

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-792-DB-2016

Reserved on: 23.02.2023

Date of Decision: 3.3.2023

Sukhwinder Singh

.....Appellant

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. A.S.Virk, Advocate for
Mr. Nagar Singh, Advocate
for the appellant.

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 25.5.2016, upon Sessions Case No. 73/31.8.2015, by the learned Additional Sessions Judge, Rupnagar. Through the above said verdict, the learned trial Judge concerned, convicted the accused, for the commission of an offence punishable, under Section 302 of the IPC. Moreover, through a separate sentencing order, drawn on 25.5.2016, the learned trial Judge concerned, sentenced the convict to undergo imprisonment for life, for an offence punishable under Section 302 of the IPC, besides also imposed, upon the convict sentence of fine, comprised in a sum of Rs. 5,000/-, and, in default of payment of fine amount, he sentenced the convict to undergo rigorous imprisonment for three months.

2. The accused-convict becomes aggrieved from the above drawn verdict of conviction, besides also, becomes aggrieved from the consequent

therewith sentence of imprisonment, and, of fine as became imposed, upon him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the instant criminal appeal, before this Court.

Factual Background

3. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PW14/B is assigned. The narrations carried in Ex. PW14/B, are that on 7.5.2015, one message/information was received from Civil Hospital, Kurali regarding grievous injuries on the person of Rajvir Singh aged about 12/13 years who was referred to PGI, Chandigarh being in serious condition. After receiving the said information, Inspector Gurdeep Singh, SHO, Police Station Kurali along with his associates had gone to PGI, Chandigarh, where Jagtar Singh son of Prem Singh was found present and got his statement recorded before Inspector Gurdeep Singh. The present case has been registered on the basis of statement given by complainant-Jagtar Singh, who stated before the police, that he is the resident of village Akalgarh, Police Station Kurali and educated up to 10th standard. The complainant further stated, that he is aged about 36 years, and, he had been working as Paathi/reciter in Gurudwara Sahib privately. The complainant further stated, that they are three brothers, and, he is the youngest one. The complainant further stated, that his elder brother Sukhwinder Singh alias Kala is father of two sons and his wife has already left the matrimonial house. The complainant further stated, that his brother Sukhwinder Singh @ Kala used to give beatings to his wife Baljinder Kaur, who had already been turned out of her matrimonial house seven months prior to the occurrence. The complainant further stated, that Sukhwinder Singh was residing along with his two sons separately from his family, and,

at about 8/8.15 AM, on 7.5.2015, when he was taking break fast at his own house, then, his nephew Harshdeep singh i.e son of Sukhwinder Singh came there in a perplexed condition, and, had given call to him by saying that his father was beating Rajvir Singh i.e. younger brother with the hammer. The complainant further stated that Harshdeep Singh was in hurry, and, asked the complainant that his father would kill Rajvir Singh by giving beatings with hammer to him. The complainant further stated, that he immediately left the breakfast, and, reached in the verandha of the house of Sukhwinder Singh, where, his brother Sukhwinder Singh was giving beatings to his younger son Rajvir Singh with the hammer and he had already given 2/3 hammer blows on the head of Rajvir Singh. The complainant further stated that he tried to save Rajvir Singh from the hands of accused Sukhwinder Singh but Rajvir Singh had received injuries on his head and near the right eye and blood was oozing from his head. The complainant further stated, that he raised alarm for seeking help of the people and then his eldest brother Manjit Singh came along with Baljinder Singh, Thereafter, a vehicle was arranged, and, Rajvir Singh was taken to Civil Hospital for medical treatment from where, Rajvir Singh was referred to PGI, Chandigarh after giving first aid. The complainant further stated, that when they reached at PGI, Chandigarh, then, medial check of Rajvir singh was conducted and he was found dead. The complainant further stated that his brother Sukhwinder Singh had committed murder of his own son Rajvir Singh by causing injuries on his person with the hammer and by saying that Rajvir Singh should bring liquor from the liquor vend for him and he should not go to school.

Investigation proceedings

4. Statement of the complainant was recorded. Case was registered against the accused, and, the investigation was initiated. Post-mortem of Rajvir Singh was got conducted by Inspector Gurdeep Singh. Site plan regarding the place of occurrence was prepared. Blood stained earth was taken into police custody vide recovery memo. Accused was arrested on 8.5.2015. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

5. Since the offence under Section 302 of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 17.8.2015, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

6. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to her, made an objective analysis of the incriminatory material, adduced before her. Resultantly, she proceeded to draw charges against the accused, for an offence punishable under Section 302 of the IPC. The afore drawn charges were put to the accused, to which he pleaded not guilty, and, claimed trial.

7. In proof of its case, the prosecution examined 15 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but thereins, the accused pleaded innocence, and, claimed false implication.

The accused also chose to adduce defence evidence, however, he did not lead any witness into the witness box.

8. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charge (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convict.

Submissions of the learned counsel for the appellant

9. The learned counsel for the aggrieved convict-appellant has argued before this Court, that the impugned verdict of conviction, and, consequent therewith order of sentence, require an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

10. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent therewith sentence(s) (supra), as become imposed upon the convict, is well merited, and, does not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict, be dismissed.

Ocular evidence based case

11. To support the charge, drawn against the accused, the prosecution led into the witness box two ocular witnesses to the occurrence, namely one Jagtar Singh and one Harshdeep Singh.

12. Jagtar Singh stepped into the witness box as PW-2, and, in his examination-in-chief, he made echoings, which are completely consistent with the ones which he made in his previously recorded statement in

writing. Therefore, but naturally his testification partakes the trait of a truthful version qua the penal occurrence. Necessarily when he has rendered a credible eye witness account, in respect of the crime event. Even on a reading of his cross-examination, no echoings occur therein suggestive, that he has thereby grossly improved or embellished, upon his previously made statement in writing, nor any echoings occur thereins rather suggestive that thereins he has contradicted the bespeakings, as made by him in his examination-in-chief. Therefore, utmost credence is to be assigned to the testification of PW-6. Thus, through the deposition of PW-2, the prosecution has successfully established the guilt of the accused.

13. Predominantly also, when in the cross-examination of PW-2, a suggestion occurs, that he reached the place of occurrence, at the time when the deceased was lying on the ground, and, also that he had lifted the deceased, and, whereto an affirmative answer emanated from PW-2. Therefore, the making of the said affirmative suggestion to PW-2, and, the emanation of an affirmative answer thereto by PW-2, thus bolsters an inference, that obviously thereby the defence concedes to the presence of PW-2, at the crime site. Naturally then the defence is to be construed to acquiesce qua PW-2 hence being an ocular witness to the occurrence.

14. PW-6 Harshdeep Singh is another ocular witness to the occurrence. However, since he was a minor, therefore, in order to test his competence to depose as a witness, the learned trial Judge concerned queried him, and, since intelligible answers became purveyed by PW-6 to the said queries thus, the learned trial Judge declared the said witness to be competent to testify. Even a reading of his testification discloses, that he has rendered a credible eye witness account, in respect of the crime event.

The testification of the said witness is in complete corroboration to the testification, as made by PW-2. Moreover, there are no inter se contradictions inter se the testification, as made by PW-6, and, as made by PW-2. In addition, when a wholesome reading of the testification of PW-6 underscores, that he has neither grossly improved nor embellished, upon, his previously made statement in writing nor when an incisive reading of his testification unveils, that he has, in his cross-examination, contradicted the version, as became setforth by him in his examination-in-chief. Therefore, immense probative vigour is to be assigned to his testification. Resultantly, when as above stated, there is the completest inter se corroboration inter se testification of PW-6, and, PW-2, thus this Court is of the view, that the charge drawn against the accused, has been invincibly proven by the prosecution.

Signature disclosure statement of the convict, and, pursuant thereto
recovery memo

15. During the course of investigations, being made into the appeal FIR, convict Sukhwinder Singh made a signature disclosure statement, to which Ex. PW1/A is assigned. The signature disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“Iron hammer and iron saini, which was used to give injuries in head to my younger son Rajvir Singh by me and which was stained with blood, both implements and my Pajama was also stained with blood, covered in plastic bag and to hide back side at the room of old liquor shop at the time of run away so that no proof has been found by anyone. I only know about the same and got recovered by pointing out.”

16. Pursuant to the above signature disclosure statement, convict Sukhwinder Singh hence got recovered one blood stained iron saini, blood stained hammer with a wooden handle, and, blood stained pajama, which were taken into police possession through recovery memo Ex. PW1/D.

17. The disclosure statement (supra), carries the signature, in Punjabi, of convict Sukhwinder Singh. In his signed disclosure statement (supra), the convict confessed his guilt in committing the murder of his deceased son, by inflicting injuries on his person, hence with the user(s) of weapons' of offence concerned. There is a further speaking therein qua his keeping, and, concealing the incriminatory weapons of offence, and, his blood stained pajama at the backside of the room of an old liquor shop. Moreover, it also makes speakings about his alone being aware about the location of his hiding and keeping the same, and, also unravels his evincing his readiness, and, willingness to cause the recovery of the incriminatory item(s) to the investigating officer concerned, from the place of his hiding, and, keeping the same.

18. The above disclosure statement, does acquire utmost evidentiary solemnity, as thereons exist the signatures, in Punjabi, of the convict, which, however, he has neither ably denied nor has efficaciously proven the said denial. Moreover, the above confession of guilt is neither a bald or a simpliciter confession, nor is hit by the bar, encapsulated in Section 25 of the Indian Evidence Act. The reason for drawing the above inference, ensues from the factum, that in pursuance thereof, through a proven recovery memo, the convict Sukhwinder Singh, did evidently cause the recovery(ies) of the incriminatory items, to the investigating officer concerned.

19. Since the recovery(ies) of the incriminatory items, as made through recovery memo Ex. PW1/D, have not been proven to be false or contrived recovery(ies), inasmuch as, it has not been cogently established, that prior to the makings of the above recovery(ies), rather the investigating

officer concerned, had taken to plant the same at the apposite site of their recovery(ies), nor when any cogent evidence becomes adduced rather vividly exemplifying, that the place of the apposite recovery(ies) rather was an open place, hence leaving scope for any person, other than the convict to place them there. Thus, the above recovery(ies) but is/are not only to be concluded to be validly made recovery(ies), but are also to be concluded to be of the very same incriminatory weapons, which did become used by the convict, rather in his committing the murder of the deceased concerned.

FSL Report as comprised in Ex. PW14/M

20. The report of the forensic expert concerned, is embodied in Ex. PW14/M. A reading of the report of the FSL concerned, reveals, that thereto became sent, through Head Constable Gurdarshan Singh No. 394, four sealed parcels marked 'A' to 'D' but enclosing therein, the respectively blood stained Pajama, blood stained hammer, blood stained chaini, besides blood stained soil. The Serologist working at the laboratory concerned, after examining the above enclosed items in the four sealed parcels, came to a conclusion, that each carried human blood. Though, the blood stained items (supra), became not opined by the Serologist concerned, to be appertaining to the blood group of the accused, and/or to the blood group of the deceased. However, yet since on each of the items, referred in Ex. PW-14/A, blood did evidently exist, and, besides when the said items became efficaciously recovered through a recovery memo, as becomes comprised in Ex. PW1/D. Therefore, the very occurrence of blood stains on the said items, does relate them, to the accused rather using the incriminatory weapons of offence, on the body of the deceased. In consequence, the opinion, as made by the Serologist concerned, about the

occurrences of blood stains on the incriminatory weapons of offence, is also corroborative to the depositions of the ocular witnesses to the occurrence, besides is also corroborative to the recovery memos but wherethrough the incriminatory weapons of offence became recovered, at the instance of the accused, to the investigating officer concerned.

Post-mortem report

21. The post-mortem report, to which Ex. PW-7/A is assigned, became proven by PW-7. PW-7 in her examination-in-chief, has deposed that on hers making an autopsy on the body of the deceased, hers noticing thereons the hereinafter injuries.

- 1. Scalp right side of the skull is compressed. On the right parietal side a lacerated wound 7 cm x 3 cm in to depth going in to the carnial cavity with bone chips present in the centre. Underlying brain matter is compressed and laerated. Meninges lacerated with congestion. Hematomo of 50 cc present in the carnial cavity.*
- 2. An incised wound 4 cm x 2 cm x bone deep present on the center of forehead. Clotted blood present. On dissection underlying bone shows hairline fracture.*
- 3. 1 cm lateral to injury No. 2 a lacerated wound 2 cm x 1.5 cm into bone deep present on the forehead. Clotted blood present underlying bone fractured.*
- 4. A lacerated wound 1.5 cm x 1 cm x bone deep present on the bridge of the nose. Clotted blood present. On dissection underlying bone fracture.*

22. Furthermore, she has pronounced therein, that the cause of demise of the deceased was haemorrhage, and, shock due to extensive damage to brain in sequel to the ante mortem injuries, which are testified by her to be sufficient to cause death in the normal course of life. The above made echoings by PW-7, in her examination-in-chief, became never

challenged through an efficacious cross-examination, being made upon her by the learned defence counsel. Therefore, the opinion, as made by PW-7 qua the demise of the deceased acquires formidable force. Moreover, when the time, which has been deposed by her to elapse inter se the injury, and, death, is within 6 hours. Further, when it became testified, that the time inter se death, and, the post-mortem examination is within 48 hours. Therefore, the above echoings, as made by PW-7, in her examination-in-chief, do relate, the fatal ante-mortem injuries to the time of the crime event hence taking place at the crime site.

23. Though, the learned defence counsel had successfully suggested to PW-7, that neither the weapon of offence was ever shown to her, nor their relation to the causing of fatal ante mortem injuries, became opined by her. However, yet the said successfully meted suggestion to PW-7, does not yet mobilize any inference, that the incriminatory weapons of offence, as became recovered through Ex. PW-1/D, preceding wherewith an able signed disclosure statement, was made by the accused, to the Investigating Officer concerned, rather loosing their incriminatory efficacy. The reason for forming the above inference, becomes stemmed from the factum, of this Court assigning credence hence both to the signed disclosure statement, and, also to the consequent therewith recoveries, as became effected through the drawings of recovery memo, to which Ex. PW-1/D is assigned.

Final order

24. The result of the above discussion, is that, this Court does not find any merit in the appeal, and, is constrained to dismiss it. Consequently, the appeal is dismissed. The impugned verdict of conviction, as becomes

recorded upon the convict-appellant, by the learned convicting Court, is maintained, and, affirmed. Moreover, the consequent therewith order of sentence is also affirmed. If the convict is on bail, thereupon, the sentence(s) as imposed upon the convict-appellant, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

25. Records be sent down forthwith.

26. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

March 3, 2023
Gurpreet

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