

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA No.D-140-DB of 2014

Date of decision : 16.07.2015

Jagtar Singh

..... Appellant

Versus

State of Punjab and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Sanjeev Kumar Arora, Advocate
for the appellant.

RAMENDRA JAIN, J.

Feeling aggrieved, the appellant-complainant Jagtar Singh has preferred the present appeal against the judgment dated 11.10.2013 passed by the learned Sessions Judge, Moga acquitting respondent-accused No.2 Manjit Singh in Sessions Case No.24 dated 02.06.2011, bearing FIR No.10 dated 29.01.2011 under Sections 201 and 302 Indian Penal Code ('IPC' for short) registered at Police Station, Sadar, Moga.

Brief facts, relevant for decision of this appeal are that on 29.01.2011, the appellant-complainant Jagtar Singh resident of Village Chakkar, Police Station Sadar, Jagraon got recorded his statement to the SHO Jasbinder Singh of Police Station Sadar, Moga in the area of T-point Ghalkalan that his

father Joginder Singh was residing with his younger brother namely Amrik Singh in village Patto Hira Singh, District Moga since last one year. His father Joginder Singh owned two shops adjacent to his house in Village Chakkar. Out of which, one shop was on rent with respondent-accused No.2 Manjit Singh for the last four/five years, wherein he was repairing electric motors. The relations in between his father Joginder Singh and respondent-accused No.2 Manjit Singh were quite cordial. For this reason, respondent-accused No.2 Manjit Singh used to pay the rent of his shop as per his own wish. Deceased Joginder Singh also used to lend money to respondent-accused No.2 Manjit Singh on his demand. Upon asking of the deceased Joginder Singh to return the borrowed money, respondent-accused No.2 Manjit Singh started making excuses, whereupon, deceased Joginder Singh rebuked him.

In the morning of 16.01.2011, respondent-accused No.2 Manjit Singh visited the house of his brother Amrik Singh at village Patto Hira Singh and took his father Joginder Singh with him on the pretext of repayment of the borrowed money, in the presence of Amrik Singh. Thereafter, Joginder Singh did not return. Earlier also, Joginder Singh used to visit village Salina and Chakkar to meet respondent No.2-accused Manjit Singh and for this reason, they did not bother about the timely return of their father Joginder Singh. However, when their father did not return even after elapsing a few days, they

enquired about him from respondent-accused No.2 Manjit Singh, who in turn told that deceased Joginder Singh had gone back on the same day. On 29.01.2011, on enquiry by the appellant-complainant Jagtar Singh and his cousin Jasbir Singh, respondent-accused No.2 Manjit Singh, he was not found present in his house. Then, they proceeded towards his fields near canal minor by the side of village Sadda Singh Wala. On reaching near canal minor, they saw one dead body lying therein. By watching it from near, they identified it to be that of their father Joginder Singh from its clothes and walking stick lying nearby. The face of the dead-body was completely defaced. One litter plastic bottle of super star brand was also lying near the dead body. Thereafter, leaving Jasbir Singh at the spot, the appellant-complainant Jagtar Singh went to report the matter to the police that his father Joginder Singh was murdered by respondent-accused No.2 Manjit Singh, who had borrowed money from him.

On the aforesaid statement of the appellant-complainant Jagtar Singh, the present case was registered under Sections 201 and 302 IPC vide FIR No.10 dated 29.01.2011 registered at Police Station Sadar, Moga.

SHO Jasbinder Singh, Investigating Officer visited the spot. The dead body was photographed on its identification by the appellant-complainant Jagtar Singh. Inquest proceedings under Section 174 Cr.P.C. were conducted. The dead body

was then sent for post mortem examination. Rough site plan of the place of occurrence Ex.P28 was prepared. One litter plastic bottle of super star brand containing some liquid lying on the spot was taken into possession, after converting the same into a sealed parcel sealed with the seal bearing impression 'JS' vide memo Ex.P2 attested by the appellant-complainant Jagtar Singh, SI Bhupinder Singh PW-9 and ASI Balbir Singh PW-7. Walking stick lying on the spot was also converted into a sealed parcel and was taken into possession vide memo Ex.P3 duly attested by the aforesaid PWs. The samples of blood stained and ordinary earth were lifted and converted into two separate parcels and were also taken into possession vide memo Ex.29. One mould food print near the dead body was also lifted and taken into possession vide memo Ex.P4. After post mortem examination, the clothes belonging to the deceased Joginder Singh were taken into possession vide separate memo. The dead body was handed over to its relatives. On 09.02.2011, respondent-accused No.2 Manjit Singh surrendered before the police. He was formally arrested by SHO Jasbinder Singh, Investigating Officer. His scooter No.PB-05D-7786 along with its registration certificate was also taken into possession vide recovery memo Ex.P7. On 11.02.2011, respondent-accused No.2 Manjit Singh suffered disclosure statement Ex.P23 that iron rod used in the commission of murder of Joginder Singh was kept concealed by him and he could get recovered the

same. He then led the police party to the disclosed place and got recovered the said iron rod. The same was taken into possession vide recovery memo Ex.P25, after converting into a sealed parcel. On 12.02.2011, the moulds of the food print of respondent-accused No.2 Manjit Singh were prepared in the presence of Pal Singh, Duty Magistrate. The statements of the prosecution witnesses were recorded. Case property was sent to FSL for examination. After completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court of Area Magistrate against the accused.

Copies of challan as envisaged under Section 207 Cr.P.C. were supplied to the accused. Since, the offences were exclusively triable by the Court of Sessions, therefore, the case was committed to the Court of Sessions by the learned Additional Chief Judicial Magistrate, Moga vide order dated 19.05.2011.

Learned trial Court, after hearing both the sides and finding a prima facie case, framed charges against the accused under Sections 201 and 302 IPC, to which they pleaded not guilty and claimed trial.

Thereafter, the prosecution in support of its case examined as many as 14 witnesses i.e. PW1 complainant Jagtar Singh, PW2 Jasbir Singh, PW3 HC Major Singh, PW4 Rajinder Kumar, PW5 Dr.Yogesh Ahuja, PW6 SI Ved Parkash, PW7 ASI

Balbir Singh, PW8 Avinash Chander Garg, PW9 SI Bhupinder Singh, PW10 Constable Gurwinder Singh, PW11 HC Jagwinder Singh, PW12 Inspector Jasbinder Singh, PW13 Faqir Chand, Clerk of the office of Tehsildar, Moga and PW14 ASI Pritam Singh and relied upon certain documents Ex.P1 to Ex.P33 and FSL reports Ex.P34 to Ex.P37.

After closure of the prosecution evidence, statement of respondent-accused No.2 Manjit Singh under Section 313 Cr.P.C. was recorded putting entire incriminating evidence brought on record against him by the prosecution, to which, he denied and pleaded his false implication. Initially he opted to lead evidence in his defence but did not lead any.

Thereafter, after hearing learned counsel for the both the sides, the learned trial Court acquitted respondent-accused No.2 Manjit Singh vide impugned judgment dated 11.10.2013, extending the benefit of doubt.

We have heard learned counsel for both the parties and gone through the case file very carefully.

Learned counsel for the appellant-complainant argued that the impugned judgment of the learned trial Court is based on surmises and conjectures. It has failed to appreciate that respondent-accused No.2 Manjit Singh had suffered his disclosure statement on 11.02.2011. In pursuance thereof, he had got recovered an iron rod used in the commission of

murder of Joginder Singh from the place, where he had kept concealed the same. The prosecution had established beyond doubt on the record that Joginder Singh had left the company of respondent-accused No.2 Manjit Singh on scooter bearing No.PB-05D-7786, in the presence of Amrik Singh and Jasbir Singh, but despite that the learned trial Court acquitted him. The appellant-complainant Jagtar Singh as PW-1 has categorically deposed that respondent-accused No.2 Manjit Singh had killed his father Joginder Singh to usurp the amount which had borrowed from him. The learned trial Court has erred in ignoring his statement which has resulted into miscarriage of justice.

The finding of the learned trial Court that PW1 and PW2 had made improvements in their statements are palpably wrong. The learned trial Court has failed to appreciate that scooter bearing No.PB-05D-7786 was very much recovered from respondent-accused No.2 Manjit Singh, though may be in the name of some Jagdeep Singh resident of Talwandi Bhai, District Ferozepur at the time of his arrest and was taken into possession with its registration certificate vide recovery memo Ex.P7.

We have given our thoughtful consideration to the submissions made by the learned counsel for the appellant-complainant Jagtar Singh.

The prosecution story throughout is that respondent-accused No.2 Manjit Singh had taken deceased Joginder Singh on 16.01.2011 from the house of his son Amrik Singh at Village Patto Hira Singh in the presence of his son Amrik Singh. However, there are major contradictions in the prosecution story about the persons, who lastly seen taking the deceased Joginder Singh by respondent-accused No.2 Manjit Singh from the house of Amrik Singh at village Patto Hira Singh.

As per initial version got recorded by the appellant-complainant Jagtar Singh PW1 in his statement Ex.P1, respondent-accused No.2 Manjit Singh had taken their deceased father Joginder Singh from the house of his brother Amrik Singh at village Patto Hira Singh in the presence of Amrik Singh only, but contrary to it, he in the witness box as PW1, by changing his above version, introduced him also as one of the last seen witnesses of taking away of their deceased father Joginder Singh by respondent-accused No.2 Manjit Singh. The above major discrepancy casts serious doubt on the prosecution story, because, had the appellant-complainant Jagtar Singh PW1 been present at the house of his brother Amrik Singh on 16.01.2011 at village Patto Hira Singh and respondent-accused No.2 Manjit Singh had taken their deceased father Joginder Singh in his presence. In that eventuality, he would have got recorded this fact to the police in his statement Ex.P1 at the first instance. Missing of this important fact in his initial version

Ex.P1 and his introduction as a last seen witness while appearing as PW1 prove falsity of the prosecution case.

Moreover, in his statement Ex.P1 before the police on 29.01.2011, the appellant-complainant Jagtar Singh did not disclose the source/vehicle upon which respondent-accused No.2 Manjit Singh had allegedly taken his deceased father Joginder Singh. Contrary to it, he as PW1 categorically deposed that his deceased father Joginder Singh was taken by respondent-accused No.2 Manjit Singh on Bajaj Chetak scooter bearing registration No.PB-05D-7786, without disclosing the source of his information, that from where he had come to know about this fact and the registration number of scooter. Again had the appellant-complainant Jagtar Singh been present on 16.01.2011 at the house of his brother Amrik Singh at village Patto Hira Singh, when respondent-accused No.2 Manjit Singh allegedly took their deceased father Joginder Singh, he would have certainly disclosed this fact and the registration number of scooter and its make in his initial statement Ex.P1 itself. Hence, it can safely be inferred that the appellant-complainant Jagtar Singh as PW1 has introduced himself falsely as a witness of last seen.

Another glaring feature in the instant case is that the prosecution has not examined Amrik Singh, the star witness of the case. In the initial statement Ex.P1, the appellant-complainant Jagtar Singh had named his brother Amrik Singh in

whose presence, respondent-accused No.2 Manjit Singh had taken his deceased father Joginder Singh. Hence, the prosecution has miserably failed to prove its case beyond any reasonable shadow of doubt.

The motive behind the occurrence was stated to be money transaction in between deceased Joginder Singh and respondent-accused No.2 Manjit Singh. As per the prosecution story, respondent-accused No.2 Manjit Singh used to borrow money from Joginder Singh (deceased) and when he asked him to return the same, respondent-accused No.2 Manjit Singh murdered him. However, no evidence whatsoever has been produced on record in this respect. Even a single instance of borrowing of any money by respondent-accused No.2-Manjit Singh from deceased Joginder Singh has been brought on the record. Even otherwise, the above story put forth by the prosecution is falsified by the deposition of PW 2 Jasbir Singh. He in his cross-examination has categorically admitted that deceased Joginder Singh never gave any money or loan to respondent-accused No.2-Manjit Singh in his presence. He had neither any knowledge of any such transaction in between them nor had any knowledge about some writing with regard to alleged loan given to the respondent-accused No.2-Manjit Singh by the deceased Joginder Singh.

As per the prosecution story, deceased Joginder Singh had accompanied respondent-accused No.2 Manjit Singh

on 16.01.2011. His dead body was found on 29.01.2011. However, it is quite strange that no FIR was got lodged in between this period of thirteen days, rather as per the appellant-complainant Jagtar Singh PW1, they took the absence of their deceased father Joginder Singh very casually. The appellant-complainant Jagtar Singh deposed that on 29.01.2011, he along with Jasbir Singh (PW-2) went to village Chakkar and enquired about respondent-accused No.2 Manjit Singh. His shop was found closed. Then they proceeded towards village Salina and came to know that respondent-accused No.2 Manjit Singh had gone to his fields near canal minor towards the side of village Sadda Singh Wala. When they reached near watercourse and alighted from the car, they saw the dead body of their deceased father Joginder Singh lying near watercourse. Thereafter, he approached the police and got recorded his statement Ex.P1. The above conduct of the prosecution is quite unbelievable. Such a behavior cannot be accepted from a man of ordinary prudence, more particularly from a son on missing of his father.

The appellant-complainant Jagtar Singh as PW1 has also made some improvements in his deposition which casts serious doubt upon the prosecution story. In his cross-examination, he deposed that he got recorded his statement Ex.P1 that he had searched his father in kith and keen, but on

confrontation, this fact was not found in his statement Ex.P1 under Section 161 Cr.P.C.

FSL report Ex.P36 also did not support the prosecution case, because as per the statement of PW6 SI Ved Parkash, SHO Jasbinder Singh PW12 had prepared a mould of right foot shoe/Jutti of respondent-accused No.2 Manjit Singh in the presence of Pal Singh, Naib Tehsildar-cum-Executive Magistrate, Moga in police station. Faqir Chand, Clerk, PW13 of the Naib Tehsildar-cum-Executive Magistrate Moga has also corroborated this fact. However, FSL report Ex.P36 speaks that only sample of left foot print of respondent-accused No.2 Manjit Singh was received for comparison with the mould lifted from the scene of crime. The above contradiction also falsifies the prosecution version.

The prosecution has also miserably failed to connect respondent-accused No.2 Manjit Singh with the scooter bearing Registration No.BB-05D-7786 make Bajaj Chetak allegedly got recovered by him, because SHO Jasbinder Singh, Investigating Officer, PW12 has admitted in his cross-examination that registration of the said scooter was in the name of Jagdeep Singh resident of Talwandi Bhai, District Ferozepur.

No independent witness was joined at any stage of investigation which also casts serious doubt upon the prosecution version.

Even otherwise, there is nothing on record that deceased Joginder Singh just before his death was lastly seen in the company of respondent-accused No.2 Manjit Singh near the place from where his dead body was recovered. Hence, the link evidence is also missing in this case. The prosecution story that respondent-accused No.2 Manjit Singh used to nourish grudge against their deceased father has been falsified by the appellant-complainant himself, because, he as PW-1 has admitted in his cross-examination that the relations in between them were cordial and that there was no dispute between their family and respondent-accused No.2 Manjit Singh.

PW2 Jasbir Singh, in his cross-examination, has also deposed that relations between deceased Joginder Singh and respondent-accused No.2 Manjit Singh were cordial. He never heard any fight between them with regard to the rent amount.

Iron rod allegedly got recovered by respondent-accused No.2 Manjit Singh was never sent to FSL for its examination, nor it was shown to PW5 Dr.Yogesh Ahuja to seek his opinion that whether the death of Joginder Singh was possible by it. Its production before the aforesaid doctor was very much necessary, when while conducting the postmortem, loss of skin left forehead with underlying bone fracture at the level of base of nose bilateral orbits bones and zygomatic bones was found with facial disfigurement. The same was extending on to the base of skull. Hence, non-production of the iron rod

and the absence of any expert opinion that the above fracture found on the body of deceased could be caused with the same casts serious doubt about the prosecution story. The Executive Magistrate in whose presence the sample mould was taken has also not been examined which has broken the chain of events narrated by the prosecution. Hence, the link evidence is also missing.

We have gone through impugned judgment and found no illegality or perversity in the same.

No other point was urged before us.

In view of the discussion above, the appeal being devoid of any merit is hereby dismissed.

(RAMENDRA JAIN)
JUDGE

(S.S. SARON)
JUDGE

16.07.2015
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