

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

CRA No.D-1045-DB-2009.

Date of decision: 20.01.2015.

Gurcharan Singh

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE M.JEYAPPAUL

HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr.H.S. Thiara, Advocate for the appellant.

Mr.Arshwinder Singh, Additional A.G., Punjab.

DARSHAN SINGH J.

Present appeal has been preferred against the judgment of conviction dated 21.05.2009, vide which accused appellant was held guilty and convicted for the offence punishable under Section 302 of Indian Penal Code (in short IPC) and the order of sentence of the even dated, vide which he has been sentenced to undergo imprisonment for life and to pay a fine of Rs.3000/-, in default of payment of fine to further undergo rigorous imprisonment for a period of 1 ½ years.

2. The brief facts giving rise to this prosecution are that

deceased Balbir Singh alias Billa was married to Satinder Kaur alias Tejinder Kaur, daughter of Jagjit Singh, resident of village Kingra about about 6-7 years prior to the present occurrence in United States of America. The other relatives of Joginder Singh had been residing in Punjab. The divorce proceedings between the deceased and his wife were going on in U.S.A. Joginder Singh, the father of the deceased, had constructed a big house in Raipur Rasulpur. PW5 complainant Jagir Singh, who was married to the sister of the wife of said Joginder Singh, had been residing in his house along with his wife Jasbir Kaur, son Gurpreet Singh alias Gopi and daughter Manpreet Kaur. That on 08.06.2004, deceased Balbir alias Billa came to them and told that he had come from U.S.A. just 2-3 days back after attending the hearing of the divorce case. After 2-3 days, one young man, aged about 20/22 years, from his in-laws side, came to Raipur Rasulpur to meet him. That person took bear with the deceased and asked that he should enter into a compromise with his wife. That young man again visited him after gap of one day and again took bear with him. Thereafter, he never came to that house. On 18.6.2004, at about 10:30 p.m., the complainant along with his other family members and the deceased was lying on the roof of their house and were talking to each other. In the meanwhile Manohar, the owner of the nearby Dhaba, gave the call bell of their house. Deceased came down. The other family members also followed him. When the deceased opened the door, Manohar left that place. At that time one young boy of the age of 25/30 years, with trimmed beard, was standing

there, who was supporting a *Patka* on his head. He shook his hand with the deceased and told that he had come to deliver his goods. Deceased replied that he had no recognized him. In the meanwhile, that person handed over one chit to the deceased and told that he had fully recognized him and then he fired a shot at the head of the deceased, who died at the spot itself. After leaving Saudagar Singh by the side of the deceased and accompanied by Gurdev Singh Sarpanch, the complainant proceeded to the Police Station to report the matter. SI Harbhajan Singh, Incharge Police Post, Maqsudan, Distt. Jalandhar along with other police employees met the complainant at Bus Stand of Nurpur and recorded the statement of the complainant Ex.PF. On the basis of which, the FIR Ex.PF/2 was registered and investigation was started.

3. SI Harbhajan Singh (PW7) inspected the spot. He collected the blood stain earth from the place of occurrence, which was kept in a sealed parcel and was taken into possession vide memo Ex.PG. One blood stain paper slip Ex.PE was also recovered from the hand of the dead body of deceased Balbir Singh alias Billa. Investigating Officer pasted that slip on a paper and took into possession vide memo Ex.PH. One empty cartridge of 8 mm was recovered from the spot, which was also converted into a sealed parcel and was taken into possession vide memo Ex.PJ. One pair of leather Jutti (shoes) was recovered from that place, which were also kept in the sealed parcel. The Investigating Officer also recovered one 12 bore country-made pistol from the spot. He prepared the sketch of said pistol Ex.PL and converted into a sealed

parcel, which was taken into possession vide memo Ex.PM. The Investigating Officer carried out the inquest proceedings and prepared the inquest report Ex.PN. He sent the dead body for the postmortem examination through Head Constables Jagtar Singh and Tilakraj. After postmortem examination, Head Constable Jagtar Singh produced before him the wearing apparels of the deceased, which were converted in the parcel and taken into possession.

4. On 29.06.2004, the present appellant along with Surinder Pal, Jarnail Singh and Smt.Tarlochan Kaur alias Toshi had suffered the extra judicial confession before Gurdev Singh, Sarpanch. They were produced before the Investigating Officer by said Gurdev Singh Sarpanch. They were arrested in this case. On interrogation, the present appellant suffered the disclosure statement Ex.PQ. In pursuance thereof, he got recovered one country-made pistol wrapped in a polythene bag from the disclosed place. The same was converted into a sealed parcel. After preparing the sketch, it was taken into possession vide memo Ex.PQ/2. The case property was deposed with Moharir Head Constable and on completion of the investigation, the report under Section 173 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was presented in the Court against all the four accused.

5. The present appellant along with his co-accused was charge sheeted for the offence punishable under Section 302 read with Section 120-B IPC, to which they pleaded not guilty and claimed trial.

6. When the trial was in progress, the appellant absented from

the proceedings of the case. He could not be arrested in spite of issuance of non bailable warrants of arrest and was ultimately declared as proclaimed offender after publication of proclamation under Section 82 Cr.P.C. His co-accused were tried and acquitted by the learned trial Court vide judgment dated 16.08.2007. After his re-arrest, the appellant was produced before the Court and *de novo* trial against him was initiated.

7. To substantiate its case, prosecution examined as many as seven witnesses.

8. When examined under Section 313 Cr.P.C., the appellant denied all the circumstances put to him and pleaded innocence and false implication. However, he did not adduce any evidence in his defence.

9. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the learned trial Court held guilty and convicted appellant for the offence punishable under Section 302 IPC and was ordered to undergo the sentence as mentioned in the upper part of the judgment.

10. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

11. We have heard Mr.H.S. Thiara, Advocate, learned counsel for the appellant and Mr.Arshwinder Singh, learned Additional A.G. for the State of Punjab and have meticulously examined the record of the case.

12. Initiating the arguments, learned counsel for the appellant assailed the conviction of the appellant on the grounds that there was no

motive with the appellant to commit the crime. There is no evidence on record to connect the appellant with the divorce proceedings between the deceased and his wife.

13. He further contended that both the witnesses of the occurrence are relatives of the deceased. They were not earlier known to the appellant. The name of the appellant does not figure in the FIR. The Investigating Officer has not got conducted any test identification parade to establish the identity of the appellant. He has been identified for the first time in the Court by PW4 Jasbir Kaur and PW5 Jagir Singh, after more than 4 years of the occurrence. Such identification of an accused for the first time in the Court is very shaky and carries no evidentiary value.

14. He further contended that Manohar the owner of the Dhaba has not been examined and has been withheld by the prosecution.

15. He further pleaded that the statement of PW6 Jasbir Singh does not inspire any confidence. It is highly improbable that in presence of a police officer the accused could have talked about the plan to eliminate Balbir Singh alias Billa. The chit Ex.PE has only been fabricated to create the evidence about the identity of the appellant. Thus, he contended that prosecution has failed to established that it was the appellant who had fired the shot at deceased Balbir Singh.

16. He further contended that the fabrication of the evidence on the part of the Investigating Officer is further evident from the fact that he has shown the recovery of two pistols. One pistol is shown to have been recovered from the spot and the second pistol is shown to have

been recovered from the possession of the appellant on the basis of his disclosure statement. None of the pistols has been sent to Forensic Science Laboratory for examination. Thus, it is not proved that the empty recovered from the spot was fired from the pistol, allegedly recovered from the possession of the appellant. He further contended that the co-accused of the appellant have already been acquitted by the learned trial Court. Thus, he contended that the appellant has been falsely implicated.

17. On the other hand learned Additional A.G. for the State of Punjab contended that the case is based on direct evidence. In such cases even the failure of the prosecution to prove the motive is immaterial. The statement of PW4 complainant Jagir Singh and PW5 Jasbir Kaur is consistent and cogent on the point of occurrence. They have identified the appellant in the Court, which is the substantive evidence of the identification. They have enough time to observe the distinctive features of the accused at the time of the occurrence. It is not necessary that the test identification parade must be held in each and every case. From the testimonies of PW4 Jasbir Kaur and PW5 Jagir Singh, the identity of the appellant as assailant is clearly established. The medical evidence also shows that the deceased had died as a result of firearm injury. Even the empty was recovered from the spot. Thus, he contended that there is no infirmity in the conviction of the appellant, recorded by the learned trial Court.

18. We have duly considered the aforesaid contentions.

19. No doubt, there has to be some motive or reason for the

commission of the crime. At the same time, it is a known fact that even the trivial motive can lead to the serious offences. To establish the actual motive for the commission of an offence is always a very difficult area to be substantiated by the prosecution as one cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act. To support this view, reference can be made to case **Nathuni Yadav Vs. State of Bihar, AIR 1997 SC 1808**. It is also the settled principle of law that where the direct evidence with respect to the commission of the offence is available the proof of the motive loses the significance. In a latest judgment titled as **Mithai Lal @ Aklesh @ Topiwala Vs. State of Haryana 2014 (4) RCR (Criminal) 270**, a Division Bench of this Court has dealt with the failure of the prosecution to prove the motive and laid down as under:

“Now, coming to the motive part of submissions made by the learned counsel for the appellant. The motive is always lying locked in the heart of assailants and it is not an easy task to cull out as to what was precisely the motive for commission of an offence. It is only known to the assailant as to what actually excited him to commit the crime. The motive in a case may be very meagre and in some other cases, there may be no motive at all, but for that reason alone, the prosecution story as a whole cannot be thrown out as false, or regarded improbable or suspicious. In such a situation, it is incumbent upon the Court to scrutinize and weigh the evidence with particular care and caution.”

20. As already mentioned, the case in hand is based on the direct evidence in the shape of the statements of PW4 Jasbir Kaur and

PW5 Jagir Singh, the witnesses of the occurrence. The Hon'ble Apex Court in case **Badam Singh Vs. State of M.P. 2004 AIR SC 26**, has laid down that the existence of the motive loses significance when there is reliable ocular evidence. It is only in the cases where the ocular evidence appears to be suspect the existence or absence of the motive may have some significance with respect to the probability of the prosecution version.

21. Thus, as per the ratio of law laid down in the cases referred above, if on close scrutiny of the prosecution evidence, the court comes to the conclusion that the evidence adduced by the prosecution is trustworthy, cogent and reliable to substantiate the charges against the appellant, the proof of the motive absolutely becomes meaningless and will not be a ground to throwaway the prosecution case.

22. PW4 Smt.Jasbir Kaur and PW5 complainant Jagir Singh, no doubt are the relatives of the deceased, but mere this fact that these witnesses happen to be the relatives of the deceased, is not a reason to discard their testimonies. The Hon'ble Supreme Court in case **Guiram Mondal Vs. State of West Bengal 2013(3) RCR (Criminal) 69**, has laid down that merely because a witness is a relative of the deceased, is not a reason for discarding his evidence. Similarly in case **Mohabbat and others Vs. State of M.P. 2009(1) RCR (Criminal) 952** also, the Hon'ble Apex Court has also reiterated the same legal position and laid down that the relationship of the witnesses with the deceased cannot be a ground to discard the evidence, which is otherwise cogent and credible.

Relationship is not factor to affect the credibility of a witness. It was further laid down that it is more often than not that a relative would not conceal the actual culprit and make allegation against an innocent person. Thus, mere this fact that PW4 Jasbir Kaur and PW5 Jagir Singh were the relatives of the deceased is again no ground to discard their testimonies.

23. The non-examination of Manohar, the owner of the Dhaba is also no ground to reject the substantive evidence coming on record. The appellant has not able to show as to what prejudice has been caused to him due to non examination of said Manohar, the owner of the Dhaba. Moreover, it has come in the testimonies of PW4 Jasbir Singh and PW5 Jagir Singh that when the door of their house was opened, Manohar had left the spot and occurrence has taken place thereafter. In these circumstances, the non-examination of Manohar is of no significance.

24. The contention raised by learned counsel for the appellant that the identity of the accused is not established, also carries no substance. No doubt, the name of the present appellant is not mentioned in the FIR. It is also not disputed that the appellant was not previously known to PW5 Jagir Singh and PW4 Jasbir Kaur. No test identification parade has been held during the investigation. However, the absence of any test identification parade at the stage of investigation, is not a ground to discard the substantive evidence coming on record with respect to the identity of the accused-appellant. The failure to hold the test identification parade will not render the prosecution evidence doubtful with respect to the identification of the accused-appellant in the Court

during trial. It is settled principle of law that the identification of an accused in the Court is the substantive evidence. In the instant case Balbir Singh alias Billa has been shot dead in front of PW5 Jagir Singh and PW4 Jasbir Kaur. In such circumstances, it would be difficult, if not impossible for them to forget the distinctive features of the appellant which would be imprinted in their memory. From their testimonies, it comes out that they have come face to face with the present appellant at the time of occurrence. PW5 complainant Jagir Singh has stated that Manohar, owner of the Dbaha came to their house. He called them and told that someone had come with their goods. Balbir Singh, who was sleeping on the roof came down. He opened the door. Accused present in the Court was present outside to deliver the chit to Balbir Singh. When he was reading the contents of the chit, accused fired a shot at him. PW4 Jasbir Kaur, the another witness of the occurrence also deposed that on 18.6.2004 at about 10:30 p.m., Gurcharan Singh came to their house. Manohar Singh, the owner of the Dhaba knocked at their door and asked to open the same. Gurcharan Singh told them that he had come to deliver the goods. He handed over one slip to Balbir Singh. Balbir Singh was still reading the contents of the slip. Gurcharan Singh shot him dead and escaped from the spot. She further deposed that she had seen Gurcharan Singh, accused present in the Court and he is the same person who had come to their house and had shot dead Balbir Singh. Thus, both the witnesses have consistently deposed that they along with deceased had gone to the door of their house. Accused-appellant also had conversation

with respect to the delivery of the goods. In these circumstances, these witnesses had sufficient time to observe the distinctive features of the appellant. PW5 Jagir Singh in his statement to the police Ex.PF, has also categorically mentioned that the culprit was aged about 25/30 years and was having trimmed beard.

25. It is further settled principle of law that if the statement of a witness has gone unchallenged, in the cross examination that part of his statement is deemed to have been admitted by the opposite party. In the instant case, there is absolutely no challenge to the testimony of PW4 Jasbir Kaur in the cross examination with respect to the identification of the appellant by her in the Court. Both PW4 and PW5 had enough opportunity to hear the interaction between appellant and the deceased and to notice his distinction features which lends support to their testimonies in the Court with respect to the identification of the appellant by them. To support this view reference can be made to **Ronald James Alwaris Vs. State of Maharashtra 1998(2) RCR (Criminal) 270**. They were not going to forget the distinctive features of such a person, who had shot in front of their eyes their guest, who had come from abroad.

26. Mere this fact that the statements of PW4 Jasbir Kaur and PW5 Jagir Singh had been recorded after about 4 years, is also no ground to render their testimonies unworthy of credence with respect to the identity of the accused. In case **Pargan Singh Vs. State of Punjab and another 2014(4) RCR (Criminal) 165**, the accused was arrested after 7½ years. Injured witnesses identified the accused. Though they had seen the

face of the accused only for 90 seconds. The Hon'ble Apex Court held that the witnesses saw the accused for 90 seconds during the incident. Accused was arrested after 7½ years. Witnesses correctly identified the accused. Keeping in view the nature of the incident, 90 seconds was too long a period, which could enable the eye-witness to watch the accused person and such a horrible experience would not be easily forgotten. The testimony of such witnesses cannot be discarded on the ground that the face of the culprit could not have been remembered with lapse of the time. The ratio of law laid down in this authority is squarely applicable to the facts of the case. Thus, from the unchallenged testimony of PW4 Jasbir Kaur and the statement of PW5 Jagir Singh complainant the identity of the accused-appellant is fully established.

27. Both PW4 Jasbir Kaur and PW5 Jagir Singh, complainant have consistently deposed that the appellant had shot dead Balbir Singh alias Billa in their presence. Their testimonies on the point of occurrence is consistent, cogent and reliable. Learned counsel for the appellant has not been able to point out any contradiction in their statements in order to discredit their testimonies.

28. The aforesaid ocular evidence is further corroborated from the medical evidence. The postmortem examination on the dead body of Balbir Singh alias Billa has been conducted by PW1 Dr.S.K. Sharma. He has deposed that on 19.6.2004 he conducted the postmortem examination on the dead body of Balbir Singh and found the following injuries:

1. Lacerated wound 1.5 cm x 1.5 cm mid front of the forehead,

underlined bones were fractured and all structures were lacerated.

2. Lacerated wound 6.5. cm x 8.5 cm on the left side of the skull, irregular in shape, underlined bones were fractured and all structures were lacerated.

29. He further deposed that cause of death was shock and haemorrhage, due to the aforesaid injuries which were ante-mortem in nature and were sufficient to cause death in the ordinary course of nature. He further deposed that possibility of the injuries having been caused with the help of firearm cannot be ruled out. However, in the cross examination he stated that the possibility of these injuries in the manner other than the firearm also cannot be ruled out. It is settled principle of law that the medical evidence is to be read harmoniously with the ocular evidence. PW4 Jasbir Kaur and PW5 Jagir Singh have categorically deposed that accused appellant has fired a shot at the deceased. In the inquest report Ex.PB, it has been categorically mentioned that the apparent cause of death was due to gun shot. Even an empty cartridge has also been lifted by the Investigating Officer from the spot vide memo Ex.PJ. The cumulative reading of the aforesaid evidence clearly establishes that the injuries to the deceased were caused with firearm.

30. Thus, keeping in view our aforesaid discussion from the cogent, consistent and reliable evidence adduced by the prosecution, it is established beyond shadow of reasonable doubt that the present appellant has committed murder of Balbir alias Billa by firing a shot at him. Thus, we do not find any legal infirmity/impropriety in the conviction and

sentence of the appellant recorded by the learned trial Court, which are hereby affirmed.

31. Resultantly, present appeal has no merits and the same is hereby dismissed.

**(M. JEYAPPAUL)
JUDGE**

20.01.2015
sunil yadav

**(DARSHAN SINGH)
JUDGE**