

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

Crl. Appeal No.D-720-DB of 2010

Baljit Singh

... **Appellant**

v.

State of Punjab

... **Respondent**

Crl. Appeal No.D-771-DB of 2010

Kamaljit Singh

... **Appellant**

v.

State of Punjab

... **Respondent**

Date of decision: September 29, 2015.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

CORAM: **HON'BLE MR. JUSTICE HEMANT GUPTA**
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Ms. Aditi Girdhar, Advocate, amicus curiae for the appellants.

Mrs. Manjari Nehru Kaul, Additional Advocate General,
Punjab for the respondent-State.

Raj Rahul Garg, J.

The appellants herein are in appeal challenging the judgment of conviction and the order of sentence dated 5.6.2010, whereby the accused, appellants herein, have been ordered to undergo imprisonment for life and to pay a fine of Rs.5,000/- each and in default of payment of fine, to undergo further imprisonment for a period of one year for an offence

punishable under Section 302/34 IPC.

The police of Police Station Tanda had sent the accused-appellants to stand trial under Section 302/34 in case FIR No.31 dated 9.2.2007.

Briefly narrated, the prosecution case runs to the effect that: the criminal law was into motion by PW2 Baldev Singh @ Deba by making statement Ex.PF to SI Ganga Singh, SHO Police Station Tanda wherein he stated that his brother Sat Pal alias Pala was a labourer and during those days, was doing the work of distribution of free liquor amongst the village folk on behalf of Sangat Singh Giljjan, an independent candidate seeking election from Tanda constituency at the rate of Rs.100/- per day. Along the pucca phirni of the village, there was the land of accused-appellant Baljit Singh wherein Kamaljit Singh @ Pappa, co-accused and appellant in the connected appeal, was digging a bore with machine for the last about 4-5 days prior to the date of incident. House of Sat Pal was in close vicinity of the land of the accused-appellant Baljit Singh. On 8.2.2007 at about 8 p.m., Kamaljit Singh came to the house of Sat Pal and demaded and took a bottle of liquor. Again at about 10.30 p.m., Kamaljit Singh came to the house of his brother Sat Pal. The complainant saw Kamaljit Singh and Baljit Singh standing near his brother Sat Pal and were demanding more liquor and after some time they took his brother with them. On the next day, i.e., 9.2.2007 at about 6.00 a.m., he was told by his sister-in-law Kulwinder Kaur, wife of Sat Pal, that Sat Pal did not return home last night. Thereafter, both of them reached the land of Baljit Singh where bore was being dug, in search of Sat

Pal at about 7.00 a.m. There they found a Parna (a piece of cloth used to tie on the head) lying ear the cot near the bore machine. They noticed blood lying on the ground near the cot towards pillow side. When they lifted the quilt, they found Sat Pal alias Pala lying there. There were multiple injuries on the head, forehead and face of Sat Pal and blood was oozing out. The brother of the complainant had already died. The complainant was suspicious that his brother Sat Pal had been killed by Baljit Singh and Kamaljit Singh by inflicting injuries on the head, forehead and face due to quarrel over the demand of more liquor. Thereafter, complainant Baldev Singh's brother Sukhwinder Singh and Saranjit Singh, Sarpanch of the village also reached the spot. Baldev Singh complainant left Kulwinder Kaur and Sukhwinder Singh at the spot and proceeded towards the Police Station to report the matter.

On the complaint Ex.PF, SI Ganga Singh made endorsement Ex.PF/1 and sent the same to the Police Station for registration of a formal case on the basis of which FIR Ex.PF/2 was recorded. SI Ganga Singh accompanied by his police team reached the spot; prepared site plan Ex.PL; lifted blood stained earth; recovered two empty bottles of liquor mark "Officers Choice" besides one bottle containing small quantity of liquor of the same mark along with parna were sealed into separate parcels. Thereafter, the police prepared the inquest report and started investigation into the matter.

On 10.2.2007, SI Ganga Singh arrested Kamaljit Singh and while in custody, on 14.2.2007, made a disclosure statement pursuant to

which wooden log used in the commission of the crime was got recovered.

Appellant Baljit Singh was summoned under Section 319 Cr.P.C. to stand trial. After investigation, the challan was presented in the court. Both the appellants were charge sheeted, to which the appellants pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Dr. Shilender Singh (who conducted the postmortem examination), PW2 Baldev Singh, PW3 Kulwinder Kaur, PW4 HC Harminder Singh, PW5 Buta Singh, PW6 HC Mahesh Kumar, PW7 HC Tarsem Singh and PW8 SI Ganga Singh, Investigating Officer and thereafter closed the evidence.

PW1 Dr. Shilender Singh found as many as 8 injuries on the person of the dead body out of which most of them were multiple fractures. According to this witness, the cause of death was head injury which was sufficient to cause death in the ordinary course of nature.

After conclusion of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. and the imputations appearing against them in the prosecution evidence were put to them. They pleaded innocence and false implication due to party faction in the village and election grudge.

After hearing both the counsel for the parties and appraising the entire evidence and material on record, the trial court recorded aforementioned judgment of conviction and order on sentence.

We have heard learned amicus curiae appearing on behalf of the appellants and the learned Counsel for the State on behalf of the

respondent-State and with their able assistance have gone through the evidence on record.

This case is based on circumstantial evidence. There was in fact no eye witness to the crime. PW2 Baldev Singh @ Deba and PW3 Kulwinder Kaur, wife of deceased Sat Pal, are the witnesses of last seen. Both the accused were lastly seen in the company of deceased by the aforesaid two witnesses. PW2 Baldev Singh @ Deba categorically stated that on 8.2.2007, his brother Sat Pal (deceased) was doing job for Sangat Singh Giljia on daily wages and was earning Rs.100/- per day and on the same day, Sangat Singh Giljia supplied liquor bottles to Sat Pal for distributing the same to other workers. Baljit Singh accused had taken land on lease from Choudhary family near the house of Sat Pal. Kamaljit Singh @ Pappa accused was at work of digging bore of tube-well, with boring machine. He also deposed that Kamaljit Singh used to visit the house of Sat Pal. He firstly came to the house of Sat Pal and took a bottle of liquor from him and thereafter he along with Kamaljit Singh came to the house of his brother and demanded liquor bottle and took away his brother. They did not return that day. On the next day at about 6 a.m., his sister-in-law (wife of the deceased) told him that Sat Pal had not returned home at night and thereafter on search, they found the dead body of Sat Pal lying on a cot in the field of Baljit Singh accused. PW3 Kulwinder Kaur followed the suit. She also deposed that at about 10.30 p.m. again, accused Kamaljit Singh along with Baljit Singh came to their house and demanded another bottle of liquor. She saw both of them standing at the gate of their house and her

husband had gone to meet them there. She further deposed that at that time, they were quarreling with her husband on the demand of liquor and thereafter they took her husband along with them in her presence but she did not know where they took her husband and thereafter her husband did not return. Thus, from the above discussed evidence, it is established on the record that the deceased left in the company of both the accused on 8.2.2007 at about 10.30 p.m. and thereafter he did not return.

Now as per Sahadeva @ Sagadevan v. State represented by Inspector of Police, Chennai, 2003(1) Crl. Court Cases 68 (SC) in which it was held that a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which they parted company; it was for the accused to explain as to when deceased parted with their company but there is no such explanation available on record.

At this juncture, it was argued by learned Counsel for the appellant-accused that the theory of last seen comes into play when gap between the time when the accused and the deceased were seen last together and the dead body was recovered is so short that there is no possibility of any person other than the accused being the author of the crime.

In the preset case, the deceased left in the company of both the accused on 8.2.2007 at about 10.30 p.m. When deceased did not return home during the whole night, in the early morning, i.e., at about 6 a.m. on 9.2.2007, PW3 Kulwinder Kaur, wife of deceased, informed complainant PW2 Baldev Singh @ Deba, brother of the deceased, that Sat Pal did not

return home that night. Thereafter search was made and at about 7 a.m., the dead body of Sat Pal was found in the field of Baljit Singh where Kamaljit Singh accused was at work of tube-well boring. The time gap when the deceased was last seen in the company of the accused and when the dead body of the deceased was found is very very short a time. In the late night, the deceased left in the company of the accused and in the following early morning, his dead body was found in the field of Baljit Singh accused. Finding of dead body in the field of Baljit Singh is again a very strong circumstance of evidence against Baljit Singh and Kamaljit Singh accused as Kamaljit Singh was at work at that very place. Even from that place, two empty liquor bottles and one bottle containing some liquor were also recovered from the spot which further goes to show that the deceased must have taken liquor in the company of accused and thereafter the accused committed the present crime.

PW2 Baldev Singh @ Deba and PW3 Kulwinder Kaur deposed that when they had gone outside the phirni of the village, they saw parna of the deceased lying on the cot. On the pillow side of the cot, blood was lying on the earth in large quantity and when PW2 Baldev Singh @ Deba picked up the quilt, they saw that Sat Pal was lying with his face downwards with multiple injuries on his head and face and was dead. At that very moment, they expressed their suspicion that Sat Pal was killed by the accused. Had they not killed Sat Pal, he would not have been found dead on the cot lying in the field of Baljit Singh where Kamaljit Singh accused was at work. Except the accused, no body else could dare to kill a person in the field of

another. The dead body of Sat Pal was found lying on the cot which further indicates that the cot must have been meant for sleeping purpose of Kamaljit Singh accused who was at work in the field of Baljit Singh. No body else could be there to use that cot for the purpose of sleep. As such, this circumstance again points towards the guilt of the accused, leaving no reasonable doubt for a conclusion consistent with the innocence of the accused. Rather, the aforesaid circumstances so established are of conclusive nature and consistent only with the hypothesis of the guilt of the accused and are not capable of being explained by another hypothesis except the guilt of the accused.

It was next argued by learned Counsel for the appellants that PW3 Kulwinder Kaur during the course of her cross examination deposed that a wooden log was taken into possession by the police from the place of occurrence whereas as per the prosecution case, it was got recovered by accused Kamaljit Singh in pursuance with his disclosure statement Ex.PP and the same was taken into possession vide memo Ex.PQ. With this statement of PW3 Kulwinder Kaur on record, the prosecution case regarding recovery of wooden log at the instance of Kamaljit Singh accused stands belied and sufficient to create a dent in the genuineness of the prosecution case.

The above argument of learned Counsel for the appellants is devoid of any force. Ex.PM memo vide which articles found lying at the spot were taken into possession, does not show that wooden log was also taken into possession by the police vide memo Ex.PM. Under these

circumstances, if PW3 Kulwinder Kaur has stated so, it is not fatal for the prosecution case which is otherwise fully proved against the accused.

Lastly, it was argued by learned Counsel for the appellants that PW2 Baldev Singh @ Deba deposed during the course of his cross examination that there is no enmity between the accused and the deceased; their relations were cordial. As such, when there was no motive for the accused to commit the crime, why they would do so. As such, accused cannot be convicted.

It is true that motive is a relevant factor in all criminal cases whether based on testimony of eye witnesses or circumstantial evidence. It is generally a difficult area for any prosecution to bring on record what was in the mind of the accused. No doubt, it is a sound principle to remember that every criminal act is done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the purpose; the motive of the accused to commit it. PW3 Kulwinder Kaur deposed that while the deceased was with the accused at the gate of their house, accused were quarreling with her husband on the demand of liquor and thereafter they took her husband along with them in her presence. As such, there was some ire for the accused towards Sat Pal which must have swelled up in the mind of the accused to such a degree as to impel them to commit this crime. There is in fact nothing on record to show as to why PW2 Baldev Singh @ Deba and PW3 Kulwinder Kaur would falsely implicate the accused in this case. Promptness in lodging the FIR further rules out the possibility of introduction of coloured version. Right in the

FIR itself, PW2 Baldev Singh @ Deba expressed that Kamaljit Singh accused in connivance with Baljit Singh of their village had killed Sat Pal.

The reasons recorded above and the above discussed circumstances cumulatively lead to the only irresistible conclusion that the accused alone are the perpetrators of the crime. As such, finding no merit in these appeals, maintaining the impugned judgment of conviction dated 5.6.2010 and the order of sentence of even date, these appeals are dismissed.

September 29, 2015.	[Raj Rahul Garg] Judge	[Hemant Gupta] Judge
<i>kadyan</i>		