

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Crl. Appeal D-766-DB of 2011
Date of Decision : September 17, 2015

Satbir Singh and another

.....Appellants

VERSUS

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE GURMIT RAM**

Present : Mr. Bijender Dhankar, Advocate
for the appellants.

Mr. Dhruv Dayal, Deputy A.G., Haryana.

T.P.S. MANN, J.

The two appellants, namely, Satbir Singh and his wife Sushila, residents of village Jafrabad were charged under Section 302 read with Section 34 IPC for committing the murder of his parents Chand Singh and Smt.Kamla in furtherance of their common intention. They were also charged for the offence punishable under Section 201 read with Section 34 IPC for causing disappearance of evidence by washing blood stains from the spot with cloth in order to screen them from legal punishment. Vide judgment and order dated 7.6.2011, learned Additional

Sessions Judge, Nuh convicted them for the aforementioned offences. They were sentenced to undergo life imprisonment and to pay a fine a fine of Rs. 5,000/- each for the offence under Section 302 read with Section 34 IPC and in default of payment of fine, to further undergo simple imprisonment for two years. They were also sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 2,000/- each for the offence under Section 201 read with Section 34 IPC and in default of payment of fine, to further undergo simple imprisonment for six months. Both the sentences were ordered to run concurrently. The period spent by them in judicial custody during investigation and trial was ordered to be set off against the sentences of imprisonment imposed upon them.

Aggrieved of their conviction and sentences, the appellants filed the present appeal which was admitted on 23.9.2011 and notice issued to the State.

The case of the prosecution, in nutshell, is that on 15.2.2010, ASI Narain Singh of Police Station, Tauru reached the house of the two deceased in village Jafrabad subsequent to receiving a telephonic message at the Police Station that some one had committed the murders of Chand Singh and his wife Kamla. On reaching the spot, he met Hoshiar Singh, the eldest son of deceased Chand Singh, who got recorded his statement

Ex. PD to the effect that he was permanent resident of Jafrabad and the eldest son of his parents. Younger to him was Dharam Singh, while Satbir Singh was the youngest. Besides, he had two sisters. Both he and Dharam Singh resided at Rajiv Colony, Gurgaon. He was employed with Omax Company at Manesar whereas Dharam Singh was a truck driver. His brother Satbir Singh with his children and parents resided at Jafrabad. Satbir Singh was an agriculturist. On that day at about 7.30 p.m., Dharam Singh told him that some one had inflicted sharp edged weapon injuries to his parents and committed their murder. On receipt of the information, complainant-Hoshiar Singh alongwith his wife Sunita reached village Jafrabad and found the accused, namely, Satbir Singh and his wife Sushila present in the house and his parents Chand Singh and Smt. Kamla lying dead in the baithak. While his father had been murdered with an axe, his mother had been strangled to death. Chhotu Khan, Sarpach of the village, Rohtas, Sarpanch of village Mohammadpur Ahir and others were found present there. However, at that point of time, complainant-Hoshiar Singh did not suspect any one who would have committed the murder of his parents. He, however, sought initiation of legal action. Statement Ex. PD of complainant-Hoshiar Singh was recorded by ASI Narain Singh on 16.2.2010 at 2.15 a.m. and the same was sent to Police Station

Tauru where on its basis, FIR No. 47 dated 16.2.2010 (Ex. PD/2) came to be recorded at 2.30 a.m. under Section 302 IPC by SI Mohinder Singh. Copy of special report was handed over to EASI Rambir, who delivered the same to the Illaqa Magistrate at 4.30 a.m.

During the investigation of the case, which was conducted by Inspector Dinesh Kumar, SHO, Police Station Tauru, site-plan of the place of occurrence was prepared, Crime investigation team, dog squad and forensic expert were summoned, who inspected the spot. The dead bodies were sent for autopsy. Statements of various witnesses were recorded. Complainant-Hoshiar Singh disclosed to Inspector Dinesh Kumar that accused-Satbir Singh had told him on his mobile phone that he alongwith his wife had committed the murder of the two deceased at 6.00/6.30 p.m. After collecting call details of mobile Nos. 09990569028 and 09050631076 for the period 1.2.2010 to 16.2.2010 through recovery memo. Ex. PF, Inspector Dinesh Kumar arrested both the appellants. On 17.2.2010, accused-Satbir Singh suffered disclosure statement Ex. PA while accused-Sushila suffered disclosure statement Ex. PB. In pursuance of the same, they got recovered one axe Ex. P15 with blood stains, one pant Ex. P16 with blood stains, one shirt Ex. P17 with blood stains and one chunni (lugri) Ex. P19, which were taken into

possession vide recovery memos. Ex. PG, PH and PJ.

After completion of the investigation followed by presentation of final report under Section 173 Cr.P.C. and commitment of the case to the Court of Sessions, the appellants were charged for the aforementioned offences to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined seventeen witnesses.

PW1 ASI Rattan Singh proved disclosure statements Exs. PA and PB of the two accused wherein they confessed their guilt of having committed the murders of the two deceased.

PW2 Basant Sharma proved photographs Exs. P1 to P7 and their negatives Exs. P8 to P14 of the place of occurrence and of the dead bodies.

PW3 Naresh Kumar, Draftsman proved the scaled site-plan Ex. PC.

PW7 Chhotu Khan, Ex-Sarpanch of village Jafrabad testified that on 15.2.2010, when he was Sarpanch of the village, accused-Satbir Singh came to him at 11.00 p.m. and disclosed regarding the murder of his parents. He also testified that he alongwith ten other villagers reached the spot and found the dead bodies. The police was called at the spot. One pant and shirt of

accused-Satbir Singh were recovered from his bed vide memo. Ex.PH. Accused-Satbir Singh also got recovered an axe, while accused-Sushila got recovered one chunni of blue colour vide recovery memos. Ex. PG and PH, respectively.

PW8 Rattan Lal, brother of deceased-Chand Singh, testified that on receipt of information regarding the murder of the two deceased, he rushed to the place of occurrence at 11.00/12.00 p.m. on 15.2.2010. He identified the dead bodies at the time of inquest and post-mortem.

PW9 Najir Ahmed of village Mohammadpur Ahir testified that in the evening of 15.2.2010 deceased-Chand Singh came to him and demanded Rs. 11,000/- for buying a plot, but he told Chand Singh that he could give Rs. 100/- only as he wanted to buy a plot for his daughter. He further testified that deceased-Chand Singh expressed that he apprehended threat to his life at the hands of the accused as he did not want to live with them and had earlier reported the matter to the police regarding quarrel with his son Satbir Singh. He also stated that on 15.2.2010 at about 8.00 p.m., Chand Singh and his wife were murdered and, accordingly, he had informed the police that the murders were committed by the accused.

PW10 Dr. Pankaj Vats testified about the post-mortem on the dead bodies of Chand Singh and Smt. Kamla. He opined

that deceased-Kamla died due to asphyxia due to ligature applied over her neck and that injury was ante-mortem in nature and sufficient to cause her death in the natural course of life. He also testified that four incised wounds were noticed on the dead body of deceased-Chand Singh whereas the fifth injury was an abrasion on the right lumbar region. According to him, deceased-Chand Singh died because of head injury (injury to brain tissue) and haemorrhage and shock due to said injury which was ante-mortem in nature and sufficient enough to cause death in natural course of life.

PW11 Hoshier Singh, who is the complainant in the case, testified that on 15.2.2010 he received telephone call in the evening regarding the murder of his parents and at 11.30 p.m., he rushed to the place of occurrence and found his parents lying dead in the house. He proved statement Ex. PD made by him before the police. He also proved memo. Ex. PW11/A regarding receiving the dead bodies of his parents after the autopsy. However, he stated that he could not come across any fact as to who killed the two deceased. The witness was declared hostile and during his cross-examination conducted by the learned Public Prosecutor, he disowned his statement Ex. PW11/B and also the fact that he stated to the police regarding the accused giving beatings to his parents and the accused being rebuked by the

villagers and his uncle. He also denied that accused-Satbir Singh had disclosed to him that he alongwith his wife Sushila had killed the deceased. He further stated that there was no dispute between his parents and the accused and some unknown person had killed his parents. He further stated that the axe and the chunni stained with blood were lying at the spot, which were taken into possession by the police. He also disclosed that Chhotu Sarpanch and his persons were nursing a grudge as he was not being supported by his family members in the election and, accordingly, at the behest of the said Sarpanch and his persons, the accused had been implicated in the case.

PW12 Ram Avtar deposed that he came to know regarding murder of the deceased on 16.2.2010 and attended their cremation. As he did not testify about other aspects of the matter, he was also declared hostile and during his cross-examination by the learned Public Prosecutor, he disowned his statement Ex. PW12/A. He also denied having stated to the police that whenever the deceased used to meet him in the market, they would complain to him about the conduct of the accused, who had been maltreating them.

PW13 Ram Mehar, who was the witness to the disclosure statements and recovery memos., failed to support the prosecution case and was declared hostile. During his cross-

examination by the learned Public Prosecutor, he denied his initial statement Ex. PW13/A. He, however, admitted his signature on the memo. Ex. PG regarding recovery of axe from the possession of accused-Satbir Singh; memo. Ex. PH of blood stained pant and shirt from the possession of accused-Satbir Singh and memo. Ex. PJ of chunni from the possession of accused-Sushila. However, according to him, he could not state as to what was recovered vide those memos.

PW16 Mahabir, brother of deceased-Chand Singh, expressed ignorance about the killers. He stated that no proceedings took place in his presence. After being declared hostile and when cross-examined by the learned Public Prosecutor, he denied making statement Ex. PW16/A to the police to the effect that whenever Chand Singh visited him at Tauru, he would apprise him that both the accused had been harassing and beating him and, thereafter, this witness went to Jafrabad to rebuke both the accused regarding their behaviour with their parents.

The investigation part of the case has been proved on record by PW4 ASI Narain Singh, PW5 HC Subhash Chander, PW6 HC Vikram Singh, PW14 SI Mohinder Singh, PW15 Inspector Dinesh Kumar and PW17 Constable Ramesh Kumar.

The prosecution after tendering FSL report Ex. PQ

closed its evidence.

When examined under Section 313 Cr.P.C., both the accused pleaded their false implication and claimed that they were innocent. They stated that both of them used to live separately from the deceased and were not present at the time of their murder. Some unknown persons had killed the deceased. They also stated that Chhotu Sarpanch and his persons were annoyed with them as they did not support the said Sarpanch in his election. Because of that enmity, they have been falsely roped in the case.

In their defence, the accused examined DW1 Ram Phal.

After hearing learned counsel for the parties, the trial Court believed the prosecution version and convicted and sentenced the appellants, as mentioned above.

We have heard learned counsel for the parties and scanned the evidence and entire material brought on record.

Learned counsel for the appellants has submitted that there is no direct evidence available on the file from which it could be established that the appellants had committed the murder of Chand Singh and his wife Smt. Kamla. As the case rests upon circumstantial evidence, the prosecution was duty bound to

satisfy the Court by adducing cogent and consistent evidence so as to show that only the appellants had committed the crime. In the present case, the material witnesses of the prosecution have not supported the prosecution case to show that the appellants had the motive to commit the crime. Merely because the dead bodies were found in the house of the appellants was not sufficient to fix the liability of the appellants, who had been living separately from the deceased. Similarly there was no corroboration to the factum of various recoveries. In any case, the part and participation of appellant-Sushila in the commission of the crime was doubtful.

Learned State counsel has vehemently opposed the arguments raised by learned counsel for the appellants and submitted that the prosecution had led sufficient evidence to connect the appellants with the commission of the crime.

Having heard learned counsel for the parties and on going through the evidence with their able assistance, this Court finds that though no direct evidence has been brought on record by the prosecution that it were the appellants, who committed the murders yet the prosecution has based its case upon circumstantial evidence. However, this Court will examine as to whether the various pieces of circumstantial evidence show the involvement of the appellants in the commission of the crime.

To begin with, it may be noticed that in his statement Ex. PD on the basis of which FIR Ex. PD/2 was recorded, it was stated by Hoshiar Singh complainant that the appellants used to reside with the deceased in a house, constructed by the deceased in the fields. Even DW1 Ram Phal admitted that the appellants had been living with the deceased in the same house though in separate rooms. Complainant-Hoshiar Singh is none else than the elder son of the two deceased and brother of appellant-Satbir Singh. While appearing as PW11 before the trial Court, he testified that on 15.2.2010 at 7.30 p.m., he received information from his another brother Dharam Singh regarding the murder of his parents. He immediately rushed to the spot where the appellants were found present and the dead bodies lying in the baithak. He had reached the spot at 11.30 p.m. He then made statement Ex. PD which was recorded by PW4 ASI Narain Singh on 16.2.2010 at 2.15 a.m. Though he did not deny making statement Ex. PD to the police yet he did not support the prosecution case. He also disowned his supplementary statement Ex. PW11/B which was made by him to the police on 16.2.2010 wherein he had stated that the appellants used to maltreat and beat his parents over property dispute, he had also stated therein about receiving of telephone call from appellant-Satbir Singh, who had told him that he alongwith his wife Sushila

had committed the murder and killed both the deceased. He had also stated therein that it was appellant-Satbir Singh, who had cleaned the floor which was full of blood. Coming back to statement Ex. PD made by complainant-Hoshiar Singh in the first instance, it is clear that he learnt about the murder of his parents from his brother Dharam Singh. The murders were committed in the house where the deceased lived and so also the appellants. Atleast Satbir Singh was supposed to have informed the complainant regarding the factum and the manner in which the occurrence had taken place. This conduct of appellant-Satbir Singh in not informing complainant-Hoshiar Singh points towards his guilt. It is true that appellant-Satbir Singh went to the house of PW7 Chhotu Khan, Sarpanch and informed him that someone had killed his parents yet he waited for more than four hours in disclosing the matter to Chhotu Khan i.e. at 11.00 p.m.

During the investigation of the case, PW15 Inspector Dinesh Kumar while inspecting the spot did not find any proof of valuables or other movable articles missing or lying scattered there. Even otherwise, there was no history of enmity of deceased with any one. PW4 ASI Narain Singh, who was the first Police Officer to reach the spot and prepared site-plan Ex. PE of the place of occurrence and getting the dead bodies photographed, also did not find any trace of missing of any

valuables, money or jewellery from the house. So much so that the defence did not challenge the testimonies of PW4 ASI Narain Singh and PW15 Inspector Dinesh Kumar regarding all the valuables lying intact. Therefore, it was not a case where the deceased had been killed by some unknown persons. Further, the dead body of deceased Chand Singh was found lying on the cot whereas that of deceased Kamla lying on the floor. Bedding and other clothes were lying on two separate cots in an arranged manner. The presence of pool of blood was at a distance from the cot where the dead body of deceased Chand Singh was lying. That also indicates that the dead body of deceased Chand Singh was placed on the cot after committing his murder at the place where the blood was lying in abundance and some portion of blood having been cleaned with the help of shawl as observed from the photograph Ex. P2. Even if it is taken for the sake of arguments that some unknown persons had attacked the two deceased, who were well built and aged about 60 years, then under normal circumstances, the appellants being the residents of the same house, would have raised hue and cry and reported the matter to the neighbours. In any case, the story of the defence about murders being committed by unknown persons is highly improbable.

Coming to the motive for commission of the murder,

the prosecution had examined PW9 Najir Ahmed, resident of the adjoining village, who testified that the appellants used to maltreat and quarrel with deceased Chand Singh. For one such incident, appellant-Satbir Singh was also challaned by the police. It is true that the written complaint lodged by deceased Chand Singh against appellant-Satbir Singh was not collected by the investigating agency but from the testimony of PW9 Najir Ahmed it is made out that the appellants had been harassing the deceased. PW9 Najir Ahmed belonged to Muslim community. He was neither related to the deceased nor had any interest in them or against the appellants. Like deceased Chand Singh, he was ex-army personnel but that is no ground to hold that he would depose falsely against the appellants.

PW7 Chhotu Khan, Ex-Sarpanch of the village, had testified that on 15.2.2010 at about 11.00 p.m., appellant-Satbir Singh came to him and told him about the murder of his parents. He, however, stated that he did not want to accompany appellant-Satbir Singh. It may be for the reason that he may have sensed some foul play on the part of appellant-Satbir Singh because he asked appellant-Satbir Singh to call some other persons and after about ten persons collected there including neighbours of the deceased that he alongwith with them reached the spot where the dead bodies were lying. The defence tried to challenge the

implication of the appellants at his instance because of election rivalry but this suggestion was specifically denied by him. At the same time, on 15.2.2010, Chhotu Khan was the Sarpanch of the village and, therefore, there was no question of his nursing any grudge against the appellants.

PW11 Hoshier Singh, PW12 Ram Avtar and PW16 Mahabir did not support the prosecution case because they happened to be the close relatives of the deceased as well as of the appellants. After the death of their two close relatives, it was but natural for them to ensure the acquittal of the appellants. However, in view of the other evidence available on the file, it stands clearly established that the deceased during their lifetime used to be harassed by the appellants upon their failure to give them share in the land. From the cross-examination of DW1 Ram Phal, it is made out that appellant-Satbir Singh had no land in his name and was cultivating the share given to him by his father. Apparently, partition of the land had not taken place. As appellant-Satbir Singh had still not become the owner, he had strong reason to commit the murders of his parents so as to accelerate succession.

Coming to the recovery of axe at the instance of appellant-Satbir Singh, the prosecution in order to establish the said fact, had examined PW13 Ram Mehar, who did not support

the prosecution case. However, PW7 Chhotu Khan proved the recovery memo. Ex. PG. He also proved memo. Ex. PH regarding recovery of pant and shirt, stained with blood, which belonged to appellant-Satbir Singh. Recovery memo. Ex. PJ vide which chunni was got recovered from the possession of appellant-Satbir Singh establishes his involvement in the crime. As per the FSL report Ex. PQ, human blood was found on the axe as well as on the shirt and the pant of appellant-Satbir Singh. As regards the recovery of chunni vide memo. Ex.PJ, there is deposition of PW7 Chhotu Khan but even the said recovery had been effected at the instance of appellant-Satbir Singh and, that too, from the nearby fields of Ram Chander on 17.2.2010.

It may not be out of place to mention here that the prosecution could not prove as to which mobile number was used by appellant-Satbir Singh for making call to complainant-Hoshiar Singh, his brother. Call details from 1.2.2010 to 16.2.2010 pertaining to mobile used by appellant-Satbir Singh, thus, remained unproved. However, that is not sufficient evidence to convince the Court about the falsity of the prosecution case against appellant Satbir Singh.

Coming to the case of appellant-Sushila, it may be noticed that by committing the murders of two deceased, she was not going to gain in any manner. On the other hand, it was

appellant-Satbir Singh, who was to inherit the land of his father Chand Singh, since deceased. Merely because, appellant-Sushila happened to be the wife of appellant-Satbir Singh is not sufficient to fix her liability in the case. Possibility cannot be ruled out that the crime had been committed by appellant-Satbir Singh and being his wife, appellant-Sushila, without knowing the consequences of her act but being faithful wife, may have played some part like cleaning of the blood so as to wash the blood stains at the spot. Still there is a lurking doubt in the mind of the Court about the involvement of appellant-Sushila. Under these circumstances, giving of benefit to appellant-Sushila will be in order.

Resultantly, the conviction of appellant-Satbir Singh is upheld and his sentences of imprisonment and fine alongwith their default clauses are maintained. However, the conviction and sentences of imprisonment and fine of appellant-Sushila are set-aside and she is acquitted of the charges against her.

The appeal is disposed of, accordingly.

(T.P.S. MANN)
JUDGE

September 17, 2015
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(GURMIT RAM)
JUDGE