

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-928-DB-2010(O&M)

Date of decision: 03.11.2015

Jagjit singh @ Jaggi 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. Vishal Rattan Lamba, Advocate
for the appellants.

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

RAJ RAHUL GARG.J.

This appeal is directed against the judgment dated 04.08.2010 rendered by learned Additional Sessions Judge, (Fast Track Court), Bathinda, whereby all the three accused were held guilty for committing offence punishable under Sections 376, 302, 404 and 120-B Indian Penal Code (for short 'IPC'). Vide order of sentence dated 05.08.2010, each one of the accused was sentenced to undergo rigorous imprisonment for a period of 10 years with fine of ₹2,000/- with default clause for offence under Section 120-B IPC; to undergo imprisonment for life with fine of ₹5,000/- with default clause for

offence under Section 302 IPC; to undergo rigorous imprisonment for a period of 10 years with fine of ₹5,000/- with default clause for the offence under Section 376 IPC and to undergo rigorous imprisonment for a period of 3 years with fine of ₹1,000/- with default clause for the offence under Section 404 IPC.

Brief facts of the prosecution case are like this; that on 17.08.2008, SI Gurpreet Singh along with police officials were present in the area of village Chak Ram Singh Wala in connection with patrolling duty. SI Balwinder Singh, Incharge PP, Bhucho along with police officials met SI Gurpreet Singh. They were also associated with the police party. Buta Singh met the police party and got his statement recorded to the effect that Inderjit Kaur @ Jeeta was his wife. She was a trained mid wife. She was working with Dr. Preet Nurse, Bhucho Mandi from 1992 to 2005. Later on, she was running a nursing home with Ghukkar Kaur in partnership. Sometimes, she also used to visit the nursing home of Dr. Kaler, on call.

On 14.08.2008, at about 9:00 P.M. he alongwith his wife and children were at home. His wife's sister's son Jaswinder Singh, son of Karamjit Singh, resident of Chak Fateh Singh Wala had come to their house and was also with them. At that time, his wife received a telephonic call at her mobile phone. After attending the phone call, she went aside. On asking, she told him that there was a delivery case at Dr. Kaler's place and she was to go there. After taking meal, Hardeep Singh @ Goldy and Jaswinder Singh had gone out for walk. His wife had also

gone out. As he opened the door and saw that at a distance of 50 karmas, his wife sat on a scooter and had gone away. He could not recognize the driver of the scooter as he had driven the scooter very fast. He also asked his son and Jaswinder about it, to which they told him that they did not know the driver of the scooter. As street light was on, therefore, they could read the last number of the scooter as 4248. It was also stated by the complainant that his wife did not reach back home that night. He along with his children and relatives searched for her. He came to know that a dead body of woman was found in the cotton fields of Baldev Singh, resident of Chak Ram Singh Wala on the Jhanduke road near drain. He along with his son Hardeep Singh reached there and found the dead body of his wife Inderjit Kaur lying there. He and his son identified the dead as Inderjit Kaur. He further disclosed that he has left his son at the spot i.e. near the dead body. He further expressed his suspicion that his wife has been murdered by the driver of the scooter or by his companions. The complainant also reported that there was injury on the head, blood stained on the body and bluish spot on the neck of his wife. Ear rings on the person of his wife and mobile phone were not there. SI made his endorsement on this report, whereupon, FIR of this case was registered. SI along with complainant had gone to the spot where his son Hardeep Singh was found present near the dead body. Jiwan Singh son of Pritam Singh and Gurnam Singh son of Dial Singh were also present there. Photographs of the dead body were got obtained in the presence of Hardeep Singh.

Site was inspected. Site plan was prepared. Statements of witnesses were recorded. Inquest report was completed. Dead body of Inderjit Kaur was got post-mortemed. Accused were arrested on 19.08.2008. Their scooter was taken into police possession vide memo Ex. PW4/A which is attested by SI Balwinder Singh and Karamjit Singh.

On interrogation, accused Jagjit Singh suffered disclosure statement Ex. PW4/B to the effect that during the intervening night of 14/15-08-2008, he, Gurtej Singh and Gurwinder Singh, residents of village Chak Ram Singh Wala, in connivance with each other planned to take Nurse Inderjit Kaur outside and to commit rape. Inderjit Kaur, nurse, was already known to him. He made call from his mobile number 94174-58826 to Inderjit Kaur. The aforesaid mobile was in the name of his father Balbir Singh. Mobile used to remain with him (accused Jagjit). Several time, he called Inderjit Kaur on her mobile number 94176-08057. In order to take Inderjit Kaur outside, they had taken scooter No. PB-03D-4248 of Ranjit Singh son of Jalour Singh of their village. In connivance with each other, they all three of them took Inderjit Kaur at night in the fields, to commit rape upon her. They all the three committed rape upon her one by one and, thereafter, at the same place she was murdered. After murder, he took out gold ear rings worn by her and two mobile phones make Nokia bearing No. 94176-08057 and the other mobile phone whose number was not known to him. The sims of both the mobiles were thrown away into the water channel which was on the way. He further deposed that both the

aforesaid mobiles and pair of gold rings were kept in a green colour polythene envelop and were kept concealed by him in his residential house in the room which is used for storing the chaff. He alone knew about that and can get the same recovered after giving *nishandehi*. SI Balwinder Singh and Jagjit Singh signed this memo as witnesses.

On interrogation, accused Gurtej Singh suffered disclosure statement Ex.PW4/C to the same effect so far as commission of offence of rape and murder of Inderjit Kaur by them, is concerned. He also disclosed that after murder, he had removed the gold chain from the neck of Inderjit Kaur and kept the same in an *almirah* beneath the book, in his residential room and he alone knew about the same and can get the same recovered by giving *nishandehi*. This memo was also attested by SI Balwinder Singh and Karamjit Singh as witnesses.

On interrogation, accused Gurwinder Singh suffered disclosure statement Ex.PW4/D to the same effect so far as the commission of offence of rape and murder of Inderjit Kaur by them is concerned. He also deposed that in his presence Jagjit Singh gave a call on her mobile No. 94176-08057. He also disclosed that after rape and murder of Inderjit Kaur, a *gandasa*, used in the crime, was kept concealed by him in the chaff room of his residential house. He alone knew about that and can get the same recovered by giving *nishandehi*. This memo was also attested by SI Balwinder Singh and Karamjit Singh as witnesses.

In pursuance with his disclosure statement, accused Jagjit

Singh led the police party to the disclosed place and after removing the chaff along with the left side of the wall got recovered one envelop of green colour from which two Nokia mobiles and one pair of gold ear rings were taken out. EMI numbers of both the recovered mobiles also found mentioned in the recovery memo. Recovered mobiles were sealed in a white cloth parcel whereas pair of gold ear rings were kept in a *dabbi* plastic and separately made into a parcel. Both the parcels were sealed with the seal of 'GS'. Sample seal was also prepared and the same were taken into possession vide memo Ex. PW4/Z.

In pursuance with his disclosure statement, accused Gurtej Singh led the police party to his house. He opened the door of the room, situated near the gate of his house, then he opened the *almirah*. He took out the gold chain and produced the same before the police which was kept in a plastic small box (*dibbi*) and made into a parcel, sealed with the seal of 'GS', seal after use was handed over to SI Balwinder Singh and then the gold chain was taken into police possession vide memo. Ex.PW4/R.

Gurwinder Singh, in pursuance with his disclosure statement, led the police party to his residential house and got recovered *gandasa* after removing the chaff from the chaff room of his residential house. Rough sketch plan of the *gandasa* was prepared as Ex.PW4/G and then the same was taken into police possession vide memo.Ex.PW4/H. Rough site plan of the place of recovery at the instance of accused Jagjit Singh was prepared as Ex.PW12/J; of the

place of recovery of accused Gurtej Singh as Ex.PW12/K and that of place of recovery of accused Gurwinder Singh as Ex.PW12/L were prepared. Case property was deposited with the MHC.

On further investigations, accused Gurwinder Singh suffered disclosure statement having kept concealed the clothes of Inderjit Kaur i.e. *salwar, kamiz and duppta (chunni)* which she was wearing at the time of commission of this crime, by digging up a pit towards southern side of the room where tube-well was installed about which he alone knew and can get the same recovered by giving demarcation. This disclosure statement is Ex.PW3/B. In pursuance with this disclosure statement accused Gurwinder Singh led the police party to the appointed place and by digging up a pit upto depth of 1' situated towards southern side at a distance of 5-6 karams from the tube-well room of Baljinder Singh got recovered aforesaid clothes of deceased Inderjit Kaur. The same was made into a parcel and sealed with the seal of 'GS' and were taken into police possession vide memo Ex.PW12/N. Sample seal was also prepared. Statements of witnesses were recorded. Details of the mobile phone of accused as well of deceased have also been obtained. Photographs taken by Beg Raj Sharma, produced before the police which were taken into police possession vide memo. Ex.PW12/O. Photographs are MO8 to MO15 and negatives are MO16 to MO22. *Gandasa* is MO23. Parcel containing clothes of the deceased is MO24. Mobile belonging to accused Jagjit Singh is MO25. Parcel of 2 mobiles of deceased is MO26. Parcel of simple earth is MO27 and

that of blood stained earth is MO28. Gold chain is MO4. Gold ear rings are MO5. Parcel of deceased's *chappal* is MO29. After completion of necessary investigations, the challan was put in the Court against the accused.

Accused were charge-sheeted for committing offence punishable under Sections 302, 376, 404 and 120-B of 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.

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 04.08.2010 and passed the order of sentence dated 05.08.2010, 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 is a case based on circumstantial evidence. Before convicting the accused, parameters as provided in Arvind @ Pappu Vs. State (Delhi Administration), 1999(2)R.C.R.(Criminal),810, have to be complied with. This parameters are as follows:-

- (i) Circumstances relied upon in support of conviction must be fully established and the chain of evidence furnished by those circumstances must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of accused.*
- (ii) The circumstances from which conclusion of guilt is*

to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused and should not be capable of being explained by any other hypothesis except the guilt of the accused.

(iii) All the circumstances cumulatively taken together should lead to only irresistible conclusion that accused alone is the perpetrator of the crime.

Buta Singh complainant, husband of deceased Inderjit Kaur as PW1 categorically stated that on 14.08.2008, at about 9:00 P.M., he along with his family members and Jaswinder Singh, son of his sister-in-law, were present at the house. His wife received a phone call at her mobile phone and, thereafter, on asking, she disclosed that she had received a call from Dr. Kaler to attend a delivery case at his nursing home and then after taking meals, Hardeep Singh (his son) and Jaswinder Singh had gone out for a walk with their dogs whereas his wife Inderjit Kaur left the house for nursing home of Dr. Kaler. Inderjit Kaur was a trained mid-wife. She used to go to Dr. Kaler's nursing home to attend the call. When his wife left the house for nursing home of Dr. Kaler, he also followed her upto the gate. At the gate, he noticed that at some distance, scooter number PB-03D-4248 was standing. He further disclosed that he noticed the scooter number in the street light and also saw that Jagjit Singh @ Jaggi was driver of the aforesaid scooter. He was also known to him. Jagjit Singh hurriedly drove away the scooter. Hardeep Singh and Jaswinder Singh also told him that they had also read the number of the scooter and also told the same to him

on which Inderjit Kaur had gone.

Hardeep Singh as PW2 corroborated the statement of Buta Singh (PW1) in this regard. Buta Singh as well his son Hardeep Singh were natural witnesses whose presence was very much expected at home at that point of time and further the fact of noticing the scooter on which Inderjit Kuar had gone on receipt of phone call. Thus, the evidence of last seen is there in this case. Though, learned counsel for the appellants-accused contended that there is improvement in the statement of Buta singh as well of Hardeep Singh on the point of last seen as they did not state in the FIR Ex.PA the complete scooter number as well the name of Jagjit Singh @ Jaggi, yet, it is not fatal for the prosecution case. In fact, the clinching evidence is established on the file so as to fasten the accused with this guilt.

It is a case of rape with murder. Hardeep Singh (PW2) deposed that dead body was in a naked condition. The dead body of his mother was covered with white cloth.

Dr. Satish Kumar Goyal (PW10) who conducted the post-mortem on the dead body of Inderjit Kaur, after post-mortem handed over the belongings of the deceased i.e. nose pin, bra, wrist watch, thread, pajebe and *chappal* to the police which were taken into police possession vide memo Ex. PW5/A. This statement of the doctor shows that the *salwar*, *kamiz* and *dupatta* of the deceased must not be on her person as otherwise the same would have also been sealed by the doctor and handed over to the police. As it is a case of rape with

murder, if the accused had taken away the clothes of the deceased and concealed the same in the tube-well room, after digging a pit, it cannot be said to be un-natural.

Learned counsel for the appellants-accused contended that there was no point for them to take away the clothes of the deceased and to conceal the same, is devoid of any force. Nobody can predict the mind of the accused. The fact established on record is this; that accused Gurwinder Singh suffered a disclosure statement in this regard which is Ex.PW3/B and then in pursuance with his disclosure statement got recovered the clothes of the deceased after digging a pit upto the depth of 1', where he had kept concealed the same. If the accused were not involved in this case, there was no point for Gurwinder Singh to get the clothes of the deceased recovered. Likewise accused Jagjit Singh in pursuance with his disclosure statement Ex.PW4/B got recovered two Nokia mobile phones of the deceased and one pair of gold ear rings of the deceased from the chaff room of his residential house. Had Jagjit Singh been not involved in this crime, there was no point for him to get the belongings of deceased recovered from the chaff room of his residential house. Accused Gurtej Singh, in pursuance with his disclosure statement Ex.PW4/C, got recovered the broken gold chain of deceased from the *almirah* of his residential house. This recovery also pin points the involvement of Gurtej Singh in this case. Even Gurwinder Singh accused in pursuance with his disclosure statement Ex.PW4/D also got recovered *gandasa* from the chaff room of his

residential house vide memo Ex.PW4/H.

Here, we would like to mention that accused Gurtej singh @ Gora, filed a CRA-No.-D-927-DB-2010. During the pendency of this appeal, Gurtej Singh @ Gora had died on 15.05.2012 while he was in custody in Central Jail, Bathinda. In view of that, the aforesaid criminal appeal was ordered as stands abated.

It was next argued by learned counsel for the appellants-accused that as per prosecution case, the occurrence is dated 14.08.2008 whereas FIR of this case was got recorded on 17.08.2008 which is delayed one and raises doubt regarding genuineness of the prosecution case. When Inderjit Kaur went missing on 14.08.2008, Buta Singh should have lodged the missing report with the police. He did not do that. As such, this case cannot be said to be free from doubt.

The above contention of learned counsel for the appellants-accused is devoid of any force as at about 9:00 P.M. on 14.08.2008, Inderjit Kaur left the house for attending the call at the nursing home of Dr. Kaler. She did not return home that night. When she did not return uptill morning, Buta Singh inquired from Dr. Kaler telephonically, whereupon, he came to know that his wife did not go to his nursing home that night. Buta Singh as PW1 deposed that still he was not satisfied, as such, he himself had gone to the nursing home of Dr. Kaler and came to know that his wife did not reach his nursing home. Under these circumstances, it was quite natural for Buta Singh to wait for his wife for good time. When uptill morning, she did not return, he made

inquires and ultimately he satisfied himself after going to the nursing home of Dr. Kaler and, thereafter, he started searching for his wife. Buta Singh as PW1 also stated that on 15.08.2008, he had gone to PP Bhucho Mandi, there one Head Constable was present, to whom he narrated the aforesaid story of missing of his wife and also requested him to report the matter but he did not record his report. There can never be any evidence of such like situations. At the same time such like things do happen. Buta Singh further stated that on the next day again, he searched for his wife but all in vain. On 17.08.2008, he came to know that a dead body of a woman was lying in the cotton fields of Baldev Singh, situated on road leading from Chak Ram Singh Wala to Jhandu ke, near the drain. Then he along with his son had gone there and found the dead body of his wife lying over there and, thereafter, FIR of this case was registered. In such like circumstances, it cannot be said that there was in fact delay in lodging the FIR so as to give room to coloured version and thoughtout story. Just after finding the dead body of his wife, he left his son by the side of the dead body and himself had gone to the police and lodged the report. As such, in this case, it cannot be said that there was any delay in lodging the FIR or that the same in any way causes dent in the prosecution case.

It was next argued by learned counsel for the appellants-accused that Gurdip Singh son of Babu Singh(PW14) did not support the prosecution case who is a witness of extra judicial confession of the accused. As such, chain of circumstances cannot be said to be complete

in this case so as to convict the accused.

Of course, as per prosecution case, accused had gone to this witness and before him Gurwinder Singh-accused confessed that he, Gurtej Singh @ Gora and Jagjit Singh @ Jaggi, during intervening night of 14/15-08-2008, called Inderjit Kaur through mobile phone, who was known to him as friend and they consumed liquor and raped Inderjit Kaur turn by turn and then some altercation had taken place with her. As such, under the influence of alcohol, they all murdered Inderjit Kaur and concealed her articles and further that since the police was in search of them, therefore, they wanted him to produce them before the police, whereupon, he suggested them to come at 12 o'clock but they did not return. This witness has turned hostile. He did not support the prosecution case at all. Simply because, this witness has turned hostile would not discredit the statements of Buta Singh (PW1), Hardeep Singh (PW2) and other witnesses who have proved the factum of making disclosure statements by the accused and then getting the recovery of belongings of deceased effected in pursuance with their disclosure statements.

It is settled proposition of law that extra judicial confession even if believed is a very weak piece of evidence and ordinarily not accepted without independent corroboration. As such, no benefit can be given to the accused on this count. As a result, the above-discussed circumstances so established on the file are conclusive in nature and consistent only with the hypothesis of the guilt of the accused and are

not capable of being explained by any other hypothesis except the guilt of the accused and if all the circumstances cumulatively taken together they would lead to only an irresistible conclusion that accused alone is the perpetrator of the crime.

For the reasons recorded above, finding no merit in this appeal, maintaining the judgment of conviction dated 04.08.2010 and order of sentence dated 05.08.2010 against the appellants Jagjit Singh @ Jaggi and Gurwinder Singh @ Gora, the Criminal Appeal No.D-928-DB of 2010 is dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

03.11.2015
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