



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRA-D-419-DB of 2005 (O&M)
Date of Decision: September 08, 2026**

Major Singh

...Appellant

VERSUS

State of Punjab

...Respondent

**CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI
HON'BLE MS. JUSTICE MANDEEP PANNU**

Present: Mr.A.P.S.Deol, Senior Advocate with
Mr.Vishal Rattan Lamba, Advocate
for the appellant.

Ms.Jagriti Kalia, AAG, Punjab
for the respondent-State.

ARCHANA PURI, J.

Challenge in the present appeal is to the judgment dated 20.05.2005, vide which, appellant-Major Singh was held guilty and convicted for the commission offence under Section 302 IPC and he was sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default whereof, he was to undergo rigorous imprisonment for a period of two years.

The factual narration is as herein given:-

That, complainant Harbans Singh s/o Jarnail Singh, caste Ramdasia Sikh of village Jai Singh Wala, had one brother, namely Gurjant Singh (since deceased) and three other brothers. After the death of Mithu Singh s/o Karnail Singh, elder paternal uncle of complainant and Gurjant Singh,

**CRA-D-419-DB of 2005**

Harbans Kaur alias Tejo, widow of Mithu Singh, had started living with Gurjant Singh as his wife. Harbans Kaur, from her earlier marriage, had given birth to a son namely, Baj Singh and one daughter, namely Sinder Kaur. Gurjant Singh had one son namely, Balraj Singh. On 11.10.2003, at about 9.30 PM, complainant Harbans Singh, along with his brother Major Singh, was proceeding towards the house of Gurjant Singh, in connection with some domestic work. When they reached in the street, near the house of Harbans Kaur, they found Gurjant Singh and Harbans Kaur having altercation. In the meantime, appellant-Major Singh, who was on visiting terms with Baj Singh s/o Gurjant Singh, arrived there, while armed with *soti* (dang) and he instantaneously gave *soti* blow, on the person of Gurjant Singh, which struck on his head, near the ear. Appellant-Major Singh, then again gave another *soti* blow, which hit Gurjant Singh on the left side of his head near the ear. Complainant Harbans Singh and his brother Major Singh raised alarm, upon which, appellant-Major Singh ran away from the spot along with weapon of offence. It was night time. As there was no arrangement made for the vehicle, thus, injured Gurjant Singh was removed to Civil Hospital, Bathinda in the wee hours of 12.10.2003.

In pursuance of the receipt of information from Incharge, Police Post, Civil Lines, Bathinda, about admission of Gurjant Singh, ASI Kulwinder Singh had reached the hospital and in pursuance of an application filed at his instance, the concerned medical officer (emergency) declared injured Gurjant Singh to be not fit to make the statement. Thereupon, ASI Kulwinder Singh had obtained MLR from the concerned doctor and recorded statement of complainant Harbans Singh, who was present by the side of Gurjant Singh, at the relevant time. Harbans Singh got recorded

**CRA-D-419-DB of 2005**

about there being differences between his brother Gurjant Singh and his sister-in-law, on certain domestic issues, as a result whereof, they were living separate. However, time and again, they used to have normal relations. Baj Singh s/o Gurjant Singh had intimacy with appellant-Major Singh and Gurjant Singh was having suspicion of wandering of Baj Singh, at the instance of Major Singh (appellant). Gurjant Singh used to abstain Baj Singh from having speaking terms with the appellant. On account of said annoyance, appellant-Major Singh had caused injuries on the person of Gurjant Singh.

On the basis of the statement of Harbans Singh, coupled with the recitals of the MLR of the injured, a case under Section 323 IPC was found to be made out by ASI Kulwinder Singh and accordingly, he made endorsement on the statement and DDR entry bearing No.11 dated 12.10.2003 was made.

On 13.10.2003, SI Malkit Singh along with other police officials, visited Civil Hospital and in pursuance of application filed, again the doctor concerned, had declared injured Gurjant Singh to be not fit to make statement.

On 14.10.2003, SI Malkit Singh received QST with regard to Gurjant Singh having succumbed to the injuries, upon which, SI Malkit Singh recorded the FIR under Section 302 IPC. He also incorporated an entry in this regard in DDR at Sr.No.40 of 14.10.2003.

Further investigation was conducted by SI Malkit Singh, who prepared the inquest report and handed over the dead body for conducting of the autopsy. SI Malkit Singh along with other police officials and eye witness Major Singh, had also visited the place of occurrence, in village Jai

**CRA-D-419-DB of 2005**

Singh Wala and prepared the rough site plan of the place of occurrence. He recorded the statements of various officials. Parcel of clothes of deceased was also prepared, which was taken into possession vide separate memo. The Investigating Officer conducted raid to apprehend the accused from the period 14.10.2003 to 17.10.2003.

On 17.10.2003, for the search of accused (Major Singh), the Investigating Officer had visited village Jai Singh Wala, where, at the bus stand, complainant Harbans Singh had met him and he was associated with the police party. While they were present at the bus stand of village Jai Singh Wala, appellant-Major Singh arrived there and on the identification of Harbans Singh, he was arrested.

In pursuance of the disclosure made by appellant-Major Singh, the *soti* (dang) was got recovered from a room made for chaff (fodder) and said *soti* was converted into parcel and taken into possession vide separate memo. The site plan of the place of recovery was also prepared.

On completion of the investigation, challan was presented against appellant-Major Singh.

After the needful compliance of Section 207 Cr.P.C. the commitment proceedings were conducted.

On the basis of the material brought on record, charge was framed against appellant-Major Singh under Section 302 IPC, to which he pleaded not guilty and claimed trial.

To substantiate its claim, the prosecution examined as many as nine witnesses, besides adducing documentary evidence. The resume of the witnesses examined is PW-1 Dr.Sushil Gupta, EMO, who had conducted medico-legal examination of the injured at first instance. PW-2 Dr.Charanjit



CRA-D-419-DB of 2005

Garg, SMO, conducted autopsy, on the dead body of Gurjant Singh. PW-3 Dr.Kamal Sharmma, Omega Diagnostic Centre, had conducted the CT-scan of Gurjant Singh (since deceased). PW-4 and PW-5 are Harbans Singh (complainant) as well as his brother Major Singh, had witnessed the occurrence in question. PW-6 Head Constable Gurtej Singh and PW-7 Head Constable Rajvinder Singh deposed with regard to manner of conducting of the proceedings, during the course of investigation. PW-8 and PW-9, ASI Kulwinder Singh and SI Malkit Singh, respectively, are the Investigating Officers.

On closure of the prosecution evidence, all the incriminating circumstances appearing in the prosecution evidence, were put to appellant-Major Singh, in his statement under Section 313 Cr.P.C. However, he pleaded innocence and asserted false implication. He put forth the plea that Gurjant Singh (since deceased) was addicted to all vices. On 11.10.2003, Gurjant Singh had fallen in the street at about 6.00 p.m., being under the influence of intoxicant and his head had struck the ground twice. At that time, he was abusing the people loudly, in front of house of Tej Kaur. The neighbours, namely Mukand Singh, member panchayat, Pappi Singh, Jang Singh and Balbir Singh were also present there. Tej Kaur had taken Gurjant Singh to her house. Also, he took the plea that Harbans Singh and Major Singh (who are the complainant and eye witness to the occurrence in question) were not present. Thereafter, he learnt about the said fact from Mukand Singh and Jang Singh. He also got recorded that PW-Major Sinjgh was working as Siri with Ex-Sarpanch Hamir Singh, who was inimical towards him because of his casting vote against him and that at the instance of Hamir Singh, he has been implicated in the case falsely. No recovery was



CRA-D-419-DB of 2005

effected from him. He was arrested from his house on 13.10.2003, at about 8.00-9.00 a.m., in the presence of Phulla Singh and Mukand Singh and detained illegally. He was shown to have been arrested, in the case later on.

In defence, appellant examined DW-1 Jang Singh and DW-2 Gurbhagat Singh.

After hearing, Addl. Public Prosecutor for the State and learned defence counsel, learned trial Court had framed various points for determination, as detailed in paragraph No.15 of the impugned judgment. On appraisal of the evidence, brought on record, vide impugned judgment, appellant-Major Singh was held guilty, convicted and sentenced, as detailed in the earlier portion of the judgment.

Being aggrieved, the present appeal was filed.

Learned counsel for the appellant as well as learned State counsel heard and with their able assistance, we have gone through the record.

At the very outset, counsel for the appellant, has submitted that even though, the prosecution built its case on direct evidence, but however, counsel painstakingly has drawn our attention to the contents of FIR, timing of the same, testimonies of eye witnesses, as well as medical and other material evidence, brought on record, to assert falsity of the prosecution version. In fact, counsel submit that the testimonies of both the complainant-Harbans Singh and his brother Major Singh, who is also an eye witness, is not above board. They were never present at the spot of occurrence, at the relevant time and their post-occurrence conduct, as spelt out from the evidence, also strengthens this claim. There was long silence and no disclosure about inflicting of injuries upon Gurjant Singh was made by the



CRA-D-419-DB of 2005

complainant and his brother Major Singh, soon after the occurrence and even, injured Gurjant Singh was taken to the hospital, on the next date. Counsel also further submits that this conduct is not the expected normal behaviour of the brothers of the injured. Precisely, on this account, there is also delay in lodging of the FIR.

Even, learned counsel submits that the medical evidence is at variance with the ocular version. Since, both the injuries described in the medico-legal report Ex.PA are reddish contusion with swelling only and there is no dimension given of both the injuries. The possibility of these injuries being the result of fall against hard surface, as such, cannot be ruled out, in the absence of the any dimension of injuries coming forth. In fact, counsel also makes reference to the testimony of Dr.Kamal Sharma, who had found haematomma in the scanned report and according to him also, it is possible by a fall on hard surface. Furthermore, two witnesses, namely Jang Singh and Gurbhagat Singh examined as DW-1 and DW-2 respectively, also strengthen this claim.

Furthermore, learned counsel for the appellant submits that there was absolutely no motive for the appellant to give *soti* blow to Gurjant Singh and the motive allegedly raised by the prosecution about Gurjant Singh to be suspecting Baj Singh, to be led astray by appellant-Major Singh, does not stand proved. The version of motive, as such, is too far fetched and vague.

Also, counsel for the appellant had laid much emphasis upon the offence under Section 302 IPC, in any case, not being made out. He submits that only two injuries and that too, with *soti* were allegedly inflicted. The injuries were found to be simple after CT Scan. Therefore, the requisite intention to commit murder to bring home the charge, is evidently missing.



Thus, summing up his arguments, counsel for the appellant, has made a prayer for acceptance of the appeal.

On the other hand, learned State counsel refutes the claim of the appellant. In fact, learned State counsel submits that it is case of direct evidence and that too, at the instance of brothers of Gurjant Singh, who were proceeding to meet Gurjant Singh for some domestic work, at the relevant time. When Gurjant Singh was present in the street, at the spot of occurrence, while having altercation with Harbans Kaur, accused Major Singh had come, well prepared and inflicted two fatal blows to Gurjant Singh. In fact, she submits that both the eye witnesses have categorically deposed about the manner of taking place of the occurrence. They faced cross-examination, but nothing material elicited out to dislodge their versions. Their testimonies are most natural and trustworthy. Even, Gurjant Singh, after inflicting of the blows, was rendered unconscious. Considering this state of affairs, coupled with medical evidence brought on record, the same unerringly point the needle of guilt towards appellant Major Singh.

Learned State counsel further submits that there is no delay in initiation of the action. In fact, she submits that the complainant and his brothers, belong to lower strata of society, being labourers. They were dumbstruck by the injuries inflicted upon Gurjant Singh and got busy in taking care of Gurjant Singh. Furthermore, they faced constraints, on account of non-arrangement of a vehicle. At the earliest opportune time, after a conveyance was arranged, in the wee hours, they took Gurjant Singh to Civil Hospital.

Learned State counsel further submits that the defence plea about the injuries having inflicted on the person of Gurjant Singh, by fall on the



ground, due to inebriation, does not established. Even, additional credence is lent to the prosecution version by the factum of recovery of weapon of offence, in pursuance of the disclosure statement made by appellant-Major Singh.

Thus, learned State counsel makes prayer for dismissal of the appeal.

In a criminal case, the prosecution is duty bound to prove the case beyond reasonable doubt. The suspicion, however grave, cannot take place of proof and that the prosecution, in order to succeed on a criminal charge, cannot afford to lodge its case in the realm of “**may be true**”, but has to essentially elevate it to the grade of “**must be true**”. Whenever any reasonable doubt is spelt out, the benefit of doubt, ought to be extended to the accused. However, such a doubt, essentially has to be reasonable and not imaginary, fanciful, intangible or non existent, but as entertainable by an impartial, prudent and analytical mind, judged on the touch-stone of reason and common sense.

The case before us is of direct evidence, wherein, complainant Harbans Singh and his brother Major Singh, are stated to have witnessed the entire incident, wherein their other brother Gurjant Singh was inflicted injuries by appellant-Major Singh, with the help of *soti*. He came to the spot, while armed with *soti* and instantaneously attacked Gurjant Singh and gave two blows with the *soti*. It be noted that there was no altercation between the appellant and others, at the spot. Consequently, there was no provocation of any kind, soon before inflicting of the injuries.

ASI Kulwinder Singh, Investigating Officer, in pursuance of Gurjant Singh being opined by the concerned doctor to be not fit for making statement, had got recorded the statement of Harbans Singh, on the basis



whereof, FIR was got registered. Therein, the complainant has specifically stated about the incriminating role of appellant-Major Singh and manner of inflicting of number of blows on both sides of face and head of Gurjant Singh.

The ocular evidence, primarily is of Harbans Singh, who stepped into witness box as PW-4. He has categorically deposed that he along with his other brother Major Singh proceeded to the house of Gurjant Singh, in connection with domestic work on 11.10.2003 at about 9.00-9.30 p.m. When they reached near the house of Gurjant Singh, they had seen Gurjant Singh and his wife standing in the street, outside their house. Appellant-Major Singh, while armed with *soti*, came from the side of his house and gave a blow of *soti*, on the right side of head, near the ear of Gurjant Singh. Another blow was given with the *soti*, which struck on the left side of head of Gurjant Singh, near the ear. He also categorically stated that there was electric bulb lit, near the courtyard of house of Mukand Singh, existing in the vicinity. On sustaining injuries, Gurjant Singh fell on the ground. They raised alarm, upon which, Major Singh had fled away from the spot.

Even, Major Singh, another eye witness to the occurrence and who is brother of complainant as well as deceased Gurjant Singh, while in the witness box as PW-5, has also deposed on similar lines, vis-a-vis, manner of causing of the occurrence by appellant-Major Singh and the inflicting blows with the *soti*, on the vital part of body i.e. head.

In fact, from the testimonies of both the said witnesses, it is evident that the eye witnesses had remained unshaken, in both, their examination-in-chief and cross-examination, on the aspect of role assigned



to appellant-Major Singh, who inflicted injuries upon Gurjant Singh, which ultimately proved to be fatal.

It is well-established rule in criminal jurisprudence that direct ocular evidence, if found to be natural, cogent and trustworthy, constitutes the best form of evidence and ordinarily prevails over all forms of evidence. Herein, considering the testimonies of the complainant and another eye witness, there is nothing palpable or glaring in the evidence of two eye witnesses, on the basis whereof, this Court could formulate its opinion of they being not true or reliable witness. Though, few contradictions or discrepancies in the form of distance of the houses of the eye witnesses from the spot or from the house of Gurjant Singh and such like, have been pointed out, but however, such like contradictions are not sufficient to discard the entire testimonies of the eye witnesses.

A faint attempt was also made, while appraising the testimony of the complainant and another eye witness Major Singh, about they being related to the victim and therefore, fall in the bracket of being related/interested witnesses and therefore, their testimonies are to be discarded. However, a witness can be regarded, as an interested witness, only when it can be shown that such witness has direct motive, personal animosity or any other reason to falsely implicate the accused. In the given case, no such reason is coming forth to establish any animosity of the witnesses with the appellant or any other reason to falsely implicate him.

Even though, to build the defence about the bitterness being there, on account of partisan role of the appellant in the panchayat elections, at the instance of Hamir Singh, Ex-sarpanch and that Hamir Singh was inimical about appellant-Major Singh, for having casted vote against him, but



however, such plea, does not stand established. Even though, DW2 Gurbhagat Singh has been examined, who stated about Major Singh and his father Babu Singh etc., having casted their vote, in favour of Jaspal Kaur, who was candidate against the wife of Hamir Singh and that Hamir Singh started nursing grudge against Major Singh and Babu Singh. However, but for the statement of Gurbhagat Singh, to this effect, nothing as such, came forth with regard to conducting of the elections or outcome of the same or any other form of material to establish about such animosity or bitterness on this account. However, DW-2 Gurbhagat Singh took this plea for the first time, while deposing as defence witness. Never earlier, he had moved any application to the police about falsity of the prosecution version or asserted about the same before any other forum. Not only this, it is also pertinent to mention that this version of dispute or bitterness was never put to the eye witnesses in their cross-examination. Considering the same, it be noted that a close relative, who is very natural witness to the occurrence, as such, cannot be regarded as interested witness. In the case in hand, the complainant and eye witness Major Singh, were proceeding to the house of Gurjant Singh for some domestic work. Enroute, they met Gurjant Singh and witnessed the occurrence. As such, they cannot be termed as **‘interested’** as it is quite obvious that the brothers of Gurjant Singh, would be the last persons to screen the real culprit, more particularly when no vested interest, on their part, is spelt out to falsely implicate the appellant.

Thus, the contention of counsel for the appellant is devoid of any merit, since, mere relationship with the deceased does not render a witness interested or unreliable.

Even though, much emphasis has been laid upon the aspect of



motive, not being proved, at the instance of the prosecution and that even appellant Major Singh had no motive to cause injuries, but, when there is direct evidence coming forth, then the motive, as such, pales into insignificance. In fact, motive always remains embedded in the mind of the culprit, which no one else can matter. That being so and considering the testimonies of the DWs, no such bitterness carried by the eye witnesses, on account of panchayat elections, is evident. Rather, the complainant and his brother, who accompanied him at the relevant time, have categorically spelt out the background of appellant, having animosity with Gurjant Singh, on account of being refrained by Gurjant Singh to remain away from Baj Singh, as he used to wander off Baj Singh. The motive is a double edged weapon, as set up by the appellant entangled him only on this aspect. Otherwise the motive as such does not carry much weight when the case rests upon the direct evidence, as in the case in hand.

Additional credence to the version of eye witnesses is also lent by the medical evidence. PW-1 Dr, Sushil Gupta, had conducted medico-legal examination of victim Gurjant Singh on 12.10.2003. He had found the following injuries on his person:-

- “1. Reddish colour contusion with swelling all over the right temporal region, including right ear and all over the face at their right side. X-ray was advised.*
- 2. Reddish colour contusion with swelling at the left side of face below the left side. X-ray was advised.”*

He also deposed that patient was in an unconscious condition and that the injuries were kept under observation. The kind of weapon used was blunt for both the injuries and he proved the MLR. Further, in cross-examination he had specifically stated injury No.1 is not possible by fall on



hard surface and he also deposed that Gurjant Singh was brought in the hospital in an unconscious condition. Even, PW-2 Dr.Charanjit Garg, had deposed about having conducted autopsy on the dead body of Gurjant Singh on 14.10.2003 and has further found following upon the same:-

“1. It was the dead body of male, moderately built and nourished. Eyes and mouth were closed. It was wearing Chola and Kachha. Post mortem staining was present on dependent parts. Rigour mortis was fully developed. There was a bluish bruise with swelling over the right temporo parietal region of skull, including ear and face. On dissection, sub cutaneous haematoma was present.

2. There was bluish bruises with swelling on left temporo parietal region and over the left face below the eye. On dissection, sub cutaneous haematoma was present and sub dural haematoma measuring 10 x 10 cm was present.”

He also deposed that in his opinion the cause of death in this case was shock and haemorrhage, which was due to injuries suffered by the deceased, which were ante-mortem in nature and sufficient to cause death, in normal course of nature. He also deposed that injuries could be result of *soti* blows. In cross-examination, he categorically stated that both the injuries, which were appearing on the body, were not possible by striking the head with the wall, which in itself counters the claim, as set up in defence, by way of examination of DW-1.

Not only this, even PW-3 Dr.Kamal Sharma, had conducted CT-Scan of head of Gurjant Singh and he deposed that the scan revealed acute subdural haematoma, on the left temporo parietal region, measuring 8.2 mm in maximum width and proved the report as well as the CT-Scan film.

Counsel for the appellant submits that no dimensions, as such, of the



injuries were given in the MLR. May it be so, that dimensions were not mentioned, but however, in the CT-Scan report, the dimensions have been given. It states about acute subdural haematoma, on the left temporal parietal region, measuring 8.2 mm, in maximum. Furthermore also, PW-2 Dr.Charanjit Garg had stated that on dissection, sub-cutaneous haematoma was present and subdural haematoma 10x10 cm was present. Thus, it cannot be concluded that no dimensions of the injuries, as such, were given.

Thus, considering the testimonies of medical specialists and more particularly, considering their cross-examinations, it is evident that the injuries were opined specifically to be not caused by strike with the wall.

However, DW-1 Jang Singh had been examined, who stated about deceased to be under influence of liquor and fell on the ground and number of times on the brick bats, lying near the house of Mukand Singh, but however, the same, as such does not stand established. It was for the first time, while appearing as witness on 11.04.2005, DW-1 Jang Singh had so stated.

In the light of the same, the testimony of Jang Singh is not free from doubt and seemingly is a false version set up to render assistance to Major Singh appellant.

Furthermore, counsel for the appellant submits that appropriate medical aid was not extended, despite reference having made to PGI Chandigarh/DMC Ludhiana. In this regard, counsel has pointed to the recitals of reference in the admission record of Gurjant Singh, which is Ex.PC. The doctor concerned, as evident from the admission record had referred Gurjant Singh PGI, Chandigarh/DMC Ludhiana, but however, even if not so taken, the benefit of the omission, as such, cannot be taken by the



appellant. One has to consider that the victim and his brothers belong to lower strata of society, as they were indulging in labour work only. There may be several constraints faced by them to further take the victim to the referred places, as at earlier instance, to reach the hospital nearby, also they could not arrange the vehicle and on this account, they had reached hospital along with Gurjant Singh in the wee hours of succeeding day. Thus, this factor, singularly is not to be considered.

Also, much emphasis is laid on delay in initiation of action. As already observed aforesaid, the occurrence had taken place at about 9.30 p.m. on 11.10.2003. Soon after the occurrence, it is quite obvious that witnesses were more interested in taking care of the injured, who was in unconscious condition. Furthermore, eye witnesses have deposed that they were making efforts to arrange the vehicle, but could not arrange. No doubt, as submitted by counsel for the appellant, village Jai Singh Wala is a big village and also the vehicles, may be available with many residents, more particularly, Mukand Singh, living nearby the spot of occurrence, but however, one has to consider the circumstances faced by the eye witnesses, as they were labourers. Without anything spelt out, one cannot conclude about people, living in the vicinity, to readily offer their vehicles. No sooner, the vehicle was arranged in wee hours of 12.10.2003, injured Gurjant Singh was taken to the hospital. As evident from the MLR Ex.PC, at 6.40 a.m., even on 12.10.2003, the patient was examined by the doctor. Thereupon, in pursuance of the information sent by the doctor to the SHO, Police Post, Civil Lines, Bathinda, the same was received by one Head Constable at 7.30 a.m. Furthermore, PW-8 ASI Kulwinder Singh, Investigating Officer also stated that on 12.10.2003, he had received a QST



message from the Police Post, Civil Lines, Bathinda, with regard to the admission of Gurjant Singh in Civil Hospital, Bathinda. He also deposed that he had gone to Police Post, Civil Lines, Bathinda and obtained the copy of MLR. Then, he visited Civil Hospital. Thereupon, in pursuance of the application filed by him, the injured was declared to be unfit to make the statement and then, he recorded the statement of Harbans Singh and made DDR entry bearing No.11. On the succeeding day i.e. 13.10.2003, again SI Malkit Singh, who also conducted part investigation of the case, had moved an application for obtaining opinion qua fitness of the victim to make statement, but however, the concerned doctor again opined that the patient was unfit to make the statement. On 14.10.2003, QST was received with regard to death of Gurjant Singh, only whereupon, DDR No.40 dated 14.10.2003 was entered and FIR was got registered and special reports were dispatched to the officers concerned.

Thus, the above seriatim of facts do reveal that there is no unexplained delay, on the part of the complainant. In fact, the delay stands duly explained, in view of the manner of the proceedings conducted, as aforesaid.

Though, plea of sustaining of injuries by deceased Gurjant Singh, while having fallen twice in the street, being in a state of inebriation, has been taken, which the appellant came to know from Mukand Singh and Jang Singh, but however, as observed earlier, it was only when Jang Singh stepped into witness box as DW-1, such plea came forth. Never he had appeared before the police to apprise about falsity of the case, on this account or about the kind of injuries sustained in this manner. It was for the first time, coming at the time of recording of his evidence on 11.04.2005. This long silence during the interregnum period, as such, also belies the



defence plea so taken.

The prosecution version further gains strength from the fact of recovery of the *soti* (dang) i.e. the weapon of offence, at the instance of appellant, in pursuance of the disclosure statement made by him and that too recovered, from the fodder room. Though, it is submitted that chowkidar of the village was not made witness to the disclosure statement, but however, it matters not much, as complainant Harbans Singh had already joined the proceedings, when he, per chance, met the police party on 17.10.2003. As such, the plea on this count, so raised is rejected.

Also, counsel for the appellant had laid much emphasis upon the case under Section 302 IPC not made out and that at the maximum, it can be taken to be covered under Section 304-II IPC. It is submitted that appellant Major Singh had no intention to cause death of Gurjant Singh, as he was never armed with deadly weapon. He was only having a *soti* (dang) of 4 feet and gave two blows only. Even, the victim had not suffered any fracture.

The distinction between culpable homicide, amounting to murder and not amounting to murder, is well known. Culpable homicide is genus, murder is its specie. The culpable homicide, excluding the special characteristics of murder, would amount to culpable homicide, not amounting to murder. The Penal Code recognizes three degrees of culpable homicide. When a culpable homicide is of the first degree, it comes within the purview of the definition of Section 300 and it will amount to murder. The second degree, which becomes punishable in the first part of Section 304, is culpable homicide of second degree. Then there is culpable homicide of third degree, which is the least side of culpable homicide and the punishment provided for, is also the lowest among the punishments for the



three grades. It is punishable under the second part of Section 304.

To render culpable homicide as murder, the case must come within the provisions of clause (1) or (2) or (3) or (4) of Section 300 IPC. Section 299 IPC defines the offence of culpable homicide; Section 300 IPC defines the circumstances, in which the offence of culpable homicide will, in absence of exceptions laid down therein, amount to murder. While considering the requisite intention, as in case of murder, the enquiry necessary proceeds on broad lines, as evident from the facts and circumstances of each case. One distinctive circumstance, may lead to the different conclusion of being murder or not. However, the kind of enquiry is broad based and simple and based on common sense: the kind of enquiry that "an ordinary man" could readily appreciate and understand.

Adverting to the case in hand, it is pertinent to mention that both the eye witnesses deposed that appellant-Major Singh, while armed with *soti* (dang) had instantaneously given *soti* blows, firstly, on the right side of head, which struck near the ear and then on the left side of the head to the similar extent and then fled away with the weapon of offence. Though, occurrence, as such, has been described, but in the minimum, it can be taken that there was no sudden fight or heat of passion or any provocation by any person present nearby. Rather, the intention is writ large, as the appellant had come prepared. This intention stands crystallised as he struck the blows on vital/dangerous part of body of Gurjant Singh and the same was given with full strength/sufficient force, by a person falling in the age group of 24-25 years, which rendered the victim unconscious and he never gained consciousness, thereafter.

This conduct itself speaks volumes about malafide intention, on the



part of appellant Major Singh. No doubt, as submitted, the weapon of offence was not dangerous, taken by itself, but however, this *soti* (dang) also was proved to be no less, in the manner, it was used. As observed above, the intentional manner of hitting with the same, with full strength, on vital part of the body, which rendered Gurjant Singh unconscious, it was used as dangerous weapon. Merely because, no fracture was caused/found, cannot take out the case, out of the purview of Section 302 IPC, when Gurjant Singh had died, due to the injuries, as PW-2 Dr.Charanjit Singh had stated that in his opinion, the cause of death in this case was shock and haemorrhage, which was due to injuries suffered by the deceased, which were ante-mortem in nature and sufficient to cause death, in normal course of nature.

In this regard, beneficial reference is made to decision rendered by the Hon'ble Supreme Court in *State of U.P. vs. Jai Dutt and another, 2022(1) RCR (Criminal) 759*, wherein, it was observed that merely because no fracture was noticed, and/or found, cannot take case out of Section 302 IPC, when the injured died due to head injury.

Thus, considering the manner, in which two blows were given and the impact of the same, the intention to cause death is evident and on this premise, the murder, as such, has been caused by the appellant.

In the light of the aforesaid observations, learned trial Court has rightly held appellant-Major Singh, to be guilty and convicted him under Section 302 IPC. Thus, the appeals sans merit and is hereby dismissed.

Accused-appellant, namely, Major Singh is on bail. A copy of the judgment be sent to concerned Chief Judicial Magistrate, to initiate process of re-arrest of the appellant, so as to serve the remaining part of the



sentence.

The pending misc. applications, if any, shall stand disposed of.

(ARCHANA PURI)
JUDGE

(MANDEEP PANNU)
JUDGE

September 08, 2026
Vgulati

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No