

A GURJIT SINGH ALIAS GORA AND ANR.

v.

STATE OF HARYANA

B (Criminal Appeal No.519 of 2010)

MARCH 10, 2015

**[JAGDISH SINGH KHEHAR AND S.A. BOBDE, JJ.]**

C *Penal Code, 1860 – s.302 rw s.34 – Murder –*  
D *Prosecution case that appellant-accused along with his*  
E *brother, armed with spades inflicted injuries to the victim–*  
F *Parents of the accused exhorted their sons to commit the*  
G *crime on account of enmity between the parties – Plea of*  
H *self defence and sudden provocation by the accused and*  
*his brother since the victim had injured their father – Trial*  
*court convicted the appellant u/s. 304 Part II, however,*  
*acquitted his brother – High Court convicted the appellants*  
*u/s. 302 rw s. 34 – On appeal, held: Circumstances of the*  
*case pointed out to the commission of the crime u/s. 302 –*  
*High Court, after going through the entire evidence, came*  
*to the correct conclusion that the two blows were caused*  
*by accused and his brother, both armed with spade and who*  
*had been exhorted to kill the victim by their parents – It is*  
*accepted that the injury on the father of the accused is self-*  
*inflicted, in all likelihood – Further, there was inordinate*  
*delay in seeking medical attention by the father – Also the*  
*father refused to undergo radiological examination of the*  
*injuries and did not tell the doctor as to how and why he*  
*got the injuries which was wholly unnatural – Non-*  
*explanation of injuries not fatal to the prosecution case –*  
*Defence version that the appellant attacked the victim*

*because the victim attacked his father with spade cannot be accepted – Further, the failure to corroborate the existence of spade was not explained – Also statement of the relatives of the victim could not be disbelieved only because they were relatives of the deceased victim – Thus, the order passed by the High Court upheld.*

**Dismissing the appeal, the Court**

**HELD: 1.1** In appeal, the High Court reassessed the entire evidence and came to the conclusion that it cannot be said to be the duty of the prosecution in the circumstances to explain injuries on the person of the accused, GD(father) particularly, since GD neither offered himself for radiological examination nor had he disclosed the history of his injuries to the doctor. The High Court opined that the non-explanation of injuries is insufficient to discard the case of the prosecution, if it otherwise inspires confidence and is worthy of credence. The High Court disagreed with the trial court and held that there is no reason to disbelieve the statement of the brother of the deceased and the widow, only because they were near relations of the deceased. It is settled law, that the statement of a relative of the deceased cannot be discarded merely on the ground that he or she is an interested party. [Para 16] [986-F-H; 987-A]

*Anwar Ali v. State of U.P* (2011) 15 SCC 360; *Kartik Malhar v. State of Bihar* 1995 (5) Suppl. SCR 239 : (1996) 1 SCC 614; *Ashok Rai v. State of U.P.* (2014) 5 SCC 713 – referred to.

**1.2** The circumstances of the case pointed out to the commission of the crime under Section 302 IPC. There is no doubt about the occurrence having taken

A place, in which JS was killed by the accused and that his injuries were caused by 'kassis.' There is clear evidence that the accused party comprised of GD, his wife along with their sons GS and SS who were armed with 'kassis.' There are two injuries made by the  
B 'kassis'; on the back of the head and the other on the face of the deceased. The eye-witnesses accounts of PW13 and PW14, who were undoubtedly present, in no uncertain terms reveals that JS was attacked by the accused party i.e. GS and SS. PW14 stated that the  
C accused GS gave a 'kassi' blow on the back of the head of JS, as a result of which he fell. Further, that the second 'kassi' blow was given on the right side of the face of JS. The inference drawn by the trial court that PW14 intended to name GS, as the person who also  
D caused the second blow is unwarranted. The acquittal of SS on that ground is also not sustainable. Some element of confusion was sought to be created in the defence version by alleging, vide DW1's deposition that JS received the second blow because he fell after  
E receiving the first blow on a 'kassi' lying beside GS, which cut his face on the right side. [Para 17, 18] [987-F-H; 988-A-E]

1.3 The trial court came up with an inference, which  
F is different even from the defence version. It is appropriate to accept the judgment of the High Court, which, after reading the entire evidence on this point, came to the correct conclusion that the two blows were caused by GS and SS, who were both armed with  
G 'kassis' and who had been exhorted to kill JS by their parents. The judgment of the High Court that the injury on GD is self-inflicted, in all likelihood is accepted. The inordinate delay in seeking medical attention by GD raised many questions. He also refused to undergo  
H radiological examination of the injuries and did not tell

the doctor as to how and why he got the injuries. GD's A  
conduct appears to be wholly unnatural and it is not  
possible to accept the defence version that GS attacked  
JS because JS attacked his father with a 'gandasi.' The  
failure to corroborate the existence of the 'gandasi,' has B  
not been explained. The order of conviction and  
sentence as recorded by the High Court is upheld and  
the order of acquittal passed by the trial court is set  
aside.[Para 19,20,21] [988-F-H; 989-A-D]

*Chandrappa & Ors v. State of Karnataka* 2007 (2) SCR. C  
630; (2007) 4 SCC 415; *State of M.P. v. Ramesh & Anr.*  
2011 (5) SCR 1; (2011) 4 SCC 786; *Ranjitham v. Basavaraj*  
& Ors. (2012) 1 SCC 414 – referred to.

*Arun Raj v. Union of India* 2010 (7) SCR 1; JT 2010 D  
(5) SC 1; *Kapildeo v. State of U.P.* 1983 SCC (Cri) 311 –  
distinguished.

Case Law Reference

2007 (2) SCR 630	referred to.	Para 13	E
2011 (5) SCR 1	referred to.	Para 13	
(2012) 1 SCC 414	referred to.	Para 13	
2010 (7) SCR 1	distinguished.	Para 13	F
1983 SCC (Cri) 311	distinguished.	Para 13	
(2011) 15 SCC 360	referred to.	Para 16	
1995 (5) Suppl. SCR 239	referred to.	Para 16	G
(2014) 5 SCC 713	referred to.	Para 16	

CRIMINAL APPELLATE JURISDICTION: Criminal

H

A Appeal No. 519 of 2010.

From the Judgment and Order dated 24.10.2009 of the High Court of the States of Punjab and Haryana at Chandigarh in Criminal Appeal No. 511-DBA of 2001.

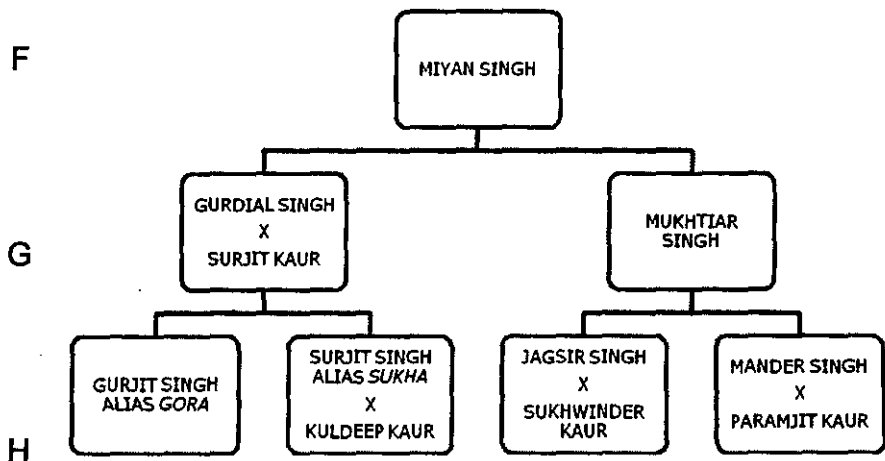
B Dr. J. P. Dhanda, Raj Rani Dhanda, Vineet Dhanda, N. A. Usmani for the Appellants.

Manjit Singh, B. K. Satija, AAG, Tarjit Singh, Vivekta Singh, Kamal Mohan Gupta for the Respondent.

C The Judgment of the Court was delivered by

D **S. A. BOBDE, J. 1.** This appeal has been preferred by the accused Gurjit Singh alias Gora and Surjit Singh alias Sukha, from the Judgment of the High Court of Punjab and Haryana at Chandigarh, convicting the appellants – accused under Section 302 read with Section 34 of the Indian Penal Code [hereinafter referred to as “IPC”] for the murder of Jagsir Singh on 17.10.1998 at about 2.15 pm at village E Ganga (Dabwali), District Sirsa, Haryana.

The relationship between the parties is as follows:



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2. According to the prosecution, on 17.10.1998 at about 2.15 p.m., Jagsir Singh left his home to go to a shop for purchasing *Zarda* (chewing tobacco). His house was adjacent to the house of the accused. Soon thereafter, his brother Mander Singh (PW13), his wife Sukhwinder Kaur (PW14) and Paramjit Kaur heard hot words being exchanged between Jagsir Singh (deceased) and the accused. Mander Singh along with Sukhwinder Kaur went out of their house to see as to what had happened. They saw that the accused had surrounded Jagsir Singh. Accused Gurjit and Surjit were armed with '*kassis*' (spades) whereas Gurdial Singh, the father of the accused and Surjit Kaur, their mother, were unarmed. Gurdial Singh and Surjit Kaur exhorted Gurjit and Surjit that Jagsir Singh be taught a lesson for bringing the '*Kanungo*' (revenue inspector) to the village for demarcation of their property. Gurjit then struck Jagsir Singh on the back of his head with a '*kassi*', causing him to fall. Thereafter, Surjit also struck Jagsir Singh on his face with a '*kassi*.' Accused Surjit Kaur then dragged Jagsir Singh towards the village lane.

3. As per the prosecution, Mander Singh (PW13), the brother of the deceased and Sukhwinder Kaur (PW14) had been restrained by the accused Gurdial Singh and his wife Surjit Kaur from approaching the site where Jagsir Singh had been cornered by the accused brothers. Mander Singh and Sukhwinder Kaur made frantic calls for help, thereby attracting many people from the locality to the scene of the incident. The accused escaped from the scene with their weapons.

4. Jagsir Singh was immediately removed to the Community Health Centre, Dabwali. The doctor there provided first aid and referred him to the General Hospital at Sirsa, which is at a distance of about 60 Kms, where he

A was declared as brought dead.

5. After completion of investigation, a report under Section 173 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') was presented in court. The accused were charged under Sections 302 and 341 read with Section 34 of the IPC. An autopsy was conducted by Dr. Jagdish Choudhary (PW4) along with Dr. Yogesh Sangwan. At the trial, the prosecution examined 15 witnesses including Mander Singh (PW13), brother of Jagsir Singh (deceased) and Sukhwinder Kaur (PW14), widow of the deceased. After the closure of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C., in which they denied the allegations and pleaded false implication. The accused examined Kuldeep Kaur (DW1) and Dr. Bhushan Garg (DW2) in their defence.

6. The two parties are related by blood. Gurdial Singh and Mukhtiar Singh, are sons of one Miyan Singh. Mukhtiar Singh is father of deceased Jagsir Singh. The two brothers were owners in possession of 2/3 share of total land measuring 157 Kanals and 19 Marlas situated in the revenue estate of village Ganga, Tehsil Dabwali, District Sirsa. The sons of Mukhtiar Singh i.e. the complainant party, believed that their uncle Gurdial Singh and his sons i.e. the accused party, had encroached upon their land. They had therefore moved an application for demarcation of the property. The accused were not in agreement with the course adopted by the complainants. Therefore, they cornered the deceased Jagsir Singh in front of their house when he was on his way to the village market. The acquitted accused, Gurdial Singh and his wife Surjit Kaur had exhorted their sons i.e. Surjit and Gurjit, to commit the crime.

H 7. It is significant that in defence, the accused admitted

the occurrence. Their version, however, has differed from that of the prosecution. According to them, Gurdial Singh was digging in the street and was dumping mud along the wall of his house. Thereafter, Jagsir Singh (deceased) came there armed with a '*gandasi*' (sharp-edged weapon) and raised a '*Khangura*' (a provocative sound made to incite another person). In response, Gurdial asked Jagsir Singh why he had made that sound since he had brought him up as a child. Jagsir Singh responded by demanding a certain piece of land from Gurdial Singh. Thereafter, Jagsir Singh struck Gurdial Singh with the '*gandasi*' on his head. It is further stated, that Gurdial Singh then rushed into his house with Jagsir Singh in pursuit. Thereafter, Jagsir Singh struck him again with the reverse side of the weapon. Meanwhile, Gurjit, Gurdial's son, picked up a '*kassi*' and tried to save his father from the hands of Jagsir Singh. In the process, Gurjit struck Jagsir Singh on the back of his head, causing him to fall on the sharp side of the '*kassi*' which had fallen from the hands of Gurdial Singh. Learned counsel for the appellants thus pleaded self-defence and sudden provocation before us.

8. The Doctor (PW4), who conducted the autopsy on the dead body of Jagsir Singh, observed two incised wounds i.e. one over the scalp extending 4 cms behind the left ear and the other extending from the nasal septum to 2 cms below the right external ear. In the opinion of the doctor, the cause of death was shock and hemorrhage as a result of injuries to vital organs, which were ante-mortem in nature.

9. At this stage, it is apposite to notice that the injury is said to have been caused to Gurdial Singh by Jagsir Singh with a '*gandasi*' (sharp-edged weapon). As per the First Information Report, the incident took place at about

A 2.15 pm. At around 6.55 pm, in the evening, Gurdial Singh went to the Primary Health Center at Odhan and got himself examined by the medical officer on duty there, namely, Dr. Bhushan Garg (DW2). The Doctor found:

B 1. An incised wound 4 cms x 1 cm on the right parietal area of head and it was 6 cms above the right ear. Fresh bleeding was present and margins were sharp. The doctor advised an x-ray for this injury.

C 2. A contusion 3 cms x 1 cm on the left hand on the dorsal aspect at the base of left thumb and it was transversely placed. Severe tenderness was present.

D This doctor prepared a skiagram (an x-ray image) of the injuries and sent a *ruqa* to the Police Station, Odhan. Further, although this witness ruled out the injury by a friendly hand or by self, he did not reject the possibility of the injuries being self-inflicted. Significantly, this witness admitted in his cross-examination that the injured i.e. Gurdial Singh, did not offer himself for radiological examination and further, he did not disclose the history of the injuries to him.

F 10. It is equally significant that the weapon, which is said to have been used to cause this injury to Gurdial Singh i.e. the '*gandasi*,' was never recovered.

G 11. The Trial Court accepted the defence version in its entirety. It came to the conclusion that Gurjit caused an injury on the head of Jagsir Singh (deceased) in self-defence i.e. after Jagsir had attacked his uncle Gurdial Singh on the head with a '*gandasi*.' That thereupon, Jagsir Singh fell face down on the '*kassi*' which had allegedly fallen from the hands of Gurdial. The Trial Court completely acquitted the other accused Sukha alias Surjit Singh. The

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Trial Court concluded that Surjit had no role to play because A  
Sukhwinder Kaur, Jagsir Singh's widow, stated in her  
deposition that Gurjit had struck Jagsir Singh on the head  
with the 'kassi.' The second 'kassi' blow, however, was given  
on the right side of the face of Jagsir Singh. Because she B  
had not mentioned the name of the person who had given  
the second blow on the face of the deceased, the Trial Court  
concluded, that the witness attributed the second blow also  
to Gurjit.

12. The Trial Court seems to have attached no C  
importance to the fact that the recovery of the weapon (the  
'kassi') was made at the instance of the accused Surjit  
Singh. This was simply dismissed as highly improbable.

13. The learned counsel for the appellants, Dr. J.P. D  
Dhanda, placed reliance on **Chandrappa & Ors v. State  
of Karnataka** (2007) 4 SCC 415, **State of M.P. v. Ramesh  
& Anr** (2011) 4 SCC 786 and **Ranjitham v. Basavaraj &  
Ors** (2012) 1 SCC 414 to submit that in an appeal against E  
acquittal, interference by the Appellate Court is not  
warranted in the absence of perversity in the judgment of  
the Trial Court. These judgments do not help the cause of  
the appellants because the High Court has given clear and  
cogent reasons to show that the judgment of the Trial Court  
was perverse and not based on the evidence on record. F

Further, Dr. Dhanda relied on **Arun Raj v. Union of  
India** JT 2010 (5) SC 1; and **Kapildeo v. State of U.P.** 1983 G  
SCC (Cri) 311 to show that the offence committed by the  
appellants fell within the scope of Section 304 Part II of IPC  
and not under Section 302 of IPC. It is pertinent to note  
that in *Arun Raj* (supra) this Court had rejected the defence  
of grave and sudden provocation and convicted the  
appellant under Section 302 of IPC. Whereas in *Kapildeo*  
(supra) this Court altered the conviction from Section 304 H

A Part I to Section 304 Part II of IPC. The circumstances in the above cases were entirely different from the present case.

14. We might state at this stage itself that upon reading  
B of the evidence of Mander Singh (PW14), it cannot be said that Sukhwinder Kaur (PW13) stated that the second '*kassi*' blow was given on the right side of the face of Jagsir Singh to mean that the second blow was also caused by Gurjit Singh alias Gora. The Trial Court also seems to have  
C missed the defence version, according to which Jagsir Singh received the second injury from the '*kassi*' because he fell on the ground where the '*kassi*' was lying, and not because Gurjit Singh caused it, vide the deposition of  
D Kuldeep Kaur (DW1), wife of Surjit Singh.

15. As stated above, the Trial Court acquitted Surjit Singh completely and also Gurjit Singh of the charge under Section 302 IPC, accepting the defence version that Gurjit attacked deceased Jagsir Singh only to save the life of his  
E father – Gurdial Singh, who had allegedly been injured by Jagsir Singh. The Trial Court convicted Gurjit Singh under Part II of Section 304 IPC.

16. In appeal, the High Court reassessed the entire  
F evidence and came to the conclusion that it cannot be said to be the duty of the prosecution in the circumstances to explain injuries on the person of the accused, Gurdial Singh, particularly, since Gurdial neither offered himself for radiological examination nor had he disclosed the history  
G of his injuries to the doctor. The High Court opined that the non-explanation of injuries is insufficient to discard the case of the prosecution, if it otherwise inspires confidence and is worthy of credence. The High Court disagreed with the Trial Court and held that there is no reason to disbelieve  
H the statement of Mander Singh, the brother of the deceased

and Sukhwinder Kaur, the widow, only because they were near relations of the deceased. It is settled law, that the statement of a relative of the deceased cannot be discarded merely on the ground that he or she is an interested party. In **Anwar Ali v. State of U.P.**, (2011) 15 SCC 360, this Court rightly observed that once the prosecution has been able to prove its case by leading admissible and cogent evidence with reference to statements of the witnesses, the same cannot be brushed aside *merely* on the ground that the witnesses are relatives of the deceased. In **Kartik Malhar v. State of Bihar**, (1996) 1 SCC 614, this Court held that even a close relative who is a natural witness cannot be regarded as an interested witness. The term "interested" postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some animus or for some other reason. More recently, this principle was upheld in **Ashok Rai v. State of U.P.**, (2014) 5 SCC 713, whereby this Court clearly stated that the evidence of interested witnesses is not infirm. The High Court has also disagreed with the Trial Court that the fight took place at the spur of the moment and the accused had not conspired with each other to commit the crime, since there was no evidence to that effect.

17. Having considered the entire matter, we are of the view that the circumstances of the case point out to the commission of the crime under Section 302 IPC, as observed earlier.

18. There is no doubt about the occurrence having taken place, in which Jagsir Singh was killed by the accused and that his injuries were caused by 'kassis.' There is clear evidence that the accused party comprised of Gurdial Singh, his wife Surjit Kaur along with their sons Gurjit Singh and Surjit Singh. Gurjit and Surjit were armed with 'kassis.' There

A are two injuries made by the '*kassis*'; on the back of the  
head and the other on the face of the deceased, Jagsir  
Singh. The eye-witnesses accounts of Mander Singh  
(PW13) and Sukhwinder Kaur (PW14), who were  
undoubtedly present, in no uncertain terms reveals that  
B Jagsir Singh was attacked by the accused party i.e. Gurjit  
Singh and Surjit Singh. Sukhwinder Kaur has stated that  
the accused Gurjit gave a '*kassi*' blow on the back of the  
head of Jagsir Singh, as a result of which he fell. Further,  
C that the second '*kassi*' blow was given on the right side of  
the face of Jagsir Singh. The inference drawn by the Trial  
Court that Sukhwinder Kaur intended to name Gurjit Singh,  
as the person who also caused the second blow is  
unwarranted. The acquittal of Surjit Singh on that ground  
D is also not sustainable. Some element of confusion was  
sought to be created in the defence version by alleging, vide  
Kuldeep Kaur's (DW1) deposition that Jagsir Singh received  
the second blow because he fell after receiving the first blow  
on a '*kassi*' lying beside Gurdial Singh, which cut his face  
E on the right side.

19. The Trial Court has come up with an inference,  
which is different even from the defence version. We  
consider it appropriate to accept the Judgment of the High  
Court, which, after reading the entire evidence on this point,  
F came to the correct conclusion that the two blows were  
caused by Gurjit Singh and Surjit Singh, who were both  
armed with '*kassis*' and who had been exhorted to kill Jagsir  
Singh by their parents, Gurdial Singh and Sukhwinder Kaur.

G 20. We also agree with the Judgment of the High Court  
that the injury on Gurdial Singh is self-inflicted, in all  
likelihood. Gurdial Singh was said to have gone to the  
Primary Health Centre, Odhan at around 6.55 pm, even  
H though the incident had taken place at around 2.15 pm. The

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inordinate delay in seeking medical attention raises many questions. In addition, he also refused to undergo radiological examination of the injuries and did not tell the doctor as to how and why he got the injuries. Gurdial Singh's conduct appears to be wholly unnatural and it is not possible to accept the defence version that Gurjit Singh attacked Jagsir Singh (deceased) because Jagsir attacked his father with a '*gandasi*.' As observed earlier, the failure to corroborate the existence of the '*gandasi*,' has not been explained.

21. For the aforesaid reasons, the appeal is dismissed. The order of conviction and sentence as recorded by the High Court is upheld and the order of acquittal passed by the Trial Court is set aside.

Nidhi Jain

Appeal dismissed.