found 11 Injuries on his person which have been detailed in paragraph 13 of the trial Courts judgement.

7. PW4 declared injury No.1 as dangerous to life and injury Nos.2, 7, 10 and 11 as grievous in nature. These injuries were reproduced as under:

1. Amputated right forearm through middle 14 cm below right elbow joint. Bleeding profusely. Blood was coming with jerks. Kumar Suresh 2014.02.25 11:19 I attest to the accuracy and integrity of this document Chandigarh CRA-S No.1417-SB of 2003 4 2. Incised wound 2 x cm on right upper arm outer side in the middle part alongwith diffuse swelling 9x6 cm fracture crepitus palpable, bony fragment palpable.

7. Incised wound 9x4 cm on left hand on base of all fingers, index finger, middle finger, ring finger and thumb cut through and through (bones, tendons and vessels) left little finger is partially bone cut from middle. Bleeding was present.

10. Incised wound 9 x 1 cm on medial side of left foot, below medial malleolus under lying bone was cut, bleeding profusely.

11. Incised wound 14 x 6 cm on lower part of right leg front side, both bones are cut through and through muscles vessels nerves and cut through and through skin was attached.. 8. Ex.PC. is copy of the medico-legal report prepared by the doctor. Injury Nos.4 to 6, 8 and 9 were declared simple in nature. Injury No.3 was kept under observation but there is no further opinion with regard to nature of injury No.3. Kind of weapons used for injury Nos.1 to 4 and 6 to 11 was sharp edged and for Injury No.5 it was blunt. Probable duration of injuries was within 2 to 6 hours.

The doctor further stated that the term dangerous to life for injury No.1 means that injury was sufficient to cause death in ordinary course of nature if timely treatment was not given.

9. The police party headed by PW9 ASI Sukhwinder Singh, Kumar Suresh 2014.02.25 11:19 I attest to the accuracy and integrity of this document Chandigarh CRA-S No.1417-SB of 2003 5 reached the spot and lifted blood stained earth which was prepared into sealed parcel and taken into possession vide Panchnama Ex.PL. The blood stained wooden bench lying at the spot was also recovered vide Memo Ex.PM. Rough sketch of the site of occurrence is Ex.PN. On 19.8.1999 father of the victim produced blood stained clothes of the victim which were converted into sealed parcel.

10. PW9 testified that on 21.3.1999 he arrested A-2 who on interrogation while in custody made disclosure statement Ex.PP that he kept concealed the weapon of offence in the room of his tubewell which he could get recovered, in pursuance whereof A-2 got recovered 'Datar' Ex.P3 from the disclosed place, for which memo Ex.PQ was prepared. Rough sketch of the place of recovery Ex.PR was also prepared.

11. PW9 further stated that A-1 was arrested on 23.3.1999 and pursuant to the disclosure statement Ex.PT made by A-1 recovery of 'Datar' Ex.P4 stained with blood was made. This was also prepared into sealed parcel. Rough sketch of the place of this recovery is Ex.PW.

12. The case was committed to the Sessions Court for trial. The prosecution in support of its case examined nine witnesses.

13. The appellants denied all the incriminating circumstances appearing in the evidence against them in their examination under Section 313 Cr.P.C. Their plea is of simple denial. In defence the appellants examined Karnail Singh DW1 statedly having a scooter Kumar Suresh 2014.02.25 11:19 I attest to the accuracy and integrity of this document Chandigarh CRA-S No.1417-SB of 2003 6 repair shop at the bus stop. DW1 has brought negative evidence by stating that no such occurrence took place on 17.3.1999 as he remains present at his shop from 9.00

am to 7.00 pm. No reliance can be placed on the testimony of this witness as it is not the defence version that DW1 ever appeared before the investigating agency to bring on record the above plea. The defence evidence cannot withstand the test of scrutiny as PW9 found stains of blood at spot and also on the Bench lying there. The police party had inspected the spot on the same day.

14. I have heard learned counsel for the appellants, learned State counsel and also perused the trial Court record with their able assistance.

15. Learned counsel for the appellants has challenged the conviction of appellants on the ground inter-alia that the entire story is concocted because of the previous enmity and further that the motive of the crime as propounded by the eye witnesses is not substantiated. It is further contended that report from CFSL was not obtained to connect the recoveries with the crime. It is submitted that no specific injury has been attributed to the appellants and that no independent witness was cited to support the eye witness who is a close relative of the injured.

16. Learned State counsel supported the findings reached by the learned trial Court and it is contended that there was no scope of roping in the appellants falsely and there was clear motive for the appellants to attack the complainant. It is also contended that the Kumar Suresh 2014.02.25 11:19 I attest to the accuracy and integrity of this document Chandigarh CRA-S No.1417-SB of 2003 7 incident was immediately reported to the police.

17. PW2 Kulwinder Singh the injured has testified the entire incident in the witness box. It was not possible for the witness to state which of all the injuries on his person were inflicted by the appellants accused. This was especially so when the right wrist of Kulwinder Singh was chopped off with the first blow which must have been inflicted with force by Sucha Singh. The concern of the paternal uncle of the injured was simply to raise an alarm so that life of the injured could be saved.

18. It would be quite relevant to refer to some portion of the cross-examination of PW2 which would make his testimony quite truthful. It is reproduced as under: - We took meals at Achhal Sahib on that date. The place of occurrence from Achhal Sahib is at a distance of 18/19 Kms. There are shops on both sides of the road at

Adda Sekhwan, but I have not counted the same. Some of the shops are on the northern side and some shops on the southern side of the road. The air in the scooter was to be checked at the shop situated on the Southern side and I was sitting on the northern side. The owner of the shop from whom the scooter was to be got checked is Karnail Singh. The adjoining shop was of Fertilizers & Feed and shop of spare-parts of tractors. There is no shop of General Store where I was sitting. There is a Peepal tree having a 'Tharra' (concrete floor) in front of Kumar Suresh 2014.02.25 11:19 I attest to the accuracy and integrity of this document Chandigarh CRA-S No.1417-SB of 2003 8 the shops situated on the Southern side.. 19. The testimony of PW2 was substantially corroborated by Gurdip Singh PW1. There could not be any concoction in the story because the incident took place at 2.30 p.m. and the injured was medico legally examined in the Civil Hospital, Batala at about 3.20 p.m.. The police reached at the hospital and statement of Gurdip Singh was recorded by the investigating officer at 6.15 p.m.. There was thus no scope of attacking the story on the ground of delay for contending that more than the real culprits were roped in.

20. It is contended by learned counsel for the appellants that Gurdip Singh PW1 did not accompany the injured to CMC & Hospital, Ludhiana which would suggest that the witness was not present at the time of occurrence. I cannot agree with this contention because it came on record that father of the injured had reached the spot and took Kulwinder Singh PW2 to the hospital. 4/5 other persons also accompanied the injured. It must have been the concern of the family that the injured be provided immediate medical- aid and at the same time to report the matter to the police. After recording statement of PW2, the police party also visited the spot where presence of Gurdip Singh complainant was required.

21. Dr. Sharad Ram Dass PW3 was a resident doctor in the Department of Plastic Surgery in CMC & Hospital, Ludhiana. According to the witness, PW2 was admitted in CMC & Hospital, Ludhiana on 17.3.1999 and discharged on 12.4.1999. The patient had total amputation of right forearm, fracture on right humerous, Kumar Suresh 2014.02.25 11:19 I attest to the accuracy and integrity of this document Chandigarh CRA-S No.1417-SB of 2003 9 fracture of both bones of right leg, open ankle, injury of left side, multiple lacerated wounds on left hand and

compound fractures of left second, third and fourth metacarpals. PW3 also stated that condition of the patient was precarious and without the expert medical aid the patient might have died.

22. PW3 further stated that the patient was again brought for further treatment in CMC & Hospital, Ludhiana on 19.7.1999 and remained admitted for 2/3 days. The patient was re-admitted on 31.1.2000 in the Department of Plastic Surgery and finally discharged on 3.2.2000. The record of bed head ticket is Ex.PB.

23. There was no delay even in recording the statement of Kulwinder Singh PW2 under Section 161 Cr.P.C. as a witness by the investigating officer. PW2 stated in the cross-examination that he re-gained consciousness on 21.3.1999 and according to PW9, he recorded statement of the injured on 22.3.1999. The investigating officer was also extensively cross-examined but there is nothing to suggest that the investigation was not fair and partial.

24. Both the witnesses are consistent in stating that there was motive for both the appellants to attack Kulwinder Singh. PW2 Kulwinder Singh stated that there was a land dispute of his father and the appellants. The witness has withstood the test of cross-examination on this aspect also. He testified that the said dispute was pending before panchayat of the village for about 6/7 months prior to the occurrence. It was relating to 8/9 Marlas of land. Even PW1 has supported the above version. The appellants have simply Kumar Suresh 2014.02.25 11:19 I attest to the accuracy and integrity of this document Chandigarh CRA-S No.1417-SB of 2003 10 denied this motive. It was not possible for the witnesses to propound an imaginary version of the motive particularly when the incident was reported to the police instantly.

25. The appellants rather tried to bring out a different story in defence. It appeared in the cross-examination of PW2 that one Mohinder Singh the neighbour of the appellants and brother of Mohinder Singh aforesaid filed a criminal case under Section 307 IPC against brother of A-2. There is nothing to suggest how the said motive could be connected with the present incident.

26. There is, therefore, no scope of interference in the finding of conviction recorded by the trial court. The appeal against conviction of appellants stands dismissed.

27. As per custody certificate produced by learned State counsel, A-1 was released from jail on 22.12.2007 after completing the sentence by granting him benefit of special remissions and jail remissions.

28. The custody certificate with regard to A-2 would show that he has undergone 5 years 3 months and 28 days of imprisonment by including the remissions. The injury for attracting Section 307 IPC has not been attributed specifically to A-2 but it is referable to appellant Sucha Singh.

29. The occurrence took place in the year 1999 i.e. about 15 years ago. In the circumstances of the case, I find that the period of sentence undergone by the appellant Amrik Singh would be sufficient punishment by enhancing the amount of fine to Rs.50,000/- for Kumar Suresh 2014.02.25 11:19 I attest to the accuracy and integrity of this document Chandigarh CRA-S No.1417-SB of 2003 11 offence under Section 307 read with Section 34 IPC and Rs.50,000/- for offence under Section 326 read with Section 34 IPC; and in default of payment of fine, Amrik Singh appellant would undergo Rigorous Imprisonment for 01 year under each count. It is directed that fine be deposited before the CJM, Gurdaspur within a period of one month from the date of receipt of copy of this judgement by the said Court, failing which the appeal of appellant Amrik Singh would stand dismissed in toto.

30. Out of total amount of fine of Rs.1,00,000/- if deposited, a sum of Rs.90,000/- be disbursed to Kulwinder Singh the injured.

31. With above modification and aforesaid condition imposed in the sentence awarded to Amrik Singh appellant, instant appeal stands dismissed.

32. Copy of the judgement be immediately sent to all concerned for compliance. (R.P. Nagrath) 13.02.2014 Judge sk Kumar Suresh 2014.02.25 11:19 I attest to the accuracy and integrity of this document Chandigarh

