

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

Crl. Appeal D-143-DB of 2003
Date of Decision : January 09, 2015

Makhan Singh and another

.....Appellants

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present : Mr. Vikas Mohan Gupta, Advocate
for the appellants.

Mr. Rajesh Bhardwaj, Addl. A.G. Punjab.

T.P.S. MANN, J.

The appellants were tried for committing offences punishable under Sections 457, 364 and 302 IPC on the allegations that during the night intervening 6/7.5.1999, in the area of village Bujrak, they committed lurking house trespass by entering into the building belonging to Harnek Singh, since deceased, which was used as a human dwelling; abducted said Harnek Singh in order to commit his murder; and, thereafter, intentionally caused his death. Vide judgment and order dated 9/23.10.2002, the Additional Sessions Judge (Adhoc), Patiala convicted them for the offences under Sections 302/34 IPC and sentenced them to undergo life imprisonment and to pay a fine of Rs. 1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for two months.

The prosecution case, in nutshell, was that deceased

Harnek Singh owned about 30 killas of land. Out of them, he had mortgaged 9 killas to Bikramjit Singh for two years. Bikramjit Singh gave the said land on contract basis to Chamkaur Singh for the first year but in the second year he wanted to give it to his brother-in-law Randhir Singh. However, Harpal Singh-complainant, who is son of the deceased, wanted land back as he was willing to return the mortgage amount and he had also obtained a decree qua 9 killas of the land and wanted to get the mutation sanctioned which was, however, objected to by Bikramjit Singh. The complainant party had constructed cattle shed in their land where Harnek Singh deceased alongwith his servant Makhan Singh used to put up and also sleep there during the night. On the night intervening 6/7.5.1999 at about 3.00 a.m., Makhan Singh in a perplexed condition came to the house of the complainant and informed him that at about 2.00 a.m. when he and Harnek Singh were sleeping on the cots in the courtyard, they heard the barking of dogs. When he got up he had seen three persons there, who after coming near his cot, asked him whether he was son of Harnek Singh to which he replied that he was only his servant. In the meantime, Harnek Singh also woke up. One of the three persons caught hold of Harnek Singh from his left arm, the second from his right arm whereas the third started pushing Harnek Singh from behind and also extending threats to Makhan Singh that if he raised an alarm, he should be

ready to face its consequences. Those three persons while taking Harnek Singh with them were proclaiming that they would see how he returned the mortgage money to Bikramjit Singh. There was one more person with them, who kept standing near the wall in the dark. There was light in the courtyard. Upon hearing from his servant, complainant-Harpal Singh started searching for his father but remained clueless. The complainant had also learnt that Bikramjit Singh had already told his relative Lakhbir Singh not to return the mortgage money or else it would lead to serious consequences. According to the complainant, he wanted to recover the possession of the land in question but Bikramjit Singh wanted to give the land on contract to his brother-in-law. Bikramjit Singh also did not receive the mortgage amount. The complainant was sure that Bikramjit Singh alongwith his companions had kidnapped his father Harnek Singh with an intent to kill him. Accordingly, he alongwith Ajaib Singh, Sarpanch of the village left for the Police Station to lodge the report. On the way, he came across SI Hardeep Singh at the Bus Adda of village Kakrala and made statement on 8.5.1999 at 12.15 p.m. On the basis of the same, FIR No. 34 was registered at Police Station Ghagga by ASI Bhupinder Rai on 8.5.1999 at 12.45 p.m. for offences under Sections 364/452/506/34 IPC. The special report was sent through Constable Devinder Singh which was received by the Judicial Magistrate, Samana on 8.5.1999 at 6.45 p.m.

During the investigation of the case, the dead body of Harnek Singh was recovered from the fields of Master Mehnga Singh near the canal minor. Inquest report and rough site-plan were prepared. The dead body was, thereafter, sent for post-mortem. The statement of Sarabjit Singh was recorded, who claimed to have seen the appellants committing the murder of Harnek Singh. On 17.5.1999, Makhan Singh-appellant appeared before Gurnam Singh and made extra judicial confession. Accordingly, Gurnam Singh produced Makhan Singh before the Investigating Officer, who arrested him. Nirmal Singh-appellant was arrested on 28.5.1999 who got recovered an iron rod and a danda (wooden stick).

Upon completion of the investigation, the appellants were challaned. The case was, thereafter, committed to the Court of Sessions where they were charged for the aforementioned offences to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Dr. O.P. Aggarwal, who deposed that on 10.5.1999, he alongwith Dr. Harish Tuli conducted post-mortem on the dead body of Harnek Singh and found the following injuries on his person:-

- “1. The left arm was amputated. The margins were incised, bone humerus was having cutting edges. Left hand, left fore arm and lower portion of left arm were missing. Clotted blood was present in the injured area.

2. There was diffused swelling on the left side of fore head. Underneath skull bone was having depressed fracture, square in nature. It was 4 cm x 4 cm. The brain was injured. Clotted blood was present in the skull cavity.
3. There was diffused swelling over the nose and the nasal bone was fractured.
4. Multiple ribs were fractured.
5. There was diffused swelling over scrotum. Both the testis were crushed.”

He further deposed that probable time that elapsed between post-mortem and death was 72 to 96 hours. He also opined that the cause of death was shock and haemorrhage resulting from the injuries which were ante-mortem and sufficient to cause death in ordinary course of nature.

PW2 HC Kuldeep Singh tendered in evidence his affidavit Ex. PF in respect of retaining the case property in the Malkhana.

PW3 Indresh Khanna, Draftsman proved the scaled site-plan Ex. PG.

PW4 ASI Karam Singh testified that on 31.5.1999 the investigation of the case was entrusted to him. He recorded the statements of MHC Kuldeep Singh and HC Amrik Singh. Thereafter, the investigation of the case was transferred from him.

PW5 HC Amrik Singh tendered in evidence his affidavit Ex. PH in respect of taking of viscera of the deceased to

the Chemical Examiner.

PW6 Gurnam Singh deposed that about 3 years back, Makhan Singh had confessed his guilt by stating that he had been working as Siri with deceased Harnek Singh, who had mortgaged his land with Bikramjit Singh for Rs. 3,68,000/-. Makhan Singh also stated that he alongwith Nirmal Singh committed the murder of Harnek Singh out of greed for money by causing injuries with iron rod and soti. Further, they had been enquiring from Harnek Singh with regard to the mortgage money. Makhan Singh also confessed that he alongwith Nirmal Singh took Harnek Singh to the water course but despite beatings given by them, Harnek Singh did not disclose about the money. Makhan Singh also confessed that he alongwith Nirmal Singh started fearing that Harnek Singh might not inform the police. Accordingly, they caught hold of him from his arms and make him fall on the ground whereafter they caused more injuries to him. Harnek Singh was done to death by throttling him. His dead body was, thereafter, thrown at some distance from the place of occurrence. Makhan Singh then stated that he had informed about the death of Harnek Singh to his son Harpal Singh. PW6 Gurnam Singh also stated that while in police custody, Nirmal Singh suffered a disclosure statement and pursuant thereto got recovered an iron rod and a danda from one corner of his house.

Complainant-Harpal Singh was examined by the

prosecution as PW7, who re-iterated whatever he had stated at the initial stage of the case while lodging FIR. He further stated that he had a suspicion against Bikramjit Singh and his brother-in-law as he was not accepting the mortgage money. He further stated that the dead body of his father was recovered from the canal minor.

PW8 Constable Devinder Singh deposed that he had delivered the special report to the Illaqa Magistrate on 8.5.1999.

PW9 SI Hardeep Singh stated about the various steps taken by him during the investigation of the case subsequent to the registration of the FIR. He deposed that he recorded the statement of Sarabjit Singh on 10.5.1999, who pointed out the place of occurrence and also disclosed the names of the accused, who had committed the crime. He also stated that on 17.5.1999, Makhan Singh-accused was arrested. He arrested Nirmal Singh-accused on 28.5.1999 and pursuant to the disclosure statement made by him, recovered an iron rod and a danda from the specified place.

PW10 Constable Kuldeep Singh proved the attested copy of DDR No. 12 dated 9.5.1999 of Police Station Ghagga as Ex. PW10/A.

The prosecution had also cited Sarabjit Singh as its witness to depose about the ocular account of the occurrence but was given up as having been won over.

When examined under Section 313 Cr.P.C., both the appellants denied the prosecution allegations and claimed that a false case was registered against them though they were innocent. However, in defence, they did not examine any evidence.

The trial Court believed the prosecution case and, accordingly, convicted and sentenced the appellants, as mentioned above.

Having heard learned counsel for the appellants as well as learned State counsel, this Court finds that the prosecution is mainly relying upon the testimony of PW6 Gurnam Singh before whom Makhan Singh-appellant had made extra judicial confession of having killed deceased-Harnek Singh and in the said act he was assisted by Nirmal Singh-appellant. According to the prosecution, both the appellants committed the murder of Harnek Singh out of greed for money. As despite taking Harnek Singh with them to the water course and giving beatings to him, said Harnek Singh did not disclose about the money i.e. Rs. 3,68,000/- which he had obtained while mortgaging his land with Bikramjit Singh, both of them had felled him on the ground and caused more injuries. So much so that the accused throttled him to death. However, it would be worthwhile to notice that though the appellants belonged to village Bujrak, PW6 Gurnam Singh was resident of village Kakrala. He

admitted in his cross-examination that he never remained Panch, Sarpanch or Lamberdar of his village. He also stated that though deceased Harnek Singh was not related to him yet he knew him since birth. His village was at a distance of 3 miles from village Bujrak. He also stated that he knew both the appellants as they were agricultural labourers but they had never worked with him. He did not know if the appellants or any one of them had worked with any person belonging to his village. He testified that he did not know as to when Makhan Singh-appellant had met him earlier. He also could not tell the names of the fathers of the appellants. He had visited the house of Nirmal Singh-appellant at the time of recovery of the weapons but he had not visited that place earlier. He could not tell the month or year when Makhan Singh-appellant met him. He admitted that there was a bank in his village and the police officials used to remain present there for security purposes. He also stated that he had not seen the dead body of Harnek Singh. He even did not participate in his cremation. He stated that he did not talk about the extra judicial confession to the family members of the deceased. He admitted that his thumb impression was obtained by the police on a paper but he could not recollect if it was a blank paper or some writing was there on it. He denied the suggestion that none of the appellants had come to him or he had produced them. PW9 SI Hardeep Singh admitted in his cross-examination that Gurnam

Singh was earlier known to him as he had met him on occasions like verification of arm licences. He admitted that Gurnam Singh was not holding any responsible position in the village. He also stated that some officials were deputed on bank security duty.

From the statement of PW6 Gurnam Singh, it is made out that neither he had been holding any responsible position in the village due to which he may be having influence with the police nor he knew the family of the appellants. He only knew them as they were agricultural labourers. At the same time, they had not worked with him nor with any person of his village. He also did not belong to the village of the appellants. There was no reason for the appellants to approach PW6 Gurnam Singh and confess guilt before him as they could very well do so by approaching some responsible person of their own village. It has come in the evidence that security personnel used to be stationed at the bank situated in the village of PW6 Gurnam Singh. In such a situation, the appellants would not have dared to go all the way from their village to the village of PW6 Gurnam Singh as in the event of their doing so, they could have been nabbed by those security officials. Even otherwise, while making extra judicial confession, Makhan Singh stated that he alongwith Nirmal Singh had, after causing injuries to Harnek Singh, had throttled the deceased but no such injury was noticed during post-mortem. On the other hand, the reason as to why PW6 Gurnam Singh is

coming forward to depose about the extra judicial confession is his closeness to PW9 SI Hardeep Singh as the latter claimed that the former had been meeting him on occasions like verification of arm licences. The verification of arm licences by Gurnam Singh is also doubtful as said Gurnam Singh did not hold any responsible position in the village. Only the services of Panch, Sarpanch or Lamberdar of a village are sought for the purposes of verification and not of any person, not holding any position of responsibility. Apparently, SI Hardeep Singh knew Gurnam Singh and, accordingly, availed his services by projecting him as a witness for extra judicial confession. On the other hand, Makhan Singh had no reason whatsoever to approach Gurnam Singh to confess his guilt and put the noose around his neck. Therefore, this Court holds that the evidence of extra judicial confession does not inspire confidence and is, accordingly, rejected.

Even as per the statement Ex. PW7/A on the basis of which FIR Ex. PW8/A was registered, Makhan Singh-appellant used to serve complainant-Harpal Singh and his father Harnek Singh. Both deceased Harnek Singh and Makhan Singh-appellant used to work in the fields and sleep there in a dera at night. On the day of the occurrence, it was Makhan Singh-appellant, who rushed to complainant-Harpal Singh to inform him that his father Harnek Singh had been taken away by some unidentified persons. This information was passed on by the

complainant to the police. At no stage, thereafter, complainant-Harpal Singh expressed any suspicion against Makhan Singh of being involved in the crime. Merely because Makhan Singh used to serve complainant-Harpal Singh and his father Harnek Singh and also staying with Harnek Singh during the night is not sufficient to hold that he had a hand in the commission of the crime.

The recoveries of an iron rod and a danda do not lend any corroboration to the prosecution case and so also the testimony of PW1 Dr. O.P. Aggarwal, who had conducted post-mortem on the dead body of Harnek Singh.

In view of the above, there is no sufficient material on record to connect the appellants with the commission of the crime. Therefore, it will not be safe to uphold the impugned judgment of conviction and sentence.

Resultantly, the appeal is accepted and the appellants are acquitted of the charges against them. Both the appellants are on bail. Bonds furnished by them shall stand discharged.

(T.P.S. MANN)
JUDGE

(SHEKHER DHAWAN)
JUDGE

January 09, 2015
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