

ITEM NO.101

COURT NO.6

SECTION IIB

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS  
CRIMINAL APPEAL NO(s). 974 OF 2008

GURMAIL SINGH

Appellant (s)

VERSUS

STATE OF PUNJAB Respondent(s)  
(With appln(s) for exemption from filing c/c of the impugned  
order)  
WITH SLP(Crl) NO. 4898 of 2008  
(With office report)  
APPEAL(CRL) NO. 975 of 2008  
(With office report)

Date: 20/04/2011

This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI  
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

For Appellant(s)  
in Crl.A. 974

Mr. P.N. Puri, Adv.

In Crl.A. 975

Mr. Manu Sharma, Adv.  
Mr. Sanjay Jain, Adv.

In SLP 4898

Mr. D.P. Singh, Adv.  
Mr. Avneet Toor, Adv.  
Mr. Sanjay Jain, Adv.

For Respondent(s)

Mr. Kuldip Singh, Adv.

UPON hearing counsel the Court made the following  
O R D E R

For the reasons recorded in the signed  
reportable order, the appeal of Sher Singh is  
allowed and that of the other accused are  
dismissed.

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(KALYANI GUPTA)  
COURT MASTER

(VINOD KULVI)  
COURT MASTER

[SIGNED REPORTABLE ORDER IS PLACED on the FILE.]

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 974 of 2008

GURMAIL SINGH

..... APPELLANT

VERSUS

STATE OF PUNJAB

.....

RESPONDENT

WITH

CRIMINAL APPEAL NO. 975 OF 2008

AND

CRIMINAL APPEAL NO. 981 OF 2011  
ARISING OUT OF SLP (CRL) NO. 4898 OF 2008

O R D E R

1. This judgment will dispose of three appeals, being Criminal Appeal Nos. 974 of 2008, 975 of 2008 and 981 of 2011 @ SLP(Crl) 4898 of 2008.

2. The facts are being taken from the paper book of Criminal Appeal No. 974 of 2008 entitled Gurmail Singh v. State of Punjab.

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3. The facts leading to these appeals are as under:

3.1 Sohan Singh, P.W., the complainant, and his co-accused Nachhattar Singh and Parshotam Singh, are married to real sisters. Nindo is the daughter of Sher Singh, accused. Darshan Singh accused is the son of Sher Singh. A few days prior to the incident which happened on the 25th March, 1996 a message was received with regard to the proposed marriage of the son of Parshottam Singh accused, on which the accused had got together in his house to celebrate the occasion by taking liquor. At about 10:00p.m. the accused came out in the street and raised a lalkara that they would teach the complainant party a lesson for having teased Nindo. At that time accused Gurnam Singh and Gurmail Singh were both armed with small knives (kirch) and

Sher Singh, Nachhattar Singh, Parshottam Singh, Dharampal Singh and Avtar Singh were armed with lathis.

Sohan Singh came out into the street to persuade them not to abuse and that they would sort out the dispute in the morning.

While he was still talking to the accused Rajwinder Singh PW and Baljinder Singh also arrived there.

Nachhattar Singh, Sher Singh, Dharampal Singh and Avtar Singh then raised a lalkara saying that they should not be allowed to go alive and should be taught a lesson for having teased Nindo. Gurnam

Singh thereupon gave a knife blow on the right side of

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the abdomen of Baljinder Singh and when Rajwinder Singh

came forward to help Baljinder Singh, Gurmail Singh

gave a knife blow on the right side just below his

chest whereas Gurcharan Singh gave a knife blow on the

lower portion of his right flank. Rajwinder Singh fell

down whereupon Sher Singh gave a dang blow on his

right shoulder. In the meantime, the women folk came

out into the street and hurled brickbats in self-

defence. As a consequence of this counter attack the

accused ran away from the spot. Baljinder Singh and

Rajwinder Singh were shifted to the A.P. Jain Hospital

at Rajpura in a truck but the former succumbed to his

injuries on the way. After investigation, the accused,

eight in number were brogught to trial for offences

punishable under Sections 302/149, 302, 324/149 and

323/149 of the IPC. The prosecution placed primary

reliance on the evidence of Sohan Singh PW 5, Rajwinder

Singh PW6, the injured eye witnesses, and also on the

evidence of Dr. Charanjit Singh, PW1 whereby he, had at

the initial stage, declared Rajwinder Singh unfit to

make a statement, Dr. S.M. Birdi who had conducted the

medical examination on the injured and Dr. O.P. Agarwal  
PW 4 who had conducted the post mortem on the dead body  
of Baljinder Singh. The accused in their defence,  
pleaded false implication and further that the dispute  
had arisen because of some election rivalries.

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the accused also claimed alibis. The trial court on a  
consideration of the evidence, acquitted Avtar Singh,  
Dharam Pal Singh, Nachtar Singh and Parshottam Singh  
whereas Gurnam Singh, Gurmail Singh, Gurcharan Singh  
and Sher Singh were convicted for having committed the  
murder of Baljinder Singh. This judgment has been  
affirmed by the High Court leading to these appeals by  
way of special leave.

4. Before us, the main argument raised by the  
learned counsel for the appellants is that even  
assuming the prosecution case to be true the matter  
would still not fall within the definition of murder  
but would fall be culpable homicide not amounting to  
murder punishable under Section 304 Part I of the IPC.  
It has also been submitted that in the facts and  
circumstances of the case, the provisions of Section 34  
of the IPC were not made out as there was no intention  
on the part of the accused to commit murder. It has  
finally been submitted that Sher Singh accused,  
appellant was similarly situated as those acquitted by  
the trial court as the injury attributed to him on the  
shoulder of Rajwinder Singh could have caused as a  
result of a scuffle during the incident and was not  
possible with a lathi.

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5. The learned counsel for the State has, however, supported the judgment of the trial court.

6. Mr. D.P. Singh has submitted that in the light of the judgments of this Court reported as Virsa Singh v. State of Punjab AIR 1958 465, Laxman Karlu Nikalje v. The State of Maharashtra 1968 (3) SCR 685, Harjinder Singh v. Delhi Administration AIR 1968 867, Randhir Singh alias Dhire v. State of Punjab 1981 (4) SCC 484, Tholan v. State of Tamil Nadu 1984 (2) SCC 133 the injury caused to the deceased would not fall under clause "thirdly" of Section 300 and as such the conviction ought to have been recorded under 304 Part I or II of the Indian Penal Code. We have considered the submissions very carefully and have examined the judgments aforesaid with the assistance of the learned counsel.

7. It is true that clause thirdly of Section 300 of the IPC deals with a case where the intention was to cause the very injury found on the dead body. In the case of Virsa Singh, Laxman Karlu's case and Arun Nivalji More's case, the injuries had been caused on non vital parts but the death had occurred because of the fact that some artery beneath the injured part had

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been cut. The Court, in that eventuality, held that it could not have been presumed that the appellants wanted to cause that very injury which ultimately led to death. It is true that in Randhir Singh's case the injury had been caused by a kassi on the head of the deceased. It appears, however, that what had weighed very heavily with the Court was the fact that attack

was not pre-planned, the accused was only 18 years of age and the kassi had been brought by his father and given to him to cause a blow on the victim, only one injury had been caused and that the death had occurred after six days of the incident. In Tholan's case it was held that though the injury had been caused in the chest but the facts were that the appellant had not intended to give the blow with a knife in the chest. In the case before us, we find that a lalkara had been raised by the accused threatening retribution on account of the misbehaviour of Darshan Singh, son of Sher Singh with Nindo a few days earlier and that the accused had been drinking together in the house of Parshottam Singh and had thereafter come out leading to the incident. It has been held in all the afore-cited cases that the question as to whether the injury had been caused with the intention to cause death would be a matter of objective satisfaction of the Court.

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are, therefore, of the opinion, that the injury in the present case had been caused directly and deep into the stomach of the deceased, a very vital part, which had led to death within a short time. It cannot, therefore, be said that there was no intention to cause that very injury which had led ultimately to the death of the deceased. In a somewhat similar situation, it has been held in Arun Nivalaji More v. State of Maharashtra 2006 (2) SCC 613 that where the injury had been caused in the stomach which was a vital part of the body, it could be said that the injury had been caused with the intention of causing death in the background of the facts that preparations for the attack on the deceased had earlier been made.

8. We now take up the question of common intention in the facts of the case. Once again it needs to be highlighted that the accused were all of one family and they were annoyed with the members of the victim family as they had teased Nindo. They also lived close together in the same locality and had come out armed and raised a lalkara that the opposite party be done away with and that the injuries had been caused thereafter. It is also clear that several injuries had

been caused to Rajwinder Singh PW as well and that one

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injury had been proved fatal for Baljinder Singh. A case of common intention is, thus, spelt out.

10. We, however, find some merit in the argument of the learned counsel that Sher Singh appellant should be given the benefit of doubt in the circumstances. The injury attributed to him on the person of Baljinder Singh is a "Red abrasion 2.5cm X 0.5cm on the right super scapular region obliquely placed 3 cm back ward from the upper tip of the right shoulder joint." A perusal of this injury would indicate that it is of very small dimensions and there is a clear doubt as to whether an abrasion could be caused with a lathi which Sher Singh was said to be carrying. We are, therefore, of the opinion that Sher Singh is similarly placed as the accused who have been acquitted by the trial court.

12. We, accordingly, allow the appeal of Sher Singh. The appeals of the other accused are dismissed.

.....J  
[HARJIT SINGH BEDI]

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.....J  
[CHANDRAMAULI KR. PRASAD]

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NEW DELHI  
APRIL 20, 2011.