

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-405-DB-2011 (O&M)

Date of decision: 15.12.2015

Jaswinder Singh @ Jassi @ Bura

..... 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. H.S.Dhindsa, Advocate
for the appellant.

Ms. Manjari Nehru Kaul, Additional Advocate General,
Punjab.

RAJ RAHUL GARG.J.

This appeal is directed against the judgment dated 12.02.2011 rendered by learned Additional Sessions Judge, Hoshiarpur, whereby, appellant-accused Jaswinder Singh @ Jassi @ Bura, was held guilty for committing offence punishable under Section 302 of Indian Penal Code (for short 'IPC'). Vide order of sentence of even date, he was sentenced to undergo RI for life and to pay a fine of ₹10,000/- with default clause.

Brief facts of the prosecution case is like this: that on the statement (Ex.PA) of Simarjit Kaur, this case was registered. She stated

before the police that she is a teacher. On 28.01.2007, at about 12:00 noon, appellant-Jaswinder Singh took Avtar Singh (deceased) from her house saying that he had some work at Police Station Tanda. Both of them left on a scooter. During the intervening night of 28/29-01-2007, when she was asleep in her house, her husband Avtar Singh came home and left the house by saying that he was going with Jaswinder Singh on account of some urgent work. On 30.01.2007, Jaswinder Singh (accused) came back to her house. On the asking of complainant, Jaswinder Singh told her that under the influence of heavy liquor, he and Avtar Singh were separated in the morning. Complainant searched for her husband for a few days but could not trace him out. On 06.02.2007, she made report (Ex.DA) to the police of Police Station Bullowal regarding missing of her husband.

On 15.02.2007, Kamaljit Singh, who is complainant's *bhuua* son, received a phone call on his mobile phone from mobile phone No. 98157-25243. The caller told him that the missing located from Ludhiana within 1 or 2 days. He further asked Kamaljit Singh to contact on telephone number 98155-74327. Kamaljit Singh made a telephonic call from land line telephone number 240269 to the aforesaid number. Somebody impersonating himself as Avtar Singh said that they had come to pay obeisance at Nikiwala Lela. Kamaljit Singh, replied that they are coming. Thereafter, the aforesaid caller told that they were coming to him within 1 to 1½ hours. After waiting for long when Kamaljit Singh again made telephonic call about 3:00/4:00

P.M. on the aforesaid mobile phone, the abovesaid caller attended the call and made inquiry about missing Avtar Singh. This aforesaid caller backed out from his previous talk and handed over the mobile to somebody who told Kamaljit Singh that he had made a call on wrong number. Thereafter, the aforesaid caller asked him that he does not know him and then disconnecting the mobile phone. Under these circumstances, Kamaljit Singh, complainant and his relatives were confident that Jaswinder Singh in connivance with Balwinder Singh and his other friends kidnapped her husband and confined him at some place with an intention to kill him. Prayer for tracing of her husband was made. On the basis of this statement of Simarjit Kaur, formal FIR was registered as Ex.PN/1 under Sections 364,365,344/34 IPC. Statements of witnesses were recorded. On the next day, supplementary statement of Simarjit Kaur was recorded regarding illicit relations of Avtar Singh (deceased) with the mother of accused-Jaswinder Singh. On 28.02.2007, SI Sukhpal Singh, received secret information regarding presence of accused Jaswinder Singh at Bus-Stand, Bhunga. Investigating Officer along with police officials had gone over there and arrested the accused. During interrogation, accused suffered disclosure statement on 29.01.2007 to the effect that he alongwith his friends Taranjit Singh, son of Jamal Singh, R/o Bhulana, committed murder of Avtar Singh and, thereafter, they both buried the dead body underneath of Eucalyptus trees in the field near village and he only knows about that and could get the same recovered by giving

nishandehi. This disclosure statement is Ex.PO. Accused put his signatures on this disclosure statement besides signing of the same by the witnesses. Accused was put in lock-up. Finger Print Expert, Government photographer and complainant Simarjit Kaur alongwith he, relatives reached there on receipt of information of the police. Investigating Officer alongwith police officials, aforesaid persons and accused were going to the place where the dead body was buried by the accused. Pardeep Kumar, Tehsildar, met the police party at the turning of village Muradpur Narial alongwith ASI Gurmej Singh. Infact, Investigating Officer had sent ASI Gurmej Singh alongwith application for getting some Magistrate deputed in whose presence the recovery of dead body could be effected. Resultantly, Pardeep Kumar, Niab Tehsildar, was deputed for the purpose by the office of DM, Hoshiarpur vide order Ex.PH. Pardeep Kumar was apprised about the disclosure statement of accused as well the other facts relating to this case. Both of them were joined in the police party. Accused led the police party to the fields of Avtar Singh where they buried the dead body of deceased Avtar Singh, from there accused got recovered the dead body of Avtar Singh by digging out the same. Site plan of the place of recovery of dead body was prepared as Ex.PR. Complainant Simarjit Kaur identified the dead body of her husband from his shoes, ring made of steel on which *Hazoor Sahib* was engrave and the buckle of the belt of the deceased. Thereafter, the dead body of Avtar Singh was taken into police possession vide memo Ex.PB. Soil, from where

the dead body was exhumed, was also taken into police possession by putting the same in a bag by preparing its parcel which was duly sealed with the seal of 'SS'. Soil was taken into possession vide memo Ex.PC. Site plan Ex.PR was also prepared at the spot with its correct marginal notes. Inquest report Ex.PD was also prepared. Statements of witnesses were recorded. Thereafter, the dead body was sent for post-mortem examination through HC Harjinder Singh and Constable Surinder Pal Singh to Civil Hospital, Hoshiapur alongwith application Ex.PK. When the dead body was recovered, it was video-graphed from photographer. Arrest memo as Ex. PS whereas personal search memo as Ex.PT were prepared.

After post-mortem, dead body was handed over to family members of deceased vide receipt Ex. PG.

On 03.03.2007, investigations of this case were handed over to ASI Gurmej Singh. On interrogation, accused Jaswinder Singh, disclosed that on 29.01.2007, he committed murder of Avtar Singh and concealed the *kirpan* as well as *kahi* (spade), which was used in the murder of Avtar Singh, in his house and could get the same recovered. This disclosure statement is Ex.PV. Accused then took the police party to the appointed place and from there got recovered *kirpan* as well as *kahi* as per his disclosure statement. *Kahi* was got recovered from the *khudda* of hen whereas *kirpan* from the *parchatti/attic* of his house. *Kahi* and *kirpan* were taken into possession. Rough sketch plan of *kirpan* was prepared which is Ex. PX/1. *Kirpan* was made into a parcel

and was duly sealed with the seal of 'GS'. Ex.PY is the rough site plan of the place of recovery of *kirpan*. By leading the police party to his house, accused Jaswinder Singh got recovered spade from the appointed place in his residential house. Recovery memo is Ex.PN. Report Chemical Examiner Ex.PJ was obtained. *Akas shijra* of the place, where the dead body was recovered from the ditch, was got prepared as Ex.P11/A. Site plan of the spot Ex. PM was prepared. After completion of necessary investigations, the challan was put in the Court against the accused Jaswinder Singh and Taranjit Singh.

Both the accused were charge-sheeted for committing offence punishable under Section 302 IPC.

After taking entire prosecution evidence, statements of accused under Section 313 Cr.P.C. were recorded wherein they denied each prosecution allegation and pleaded their false implication. The defence taken by accused Jaswinder Singh is this that; all the recoveries like *kahi* and *kirpan* were falsely planted by the police. He was having good terms with Avtar Singh and there was no reason for him to commit his murder.

After hearing counsel for the parties and appraising the entire material and evidence on record, the learned trial Court recorded the judgment of conviction only against accused Jaswinder Singh whereas holding that the prosecution has failed to prove its case against accused Taranjit Singh beyond all reasonable doubt. He was acquitted of the charge framed against him and accused Jaswinder Singh was

sentenced vide order of sentence dated 12.02.2011, 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.

This case is based on circumstantial evidence as there is no eye witness of this case. For convicting the accused on the basis of circumstantial evidence, the Court must satisfy **itself** that :

(1) that the circumstances from which the inference of guilt is to be drawn, have been fully established by unimpeachable evidence beyond a shadow of doubt;

(2) that the circumstances are of a determinative tendency unerringly pointing towards the guilt of the accused; and

(3) that the circumstances, taken collectively, are incapable of explanation on any reasonable hypothesis save that of the guilt sought to be proved against him.

(4) that the circumstances concerned 'must or should' and not 'may be; established. There is not only a grammatical but a legal distinction between 'may be proved' and "must be or should be proved".

(5) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(6) the circumstances should be of a conclusive nature and tendency,

(7) they should exclude every possible hypothesis except the one to be proved, and

(8) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

(9) whether a chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted.

Simarjit Kaur is the star witness of this case. She is the wife of Avtar Singh deceased. As PW1, she fully corroborated the prosecution story. She categorically stated that on 28.01.2007 at 12 noon, Jaswinder Singh @ Jassi, son of Baldev Singh, came to their house and asked her husband Avtar Singh that he was to go to Tanda for his personal work and requested her husband to accompany him. At this, Avtar Singh and Jaswinder Singh had left the house on scooter. She further deposed that during the intervening night of 28/29-01-2007 while she was asleep in her house, at about 2:40 A.M., her husband Avtar Singh came to the house along with Jaswinder Singh-accused and told her that he was going with Jaswinder on account of some urgent work. Then, both of them left the house. She further deposed that on 30.01.2007, Jaswinder Singh-accused came to her house. On her asking, Jaswinder Singh told her that due to taking of liquor by both of them on 29.01.2007, her husband Avtar Singh had taken

excessive liquor and further that they separated from each other. Thereafter, she tried to find her husband but could not get any clue and then she got recorded DDR Ex.DA on 06.02.2007. At that time, she had given identity of her husband as aged about 25 years; clean shaven; wearing yellow looser (pullover); black pant (jean); orange and brown shoes, a Hindu Gentleman. Simarjit Kaur was cross-examined at length but her testimony could not be discredited by the accused. She is the most natural witness of last seen. She has categorically stated that Jaswinder Singh-accused had taken away her husband. He was the one who remained with her husband till last. As on 30.01.2007, when Jaswinder Singh came to her house, on her asking he told that both of them had taken liquor during the night of 29.01.007 and since Avtar Sngh had taken excessive liquor, therefore, they had separated. No sufficient explanation is coming-forth so as to explain as to when, where and under what circumstances Avtar Singh parted with the company of Jaswinder Singh. On the other hand, on the basis of disclosure statement of accused Jaswinder Singh, which is Ex.PO, he led the police party to the appointed place where he buried the dead body in a ditch and then on reaching there, after digging, got recovered the buried dead body of Avtar Singh which was in decomposed state. However, the same was identified by Simarjit Kaur-complainant as that of her husband. She identified the dead body from shoes, ring made of steel on which word '*hazoor Sahib*' was written and from the buckle of belt vide memo Ex.PB. Not only this, she had also given the identity of

Avtar Singh in Ex.DA. DDR got recorded by Simarjit Kaur, regarding missing of her husband. In this DDR as well the complainant has given the identity that Avtar Singh was wearing yellow looser (pullover), black pant (jean), orange and brown shoes. Dr. Jaswinder Singh, MO, Civil Hospital, Hoshiarpur, as PW2 also gave the description of dead body at the time of post-mortem examination. This doctor has also found the dead body wearing *kotti* yellow. Identification by the wife of deceased from the wearing apparels as well from the other articles on the person of deceased is proper identification and cannot be viewed in any manner with doubt. Thus, it is accused Jaswinder Singh who got recovered the dead body of Avtar Singh by suffering disclosure statement and then leading the police party to the pointed place and then after digging earth, exhumed the dead body.

It was next argued by learned counsel for the appellant-accused that Simarjit Kaur had identified the dead body from shoes, ring and from buckle of the belt. All these things are commonly available in the market and there was no specific mark of identification. As such, it cannot be said that identification of dead body from the aforesaid articles is proper identification. This argument is again not sustainable in view of the above discussion as wife of the deceased was well in a position to identify the dead body of her husband particularly from the aforementioned articles on the person of the dead body.

Pardeep Kumar, Naib Tehsildar (PW5) also witnessed the aforesaid proceedings wherein accused got recovered the dead body of

the deceased. Naib Tehsildar is an independent person. He is the Government Officer. He was deputed on duty by the District Magistrate. His testimony is of great importance, besides Investigating Officer of this case, who also deposed about taking out of the dead body from dug out pit by accused Jaswinder Singh.

It is a very strong circumstance showing involvement of accused in this crime as otherwise there was no point for the accused to know about the place where the dead body of Avtar Singh was lying buried. Thus, with this evidence on the file, it can be said that the circumstance from which inference of guilt is to be drawn, have been fully established by an unimpeachable evidence beyond shadow of doubt.

In view of the above evidence available on record, the contention of learned counsel for the appellant-accused that in the absence of DNA test, as the body was decomposed body, its identity cannot be said to have been established; is devoid of any force. As the body was decomposed, therefore, no DNA test was conducted but this evidence cannot be said to be conclusive in nature even if DNA test had been conducted. Evidence would have been corroborative in nature only. Of course, doctor has stated that without DNA report, identity of skeletonize body and with facial feature unidentifiable, identity of dead body cannot be established; yet with the clothes, ring and belt worn by the dead body, the wife of deceased could well identify the dead body. Even otherwise accused in pursuance with his disclosure statement led

the police party to the pointed place and after digging earth, taken out the buried dead body of Avtar Singh. Accused in his disclosure statement himself stated that he buried the dead body of Avtar Singh at the appointed place. As such, regarding identity, there is no doubt.

The next argument raised by learned counsel for the appellant-accused is this; that the recovery of spade and sword at the instance of appellant-accused is nothing but planted one in order to show the involvement of accused in this case. The finger prints of accused must have been there on the aforesaid two weapons and the same could be well lifted from those weapons. In the absence of this evidence which could be more scientific in nature, the prosecution case cannot be said to be proved beyond reasonable doubt and the benefit of the same has to go the accused. There is nothing on record to show that when *kirpan* and spade were recovered, those were having finger print marks. In fact, the same were not recovered from the spot itself. Accused had taken away the same and further kept concealed them in his house and then after laps of sufficient time got the same recovered. The question of finger print on *kirpan* and spade cannot be said to be there. Under these circumstances, if the Investigating Officer did not collect this evidence, it cannot be said to be fatal for the prosecution case. Hence, for defective investigation, no benefit can be given to the accused.

For the reasons recorded above, finding no merit in this appeal, maintaining the judgment of conviction dated 12.02.2011 and

order of sentence of even date, this appeal is ordered to be dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

15.12.2015
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