

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Crl. Appeal No.D-1085-DB of 2013

Date of Decision: 16.01.2015

Manjit Singh @ Laddi and another

..... APPELLANTS

VERSUS

State of Punjab

..... RESPONDENT

Crl. Appeal No.D-916-DB of 2013

Varinder Singh

..... APPELLANT

VERSUS

State of Punjab

..... RESPONDENT

. . .

CORAM:

HON'BLE MR. JUSTICE T.P.S. MANN

HON'BLE MR. JUSTICE SHEKHER DHAWAN

- 1) Whether Reporters of the 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?

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PRESENT: -

Mr. H.S. Batth, Advocate for
the appellants.
(in Crl.Appeal No.D-1085-DB of 2013)

Mr. D.S. Kahlon, Advocate
for the appellant.
(in Crl.Appeal No.D-916-DB of 2013)

Mr.Rajesh Bhardwaj, Additional Advocate
General, Punjab for the State-respondent.

SHEKHER DHAWAN, J

This judgment shall dispose of the above referred two appeals of the appellants vide which they have challenged the judgment dated 18.07.2013 and order of sentence of even date whereby appellants have been held guilty, convicted and and sentenced to undergo rigorous imprisonment for life and to pay a fine of ₹2,500/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month under Section 302 of IPC and further sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹1,500/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month under Section 201 of IPC.

Brief facts for the decision of present appeals are that on 18.09.2008 complainant Surat Singh reported to the police that his younger son Parminder Singh @ Sonu was doing the job of Photography and Videography. On 16.09.2008 at about 10.00 P.M., he had left his residential house after telling his mother Smt. Balbir Kaur that he was going to take back his Camera. However, Parminder Singh @ Sonu had not come back. He was having two mobile phones of make NOKIA having Nos.9464437424 and

9872189644. They tried to contact Parminder Singh but he could not be contacted. They made search at their own level at different places. During the process, complainant along with Daljit Singh was going towards Patti drain from village Kandiala towards Sarhali Mand and at a distance of 200 meters from Sarhali Mand, they found the dead body of Parminder Singh lying in the drain towards its eastern side. The dead body was brought out of water. At that time, there were three injuries on his body i.e. towards right side of his neck, left cheek and under the ear. As per complainant, Parminder Singh had been killed by some persons and thereafter his body was thrown into the water to destroy the evidence. It had come in the investigation that murder of Parminder Singh @ Sonu was committed by accused Manjit Singh @ Laddi, Gursahib Singh @ Saaba and Varinder Singh, who were lastly seen with Parminder Singh @ Sonu by Heera Singh near the drain where the dead body was found floating in the water. It had also come in the investigation that Manjit Singh @ Laddi had given injury with baseball on the head of deceased whereas accused Gursahib Singh @ Saaba had given knife blows on the neck and chest of deceased and accused Varinder Singh had taken the deceased into grip when the injuries were caused by accused Manjit Singh and Gursahib Singh. Thereafter,

the dead body was thrown in the drain of Sarhali Mand. These facts were disclosed by all three accused to Joginder Singh, who later on told the same facts to the police. All the three accused were arrested on 13.10.2008. Accused Manjit Singh @ Laddi made disclosure statement and got recovered baseball used for commission of offence and accused Gursahib Singh got recovered knife as per his disclosure statement. Car bearing registration No.HR29-C-6900 which was used by accused persons was also taken into police custody. Blood stained earth and weapons used for commission of offence were sent to the Forensic Science Laboratory for examination.

Charge for commission of offence under Sections 302/201 read with Section 34 of IPC was framed against accused persons on 07.01.2009, to which accused pleaded not guilty.

Prosecution examined seven witnesses during trial of the case. Accused were examined under Section 313 Cr.P.C. and all of them denied the prosecution version to be correct and pleaded their false implication in the case. However, no witness in defence was examined.

Prosecution case is mainly based upon testimony of PW1 complainant Surat Singh and PW3 Balbir Kaur, who are parents of deceased Parminder Singh. As per PW-1

Surat Singh and PW-3 Balbir Kaur, on 16.09.2008, Parminder Singh had left his residential house at about 10.00 PM for taking back his Camera. At that time, all the three accused persons were standing outside the house along with their white coloured Maruti Car. Both these witnesses have deposed before the Court that they had identified the accused persons present in the Court. Ocular version by way of statements of PW-1 and PW-3 finds corroboration from medical evidence by way of statement of PW-2 Dr. Sulakhan Singh, who had found seven injuries on the dead body of Parminder Singh including injury No.7, which was the main injury.

“Injury No.7 -A lacerated wound 3.5x1.0 cm on occipital region of scalp. On dissection of skull, subdural haemorrhage (about 100 CC) was present in both the hemisphere with fracture occipital bone. Meninges were torn.”

As per medical Officer, the above injury No.7 was found to be sufficient to cause death in the ordinary course of nature and all these injuries were found to have been caused immediately before death.

Apart from that, the prosecution case finds support and corroboration from testimony of PW-5 SI Bachittar Singh before whom all the accused had disclosed the fact regarding injuries caused by them to Parminder

Singh. The weapons used for commission of offence were got recovered. Dagger Ex.P6 was taken into police custody vide recovery memo Ex.PW6/Q and the same was found to be blood stained. A baseball used for commission of offence was also got recovered at the instance of accused and was taken into police custody vide memo Ex.PW6/I.

Against the above discussed prosecution evidence, the defence version in this case is plea of denial by way of statement of accused under Section 313 Cr.P.C. Apart from that, no defence evidence has been led by the accused.

We have heard Mr. D.S. Kahlon and Mr. H.S. Batth, Advocates for the appellants and Mr. Rajesh Bhardwaj, Additional Advocate General, Punjab for the State-respondent.

As in this case, the process of law was set into motion by complainant Surat Singh, who had reported the matter to the police vide Ex.PW1/A that on 16.09.2008 at about 10.00 PM his son Parminder Singh had left the residential house after telling his mother Smt. Balbir Kaur that he was going to take his Camera. Thereafter, he had not come back. At that time, Surat Singh had not disclosed to the police that the appellants-accused were standing outside their house and their son Parminder Singh was lastly seen by him or by his wife Balbir Kaur. In Ex.PW1/A, there

is no mention of use of Car by the appellants-accused, which was subsequently recovered during investigation. There is no eye witness account in the present case and the prosecution relies upon circumstantial evidence. It is not disputed in any way that the conviction can still be based upon circumstantial evidence but the law on the point is settled that sequence of events explaining the circumstances should be such that the same leads to one and the only conclusion that the offence alleged against the accused was committed by the accused facing the trial and none else. In such like cases of murder, the prosecution was required to prove the circumstances which include:-

- (i) motive for causing the offence
- (ii) last seen in the company of accused
- (iii) extra judicial confession, if any
- (iv) disclosure statement made by accused persons, if any
- (v) recovery on the basis of disclosure statement, if any
- (vi) factum of death in such like cases of murder.

In the case in hand, prosecution has not been able to prove any motive on the part of accused persons for committing such a heinous crime of murder of Parminder Singh @ Sonu. It had not come in the statements of PW-1 Surat Singh or PW-3 Balbir Kaur that the appellants had any motive to commit the murder of Parminder Singh. The

prosecution had set up the plea that the deceased was lastly seen in the company of appellants-accused but that theory has not been proved in accordance with law. The initial version put forwarded by Surat Singh is by way of statement Ex.PW1/A. At that time, Surat Singh had not mentioned that on the fateful night i.e. on 16.09.2008, the appellants-accused were standing outside their residence or they were seen by him or by his wife Balbir Kaur. However, Surat Singh appeared as PW-1. During the trial of the case, he has made improvement on this point. The witness was duly confronted on this point. During the cross-examination, it had come that this fact was not mentioned in his earlier statement before the police. The witness was also duly confronted and contradicted on this point that in his earlier statement before the police, there was no mention about availability of white coloured Car which was allegedly used by all the three appellants-accused on that night. It had come in the cross-examination that the said fact was also not recorded in his earlier statement before the police. The contradiction on most material point in the statement of PW-1 Surat Singh certainly makes the prosecution case doubtful. Similarly, PW-3 Balbir Kaur was confronted with her earlier statement Ex.DA on this point and it had come that she had not made such a statement before the police.

Smt. Balbir Kaur had also made improvement and contradiction on the material point, which makes the prosecution case doubtful on that account.

As regards the theory of last seen, the prosecution had examined Hira Singh as a witness during trial of the case as PW-8. The said witness had not supported the prosecution case and he was declared hostile. That way, the theory of prosecution that Parminder Singh was lastly seen in the company of the appellants-accused has not been proved on the file so as to treat that a circumstance raising pointing finger of accusation and establishing the guilt of the accused.

The prosecution had also come with the plea that accused persons had made extra judicial confession before Joginder Singh. The said Joginder Singh was examined as PW-9. He has also not supported the prosecution case and turned hostile. That way, the case of prosecution was also not stand proved on the basis of extra judicial confession having been made by appellants-accused.

In the absence of material circumstances leading to proof of guilt of the appellants-accused, the remaining evidence available on file by way of medical evidence and investigation proceedings do not establish the guilt of the accused and do not complete the chain of circumstances

leading to proof of guilt of the appellants-accused. In absence of such evidence, the defence version put forward by the appellants-accused is more probable version than prosecution version and benefit of doubt is certainly to be given to the appellants-accused.

Resultantly, both the appeals are allowed and judgment and sentence order dated 18.07.2013 passed by the Additional Sessions Judge, Tarn Taran are set aside.

(T.P.S. MANN)
JUDGE

(SHEKHER DHAWAN)
JUDGE

January 16, 2015
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