

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. D-1058-DB of 2010

Date of Decision: 05.11.2015

Tek Singh

...Appellant

Versus

State of Punjab

...Respondent

**Coram: Hon'ble Mr. Justice Hemant Gupta
Hon'ble Mrs. Justice Raj Rahul Garg**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters? Yes
3. Whether the judgment should be reported in the Digest?

**Argued By: Mr. Abhilaksh Grover, Advocate as amicus curiae
for the appellant.**

**Ms. Manjari Nehru Kaul, Additional Advocate General,
Punjab for respondent-State.**

Raj Rahul Garg, J.

1. This appeal is directed against the judgment dated 16.03.2010 rendered by learned Sessions Judge, Muktsar whereby appellant-accused was convicted for committing offence punishable under Section 302 of the Indian Penal Code (for short 'IPC'). Vide order on sentence of the even date, he was sentence to undergo life imprisonment for offence under Section 302 IPC and to pay a fine of Rs. 5000/- with default clause.

2. Brief facts of the case are like this; that Gagandeep Singh son of the deceased-Charanjit Kaur reported the matter regarding murder of Charanjit

Kaur, to the police on 31.05.2009 when ASI Hukam Chand along with other police officials was present at Mandi Kotbhai on patrol duty. Gagandeep Singh, of the age of 15 years and a student of 8th standard, lodged this report stating that his father had died 6 months ago. Simrandeep Kaur is his younger sister. His parental uncles Sukhdev Singh alias Sukha and Tek Singh (accused) and his parental grandmother Gurdial Kaur reside together in the same house. His parental uncles were bachelor. His maternal uncle namely Iqbal Singh resident of village Mour Kalan came to see them at village Chotian. Last night, after taking dinner, Charanjit Kaur-mother, maternal uncle Iqbal Singh and sister Simrandeep Kaur had gone to sleep in the courtyard, on cots which were placed nearby each other. Paternal grandmother and paternal uncle Sukhdev Singh alias Sukha slept near the main gate of the house. Tek Singh, another paternal uncle, was not in the house. As per complainant, his paternal uncle Tek Singh had picked up a quarrel with his mother Charanjit Kaur, last evening. He demanded money for sowing sorghum (Jawar). He further stated that Tek Singh used to pick up quarrel with his mother as he wanted to marry her to which his mother was not agreeing. Tek Singh armed with a spade came at the house at about 11.30 PM. He gave spade blow on the face of Charanjit Kaur. Iqbal Singh and complainant woke up on hearing a noise and raised alarm. Tek Singh gave 2-3 more blows in their presence on the person of Charanjit Kaur. Blood started oozing out. Thereafter, Tek Singh fled away along with spade. After leaving of the spot by the accused, he and his uncle Iqbal Singh took care of his mother but she died on the spot. As per complainant, electric bulb was glowing at that time. ASI Hukam Chand made

his endorsement on this report and sent the same to the police station for registration of the case. Accordingly, FIR of the case was registered. ASI Hukam Chand along with other police officials visited the spot. Inquest report of Charanjit Kuar was completed. Dead body of Charanjit Kuar was sent for post-mortem examination through HC Teja Singh and HC Sukhdev Singh. From the spot, simple earth and blood stained earth were taken into police possession and converted into separate sealed parcels. Blood stained pieces of plastic strings of cot were also taken into police possession after converting the same into a sealed parcel. Seal was handed over to Iqbal Singh after use. Rough site plan of the place of occurrence was prepared. HC Teja Singh handed over one sealed parcel of clothes of the deceased which was handed over to him by the doctor concerned and the same was handed over to the Investigating Officer which was taken into police possession, vide separate recovery memo. Accused was arrested on 02.06.2009.

3. On interrogation, accused suffered disclosure statement on 03.06.2009 having kept concealed the spade, stained with blood, used for this murder, in the heap of dry grass lying on the backside of place Shaheed Baba Duggal Khandan (Kot Bhai) towards western side of the wall alleging that he alone knows about that and can get the same recovered by giving 'nishandehi'. Thereafter, he led the police party to the specified place and in pursuance with his disclosure statement got recovered the spade, stained with blood. Rough sketch of the spade was prepared. Same was converted into a sealed parcel and then taken into police possession, vide separate recovery memo. Statements of witnesses were recorded. Report chemical examiner was obtained. Scaled site

plan of the place of recovery was also got prepared. On completion of necessary investigations, challan was put in the Court against the accused.

4. Finding a prima-facie case against the accused for committing offence punishable under Section 302 IPC, he was charge-sheeted. After taking entire prosecution evidence, statement of accused, under Section 313 Cr.P.C., was recorded. Accused denied each allegation of the prosecution appearing against him and pleaded his false implication in this case for the reason that Charanjit Kaur developed illicit relations with Bhinder Singh and Vakil Singh. Bhinder Singh was infuriated by her and killed her. He (accused) never demanded any money from Charanjit Kaur nor had any dispute with her nor ever compelled her to marry him.

5. After hearing both the sides and appraising the entire evidence and material coming on record, the learned trial Court recorded the judgment of conviction and order on sentence as mentioned in the earlier part of this judgment.

6. We have heard Mr. Abhilaksh Grover, Advocate as amicus-curiae for the appellant and Ms. Manjari Nehru Kaul, Additional Advocate General, Punjab for the state of Punjab besides appraising the entire evidence and material on record.

7. Learned counsel for the appellant-accused contended that Tek Singh-accused is the brother-in-law (Devar) of the deceased. There was no point for him to commit the murder of Charanjit Kaur. He has been cultivating the land of Charanjit Kaur as her husband has died 6 months ago. In fact, Charanjit Kaur developed illicit relations with Bhinder Singh and Vakil Singh.

Bhinder Singh was infuriated by her and thus killed her. As such, it is Bhinder Singh who had killed Charanjit Kaur and not the accused.

8. The above argument of learned counsel for the appellant-accused is devoid of any force. Except the statement of accused, under Section 313 Cr.P.C., there is no material on the file to make this defence version probable. There is, in fact, no iota of evidence available on record in this regard. There is no evidence that Charanjit Kaur was having illicit relations with Bhinder Singh and Vakil Singh. On the other hand, there is clinching evidence, available on record, against accused Tek Singh. PW-1 Gagandeep Singh is none else but the son of the deceased. He is of the age of 15 years. He was sleeping in the courtyard nearby the cot of Charanjit Kaur. Not only this, even PW-2 Iqbal Singh, brother of deceased, was also sleeping in the courtyard nearby the deceased. Both these witnesses categorically deposed that after the death of husband of Charanjit Kaur, Tek Singh wanted to marry her. But Charanjit Kaur was not willing to marry him and this infuriated the accused. Besides it, PW-1 and PW-2 deposed that in the evening of fateful day, accused demanded money from Charanjit Kaur for sowing *Jawar* crop. On that point, a quarrel had taken place between Tek Singh and deceased and thereafter at the dead of night i.e. at about 11.30 pm, Tek Singh armed with spade entered into the house and gave a blow with spade on the face of Charanjit Kaur whereupon PW-1 Gagandeep Singh and PW-2 Iqbal Singh got up and raised alarm and in their presence Tek Singh gave 2-3 more blows with spade on the face of the deceased, whereupon she started bleeding and ultimately died on the spot. Both the aforesaid Pws were cross-examined at length but nothing material could be extracted from

them. Even the medical evidence, as proved on record with the examination of Dr. Manju Bala, who proved the post-mortem report of the deceased as Ex. PW4/B, it stands established on the file that the medical evidence is in consonance with oral evidence, available on record. Besides other injuries, this doctor reported injury No. 1 on the person of deceased as under:

“Injury No. 1: there was incised wound starting from left angle of mouth and ending upto left ear. Depth of wound on medial size was 12.5 cm and on lateral side 8 cm. Tongue was cut upper four incisor and two canines were broken.”

10. She further deposed that in her opinion, the cause of death was due to massive blood loss due to injury No. 1 as there was cut on major blood vessels, which was sufficient to cause death under normal circumstances. She further reported that all the injuries on the person of deceased were ante-mortem in nature. With the afore-discussed statements of witnesses, the defence put up by the accused is not probable.

11. It was next argued by the learned counsel for the appellant-accused that PW-1 Gagandeep Singh deposed that the electric bulb was on at the time of occurrence. If we peruse the site plan, Ex. PW3/F, on point 'F' it has been shown that the electric bulb was glowing. The distance of electric bulb is such that no one can identify an assailant during the night time. This argument is again devoid of any force. Electric bulb was there in the courtyard which was on at the relevant time. Besides that, assailant is none else but the brother-in-law (devar) of the deceased who is the family member of the complainant party. In the little light, the family members can well identify another family member from his structure, voice etc. The question of mistaken identity cannot

be said to be there in such a case. It is also not believable that family members would allow real assailant go scot free and falsely implicate their near relative i.e. uncle of complainant. As such, for this reason, the argument advance by the learned counsel for the appellant-accused is not acceptable.

12. It was next argued by learned counsel for the appellant-accused that Charanjit Kaur was taken to hospital after two hours of the occurrence. The complainant party did not take her to hospital immediately and this fact also creates doubt regarding prosecution version. They had enough time to concoct the story and as such prosecution case is not free from doubt and, therefore, benefit of doubt is to be given to the accused. This argument is again not sustainable as PW-1 categorically stated when appeared in the Court as well in the FIR, Ex. PA, that after leaving of the spot by the accused along with spade, he and his uncle Iqbal Singh took care of his mother but she died on the spot. To the same effect is the statement of PW-2 Iqbal Singh. Under these circumstances, when mother of complainant had died on the spot, the question, of time of reaching the mother to hospital after two hours; becomes irrelevant. In this case, complainant, who is of the age of 15 years, had gone to the police in the first instance and lodged the report. ASI Hukam Chand along with other police officials reached the spot. The police sent the dead body of complainant to hospital for her post-mortem examination through HC Teja Singh and HC Sukhdev Singh and also conducted the other investigations at the spot. As such, it cannot be said that Charanjit Kaur had died since she was not taken immediately to the hospital or that delay of two hours in any way afford a ground to the complainant party to concoct the story. Rather this story,

propounded by the prosecution, is quite natural, convincing, consistent and inspire confidence in the mind of the Court regarding guilt of the accused.

13. It was next argued by learned counsel for the appellant-accused that though the motive to commit crime was alleged by the prosecution, yet, it remained unproved on the file. Except the statements of PW-1 and PW-2, who are the son and brother of deceased and deeply interested in the success of the case, there is no evidence on the file to prove the motive. As such, for lack of motive, it cannot be said that accused, who was near relatives, would commit the murder of Charanjit Kaur. It is true that motive is a relevant factor in all criminal cases. However, it is generally a difficult area for any prosecution to bring on record as to what was the mind of the accused. In Nathuni Yadav vs. State of Bihar, 1998 (9) SCC 238, it has been held that:

“Though, it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the assailant.”

14. In view of above proposition of law and further as it is a case of direct evidence which is consistent and inspire confidence in the mind of the Court regarding guilt of the accused, we find no reason to construe lack of proof of motive as a fatal weakness of the prosecution. On the other hand, with the statements of PW-1 Gagandeep Singh and PW-2 Iqbal Singh, it is proved on the file that the accused was having some ire against the deceased.

15. For the reasons recorded above, finding no merit in this appeal,

maintaining the impugned judgment dated 16.03.2010 and order on sentence of the even date, this appeal is dismissed.

(Hemant Gupta)
Judge

(Raj Rahul Garg)
Judge

05.11.2015
Waseem Ansari