

PUNJAB AND HARYANA HIGH COURT

Pawan Singh Chotta Singh

Vs

State of Punjab

(S.S.Grewal, J.)

11.05.1994

JUDGEMENT

S.S.Grewal, J.

(1.) THIS appeal as well as Criminal Revision No. 410 of 1993 filed by Major Singh complainant, are directed against the order of Additional Sessions Judge, Barnala, dated 29-1-1993 whereby Pawan Singh appellant was convicted under Section 302 of the Indian Penal Code and Chhota Singh appellant was convicted under Section 302 read with Section 34 of the Indian Penal Code for intentionally committing the murder of Jora Singh in furtherance of their common intention and both of them were sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000.00 each. In default of payment of fine each of them was sentenced to undergo rigorous imprisonment for one year. Gurdev Singh and Wakil Singh their co-accused were, however, acquitted by the learned trial Court.

(2.) IN brief facts of the prosecution case as emerge from the first information reported lodged by Major Singh PW are that he along with his brother Darshan Singh and their father Jora Singh used to reside together whereas his four elder brothers were residing separately. 18 Killas of land fell to the share of Darshan Singh, Major Singh and Jora Singh in partition which was under their cultivation. On 9-5-1990, at about 5.30 P.M. Darshan Singh PW was driving tractor at some distance from their tube-well. Jora Singh and his son Major Singh PW were mending Khal in their field known as Motorwala. Jora Singh was putting earth on the common Watt adjoining his fields and that of Karnail Singh whereas, Major Singh was mending the Watt with the earth on the other side. Pawan Singh, Chhota Singh appellants their brother Gurdev Singh and Wakil Singh son of Chhota Singh were sowing Narma (American cotton) with the help of tractor. At that time all the aforesaid four accused, who were armed with Kahi, Gandasa and Sotis attacked Jora Singh. Pawan Singh accused gave a Kahi blow from its blunt side on the head of Jora Singh and on receipt of the said injury Jora Singh fell down on the ground. Chhota Singh accused gave a Gandasa blow from its blunt side on the left shoulder of Jora Singh while the latter was lying on the ground. Wakil Singh who was standing near the tractor exhorted his other co-accused to finish Jora Singh. Thereafter Gurdev Singh accused gave soti blows to Jora Singh. Major Singh

PW raised alarm 'NA MARO NA MARO' hearing which Darshan Singh PW also reached there after leaving the tractor. Out of fear Major Singh PW stayed where he was. According to him, had he stepped forward he too would have been injured. After arrival of Darshan Singh, he and Major Singh PW came forward to rescue their father. Meanwhile after inflicting injuries to Jora Singh, all the accused ran from the spot along with their respective weapons. Major Singh PW and his brother Darshan Singh witnessed the entire occurrence. After arranging tractor trolley Jora Singh, who was lying unconscious with blood oozing out of his head, was taken to Civil Hospital, Barnala and was got admitted there. From there he was referred to Christian Medical College and Hospital, Ludhiana. Major Singh, Darshan Singh and their cousin Kaur Singh arranged for the car and removed Jora Singh injured to C.M.C. Ludhiana. Motive for the crime was that Watt of the complainant party and that of Karnail Singh was common. That Watt got damaged when the complainant party tried to cultivate the land with the help of the tractor and Jora Singh was mending the Khal after the common Watt was damaged and the accused party inflicted injuries to Jora Singh. On receipt of information Joginder Singh ASI went to C.M.C. Ludhiana and after ascertaining from the doctor that Jora Singh PW was unfit to make a statement, the said ASI recorded the statement of Major Singh PW at 1.30 P.M. on the next day of the occurrence. On the basis of the said statement formal first information report was registered at Police Station, Barnala at 4.10 P.M. As a result of the injuries received by Jora Singh he remained unconscious throughout till he died in C.M.C. Ludhiana on 22-5-1990 at 12.10 P.M. The offence was then converted to one under Section 302/34 of the Indian Penal Code. After completion of the investigation, Pawan Singh, Gurdev Singh and Chhota Singh were challenged whereas the name of Wakil Singh was shown in Column No. II of the report under Section 173 of the Code of Criminal Procedure, 1973. Later on Wakil Singh accused was summoned by the learned trial Court. Pawan Singh and Chhota Singh appellants were convicted and sentenced as stated earlier while Gurdev Singh and Wakil Singh accused were acquitted by the learned trial Court. Aggrieved against the order of their conviction and sentence passed by the learned trial Court, Pawan Singh and Chhota Singh appellants have Filed Cri A. No. 48-DB of 1993 whereas Major Singh complainant has tiled Cri R. No. 410 of 1993. As common questions of law and facts are involved in the appeal as well as in the Criminal Revision, both these are disposed of by one judgment. The learned counsel for the parties were heard.

(3.) BEFORE dealing with the contentions raised by the learned counsel for the appellants, it would be desirable to note the injuries received by the deceased. Dr. Baldev Raj, Medical Officer, Civil Hospital, Barnala, medically examined Jora Singh on 9-5-1990 at 7.35 P.M. and found the following injuries on his person :- 1. Incised wound 16 cm x 1 cm x bone deep on the right side of the scalp, 9 cm from the pinna of ear, 4 cm from the mid line and five cm from the eye brow. Fresh bleeding was present X-ray was advised. 2. An incised wound 5 cm x 1 cm x bone deep with fresh bleeding present. Wound was present on the back of right fore-arm 4 cm proximal to wrist joint. 3. Contusion 15 cm x 2 1/2 cm reddish in colour present on the lateral and back on right side 8 cm below the inferior angle of the scapula. Crepitus fell on the right side of the chest just below the clavical. X-ray was advised. 4. Abdomen on right side was distended. X-ray was advised. 5. Reddish contusion 7 cm x 2 1/2 cm present on the lateral surface of the

right thigh. 6. Reddish contusion 10 cm x 2 1/2 cm on the back of right leg 5 cm below the popliteal fossa. Injuries Nos. 1 and 2 in the opinion of the said doctor were caused by sharp edged Weapon and the rest with blunt weapon. Dr. Tara Chand PW. 10, General Surgery, C.M.C. Ludhiana noted the following injuries on the person of Jora Singh when the latter was brought to casualty department on 9-5-1990 at 10.40 P. M. : 1. 6-7 cms long laceration on right parietotemporal region with brain matter coming out. 2. Blunt trauma chest with fractured ribs and haemopneumo-thorax. 3. 3.5 cm superficial laceration on right wrist. Injuries Nos. 1 and 2 in the opinion of the said doctor were dangerous to life. ;