

that the mandate of these judgments have to be applied in similar set of facts and circumstances of a case if a statute cannot stand on the anvil of such established principles of law applicable for testing the constitutional validity of its provisions, it need not be said that such a statute would not endure. However, if an Act passed by a State legislature does not suffer from any incompetence and/or arbitrariness, and the actions taken thereunder do not cast any stigma on the affected person, this Court would be loath in exercising its powers under the writ jurisdiction.

(18) In the premises discussed hereinabove, we do not find any ground to hold the provisions of the Punjab Act No. 5 of 2007 as unconstitutional, offending and ultra vires and thus it is held to be intra vires. Resultantly, the Civil Writ Petition No. 10900 of 2007 being devoid of merits, is hereby, dismissed.

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**R.N.R.**

*Before Mehtab S. Gill & A.N. Jindal, JJ.*

SURJIT SINGH,—Appellant

*versus*

STATE OF PUNJAB,—Respondent

**Criminal Appeal No. 124/DB of 1998**

7th September, 2007

***Indian Penal Code, 1860—S.302—Deceased executing sale deed in favour of step sons—Murder—Appellant convicted & sentenced—No delay in lodging of FIR & reaching special report to JMIC—Civil dispute compromised between parties—Complainant appearing in Court in appeal—Lenient view taken—Conviction of appellant modified from S. 302 to S. 304 Part I IPC & sentence reduced to 6 years.***

*Held*, that the complainant party appeared before us in Court and stated that they had compromised the matter with appellant Surjit Singh and prayed that the Court may take a lenient view in the interest of both the parties. Appellant Surjit Singh was annoyed with the victim as his father was giving more land to the complainant party. He went to the

house of the deceased to complain, but some sort of altercation took place. At the heat of the moment appellant Surjit Singh hit the deceased with a *Kirpan* which fatally injured deceased Lal Singh. At the most, appellant could be held liable under Section 304 Part I IPC.

(Paras 17 & 18)

Baljit Mann, Advocate with Mr. Sandeep Mann, Advocate  
*for the appellant*

S.S. Bhinder, Additional A.G., Punjab.

**MEHTAB S. GILL, J.**

(1) This is an appeal against the judgement/order, dated 7th March, 1998 of the Sessions Judge, Hoshiarpur whereby he convicted Surjit Singh son of Lal Singh under Section 302 I.P.C. and sentenced him to undergo life imprisonment and to pay a fine of Rs. 1000/- in default, of payment of fine, to further undergo RI for two months.

(2) The prosecution case is unfolded by the statement Ex.PJ of Harbhajan Kaur given to SI Gurnam Singh at the turning of Village Toye in the area of Village Ghogra.

(3) Harbhajan Kaur stated that her father-in-law Lal Singh had performed two marriages. First he was married to Kartar Kaur who died about 5 years before the occurrence and later on he got married to Gian Kaur. Her husband Bhagwan Singh was the only issue out of the first marriage. In the second marriage of Lal Singh with Gian Kaur three sons namely Ram Singh, Blajit Singh, Surjit Singh and one daughter Surjit Kaur were born. The family of Gian Kaur lived separately in the same village about 200/300 yds. away from the house of Harbhajan Kaur. Her father-in-law Lal Singh was handicapped and was being looked after by Harbhajan Kaur for the last 12 years. Lal Singh executed a registered sale deed of 12 acres of his land, in the name of her children in the year 1995. 13 acres of land was in the possession of the sons of Gian Kaur. About 10/15 days before the occurrence, Ram Singh son of Gian Kaur took 9 acres of Panchayat land on lease. They wanted to irrigate this land from a joint tubewell by digging a *Khal* (water-course), through the land of the complainant party. Complainant party did not agree. Both the parties approached the

Panchayat, but the matter could not be settled. Proceedings under Sections 107/151 Cr.P.C. were initiated against both the parties on 25th June, 1996. On 25th June, 1996 complainant along with her children and husband were sleeping in their house in the courtyard and at about 1.30 a.m. when Lal Singh got up to wash his hands for offering prayers, Surjit Singh accused came there armed with a *Kirpan*. He gave two successive blows with his *Kirpan* on Lal Singh hitting him on the nose, cheek, left eye and on the back. Lal Singh fell down. Gurvinder Singh on hearing the noise, woke up. An alarm was raised. Manjit Singh, the neighbour came, but before that Surjit Singh accused had run away. Motive for the commission of the offence is that Ram Singh and others challenged the sale deed of Lal Singh about a year back by filing a civil suit. Surjit Singh accused did not digest the 6 acres given to Gurvinder Singh etc. On the basis of this statement F.I.R. Ex.PJ/2 was recorded. Special report was received by the J.M.I.C., Dasuya on 26th June, 1996 at 7.40 a.m.

(4) The prosecution to prove its case brought into the witness-box Dr. Jarnail Singh PW-1, Kuldip Kumar Sharma Draftsman PW-2, Hem Raj Registration Clerk PW-3, Harbans Lal Ahlamad PW-4, Jagdish Ram PW-5, Gurnam Singh Inspector PW-6, MHC Balbir Singh PW-7, Constable Naresh Kumar PW-8, Constable Sujjan Singh PW-9, Harbhajan Kaur PW-10, Gurvinder Singh PW-11, Dilbagh Singh PW-12, ASI Sucha Singh PW-13, Inspector Amrik Singh PW-14, MHC Tarsem Singh PW-15 and Nathu Sabharwal PW-16.

(5) Learned counsel for the appellant has argued that there is a delay in lodging of the F.I.R. and also the special report reaching J.M.I.C., Dasuya. In fact, F.I.R. has been recorded at 7 a.m. on 26th June, 1996. Motive for the commission of offence was not on the appellants, but on the part of the complainant party. A suit Ex. DC was filed on 28th February, 1995 by Bhagwan Singh, husband of the complainant along with his step-brothers i.e. Surjit Singh appellant, Ram Singh and Baljit Singh. This was a collusive suit for the division of the entire property of Lal Singh. The suit was decreed on 20th July, 1995,—*vide* documents Exs. DD and DE.

(6) A sale deed was executed by Lal Singh of 6 acres of land in favour of Gurvinder Singh PW-11 and his brothers Pragat Singh and Joginder Singh on 21st March, 1995. Surjit Singh appellant and his

co-sharers Ram Singh and Baljit Singh challenged the sale deed on 6th February, 1996. There was apprehension in the mind of the complainant party that Lal Singh may give a statement in favour of Surjit Singh accuse and his brother Ram Singh and Baljit Singh whereby the sale deed Ex. PE could have been set aside, as it was without consideration. It is in fact, for this reason that the complainant party had committed the murder of Lal Singh, so that he could not give a statement in Court in favour of appellants Surjit Singh, Ram Singh and Baljit Singh. Lal Singh was residing with the complainant and they got an opportunity to eliminate him, and falsely implicated the appellants.

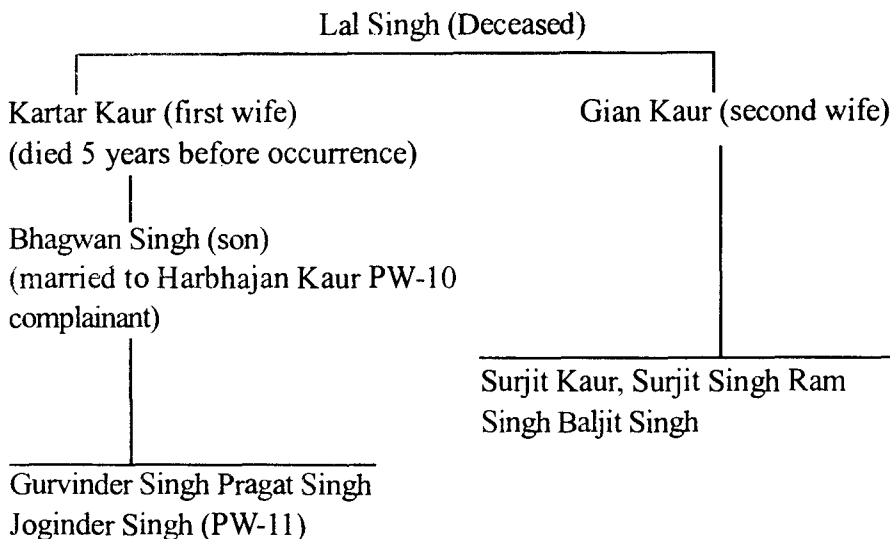
(7) A dispute arose between the complainant party and the accused and his brothers regarding the passage of a *Khal* (water-course) through the fields of the complainant party, so that accused party could irrigate some land which it had taken on lease from the panchayat. Proceedings under sections 107/151 Cr.P.C. Ex. PG were instituted between both the parties.

(8) Learned counsel for the State has argued that there is a strong motive for the commission of the offence not for the complainant party, but for the appellant to eliminate Lal Singh Proceeding under Sections 107/151 Cr.P.C. (Ex. PG) were initiated on 25th June, 1996, but appellant could not be arrested and in the night he went to the house of the complainant and eliminated his grand-father Lal Singh. He was aggrieved that 6 acres of land had been given to his step-brothers i.e. Gurvinder Singh PW-11, Pragat Singh and Joginder Singh by deceased Lal Singh.

(9) Lodging of F.I.R. in this case was very prompt. Dr. Jarnail Singh PW-1 in his post-mortem report has stated that food had been taken by the deceased 3/4 hours prior to his death. It clearly shows that occurrence had taken place at 1.30 a.m., as in the villages in the month of June, food is taken in between 8 to 10 p.m. Both the eye-witnesses Harbhajan Kaur PW-10 and Gurvinder Singh PW-11 are natural witnesses. Occurrence had taken place in their house. There was no need for them to commit the murder of Lal Singh, as Lal Singh had already given them 6 acres of land which was his share.

(10) We have heard the learned counsel for the parties and perused the record with their assistance.

(11) Both complainant party and the appellant are collaterals. Lal Singh had performed two marriages. His first wife being Kartar Kaur, who died about 5 years before the occurrence. Kartar Kaur gave birth to Bhagwan Singh husband of complainant Harbhajan Kaur PW-10. Out of the wedlock of Harbhajan Kaur and Bhagwan Singh three sons were born namely Gurvinder Singh PW-11, Pragat Singh and Joginder Singh. Deceased Lal Singh after the death of Kartar Kaur, married Gian Kaur. Out of this wedlock three sons and one daughter was born namely Surjit Singh appellant, Ram Singh, Baljit Singh and Surjit Kaur. The pedigree table of the parties is as under :—



(12) Learned counsel for the appellant has laid a lot of stress in her arguments that motive for the commission of offence was not on the appellant, but on the part of the complainant party. On 28th February, 1995, a collusive suit Ex. D.C. was filed by Joginder Singh, Surjit Singh, Ram Singh and Baljit Singh against Lal Singh deceased. This suit was decreed on 20th July, 1995 which is Exs. DD and DE. On 21st March, 1995, Lal Singh executed a sale deed *qua* his share of 6 acres i.e. 48 Kanals in favour of sons of Harbhajan Kaur PW-10 i.e. Gurvinder Singh PW-11, Pragat Singh and Joginder Singh. Sale deed Ex. PE was challenged by appellant Surjit Singh, Ram Singh and Baljit Singh on 6th February, 1996. As per the arguments of the learned counsel for the appellant, there was apprehension in the minds of the complainant party that Lal Singh deceased would give a statement in favour of appellant Surjit Singh, Ram Singh and

Baljit Singh that sale deed Ex. PE, was fraudulently got executed by Gurvinder Singh PW-11 and others and it was without consideration.

(13) This aspect of the motive *qua* complainant is difficult for us to believe, for the reason that it has not come out anywhere that Lal Singh had given his mind or he had encouraged appellant Surjit Singh, Ram Singh and Baljit Singh to challenge the sale deed Ex. PE. Nothing has come on record anywhere even as a suggestion that Lal Singh deceased was not happy with the sale deed Ex. PE which was in favour of Gurvinder Singh PW-11 etc. Since nothing has come on record regarding his discontentment *qua* the sale deed Ex. PE, it is difficult for us to come to a conclusion that it is the complainant party who was aggrieved with deceased Lal Singh.

(14) F.I.R. Ex. PJ/2 in this case was registered on 26th June, 1996 at 5 a.m. at Police Station Dasuya. Occurrence had taken place on 26th June, 1996 at 1.30 a. m. and the special report reached the J.M.I.C. Dasuya on the same day at 7.40 a. m. There is no delay in lodging of the F.I.R. and the special report reaching the J.M.I.C. The only person named is Surjit Singh appellant. Ram Singh and Baljit Singh thought it proper to fight the matter in Court. Surjit Singh appellant was angry for giving 6 acres of land to the complainant party, he did not digest this. Ram Singh and Baljit Singh, real brothers of Surjit Singh also could have been falsely roped in as they also lost an equal share of property, as Surjit Singh appellant had lost, but they have not been named in the F.I.R.

(15) Dr. Jarnail Singh PW-I in his post-mortem report has stated that stomach of the deceased contained semi-digested food. He has further stated that the last meal was taken by the deceased 3/4 hours before his death. The medical evidence corroborates the ocular account.

(16) Complainant Harbhajan Kaur PW-10 has registered the F.I.R. Ex. PJ/2 truthfully. Both Harbhajan Kaur PW-10 and Gurvinder Singh PW-11 are natural witnesses. Occurrence had taken place in the night in their house. It has come on record that deceased Lal Singh was an old man of 85 years and was bed-ridden. There was no need for deceased Lal Singh to give statement in favour of appellant Surjit Singh, as he was being looked after and was being taken care of by the complainant party for the last 10/12 years. The medical evidence corroborates the ocular account.

(17) During the course of arguments, the complainant party i.e. Harbhajan Kaur PW-10, her husband Bhagwan Singh, Gurvinder Singh PW-11, Pragat Singh and Joginder Singh appeared before us in Court and stated that they had compromised the matter with appellant Surjit Singh and prayed that the Court may take a lenient view in the interest of both the parties.

(18) After going through the evidence and from the arguments of learned counsel for the parties, it comes out that appellant Surjit Singh was annoyed with the victim as his father was giving more land to the complainant party. He went to the house of the deceased to complain, but some sort of altercation took place. At the heat of the moment appellant Surjit Singh hit the deceased with a *Kirpan* Ex. PN/2 which fatally injured deceased Lal Singh. At the most, appellant could be held liable under Section 304 Part-I I.P.C.

(19) Conviction of the appellant is modified from Section 302 to Section 304 Part-I I.P.C. and he is sentenced to undergo RI for 6 years.

(20) With the above modification in conviction and sentence, appeal is dismissed.

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**R.N.R.**

*Before Mehtab S. Gill & A.N. Jindal, JJ.*

HARINDERPAL SINGH,—*Petitioner*

*versus*

STATE OF PUNJAB,—*Respondent*

**Criminal Misc No. 48695/M of 2004**

24th August, 2007

***Code of Criminal Procedure, 1973—S. 482—Negotiable of Instruments Act, 1881—S. 138—Dishonour of cheques—Proceedings u/s 138 of N.I. Act pending—Whether FIR u/s 420 & 406 IPC registered against petitioner is liable to be quashed—Held, yes, would be abuse of process of law—Petition allowed.***