

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

1. Crl.Appeal-D No. 3-DB of 2010
Date of Decision: July 7 , 2015.

Jaswinder Singh APPELLANT(s)

Versus

State of Punjab RESPONDENT (s)

2. Crl.Appeal-D No.597-DB of 2010.

Baljit Singh @ Billa and another APPELLANT(s)

Versus

State of Punjab RESPONDENT (s)

CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Gorakh Nath, Advocate and
Mr. SPS Sidhu, Advocate
for the appellants.

Mr. Manoj Bajaj, Addl.AG, Punjab.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Crl.Appeal-D No.3-DB of 2010 filed by Jaswinder Singh and

Crl.Appeal-D No.597-DB of 2010 filed by Baljit Singh @ Billa and Mohinder

Kumar are taken up together for hearing as both the appeals emanate from

judgment and order dated 11.12.2009 passed by learned Sessions Judge, Faridkot whereby all the appellants have been convicted for the offences punishable under Sections 302/379/201 read with Section 34 IPC and sentenced to undergo imprisonment for life, besides, pay a fine of ₹5,000/- each and in default thereof, to further undergo rigorous imprisonment for one year for offence punishable under Sections 302/34 IPC, to undergo rigorous imprisonment for two years each for offence punishable under Sections 379/34 IPC and to undergo rigorous imprisonment for two years each, besides, pay a fine of ₹1,000/- each and in default thereof, to further undergo rigorous imprisonment for three months. All the sentences were ordered to run concurrently.

It is informed that appellant Baljit Singh @ Billa in Crl.Appeal-D No.597-DB of 2010 has since passed away on 07.10.2013 due to a heart attack when on parole. This fact is verified by learned counsel for the State. Therefore, in terms of Section 394 Cr.P.C. abovesaid appeal stands abated qua Baljit Singh @ Billa and survives only qua Mohinder Kumar son of Sahi Ram.

Prosecution was set in motion on the statement Ex.PE, made by PW4 Sukhchain Singh son of Gurdial Singh (deceased). Sukhchain Singh PW4 revealed that he alongwith his younger brothers Jaspal Singh and Gurpal Singh engaged in the work of labour. His father Gurdial Singh (deceased) had been working as a *Siri* (agricultural labourer) for one year with Harsangeet Singh, resident of Faridkot who is an official in the office of Deputy Commissioner, Faridkot having land in village Nawan Quila. Gurdial Singh used to live on the said land and occasionally came home. Harsangeet Singh had purchased the said

land from accused Jaswinder Singh @ Chhinder who had shifted to Rajasthan. Harsangeet Singh had employed son of Dara Singh to prepare meals in the fields. This boy of Dara Singh had left the said work a few days ago. Therefore complainant, Sukhchain Singh had been living on the fields with his father for 3-4 days as the boy who used to prepare the meals had left the work. Sukhchain Singh came home from the fields on 17.09.2003. Sukhchain Singh was present in his house on 18.09.2003 alongwith other family members when at about 7.00 a.m. Saghar Singh son of Mohinder Singh alongwith Mahna Singh, Sarpanch of the village arrived and informed that the dead body of his father was lying on the pavement of the canal minor near the fields. It seemed that he was killed by causing injuries on his head. Sukhchain Singh alongwith his brother Jaspal Singh, Saghar Singh, Sarpanch Mahna Singh alongwith some other persons of the village reached the spot. They found the dead body of Gurdial Singh lying there with injuries on the head, forehead, thighs and stomach. His body was smeared with blood. Sukhchain Singh stated that his father Gurdial Singh had been murdered on the preceding night by unknown persons by causing injuries. A stick stained with blood and another stick as well as one slipper of his father and a match box were lying near the dead body. On the basis of this statement, formal FIR Ex.PE/2 was registered.

On the same day i.e., 18.09.2003 statement of PW7 Jaspal Singh son of the deceased was also recorded. He revealed that he was working as a *Siri* (agricultural labourer) with Binder Singh son of Deputy Singh of village Nawan Quila. On being free from his work at about 8.00 p.m. on 17.09.2003, he went to his father on the motor of Harsangeet Singh. His father was working as *Siri* with

Harsangeet Singh. Harsangeet Singh had purchased the land from accused Jaswinder Singh @ Chhinder. He reiterated that his father used to work and reside most of the time in the fields of Harsangeet Singh. An old International tractor belonging to Harsangeet Singh used to remain with his father who used to ply the same. His mother used to stay with his father though for 2-4 days. She had come in the fields about 4-5 days prior to the occurrence. Jaspal Singh used to take meals on the fields with his father and slept on the land of his employer where the motor was affixed. When he reached his father on 17.09.2003, he was apprised that his mother had left for their house therefore, Jaspal Singh should go home for taking meals. Jaspal Singh took a bath at the motor on the fields where his father worked and changed his clothes. He was eating *Sevian* (sweet meat) prepared by his father.

Jaspal Singh and Gurdial Singh were sitting on a cot at about 9.00 p.m. when vendor of the land Jaswinder Singh @ Chhinder appellant-accused, now a resident of Matili came alongwith two young clean shaven boys. His father enquired about their health and served them water. Jaswinder Singh accused revealed that they had come there to see the fair of Baba Farid and they were to proceed to the house of Charna. Gurdial Singh (deceased) asked Jaswinder Singh about the identity of the two persons accompanying him as he was unable to recognize them, Jaswinder Singh revealed that one of them is Billa Singh son of Malkiat Singh his brother-in-law (wife's brother) and the other is Mohinder Chaudhary, both residents of Matili. Jaswinder Singh @ Chhinder told his father that he should leave the service of a dishonest person. On his father's refusal, Jaswinder Singh asked as to why Gurdial Singh was helping

Harsangeet Singh and obstructing their way in not handing over the tractor to him. When Harsangeet Singh would pay ₹25,000/- the accused would return the same. His father refused to hand over the tractor to Jaswinder Singh feeling that it is his responsibility to take care of the tractor. His father then asked Jaspal Singh to leave on which he left the said place and slept on the lands of his own employer. He proceeded to his house in the morning of 18.09.2003 to have tea when Sarpanch Mahna Singh and Saghar Singh informed about the dead body of his father lying near the canal minor.

Jaspal Singh further revealed that motive behind the occurrence is that despite threats of accused Jaswinder Singh @ Chhinder, his father did not leave the employment of Harsangeet Singh. At the time of harvest of wheat crop, accused and his relatives armed with sticks followed his father but he managed to save his life. There was a dispute of land and money between Harsangeet Singh and Chhinder Singh. A compromise was got effected between them by respectables of the village according to which Harsangeet Singh owed ₹25,000/- to the accused.

Blood stained earth and simple earth near the dead body was lifted. A pair of slippers, match box and a stick (Danda) were taken in possession vide different recovery memos. Blood stained stick was taken in possession vide Ex.PE/1. Inquest report Ex.PB was prepared in the presence of Mahna Singh Sarpanch and PW4 Sukhchain Singh. Body of Gurdial Singh was sent for post-mortem examination. Rough site plan Ex.POO was prepared.

Post-mortem report Ex.PA revealed seven injuries on the body of deceased Gurdial Singh. PW1 Dr. S.S.Sandhu opined that all the injuries were

ante-mortem in nature. Cause of death was due to injury No.1 i.e. laceration of brain and its membranes and injury No.3, fracture of maxilla which is sufficient to cause death in the ordinary course of nature. Probable time between injuries and death was immediate and duration between death and post-mortem was about 12 to 24 hours.

SHO Darshan Singh PW17 proceeded to Rajasthan on 19.09.2003 in search of the accused but they were not traceable. He collected evidence on 24.09.2003 regarding the theft of International Tractor from the fields of Harsangeet Singh. Affidavit Ex.PF was produced by Akattar Singh PW5 to the effect that the tractor in question had been sold to Harsangeet Singh. Registration Certificate Ex.P7 of the tractor was taken in possession vide Ex.P1.

Accused Jaswinder Singh was arrested on 25.09.2003 from the house of his sister at village Fidde Kalan. Co-accused Mohinder Kumar and Baljit Singh surrendered in the court of Illaqa Magistrate. Accused Jaswinder Singh disclosed that he had thrown the International tractor in the link canal in the area of Alipur Doda near Burji No.106 under the water and he could get the same recovered after pointing out the same. His disclosure statement is Ex.PT.

Pursuant to the disclosure statement, Ex.PT accused Jaswinder Singh was taken to Alipur Doda canal (Rajasthan) on 27.09.2003 where tractor was not found. Barkat Ram, Chowkidar of village Alipur Doda then apprised them that the police of Police Station Matili had already taken out a tractor from the link channel and it was kept at the police station. The place where the tractor had been thrown into the canal was demarcated on the pointing out of accused Jaswinder Singh. Statement of PW20 Barkat Ram chowkidar and Joginder

Singh were also recorded. They proceeded to Police Station Matili where it was found that tractor No. PUD 3229 had already been taken in possession by the police of Police Station Matili on 21.09.2003. PW5 Akattar Singh was identified to be the owner of the tractor. Said tractor was released to Akattar Singh on Superdari.

On completion of investigation, report under Section 173 Cr.P.C. was presented against all the accused. Charge was framed on 22.01.2004 against the accused, who claimed trial.

Prosecution examined as many as twenty (20) witnesses to prove its case against the accused. All the accused while denying the incriminating material put to them, pleaded innocence and false implication in their statements under Section 313 Cr.P.C. No evidence was however led in defence.

Learned trial court on appreciation of the evidence on record, concluded that the prosecution has proved its case beyond reasonable doubt against all the accused thereby, convicting them of the offences punishable under Sections 302/379/201 read with Section 34 IPC and sentenced them as detailed above. Aggrieved therefrom, present appeals have been preferred.

Learned counsel for the appellants vehemently submit that present is a case of circumstantial evidence and the prosecution has miserably failed to prove its case beyond reasonable doubt. Chain of circumstances is not complete which points to unequivocal guilt of the accused who are entitled to be acquitted in this case. It is argued that present is a case of blind murder and false implication of the accused is apparent on the face of it. It is submitted that the alleged last seen evidence in the form of statement of PW7 Jaspal Singh is

extremely shaky and does not connect all the accused with the offence in question. No reliance can be placed on the statement suffered by him in respect to appellant Baljit Singh @ Billa and Mohinder Kumar. PW7 Jaspal Singh himself never knew the appellants. In respect to Mohinder Kumar, it is strenuously urged that the only evidence qua him is the statement of co-accused Jaswinder Singh which can not be made the basis for his conviction. His presence on the spot cannot be fixed in this manner. It is submitted that no reliance can be placed on disclosure made by Jaswinder Singh to inculcate him in this case.

Learned counsel further argue that the conduct of PW7 Jaspal Singh is extremely unnatural inasmuch as why he left the spot at a time when the accused were allegedly threatening his father. Furthermore accused had no motive whatsoever to murder Gurdial Singh who was merely an employee of Harsangeet Singh. No weapon whatsoever has been recovered from the accused to prove their complicity in the commission of the alleged offence. It is thus prayed that conviction of the accused be set aside.

Learned counsel for the State however refutes the abovesaid arguments. While supporting the impugned judgment and order, he submits that there is no ground whatsoever to acquit the appellants of the charges against them. There is sufficient evidence on record which proves the commission of the offence by all the accused persons beyond reasonable doubt. Thus their conviction and sentence deserves to be maintained.

Having heard learned counsel for the parties and going through the record with their able assistance, we find no merit in these appeals.

Present case rests on circumstantial evidence wherein the link in the chain of circumstances is indeed complete. Evidence on record permits no other hypothesis but the guilt of the accused persons. PW7 Jaspal Singh has clearly revealed the sequence of events as they unfolded on 17.09.2003 at about 8.30 p.m. There is nothing improbable in the conduct of Jaspal Singh who is admittedly a *Siri* (agricultural labourer) in the same village working for another land owner. He had gone to join his father for meals after finishing his work. His father used to stay in the fields itself. On that day, he was asked by his father to go home as the boy who used to cook meals was not there and his mother had also proceeded home. While he was sitting with his father after having a bath, all the accused arrived. Accused Jaswinder Singh @ Chhinder was the previous owner of the land which was being looked after by Gurdial Singh (deceased) as an employee of subsequent vendor, Harsangeet Singh. Jaswinder Singh @ Chhinder was of the same village as of the deceased though he had migrated to Rajasthan thereafter.

PW7 Jaspal Singh has clearly stated accused Baljit Singh @ Billa and Mohinder Kumar to be accompanying Jaswinder Singh @ Chhinder. Names of the said accused were revealed by Jaswinder Singh himself. PW7 Jaspal Singh identified accused Mohinder Singh during a test identification parade from amongst ten persons. Said fact was proved by PW16 Kanwar Inder Singh who was posted as Naib Tehsildar/Executive Magistrate, Ferozepur at the relevant time. He had been deputed for conducting test identification parade by Sub Divisional Magistrate, Ferozepur. Accused were duly identified by Jaspal Singh in court as well.

Last seen evidence in the shape of testimony of Jaspal Singh is trustworthy and inspires confidence. Presence of Jaspal Singh is natural and probable in the facts and circumstances of the case. Dead body of Gurdial Singh was recovered on the morning of 18.09.2003 by PW8 Saghar Singh at about 5.30 – 5.40 a.m. He informed Mahna Singh, Sarpanch of village. Thus the period between the deceased last seen in the company of accused and the discovery of dead body is not such which can lead to discarding the testimony of PW7 Jaspal Singh.

Identity of both Baljit Singh @ Billa (deceased) and Mohinder Kumar has been duly established by Jaspal Singh. It is natural and normal that Jaswinder Singh revealed their identities himself to the deceased on his asking in the presence of Jaspal Singh. There is no reason to disbelieve his testimony. It is a settled position that if the prosecution on the basis of reliable evidence establishes that the missing person was last seen in the company of the accused and the time gap is such to exclude possibility of others coming in, it is obligatory on the part of the accused to explain the circumstances in which the accused and deceased parted company. Reference in this regard can be gainfully made to a decision of Hon'ble Supreme Court in **Dharam Deo Yadav v. State of U.P., 2014 (5) SCC 509.**

Likewise, submission that conduct of Jaspal Singh in leaving the place of occurrence when accused were threatening his father is unnatural is not acceptable. He was specifically asked by his father to leave. There was no reason for him to display rebellion by not obeying his father, neither could he have imagined that his father would be done to death.

It is also borne out from the record that the tractor in question was sought to be disposed of by the accused in an illegal manner. Pursuant to disclosure statement Ex.PT suffered by Jaswinder Singh, police had proceeded to Matili where it transpired that such tractor had already been recovered by the police of Rajasthan on 21.09.2003. PW14 ASI Gurdev Singh, Police Station Suratgarh, District Ganganagar, Rajasthan has proved the recovery of tractor on 21.09.2003. Jaswinder Singh duly pointed out the place of recovery of the tractor. Police had obviously proceeded to Rajasthan only on the disclosure of Jaswinder Singh. Thus, argument by learned counsel for the appellants that the tractor already stood recovered by the Rajasthan Police therefore no reliance can be placed on disclosure statement Ex.PT, is not acceptable.

Recovery of the tractor by Rajasthan Police at an earlier point of time would not be relevant as this fact came to light only when the police proceeded to Rajasthan on a disclosure by Jaswinder Singh. Hon'ble Supreme Court in **State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru, (2005) 11 SCC 600** and **Sandeep and another v. State of U.P., (2012) 6 SCC 107** has held that 'discovery of fact' with reference to Section 27 of the Evidence Act cannot be equated to the object produced or found. It is more than that. Discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or mental awareness of the informant as to its existence at a particular place. Furthermore, Section 8 of the Evidence Act, which deals with the relevancy of conduct of the accused, would come into play as well.

It is a matter of record that the tractor bearing registration No. PUD

3229 was sold by PW5 Akattar Singh son of Uttam Singh, resident of village Pacca to Harsangeet Singh. Argument that this tractor having been released on Superdari to Akattar Singh cannot belong to Harsangeet Singh, is misplaced. This is so specially in view of the statement of Akattar Singh himself that he sold the tractor in question to Harsangeet Singh for a sum of ₹40,000/-. He handed over Registration Certificate, Ex.P1 to Harsangeet Singh. PW3 Atwinder Kumar, Manager of M/s Shiv Shakti Tractor, Kotkapura Road, Faridkot deposed that they used to sell Eicher Tractors. Through an exchange scheme they would sell new tractors in place of old ones. He revealed that on 13.04.2003, an the exchange scheme an old International Tractor bearing registration No. PUD 3229 was sold to Harsangeet Singh for ₹40,000/-. A new tractor was given by their agency to Akattar Singh after adjusting amount of ₹40,000/- to be paid by Harsangeet Singh.

PW18 Harsangeet Singh fully supports the prosecution version. He has specifically deposed that Gurdial Singh was employed as his *Siri* (farm labourer) to maintain his agricultural land. Gurdial Singh used to live in the fields in a room constructed thereon. He had purchased a tractor from Akattar Singh for a sum of ₹40,000/- which used to remain on the fields. In the year 2003 during harvesting of the wheat crop, he alongwith deceased Gurdial Singh had gone to the fields for harvesting crop where accused Jaswinder Singh accompanied by another person tried to restrain them from harvesting. Accused demanded more money as consideration of the land sold by Jaswinder Singh to Harsangeet Singh. They could not harvest the wheat crop on that day. Jaswinder Singh let out his animals in the fields for grazing and threats were handed out to

Gurdial Singh. A settlement was arrived between Jaswinder Singh and Harsangeet Singh with the intervention of respectables and relatives. Harsangeet Singh agreed to pay another amount of ₹45,000/- on account of expenses of underground pipes out of which, ₹20,000/- was already paid to him. Remaining amount of ₹25,000/- was to be paid on harvest of paddy crop. Sale-deed was executed by Jaswinder Singh in the year 2003 itself. It is not disputed that Gurdial Singh was indeed an employee of Harsangeet Singh and was managing his land. There is nothing on record to negate this fact. Accused Jaswinder Singh was a former resident of the same village.

Keeping in view the entire facts and circumstances of this case, prosecution has indeed proved its case beyond reasonable doubt qua all the accused. There is no material contradiction or discrepancy which renders the evidence unreliable. Evidence on record does not permit of any other hypothesis but the guilt of the accused persons. Chain of circumstances is complete. Learned counsel for the appellants are unable to point out any factor to create a shadow of doubt on the prosecution version.

Consequently finding no merit, both the appeals are dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

July 7 , 2015.
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