

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-246-DB-2010 (O&M)

Date of decision: 19.08.2015.

Amar Singh

..... Appellant

Vs.

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 or not?
3. Whether the judgment should be reported in the Digest?

Argued by: Mr. A.S.Cheema, Advocate
for the appellant.

Ms. Deepa Singh, DAG, Punjab.

RAJ RAHUL GARG.J.

The appellant-accused has assailed the impugned judgment of conviction dated 13.11.2009 whereby he was convicted for committing murder of his real brother namely Gurdev Singh, and causing disappearance of the evidence of murder by concealing the dead body of deceased after burying it in his own house; under Sections 302 and 201 of Indian Penal Code (for short 'IPC'), rendered by the then learned Sessions Judge, Mansa. He was sentenced to undergo life imprisonment and to pay a fine of Rs. 1,000/- with default clause for the commission of aforesaid offence vide order of the even date.

Amar Singh-appellant, Sukhdev Singh and Gurdev Singh, sons of Jora Singh, were three brothers. They were residents of village Bajewala.

Sukhdev Singh was eldest one. He died earlier. Gurdev Singh (deceased) was in Army. He used to reside at Guwahati. He also used to visit village Bajewala. As Gurdev Singh, had deserted from Army, therefore, he was dismissed by the Army.

Police machinery was set in motion on 16.06.2007 when SI Baljinder Singh (PW3), received secret information from a reliable source to the effect that about 9-10 months ago, Amar Singh @ Kala, accused R/o of Bajewala, had killed his brother Gurdev Singh @ Fauji, who usually resides at Guwahati but occasionally come to village Bajewala. He further informed that accused Amar Singh, killed his brother Gurdev Singh @ Fauji, out of greed to grab the land falling in the share of Gurdev Singh @ Fauji. The informer also told him that in order to cause disappearance of the evidence of murder, accused Amar Singh has secretly disposed of the body of Gurdev Singh @ Fauji. At the time of receipt of secret information, SI Baljinder Singh, along with other police officials were present on nakabandi at Mian Kenchian. On this information, ruqa (Ex.PE) was sent to police station for registration of the case through HC Samrat Vir. Formal FIR was recorded. Police party proceeded towards the spot of occurrence. At bus-stand of village Bajewala, Chowkidar had come across them. They asked him about the house of the accused. House of the accused was raided. Accused was found present there. Pritpal Singh son of Tara Singh also present at the spot. He was also joined in the investigations. Accused was arrested.

On interrogation, accused made a disclosure statement (Ex.PF) to the effect that about 9/10 months ago during night time, he killed his brother Gurdev Singh @ Fauji with a *khapra* and put his dead body in a

ditch made by him in his living room about which he alone knows as to where the dead body of Gurdev Singh @ Fauji is buried. He further disclosed that he had kept concealed the *khapra* behind the *peti* (box) lying in his room after thoroughly washing and he alone knows about it and can get the same recovered by giving *nishandehi*. Accused thumb marked his disclosure statement. ASI Sukhwinder Singh and Pritpal Singh, signed it as witnesses. Thereafter, SI Baljinder Singh, made a request (Ex.PG) to the SDM, Nasa, for deputing some Executive Magistrate for recovery of deceased Gurdev Singh @ Fauji. On this request, Tehsildar, Sardulgarh was deputed vide Ex.PD. Investigating Officer, then made a request Ex.PH to SMO, Sardulgarh for deputing some doctor for the recovery of dead body of Gurdev Singh @ Fauji, whereupon Dr. Sohan Lal, was deputed vide endorsement Ex.PA. In pursuance with his aforementioned disclosure statement, accused produced the dead body of Gurdev Singh @ Fauji after taking out from earth, after pulling it with his own hands, which was kept concealed under the earth in the right side of his residential room. Dead body of Gurdev Singh @ Fauji was in decomposed condition and skeleton of decomposed bones. He also produced *khapra* which was kept concealed by him behind the *peti* (box) lying in his room, after washing and cleaning it. The above said skeleton, and *khapra* (Ex.P1), were taken into police possession vide memo. Ex.PB. Rough site plan of the place of recovery of dead body/ skeleton of Gurdev Singh and *khapra* Ex.PJ was prepared. Rough sketch of the *khapra* was prepared as Ex.PK. Rough site plan Ex.PL was prepared. Request Ex. PM was made to Medical Officer, PHC, Sardulgarh, for conducting post-mortem of dead body of Gurdev Singh @ Fauji (deceased) whereupon the dead body was referred to Civil Hospital,

Mansa, vide endorsement Ex.PC for post-mortem. From there, it was sent to Forensic Medicine Laboratory, Faridkot, through H.C. Samrat Vir. Post-mortem report was obtained. Inquest report Ex.PN was prepared. Dead body was got photographed and videos of the recovery proceedings were also got prepared. Negatives, photos and video cassette (Ex.P2) were also taken into police possession vide memo. Ex.PQ.

Statement of witnesses were recorded. After completion of necessary investigations, the challan against the appellant-accused was put in the Court.

Finding a *prima-facie* case against accused, he was charge-sheeted for committing offence under Sections 302 and 201 IPC to which he did not plead guilty but claimed trial.

After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded wherein accused denied each prosecution allegation and pleaded his innocence. The defence taken by the accused is this; that he did not suffer any disclosure statement nor anything was got recovered by him. The house from which dead body of Gurdev Singh @ Fauji (deceased) recovered was previously in possession of Bhura Singh, who was the owner of the house. He had purchased the house six months prior to occurrence. He has been got involved in this case falsely by Bhura Singh. Deceased Gurdev Singh @ Fauji, was in Army but he has not been heard. The skeleton recovered by the police was not of his brother Gurdev Singh @ Fauji. In his defence, Gurtej Singh, was examined as DW1.

We have heard learned counsel for the appellant and learned State counsel besides appraising the entire material and evidence coming on

record.

The first and foremost point raised by the learned counsel for the appellant is this; that appellant purchased the house from where the skeleton was allegedly recovered; from Bhura Singh, his uncle, 6 months prior to the occurrence. Dr. Gurmanjit Rai, (PW5), who conducted the post-mortem on the skeleton deposed that time between injury and death was immediate and time elapsed between death and skeleton was about 8 to 12 months. As such, appellant-accused did not kill the deceased, if at all, deceased was killed i.e. by Bhura Singh, to whom the house in question earlier belonged. Gurtej Singh (DW1) is also the witness on this point. He also deposed that Bhura Singh, had transferred his house in the name of accused by way of writing. Photostat copy of writing is Mark 'A'.

Gurtej Singh (DW1) could not give the exact date when the house was sold by Bhura Singh to appellant and further as to when the possession of the house was delivered to the appellant. Mark 'A' is only the Photostat document dated 17.03.2009. It has not been proved on record by examining the vendor or the vendee. In fact, it is not the sale-deed. It is simply an affidavit. Thus for want of proof, this document does not lead us anywhere and of no value. This document does not convey any title to appellant of this case. Such document can be prepared by any person at any point of time. In the absence of any proof that the house in question was purchased and its possession was taken by the appellant prior to the time of death of the deceased of this case, it cannot be said that the appellant was not in possession of the house in question at the time of alleged offence. Gurtej Singh (DW1) deposed that dead body recovered by the police may be of Sukhdev Singh i.e. another brother of the appellant and the same was

recovered at the instance of Bhura Singh. In his cross-examination, he admitted that at the time of recovery, the house was in exclusive possession of Amar Singh, the present appellant. As such, since the dead body was exhumed on the disclosure statement of appellant, and by the appellant after removing earth from the pointed place and by pulling out the dead body; therefore, the case against the accused is established. Even otherwise, there is no material on record against Bhura Singh as to why he would kill Gurdev Singh @ Fauji. The informer of this case is also Bhura Singh. The conduct of Bhura Singh is not suspicious, as he has not been examined by the defence.

Next argument advanced by learned counsel for the appellant was that PW1-Dr. Sohan Lal Arora, Medical Officer and PW2-Gurjit Singh, Executive Magistrate-cum-Tehsildar, Sardulgarh, who were present at the time of alleged recovery, deposed that 3-4 persons had taken out the dead body by digging the earth with spade. As such, recovery of dead body cannot be said to be effected from the appellant-accused in any manner.

This contention of learned counsel is not sustainable as the dead body was got recovered by accused in pursuance with his disclosure statement and he removed the earth from the place where the dead body was kept concealed and then he pulled the dead body out of the ditch. If at that time 3-4 persons helped in taking out the dead body from the ditch or pulling the dead body out of the ditch that would not mean that recovery of dead body was not got effected by the appellant-accused. PW3 Investigating Officer, has categorically stated about the recovery of dead body at the instance of accused in pursuance with his disclosure statement.

It was further argued by learned counsel for the appellant that

recovery of *khapra* cannot be attributed to the accused as PW2-Gurjit Singh, Executive Magistrate-cum-Tehsildar, Sardulgarh, deposed during the course of his cross-examination that *khapra* was lying behind the iron box and it was not concealed under anything but it was visible. It was handed over to the police by the accused. This argument of learned counsel for the appellant is again devoid of any force, as it is established on the file that appellant was in exclusive possession of the house from which the dead body of Gurdev Singh @ Fauji was exhumed. *Khapra* was kept concealed behind the *peti* (box) lying in the room belonging to the appellant. Simply because *khapra* was not put in any cloth would not mean that it was not concealed by the appellant-accused. *Khapra* could well be concealed behind the big iron box i.e. *peti*. The possession of the room where the *peti* lying was that of appellant alone. He alone was knowing about it and got the same recovered. As such, appellant-accused was in exclusive possession of *khapra*.

It was further argued by learned counsel for the appellant that identification of dead body of deceased could not be proved by the prosecution. No relative of the deceased has been joined by the police for the purposes of identification of dead body. PW Gurdev Singh, Chowkidar, witness of identification of dead body was given up as having been won over by the accused. Another witness of identification i.e. Pritpal Singh also did not support the prosecution case in this regard. He turned hostile. Even the dead body was in the form of skeleton. Dr. Gurmanjit Rai, (PW5), deposed that it is impossible to identify a person from skeleton by cursory look. Thus, when the dead body allegedly got recovered in this case, was not duly identified as that of Gurdev Singh, the appellant-accused cannot be

convicted for his murder.

The above contention of learned counsel for the appellant is not sustainable as SI Baljinder Singh (PW3), Investigating Officer of the case, deposed that Pritpal Singh, identified the dead body from brown pants.

In *State of Maharashtra Vs. Suresh, 2000(1) RCR, 149*, it was made clear that when dead body was recovered on disclosure statement made by the accused then it is only the accused who can offer the explanation as to how he came to know of the concealment, that will draw presumption that concealment was made by the accused himself. Thus, it was for the accused to explain as to how the dead body was lying concealed in the house, exclusively possessed by him.

In this case, Dr. Gurmanjit Rai, (PW5), who conducted the post-mortem of the skeleton, deposed that sex of the person was male. Age of the person was approximately 45 to 55 years. Height of the person was approximately 170.6 cm plus minus 2cm by application of multiplication factors on long bones and taking their average. There is nothing on record to show that the aforementioned character do not tally with the age, height and sex of the deceased. As such, from this evidence as well, it can be concluded that skeleton got recovered by the appellant-accused in this case belonged to deceased Gurdev Singh @ Fauji.

Further in this case, in pursuance with disclosure statement, appellant-accused got recovered the dead body from his house and at that time, that house was in exclusive possession of appellant. The dead body was got recovered in the presence of PW1- Dr. Sohan Lal Arora, Medical Officer, Civil Hospital, Sardulgarh, PW2-Gurjit Singh, Executive

Magistrate-cum-Tehsildar, Sardulgarh. SI Baljinder Singh (PW3), being Investigating Officer of the case, was also present at that time.

The statement of Gurtej Singh (DW1) that the dead body may be of Sukhdev Singh, another brother of the appellant, cannot be said to be of a truthful witness. In fact, Pritpal Singh (PW6) though has turned hostile, but in his cross-examination stated that Sukhdev Singh died due to illness. He denied the knowledge whether the appellant has taken this house from his uncle about 6/7 months prior to the occurrence. We find that the story that the appellant has purchased the house 6/7 months prior to the occurrence is not tenable. Bhura Singh, the alleged owner, has not been examined to prove that he was the owner or has effected the sale of the house to the appellant. Even further, the statement of Gurtej Singh (DW1) that dead body might be of Sukhdev Singh is in the realm of conjectures, whereas Pritpal Singh (PW6) is categorical that Sukhdev Singh died due to illness. If Sukhdev Singh died due to illness, there is no reason to bury his body in the courtyard of the house. The process of recovery of dead body was conducted pursuant to the disclosure statement and in the presence of PW-2 Gurjit Singh, Executive Magistrate. Such is the statement of PW-3 Baljinder Singh, the Investigating Officer, as well.

As per Dr. Gurmanjit Rai, (PW5), cut fracture injuries were found on the dead body and all the aforesaid injuries were opined as ante mortem in nature and were caused by heavy sharp cutting weapon. The cause of death in this case was given as multiple cut fracture on the vital part i.e. head and neck region leading to haemorrhagic shock, which was sufficient to cause death in ordinary course of nature. Recovery of *khapra* from the exclusive possession of accused further connects the accused with

this crime. The factum of burying of the dead body of his brother Gurdev Singh @ Fauji under the earth after making a ditch in his residential room itself goes to show that it can be the act of accused alone and none else. The person, who has killed the deceased alone would bury the dead body in his residential room and no one else. It is the case in which accused suffered disclosure statement in this regard and also got exhumed the dead body after removing the earth from the ditch made in his residential room and also got recovered *khapra* which he kept concealed behind the big box i.e. *peti*. The aforesaid residential house was in exclusive possession of the appellant-accused, therefore, we conclude that prosecution has succeeded in bringing home guilt against the accused.

For the reasons recorded above, finding no merit in this appeal, thus maintaining the impugned judgment of conviction and order of sentence dated 13.11.2009, this appeal is ordered to be dismissed.

(HEMANT GUPTA)
JUDGE

19.08.2015
smriti

(RAJ RAHUL GARG)
JUDGE