

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA No.D-1496-DB of 2014
DATE OF DECISION: July 28, 2015

Sukhwinder Kaur

....Appellant

versus

Harinder Singh @ Hindi and others

.....Respondents

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

Present: Mr.Mohinder Singh Joshi, Advocate for the
appellant.

RAMENDRA JAIN,J.

The instant appeal has been filed by the wife of deceased Netar Singh assailing the judgment dated 30.7.2014 passed by learned Additional Sessions Judge, Rupnagar acquitting respondent Nos.5 to 9 under Sections 302, 302 read with section 34 IPC, while convicting respondent Nos.1 to 4 for the offence under section 302 read with section 34 IPC.

Brief relevant facts are as under:

On 25.1.2010, when Inspector Manvir Singh, SHO, City, Ropar along with other police officials was present at Railon Chowk, Rupnagar in government vehicle No.PB-12-J-

9157 driven by Head Constable Charan Singh in connection with the celebration of Republic Day, complainant Jagir Singh son of Mehma Singh got recorded his statement Ex.PA before him to the effect that he an agriculturist by profession was resident of village Parrol, Police Station, Mullanpur Garibdass, District Mohali. His nephew Netar Singh son of Santokh Singh was running M/s Gobind Hyundai Sub Agency at Rangipur on the main Ropar Chandigarh road. Respondent No.2 Amritpal Singh was working as Manager with his nephew, who some time back procured the signatures of Netar Singh on blank stamp papers on the pretext of getting Insurance Policy with a view to usurp his business. On the fateful day, i.e. on 25.1.2010, he along with his nephews Netar Singh and Jaswinder Singh alias Guddu and Surjit Singh son of Nachhattgar Singh, residents of Partapgarh, Ludhiana, had gone to the Court Complex to meet their counsel Mr.Ravinder Singh Bassi in connection with the aforesaid dispute. Around 12.00 O'clock, when they reached ahead of D.C. Office towards the Court, in front of the Canteen, they found respondent-accused No.1 Harinder Singh alias Hindi son of Kuldeep Singh armed with a dagger in his right hand having teeth on its one edge and plain on the other edge coming from the opposite side, accompanying respondent-

accused No.2 Amritpal Singh, respondent-accused No.3 Sandeep Singh alias Sippy and one unknown person. Respondent-accused No.3 Sandeep Singh alias Sippy and the said unknown person caught hold of Netar Singh from his arms and respondent-accused No.1 Haridner Singh exhorted Lalkara that he be made owner of the Agency. Respondent-accused No.1 Harinder Singh had given repeated blows with dagger on the left side of the chest of Netar Singh, whereas, respondent-accused No.2 Amritpal Singh, after taking out the dagger from his dub, gave 3/4 blows on the back of Netar Singh. On their raising alarm, the assailants ran away from the spot with their respective weapons. Injured Netar Singh was taken to the Civil Hospital, Ropar, where the doctors declared him dead. Shamsheer Singh son of Gurmukh Singh, resident of village Dangoli, Police Station Sadar Ropar, Didar Singh son of Sohan Singh, resident of Farm Ghadholi, Police Station Mullanpur and Nardev Singh son of Naresh Singh, resident of Teur, in connivance with each other, had got murdered his nephew with an intention to grab his Car Agency. Inspector/SHO after making his endorsement Ex.PW12/A on the said statement Ex.PA of the complainant, sent the same to the Police Station for registration of the case. Formal FIR Ex.PW12/B was registered. Endorsement Ex.PW12/C was

made upon complaint Ex.PA regarding registration of FIR. Investigation was commenced. Site plan Ex.PW12/D of the place of occurrence was prepared. The Investigating Officer collected the blood stained earth and took the same into possession after converting into a sealed parcel sealed with the seal bearing impression 'MS' vide recovery memo Ex.PW12/E. Inquest report Ex.PW12/F was prepared. Post mortem report Ex.PW3/B was obtained. On 25.1.2010, respondent-accused No.1 Harinder Singh was arrested. Memo of arrest and information Ex.PW5/A regarding his arrest were prepared. His Personal search memo Ex.PW5/B was also prepared. He suffered disclosure statement Ex.PW5/E regarding concealment of weapon and blood stained clothes. In pursuance of his disclosure statement, he got recovered one dagger stained with blood and also the clothes stained with blood. Sub Inspector Darshan Singh, Finger Print Expert prepared the sketch Ex.PW5/G of the dagger. He placed the dagger in a wooden box and sealed the same with the seal bearing impression MS and took the same into possession vide recovery memo Ex.PW5/H. The shirt and the pent/jean etc. stained with blood were separately sealed with seal bearing impression MS and the same were taken into possession vide recovery memo Exs.PW5/F and PW12/J, respectively. Specimen of the seal

was also prepared. The same after use was handed over to Assistant Sub Inspector Nirmal Singh. Site plan of the place of recovery Ex.PW12/K was prepared. After conducting the post mortem examination of Netar Singh, his blood stained clothes were sealed into a parcel and were taken into police possession vide recovery memo Ex.PW5/C. The dead body was handed over to the relatives against receipt Ex.PW12/G. A piece of cloth was also taken into police possession vide recovery memo Ex.PW5/D after sealing the same with seal bearing impression 'MS'. On 29.1.2010, respondent-accused No.4 Jagtar Singh was arrested. His personal search memo Ex.PW12/L, memo of his arrest and information Ex.PW12/S regarding his arrest were also prepared. Respondent-accused No.5 Shamsheer Singh alias Shera was arrested. His personal search memo Ex.PW12/Q, memo of arrest and information Ex.PW12/T regarding his arrest were prepared. Respondent-accused No.6 Bhawna Sharma was arrested on 24.2.2010. Her personal search memo Ex.PW12/M, memo of arrest and information Ex.PW12/P regarding her arrest were prepared. Respondent-accused No.7 Varinder Kumar Sharma was arrested. Memo of his arrest and information Ex.PW12/N regarding his arrest were prepared. On 23.3.2010, Respondent-accused Nos.2 and 3 Amritpal Singh and

Sandeep Singh, respectively, were arrested. Their personal search memos Ex.PW10/C and Ex.PW10/B, memo of arrest and information Ex.PW10/A regarding their arrest were prepared. During interrogation, on 25.3.2010, accused Amritpal Singh alias Billu suffered his disclosure statement Ex.PW4/A regarding concealment of weapon used by him in the crime and the clothes worn by him. In pursuance thereof, he got recovered one dagger stained with blood and clothes worn by him which were taken into possession after sealing them with the seal bearing impression 'MS' vide recovery memo Ex.PW4/C. Sub Inspector Darshan Singh, Finger Print Expert developed the prints on the blood stained dagger and prepared its sketch. The dagger after putting in a wooden box was sealed with the seal bearing impression 'MS' and was taken into police possession vide recovery memo Ex.PW4/D. Site plan of place of recovery Ex.PW12/R was prepared. On 6.4.2010, attendance register and other documents were taken into possession vide recovery memo Ex.PW12/U. Remaining accused were also arrested. Reports of the FSL were received. Statements of the relevant witnesses were recorded. On completion of investigation, 'challan' was presented under sections 302, 34, 120-B IPC, before the Area Magistrate.

Since the offence under Section 302 IPC was exclusively triable by the Court of Sessions, therefore, the learned Additional Chief Judicial Magistrate, Ropar committed the case to the Court of Sessions vide order dated 20.11.2011.

The learned trial Court after hearing learned PP for the State and learned counsel for the accused, on finding a prima facie case, framed charges under Sections 120-B, 302, 302/34 IPC against the respondents-accused to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as twelve witnesses, namely, PW1 complainant Jagir Singh, PW2 Surjit Singh, PW3 Dr. Pawan Kumar, PW4 Shamsheer Singh, PW5 Sub Inspector Nirmal Singh, PW6 Sub Inspector Darshan Singh, Finger Print Expert, PW7 Harneek Singh Patwari, PW8 Head Constable Dilbagh Singh, PW9 Head Constable Kulwinder Singh, PW10 Karam Singh, PW11 Constable Kulwinder Singh and PW12 Inspector Manvir Singh Investigating Officer and also relied upon various documents prepared during investigation.

Thereafter, the statements of the accused under section 313 CrPC were recorded putting entire incriminating evidence brought on record against them to which they denied and pleaded their false implication.

In defence, the accused examined DW1 Draftsman Amarjit Singh, DW2 Balwant Singh, DW3 Accountant Raj Kumar, DW4 Lakhbir Singh and DW5 Karan Singh.

After hearing learned Public Prosecutor for the State and learned counsel for the accused, the learned trial Court acquitted the respondents-accused No.5 to 9, namely, Varinder Sharma, Bhawna Sharma, Hapreet Singh, Shamsher Singh and Madan Pal @ Madan Gopal of the charges framed against them and convicted the accused-respondents Nos.1 and 2 Harinder Singh and Amritpal Singh under Section 302 IPC, whereas, Sandeep Singh and Jagtar Singh were convicted under Sections 302 read with section 34 IPC. All the respondent-accused Nos.1 to 4 were sentenced to undergo imprisonment for life and to pay a fine of Rs.25,000/- each and in default thereof, to further undergo rigorous imprisonment for six months.

However, during the pendency of this appeal, this Court made the following order on 27.10.2014:

“Learned counsel for the appellant does not press the appeal insofar as inadequate sentences of imprisonment have been imposed on respondents No.1 to 4. He, however, submits that the acquittal of respondents No.5 to 9 is against law and evidence.

The trial Court records be requisitioned.

List for hearing on 19.1.2015.”

We have heard learned counsel for the parties and have also gone through the case.

Learned counsel for appellant-Sukhwinder Kaur, wife of deceased Netar Singh argued that the learned trial Court has failed to appreciate that there was a pre-planned conspiracy. All the respondents in pursuance thereof, got signed some blank papers from her deceased husband and in connivance with each other had murdered her husband on 25.1.2010 to grab his car agency. Learned trial Court has erred in not appreciating that respondent-accused Nos.2 and 3 Amritpal Singh and Sandeep Singh had made extra judicial confession before PW10 Karam Singh admitting their guilt of committing murder of Netar Singh in conspiracy with the remaining accused. Learned trial Court ought to have also convicted respondent-accused Nos.5 to 9, because their motive was common with respondent Nos.1 to 4, who have been convicted. The deceased Netar Singh had earlier lodged an FIR No.6 on 8.1.2010 under Sections 420,467,468, 471,120-B IPC against respondent-accused Nos.2,6 and one Narinder Kumar Sharma about selling of cars on fabricated documents. The above factum of registration of FIR in itself was sufficient to record conviction

of the respondents-accused. The recovery of weapon of offence i.e. dagger and blood stained clothes from respondents-accused proves their complicity and conspiracy with each other in the commitment of murder of Netar Singh and thus, respondents Nos.5 to 9 should have also been convicted.

We have given our thoughtful consideration to the above submissions made by learned counsel for the appellant.

In his initial complaint, complainant Jagir Singh named three persons i.e. respondent-accused Nos.1,2 and 3, namely, Harinder Singh @ Hindi, Amritpal Singh and Sandeep Singh alias Sippy and one unknown person. He also described their specific role that respondent-accused No.1 Harinder Singh @ Hindi gave 4/5 knife blows on the left side of chest of Netar Singh, whereas, respondent-accused No.2 Amritpal Singh gave $\frac{3}{4}$ knife blow to Netar Singh on his back side, respondent-accused No.3 Sandeep Singh alias Sippy caught hold of Netar Singh and an unknown person had caught hold of the deceased Netar Singh from his right arm. Complainant did not name any other person except above four persons in his complaint Ex.PA or as PW1 as the assailants of murder of his nephew Netar Singh. The allegations against the remaining

respondent-accused Nos.5 to 9 are of their conspiracy with accused Nos.1 to 4 in committing murder of Netar Singh. However, prosecution has miserably failed to lead any evidence showing the complicity of respondent-accused Nos.5 to 9, beyond any shadow of doubt. The deposition of the prosecution witnesses about their conspiracy without any corroboration or documentary proof is not sufficient to base their conviction. More so, the allegations of obtaining signature of deceased Netar Singh on some blank stamp papers or their conversion into some documents has also not been proved on the record by the prosecution. Hence, in the absence of any such evidence, it cannot be said that respondent Nos.5 to 9 had any role in the murder of Netar Singh. From the cross-examination of complainant Jagir Singh PW1, it is abundantly clear that he kept on changing his stand, because at one point of time, he deposed that respondent-accused No.2 Amritpal Singh was the Manager in the Agency of deceased Netar Singh, whereas, at another point of time he deposed Amritpal as one of his partner. That apart, respondent-accused Nos.2,5,6 and 9, namely, Amritpal Singh, Shamsheer Singh, Bhavna Sharma and Madan Gopal @ Madan Pal were also employed in the alleged Agency of the deceased Netar Singh. However, his ignorance about the fact that which of the employee was

getting what salary and that on which date, month and year, the alleged signatures of deceased Netar Singh were obtained by respondent-accused No.2 Amritpal Singh on blank stamp papers does not prove the prosecution case to the hilt. His clarification that he was told about this fact about 6/7 months prior to occurrence by deceased Netar Singh can simply be termed as hearsay. He has also deposed that he does not know whether the stamp papers were recovered by the police or not. His above deposition clearly indicates that respondent-accused Nos.5 to 9 were simply named by him as they may be employee of deceased Netar Singh. More so, this fact is not proved by any documentary evidence i.e. salary slips, attendance register, appointment letter etc. Hence, the remaining respondent-accused Nos.5 to 9 cannot be said to be connected, in any manner with the deceased Netar Singh. Similarly, PW1 Jagir Singh deposed that he had told to the police that the accused had committed murder of Netar Singh having conspired with respondent-accused No.7 Varinder Kumar, respondent-accused No.6 Bhavna Sharma, respondent-accused No.8 Harpreet Singh and accused-respondent No.9 Madan Gopal @ Madan Pal, but when was confronted with his complaint Ex.PA, the names of the aforesaid persons were not found mentioned in the same as conspirators.

Since the prosecution has not been able to connect their relation in any capacity with deceased Netar Singh, therefore, it cannot be said that they had any motive to get him murdered. He has admitted in his cross examination about levelling of allegation against the SP, Ropar of taking bribe of Rs.10 lacs from the accused, but did not move any written complaint to any higher police officers in this regard, nor disclosed this fact to the IO while recording his statement Ex.PA. It is unexplained on the file that what circumstances refrained him from not disclosing this fact to the Investigating Officer. Had he disclosed this important fact in his statement Ex.PA, in that eventuality, the Investigating Officer would have gone to the hilt to know the truth. This witness has further admitted that neither he nor Jaswinder Singh had given any clue to the police qua the identity of unidentified assailants. Thus, in the absence of any corroborative or documentary evidence, there is nothing on record to connect respondent-accused Nos.5 to 9 with the murder of deceased Netar Singh.

In view of the circumstances explained above, acquittal of respondents Nos.5 to 9, namely, Shamsheer Singh, Bhavna Sharma, Varinder Kumar, Harpreet Singh and Madan Gopal @ Madan Pal is concerned, the impugned judgment does not warrant any interference, because their

complicity in the murder of Netar Singh is not established on the record.

In view of the aforesaid discussion, we find no merit in the present appeal. Accordingly, the same is dismissed.

(RAMENDRA JAIN)
JUDGE

July 28, 2015
Kd

(S.S.SARON)
JUDGE