

In the High Court of Punjab and Haryana at Chandigarh

Date of decision: 20.11.2015
CRA-D-273-DB-2011 (O&M)

Jagdeep Singh Appellant

Vs.

State of Punjab Respondent

CRA-D-1106-DB-2011 (O&M)

Premjit and another Appellants

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. Rahul Vats, Advocate
for the appellant and as Amicus Curiae
in **CRA-D-1106-DB-2011**

Mr. Amit Chaudhary, Additional Advocate General, Punjab

RAJ RAHUL GARG.J.

The above mentioned two appeals have been directed against the judgment dated 01.02.2011 rendered by learned Additional Sessions Judge, Sri Muktsar Sahib, whereby, the aforesaid 3 appellants-accused were held guilty for the offence under Section

302/120-B of Indian Penal Code (for short 'IPC'). Vide order of sentence of the even date, accused Jagdeep Singh and Kaka Singh @ Kaku were sentenced to undergo imprisonment for life for the offence under Section 120-B IPC and to pay a fine of Rs. 2,000/-. In default of payment of fine, each shall further undergo one year rigorous imprisonment. They were also sentenced to imprisonment of life for the offence under Section 302 IPC and to pay a fine of Rs.2,000/-. In default of payment of fine, to further undergo one year rigorous imprisonment. Appellant-accused Premjit was sentenced to imprisonment for life for the offence under Section 302 read with Section 34 IPC and to pay a fine of ₹2,000/-. In default of payment of fine, to further undergo rigorous imprisonment for one year.

Brief facts of the case are like this; that on 03.05.2008, SI/SHO Darshan Singh, received a message from H.C. Kulwant Singh No. 114 that Mohinder Kaur (widow), residing near his house, was murdered. On this information, SI Darshan Singh along with police officials reached the spot. Baljinder Singh and Jagroop Singh alongwith others met the police party. At that place, Baljinder Singh, gave a statement to the police to the effect that his father had already died about 9/10 years ago. His mother was Mohinder Kaur. He had a step sister namely Virpal Kaur, aged 20 years, from a different father but same mother. Mandeep Kaur, aged 12/13 years, is his real sister from his own father. Mohinder Kaur, was earlier married somewhere else. As per complainant 2½ years ago, one Gurmit Singh, resident of

Malout, used to visit their house as he was philandering with his mother Mohinder Kaur. He used to reside in their house, day and night. About 20 days ago, prior to 03.05.2008, one Pappu Majhbi, resident of Malout, accompanied with aforesaid Gurmit Singh, came to their house. Thereafter, Gurmit Singh stopped visiting the house of the complainant whereas Pappu Majhbi visiting them. Pappu used to take meals at their house and also used to sleep with Mohinder Kaur, in the presence of elder sister Virpal Kaur and younger sister of complainant namely Mandeep Kaur. Virpal Kaur felt offended on that. She used to quarrel with her mother Mohinder Kaur on this matter. Mohinder Kaur, by giving threats, used to make her keep quite. She used to state as to who were they to stop her from indulging in her relationship. Virpal Kaur told the complainant and Balwant Singh, resident of village Bhangchari, many time about the affairs of her mother Mohinder Kaur.

Premjit, son of Mam Chand, was the God brother of Mohinder Kaur. Complainant and his sister used to call him as Mama (maternal uncle). He was also on visiting terms with them. He also stopped Mohinder Kaur from indulging in the illicit relationship with the aforesaid bad elements and also stopped their entry to her house. When she did not stop, Virpal Kaur conspired with Premjit and also called Kaka and Jagdeep (appellants-accused) in this regard. A day before 02.05.2008, they conspired together in the absence of Mohinder Kaur . A day before that day, at about 7:30 P.M., Pappu, came to meet

Mohinder Kaur at her house. After staying for sometime, he went back. After taking meals, Mohinder Kaur , slept outside by putting on her separate fan whereas the complainant and his sisters Virpal Kaur and Mandeep Kaur slept on their separate cots at the distance of 2/4 karms from Mohinder Kaur. At about mid-night, the complainant woke up when some leg struck against his cot. Complainant saw that Virpal Kaur and Premjit were standing there. Kaka and Jagdeep were armed with 'kapas' and 'tokas'. Electric bulb was glowing at that time. Complainant witnessed Kaka and Jagdeep Singh inflicting 'toka' and 'kapa' blows on the face and neck of Mohinder Kaur. Complainant did not utter anything but had been seeing this occurrence while lying in a nervous and panicky state of mind. Thereafter, Virpal Kaur and Premjit encouraged Kaka and Jagdeep Singh accused by stating that they would send their due to them. Thereafter, Virpal Kaur closed the outer door of the house after sending the aforesaid three assailants outside the house. She bolted the door from inside. She also put a Khes on the mother of the complainant. Complainant stated that he was terrified and closed his eyes out of fear. The complainant did not move nor could sleep. In the morning, Virpal Kaur woke up complainant and told him that some person had murdered their mother by inflicting injuries on her. Thereafter, she informed neighbourers about the death of her mother. Complainant waited for Balwant and others. He stated before the police that accused Virpal Kaur, Premjit, Kaka and Jagdeep Singh had caused murder of his mother by slicing her face and neck. As per

complainant, his sister Virpal Kaur was not liking his mother, to have illicit relations in their presence with Pappu and Gurmit and also to openly sleep with them. She also used to lose temper on it and as such, she hatched a conspiracy with Premjit, committed murder of her mother Mohinder Kaur. Kaka and Jagdeep Singh came to the house of Premjit on *fitter rehra*, a day before the fateful day. They also used to visit the house of Premjit even prior to that and were known to complainant. SI Darshan Singh recorded the statement of Baljinder Singh @ Babbu. After making his endorsement on this statement, the same was sent to police station for registration of the case, whereupon, formal FIR of this case was recorded. SI Darshan Singh conducted the investigations. He visited the spot alongwith the police team and inspected the same. Photographs of the spot were obtained. He lifted the Plain earth and blood stained earth from beneath the cot of dead body of Mohinder Kaur and converted the same into two sealed parcels, sealed with the seal of 'DS' and then took the same into police possession. Blood stained portion of the Khes from the cot, blood stained portion from the bed-sheet lying on the cot, blood stained string of cot were also taken into police possession, after converting the same into a sealed parcel by putting the seal of 'DS' vide separate memos. Rubber chappals were also taken into police possession vide separate memo. Rough site plan of the place of occurrence was prepared. Inquest report was completed. Post-mortem examination of the dead body was got conducted. ASI Harjinder Singh, who got post-mortem examination of the dead body

conducted from the doctor, received a sealed parcel of clothes of deceased from the doctor and produced the same before SI Darshan Singh who took the same into police possession vide separate memo. Sukhvirpal Kaur and Premjit were arrested on 03.05.2008. Case property with the seal intact was deposited with the MHC of the police station.

On 06.05.2008, accused Premjit suffered disclosure statement to the effect that he had kept concealed blood stained Kappa on the backside towards southern side of the house of elder brother of Mohinder Kaur (deceased), which fact was in his exclusive knowledge only and he could get the same recovered by giving *nishandehi*. In pursuance of this disclosure statement, he led the police party to the aforesaid place and got kappa recovered therefrom. Rough sketch plan of kappa was prepared. Kappa was made into a sealed parcel, sealed with the seal of 'DS and was taken into possession vide separate memo, in an intact condition. On that very day i.e. 06.05.2008, accused Kaka and Jagdeep Singh were produced before SI Darshan Singh and they were arrested.

On 07.05.2008, on interrogation, accused Jagdeep Singh, suffered disclosure statement having kept hidden one tokka stained with blood fixed in a wooden handle in front of his house underneath the cotton stick lying nearby his house. He further disclosed that the aforesaid fact was in his exclusive knowledge and he could get the same recovered by giving *nishandehi*. In pursuance with this disclosure

statement, accused Jagdeep Singh led the police party to the aforesaid place and got tokka recovered therefrom. Rough sketch plan of tokka was prepared. It was sealed into a parcel with the seal of 'DS' and then the same was taken into police possession vide separate memo. Fitter *Rehra* was also recovered from front of the house of accused Jagdeep Singh and the same was taken into possession vide separate memo. Case property was sent to Forensic Science Laboratory, Punjab, Chandigarh in an intact condition. Photographs, taken by photographer Hind Pal Singh, were produced before the Investigating Officer and the same were taken into police possession vide separate memo. On receipt of report FSL and on completion of necessary investigations, the challan was put in the Court against the accused.

Accused were charge-sheeted for committing offence punishable under Section 120-B IPC and under Section 302 IPC. After recording entire prosecution evidence, statements of accused under Section 313 Cr.P.C. were recorded wherein accused denied each prosecution allegation and pleaded their innocence.

Accused Premjit took the defence that he had no concern with this blind murder and further that nothing was recovered from him nor he made any statement to the police.

Accused Sukhvirpal Kaur also pleaded her innocence and further that she did not commit the murder of mother nor hatched any conspiracy with any person, about this crime. She had great love and affection with her mother. She took the defence that their family has

commercial land in abadi of Malout and Jagroop Singh, son of Kaka Singh, resident of Malout, wanted to take possession of aforesaid property and also wanted to purchase their land but she was opposed to that. For the said reason, Jagroop Singh, in connivance with the police, falsely involved her in this case so that he may be able to take possession of the aforesaid land in her absence as her other brother and sister were minors. Accused Kaka and Jagdeep Singh also pleaded that they are innocent and have been falsely implicated in this case. They have no concern with this blind murder.

After hearing both the counsel for the parties and appraising the entire material and evidence on record, the learned trial Court recorded the judgment of conviction dated 01.02.2011 and passed the order of sentence of even date, as mentioned in the earlier part of this judgment.

We have heard learned counsel for the parties, besides appraising the entire material and evidence on record.

First of all, it was argued by learned counsel for the appellants-accused that Baljinder Singh-complainant is the son of deceased. If he had actually seen the occurrence as narrated by him, he would have certainly intervened in order to save his mother. As per Baljinder Singh (PW1) even after seeing the occurrence, he did not get up nor raised any hue and cry nor took any step to save his mother from the clutches of the assailants. This conduct of Baljinder Singh is quite un-natural which creates doubt in the genuineness of the prosecution

story.

The above, argument of learned counsel for the appellants-accused is not sustainable as the complainant was of the age of 10-12 years on the date of occurrence. He was a student of 8th class at that time. Virpal Kaur is the elder sister of complainant. At the time of occurrence, Premjit-accused, to whom they used to call Mama, was present. On seeing the assailants, armed with weapons, who were inflicting fatal injuries on the person of Mohinder Kaur, a child of the age of Baljinder Singh would never muster the courage to get up and intervene. Baljinder Singh (PW1) stated that on seeing the occurrence he became nervous and kept lying in a panicky state of mind. In fact the situation was baffling. Under these circumstances, a child of the age of Baljinder Singh-complainant would normally behave in the manner he did. Even otherwise, each person acts in a different manner in a particular situation. He was not grown up young man nor armed with any weapon so as to think that he would be able to counter attack the assailants or would be able to save her mother from armed assailants.

The next argument raised by learned counsel for the appellants-accused that there is discrepancy in the statements of Baljinder Singh (PW1) and Mandeep Kaur (PW2) who are the material witnesses of the prosecution. Baljinder Singh as PW1 deposed that accused Premjit was armed with kappa Kaka and Jagdeep Singh-accused were armed with tokka. He further deposed that accused Premjit gave blows on the hands of his mother. Accused Kaka and

Jagdeep Singh caused injuries on the neck and mouth of his mother. Whereas per Mandeep Kaur (PW2), accused Kaka @ Kaku was armed with kappa, accused Jagdeep Singh armed with tokka and accused Premjit was empty handed. She further deposed that accused Kaku caused kappa blow and accused Jagdeep Singh caused tokka blow on the mouth and throat of her mother. In the complaint made by Baljinder Singh (PW1) to the police, he stated that Kaka and Jagdeep Singh were armed with kappa and tokkas. They inflicted tokka and kappa blows on the face and neck of Mohinder Kaur. As such, statement of Baljinder Singh (PW1) is not consistent on the point as to if Premjit was empty handed and further as to if he caused any injury to deceased Mohinder Kaur or not.

In fact, the above argument raised by learned counsel for the appellants-accused is not very material as the fact remains that Premjit, Kaka @ Kaku and Jagdeep Singh appellants-accused were very much present at the scene of crime. They conspired together to kill Mohinder Kaur. In pursuance with that they entered the house of Mohinder Kaur during night time and also inflicted injuries on her person with kappas and tokkas. It hardly makes any difference if Premjit was empty handed or armed with kappa. The boy of the age of Baljinder Singh-complainant cannot exactly remember the minute details of the incident even after passing of 3 years when his statement in the Court was recorded. Baljinder Singh as PW1 did not state in his statement, before the police, on the basis of which formal FIR was

recorded; that Premjit was either armed with weapon or inflicted any injury on the person of Mohinder Kaur. Mandeep Kaur as PW2, sister of complainant and daughter of deceased, also deposed that Premjit was empty handed. Both PWs i.e. PW1 and PW2 are the son and daughter of deceased Mohinder Kaur. They are the natural witnesses of the occurrence. Their presence at the relevant time in the house is not at all doubtful. Both the witnesses faced cross-examination at length but nothing material could be extracted from them. Simply because they did not support the case against their sister Virpal Kaur, would not discredit their testimonies.

The next argument raised by learned counsel for the appellants-accused is this; that accused Kaka and Jagdeep Singh have been identified by witnesses for the first time in the Court. This is no identification as per law. This argument of learned counsel for the appellants-accused is devoid of any force as complainant explicitly mentioned in his statement itself that Kaka and Jagdeep Singh have been visiting Premjit, their Mama (maternal uncle). He has seen them earlier to it as well and also identify them. Complainant mentioned in the complaint itself the names of Jagdeep Singh and Kaka as assailants of this case. He has also made a mention that they were known to him earlier to it, even otherwise, the complainant had seen the entire occurrence while lying on the cot. As the leg of Premjit struck against the cot of complainant, he got up and, thereafter, saw the entire occurrence and also identified the assailants as Jagdeep Singh and

Kaka besides Premjit who was also standing there.

Under these circumstances, it cannot be said that complainant was having no occasion to see and identify the accused Jagdeep Singh and Kaka. In fact, they were known to the complainant and there is no doubt in the mind of the complainant regarding identity of these two persons.

The next argument raised was that the recoveries of kappa and tokka are planted one. No independent witness was joined in the investigations of this case inspite of the fact that the recovery of aforesaid two weapons was got effected in pursuance with the disclosure statements of accused Kaka and Jagdeep Singh. Had prosecution joined independent witness, the prosecution case would have been disclosed. In the absence of any independent corroboration, the recovery of weapon of offence from the possession of accused, is not free from doubt.

It is true that joining of independent witnesses at the time of interrogation of the accused as well at the time of recovery, is imperative but at the same time it is settled proposition of law that the testimonies of non-official witnesses are at par with the testimonies of official witnesses if the same are consistent and inspire confidence in the mind of the Court regarding guilt of the accused. It is also settled proposition of law that where the recovery is supported by the official witnesses only, that *per se* is no ground to discard their testimonies.

The only rule of caution is that their statements should be examined

with extra care in order to find out whether they inspire confidence and are worthy of reliance. It is further the settled proposition of law that if independent witnesses are not joined at the time of search and seizure then the search would not *per se* be illegal and would not vitiate the trial.

In the case in hand deceased was having illicit relation with bad elements which was not to the liking of Virpal Kaur, daughter of deceased. Premjit accused was God brother of deceased. In conspiracy with Kaka and Jagdeep Singh, murder of Mohinder Kaur was got done. Under those circumstances no one would like to be a part of such like cases as they did not want to earn any kind of enmity with such accused. In this case, in pursuance with their disclosure statement, accused got recovered blood stained kappa and tokka. The same were sent to Forensic Science Laboratory for test. Test report is Ex.PW8/U which says that exhibits contained in parcels A and B (blood stained tokka and blood stained kappa) were stained with human blood. These weapons of offence were recovered at the instance of accused of this case. As such, there remains no doubt regarding involvement of accused in this case.

The learned trial Court written the impugned judgment of conviction after appraising the evidence available on record, minutely. The impugned judgment is well reasoned judgment. We find no illegality in the impugned judgment so as to warrant interference of this Court.

For the reasons recorded above, finding no merit in this appeal. Impugned judgment of conviction dated 01.02.2011 and order of sentence of even date are maintained.

Dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

20.11.2015.
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