

**Sukhdev Singh Vs. State of Punjab**

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**Court :** Punjab and Haryana

**Decided On :** May-05-2009

**Reported in :** 2009CriLJ4550

**Judge :** Sham Sunder, J.

**Appellant :** Sukhdev Singh

**Respondent :** State of Punjab

**Judgement :**

**Sham Sunder, J.**

1. This judgment shall dispose of, Criminal Appeal No. 659-SB of 1996, filed by Sukhdev Singh, accused (now appellant), against the judgment of conviction, and the order of sentence, dated 17-9-96, rendered by the Court of Sessions Judge, Bathinda, vide which, it convicted the accused (now appellant), and sentenced him, as under, and Criminal Revision No. 490 of 1997, filed by Gurdev Singh, revision-petitioner, for enhancement of Sentence:

| -----                                                                        | Name of the accused     |
|------------------------------------------------------------------------------|-------------------------|
| Offence for which Sentence awarded(now appellant) convicted                  |                         |
| -----                                                                        | 1 2 3                   |
| -----                                                                        | Sukhdev Singh (a) Under |
| Section To undergo rigorous304 part II of the imprisonment for aIndian Penal |                         |

Code. period of five years, and to pay a fine of Rs. 50,000/- in default thereof, to further undergo rigorous imprisonment for a period of one year----- (b) Under Section 323 of the Indian Penal Code, To undergo rigorous imprisonment for a period of six months-----

Both the substantive sentences, were ordered to run concurrently. Jagrup Singh, accused, was, however, acquitted by the trial Court.

2. The facts, in brief, are that one Balwinder Singh, resident of Kothe Phule Wale, owned some land, in the village, which was being cultivated by Jagrup Singh, accused. Jagrup Singh, had also agreed to purchase a part of the land from Balwinder Singh, for Rs. 38,000/-, but on 25-11-94, he (Balwinder Singh), executed a sale deed transferring one acre of that land, in favour of Gurdev Singh's sons Beant Singh, and Kulwant Singh, for Rs. 80,000/-. Since Jagrup Singh, was in cultivating possession of the land, he told Gurdev Singh, that he would only quit possession, after he received his money back, from Balwinder Singh.

3. In order to resolve the dispute, between Gurdev Singh, Jagrup Singh, and Balwinder Singh, the three of them assembled in the Baithak of Naib Singh of their village, on 4-12-94, at 4.00 p.m. The other persons present there, at that time, were Naib Singh, Bakhtaur Singh, deceased, and Sukhdev Singh, accused. The dispute could not be resolved. The accused lost their temper, and went out saying that the others should reach the fields for the settlement of dispute. In the lane Jagrup Singh, caught hold of Bakhtaur Singh, and exhorted his co-accused Sukhdev Singh, to kill him, whereupon, he (Sukhdev Singh) dealt a blow, with the pulley of his tractor, on the left side of the face of Bakhtaur Singh, Gurdev Singh, came forward to intercede when Sukhdev Singh, dealt a blow with the pulley on Sukhdev Singh's head. Bakhtaur Singh, fell down, on receipt of the injury. When alarm was raised, one Mander Singh, was attracted to the spot. The accused disappeared from the spot, on their tractor, carrying their pulley.

4. Bakhtaur Singh, and Gurdev Singh, were removed to Civil Hospital, Bathinda, by Mander Singh, and Balwinder Singh, and were got admitted there. The Medical

Officer, sent information, regarding the admission of Bakhtaur Singh, and Gurdev Singh, to Station House Officer/Incharge, Police Station, Civil Lines, Bathinda, vide report PF.

5. Thereafter, Gurdev Singh, was medico-legally examined by the Medical Officer.

Diffused swelling with abrasion 0.3 cm. x 0.2 c.m. on right parietal region. The injury was kept under observation.

According to the Medical Officer, the weapon used was blunt and the duration of the injury was fresh.

6. On the basis of the report sent to the Public, Assistant Sub-Inspector Dinesh Kumar, reached the hospital, at 8.20 p.m. and obtained medical opinion, with regard to the fitness of Gurdev Singh, to make a statement. The Medical Officer, opined that the injured was fit to make statement, whereas, Bakhtaur Singh, another injured, was declared unfit to make statement. Thereafter, the statement of Gurdev Singh, was recorded, at 8.50 p.m. exhibit PL.

7. Bakhtaur Singh, was medico-legally examined on 5-12-1994, at 1.00 p.m. He was unconscious, at that time, and in a serious condition. Right pupil were sluggish and left eye had been operated upon. The following injuries, were found, on his person:

(i) Diffused swelling with reddish blue contusion over it in an area extending from left side of face to left temporal region, frontal region and parietal area. Left eye was blue and swollen. Advised x-ray and kept under observation.

(ii) Clotted blood was present on the lips, right upper central and left incisors were mobile, laceration of the underlying gums was there. Left upper left incisor was also missing from the socket. Clotted blood was present. Advised x-ray and dental surgeon's opinion.

The medico-legal report is exhibit PE and exhibit PE/1, is the pictorial diagram, showing the seats of the injuries.

8. Bakhtaur Singh, did not survive, and succumbed to his injuries, on the following day i.e. 6-12-94. Thereafter, Dr. K. S. Brar, conducted post-mortem examination, on the dead-body, on 7-12-1994, at 9.30 a.m. and found the following injuries:

(i) Bluish contusion 14 cms x 10 cms over the upper portion of left face, frontal, left temporal, and parietal area. On dissection haematoma was present underneath the skin and muscles. Fracture of left parietal bone starting from mid-line to the zygomatic arch through the temporal bone. Haematoma was present, measuring 8 cms x 6 cms, in the left fronto-parietal region of the brain. Eye lids of the left eye bluish in colour.

(ii) Stitched wound on the gums, in the area of right central and lateral incisor. Right upper central and lateral incisors were missing. Left upper central and lateral incisors were missing. Clotted blood was present in the socket.

9. In the opinion of the Medical Officer, the death had been caused by Haemorrhage and shock, as a result of injury No. 1. The probable time that lapsed between injuries, and death was within 48 hours, and between death and post-mortem was within 24 hours.

10. After recording the statement of Gurdev Singh, exhibit PL, the Investigating Officer, did not register the case, but made an entry, in the Daily Diary Register, about the incident. Later on, on the following day, when the Investigating Officer, received medico-legal report of Bakhtaur Singh, a case under Section 308 read with Section 34 of the Indian Penal Code, was registered, on the basis of original statement PL of Gurdev Singh. The first information report, was registered, vide PL/2, at 6.35 p.m., on 5-12-94, and its special report was received by the area Magistrate, at 9.30 p.m.

11. After the death of Bakhtaur Singh, on 6-12-94, the offence was converted into one under Section 304 read with Section 34 of the Indian Penal Code. Sub-Inspector Dinesh Kumar, inspected the spot, and prepared the rough site plan exhibit PS. He recorded the statements of the witnesses, and then handed over the investigation to Sub-Inspector Balbir Singh. Sub-Inspector Balbir Singh, received wireless message, regarding the death of Bakhtaur Singh, at Civil

Hospital, Bathinda, and reached there, where, in the presence of Mander Singh, and Naib Singh, he prepared inquest report PB, and sent the dead-body for post-mortem examination, vide application PC. On the following day, vide recovery memo PV, the Investigating Officer, took into possession belongings of the deceased. On 14-12-1994, both the accused were found, coming on their tractor, a little ahead of Kothe Lal Singh, and they were apprehended. The tractor along with pulley was taken into possession, vide recovery memo P.M., attested by the witnesses. After the completion of investigation, the accused were challaned.

12. On their appearance, in the Court of the Committing Magistrate, the accused were supplied the copies of documents, relied upon by the prosecution. After the case was received by commitment, in the Court of Sessions, charge under Section 302 of the Indian Penal Code, against Sukhdev Singh, accused, and under Section 302 read with Section 34 Indian Penal Code, against his co-accused Jagrup Singh, was framed. An additional charge, against Sukhdev Singh, accused, under Section 323 of the Indian Penal Code, and under Section 323 read with Section 34 of the Indian Penal Code, against his co-accused Jagrup Singh, was also framed. The charge was read-over and explained to them, to which they pleaded not guilty, and claimed judicial trial.

13. The prosecution, in support of its case, examined Dr. K. S. Brar (P.W. 1), Dr. Sat Pal Garg (P.W. 2), Gurdev Singh (P.W. 3), Mander Singh (P.W. 4), Sub-Inspector Dinesh Kumar (P.W. 5), Assistant Sub-Inspector Gurtej Singh (P.W. 6), and Sub-Inspector Balbir Singh (P.W. 7). Thereafter, the Public Prosecutor for the State, closed the prosecution evidence.

14. The statements of the accused under Section 313 of the Code of Criminal Procedure, were recorded. They were put all the incriminating circumstances, appearing against them, in the prosecution evidence. They pleaded false implication. They admitted their inter se relationship. It was stated that Gurdev Singh, had purchased one acre of land from Balwinder Singh, in favour of his sons, about a week before the occurrence and the said land had been under the cultivation of Jagrup Singh. It was further stated that Jagrup Singh, accused denied having told Gurdev Singh that he would quit possession after taking money

back from Balwinder Singh. It was admitted that the meeting was held on 4-12-1994, at 4.00 p.m. in the baithak of Naib Singh, but it was denied that it was to resolve the dispute. The accused admitted that the meeting was attended by Gurdev Singh, Naib Singh, Balwinder Singh, and Bakhtaur Singh, and both the accused. It was denied that they had lost their temper. Sukhdev Singh, accused gave detailed version, as under:

I am living separately from my brother for the last many years. On the day of occurrence I along with my brother had come to the baithak of Naib Singh, where Gurdev Singh, complainant, and deceased Bakhtaur Singh, forced my brother Jagrup Singh, to get back the earnest money of Rs. 37000/-which my brother refused to accept from Gurdev Singh and Bakhtaur Singh. Bakhtaur Singh and Gurdev Singh wanted to purchase that 3 kanals of land from Balwinder Singh. Myself and my brother came out of the baithak and I started my tractor by pulling the pulley of the tractor and at that time Bakhtaur Singh deceased armed with a khunda followed by Gurdev Singh came out. They started abusing to us and stopped us from proceeding to our field. Then Bakhtaur Singh, deceased gave a khunda blow on my head which fell on my turban and long hair. He gave another blow which I warded off with the pulley of the tractor which was in my hand which was to be placed on the tractor when he attempted to give a third blow I gave a pulley blow on his head in the right of private defence of my person and under sudden provocation. Then Gurdev Singh, P.W. caught hold of my brother Jagrup Singh, who pushed him as a result of which his head struck against the cement electric pole. Thereafter, we proceeded towards our house.

15. The accused, however, did not lead any evidence, in defence, and closed the same.

16. After hearing the counsel for the parties, and, on going through the evidence, on record, the trial Court, convicted Sukhdev Singh, accused, for the offences, punishable under Sections 304, Part II, and 323 of the Indian Penal Code, whereas, it acquitted Jagrup Singh, accused.

17. Feeling aggrieved, the instant appeal, was filed by Sukhdev Singh, accused (now appellant).

18. I have heard the counsel for the parties, and have gone through the evidence, and record of the case, carefully.

19. The counsel for the appellant submitted that the injuries on the person of Bakhtaur Singh with the pulley of the tractor, could not be caused, as the same was very heavy. He further submitted that since the injuries with pulley on the person of Bakhtaur Singh, could not be caused, the very foundation of the case of the prosecution, fell to the ground. The submission of the Counsel for the appellant, in this regard, does not appear to be correct. Dr. K. S. Brar, Emergency Medical Officer, Civil Hospital, Bathinda, who conducted the post-mortem examination on the dead-body of Bakhtaur Singh, stated that the injuries on the person of the deceased, could be caused with a blow dealt from pulley side of the tractor, exhibit P1 shown to him in the Court. Dr. Satpal Garg, P.W. 2, also stated that injuries on the person of Bakhtaur Singh, deceased, and Gurdev Singh, could be caused with the pulley rod P1 shown to him in the Court. He further made it clear, during the course of cross-examination, that the injury on the person of Gurdev Singh, could be caused with the handle part as well as pulley end of the rod. It was further made clear by him that the possibility of little force used with pulley exhibit P1, while causing injuries on the person of Gurdev Singh could not be ruled out. Not only this, Gurdev Singh son of Hari Singh, P.W. 3, and Mander Singh, P.W. 4, both eye-witnesses in clear-cut terms stated that it was with the pulley of the tractor, that the injuries on the person of Gurdev Singh, and Bakhtaur Singh, were caused. The ocular version with regard to the use of weapon of offence for causing injuries on the person of Gurdev Singh, and Bakhtaur Singh, deceased, was, thus, duly corroborated through the medical evidence. In this view of the matter, the submission of the Counsel for the appellant, being without merit, must fail, and the same stands rejected.

20. It was next submitted by the counsel for the appellant, that no injury on the person of Balwinder Singh, with whom, there was a dispute, with regard to the possession of land, was caused. He further submitted that this clearly showed that there was no reason, on the part of the accused, to cause injuries on the person of Gurdev Singh, and Bakhtaur Singh, deceased, but he was falsely implicated, in the instant case. The submission of the counsel for the appellant, in this regard,

does not appear to be correct. The eye-witnesses namely Gurdev Singh, and Mander Singh, in clear-cut terms, stated that the injuries with pulley of the tractor, on the person of Gurdev Singh, and Bakhtaur Singh, deceased, were caused by the accused.' If, the accused chose the person of Gurdev Singh, and Bakhtaur Singh, deceased, to cause injuries, that did not mean that the case of the prosecution was doubtful. It was for the accused to decide, as to whether, he wanted to cause injuries on the person of Balwinder Singh, with whom, he was having dispute, or not. Non-causing of injuries, on the person of Balwinder Singh, therefore, did not, in the facts and circumstances of the case, in any way, go to prove that the case of the prosecution was false. The submission of the Counsel for the appellant, in this regard, being without merit, must fail, and the same stands rejected.

21. It was next submitted by the Counsel for the appellant, that Naib Singh, in whose baithak, there was a sitting and Balwinder Singh, with whom the accused was having a dispute, with regard to the possession of land, were not examined. He further submitted that both were material witnesses, and, as such, the prosecution could be said to have withheld the best evidence in its possession. It may be stated here that, it was for the Public Prosecutor for the State to decide, as to the number of witnesses he wanted to examine, to prove his case. Since the Public Prosecutor for the State, came to the conclusion that the examination of Gurdev Singh, and Mander Singh, eye-witnesses, was sufficient to prove his case, he did not want to multiply the number of witnesses by examining Naib Singh, and Balwinder Singh. It was not necessary for the Public Prosecutor for the State, to examine each and every witness. In *Sarwan Singh v. State of Punjab* : AIR 1976, SC 2304 : 1976 Cri LJ 1757. it was held that it is not the law that the omission to examine any and every witness even on minor points, would undoubtedly lead to rejection of the prosecution case, or drawing of an adverse inference, against the prosecution. The law is well settled that the prosecution is bound to produce only such witnesses, as are essential for unfolding of the prosecution narrative. In other words, before an adverse inference against the prosecution can be drawn it must be proved to the satisfaction of the Court that the witnesses who had been withheld were eye-witnesses who had actually seen the occurrence and were therefore material to prove the case. It is not necessary for the prosecution to

multiply witnesses after witnesses, on the same point; it is the quality rather than the quantity of the evidence that matters. In these circumstances, non-examination of Naib Singh, and Balwinder Singh, did not prove fatal, to the case of the prosecution. The submission of the Counsel for the appellant, in this regard, being without merit, must fail, and the same stands rejected.

22. Coming to the revision-petition, for the enhancement of sentence, it may be stated here, that the same is liable to be dismissed, for the reasons to be recorded hereinafter. The trial Court, after taking into consideration, the facts and circumstances of the case; and the nature of dispute, between the parties, came to the conclusion that the ends of justice would be met, if sentence, to the extent of three years rigorous imprisonment, was imposed upon the accused. The sentence awarded to the accused by the trial Court, could not be said to be incommensurate or inadequate with his proved guilt. No ground, whatsoever, therefore, for enhancement of sentence awarded to the accused by the trial Court, is made out. Criminal-revision, thus, deserves to be dismissed.

23. No other point, was urged, by the counsel for the parties.

24. In view of the above discussion, it is held that the judgment of conviction and the order of sentence, are based on the correct appreciation of evidence, and law, on the point. The same warrant no interference. The same are liable to be upheld.

25. For the reasons recorded above, Criminal Appeal No. 659-SB of 1996, being devoid of merit, is dismissed. The judgment of conviction, and the order of sentence are upheld. If the appellant is on bail, his bail bonds shall stand cancelled. The Chief Judicial Magistrate, shall take necessary steps to comply with the judgment with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Code of Criminal Procedure, and submit compliance report within 02 months.

26. Criminal-Revision No. 490 of 1997, filed by the complainant/revision-petitioner, is also dismissed.

27. The District & Sessions Judge, is also directed to ensure that the directions, referred to above, are complied with, and the compliance report is sent within the time frame, to this Court.

28. The Registry is directed to keep track that the directions are complied with, within the stipulated time. The papers be put up within 10 days, of the expiry of the time frame, whether the report is received or not, for further action.

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