

**IN THE HIGH COURT FOR THE STATES OF PUNJAB &
HARYANA, AT CHANDIGARH**

Criminal Appeal-D No. 865-DB of 2002

Date of Decision: March 26, 2015

Dalbir Singh and another

--- Appellants

Versus

State of Punjab

---Respondent

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

HON'BLE MR. JUSTICE MAHAVIRS. CHAUHAN.

Present: Shri Atul Lakhanpal, Senior Advocate with Ms. Baby Kumari,
Advocate for the appellants.

Shri S.S. Dhaliwal, Additional Advocate General, Punjab for
the respondent-State.

1. *Whether Reporters of local papers may be allowed to see the Judgment?*
Yes/No
2. To be referred to the Reporter or not? Yes/No
3. *Whether the judgment should be reported in the Digest? Yes/No*

MAHAVIRS. CHAUHAN, J.

Dalbir Singh and Jasbir Singh, the appellants herein, were tried under Sections 302 and 302 read with Section 34, respectively, of the Indian Penal Code, 1860 (for short, 'the IPC') and vide judgment/order dated October 22, 2002 passed by learned Sessions Judge, Fatehgarh Sahib, have been convicted and sentenced as under:

Name	Under Section	Sentence	Fine	In default of payment of fine (RI)
Dalbir Singh	302, IPC	Life	Rs. 500/-	Six months
Jasbir Singh	302/34, IPC	Life	Rs. 500/-	Six months

02. Chronicle of events culminating into the instant appeal reveals that Rajpal Singh (PW6) (here-in-after referred to as ‘the complainant’) was a tenant in respect of a room in the house of Paramjit Singh (PW9) situated in Dalip Nagar, Gobindgarh. In the adjoining room Rampal Singh (the deceased) was also a tenant. At or around 09.30 p.m. on January 05, 1998, the complainant, on his return from work, found that appellant Dalbir Singh and the deceased were present in the room of the deceased. At or around 11.00 p.m. on that very day, on hearing the noise from deceased’s room, complainant rushed to his room and found that light in the room was on; deceased was lying on the bed and appellant Jasbir Singh was throttling his neck. He asked the appellants what they were doing. Upon this appellant Dalbir Singh took out, from right hand side pocket of his pants, a knife (Exhibit MO/1) and inflicted knife blows on the abdomen and left side of chest of the deceased. Both the appellants, who were known to the complainant, left the deceased bleeding and chased the complainant saying that the deceased had been taught a lesson for having illicit relations with Amarjit Kaur wife of appellant Jasbir Singh and now it was his (complainant’s) turn. Out of fear he rushed inside his room and bolted the door from inside. The appellants bolted the door of complainant’s room from outside and ran away. At or around 08.30 a.m. on January 06, 1998, Girvar Singh (PW8), a relative of the complainant, on hearing the alarm, opened the door of complainant’s room. Leaving Shiv Dutt, another

relative, to guard the dead body of the deceased, complainant, accompanied by Girvar (PW8) set out for the police station but near the Bus Stand of Mandi Gobindgarh came across Sub Inspector Gurchain Singh (PW11) and suffered before him statement, Exhibit P6, based whereupon a formal First Information Report ('FIR', for short), Exhibit P2/A, was recorded by Moharrir Head Constable Sukhbir Singh.

03. Investigating officer visited the spot of occurrence, prepared inquest report, Exhibit P2 and rough site plan, Exhibit PW11/C, recovered blood stained mattress (Gadella), Exhibit PW11/1, as also clothes of the deceased, Exhibits PW11/2 to PW11/5, recorded statements of witnesses and arrested the appellants on January 14, 1998. Dr. Jaspal Rekhi (PW1) conducted post mortem on the dead body of the deceased vide Post Mortem Report ('PMR', for short), Exhibit P1. Appellant Dalbir Singh, while in police custody, got recovered the knife, Exhibit MO/1, used in the occurrence, pursuant to his disclosure statement, Exhibit P9. Clothes of the deceased and the mattress recovered from the scene of occurrence were examined by Chemical Examiner to Government of Punjab vide report, Exhibit PW11/F and by Serologist & Chemical Examiner to Government of India vide report, Exhibit PZ. After the investigation was complete, a report in terms of sub-section (2) of Section 173 of the Code of Criminal Procedure, 1973 ('CrPC', for short) was presented before the learned Area Magistrate.

04. On committal of the case, learned Sessions Judge afforded a hearing to the prosecutor and the defence, found a prima facie case punishable under Section 302, IPC, to be made out against appellant Dalbir

Singh and under Section 302 read with Section 34, IPC, against appellant Jasbir Singh and charged them accordingly. Appellants refused to plead guilty and claimed to be tried.

05. During trial Complainant Rajpal Singh (PW6) reiterated the prosecution story on oath; Girvar (PW8) stated that he unbolted door of Complainant's room at or around 08.30 a.m. on January 06, 1998; Paramjit Singh (PW9) testified to say that on the fateful day the deceased and the complainant were tenants in his house; Dr. Jaspal Rekhi (PW1) proved PMR. Exhibit P1, and Draughtsman Sewa Singh (PW5) proved scaled site plan, Exhibit P5, while Dy. S.P. Gurchain Singh (PW11), Head Constable Manoj Kumar (PW2), Moharrir Head Constable Sukhbir Singh (PW3), Constable Pritam Singh (PW4), Assistant Sub Inspector Rajinderpal Singh (PW7), and Head Constable Manmohan Singh (PW10) brought on record various aspects of investigation.

06. Incriminating circumstances appearing in prosecution evidence, when put to the appellants in terms of Section 313, CrPC, were denied by them and a plea of innocence and false implication was put forth.

07. Appellants examined Dr. Satish Sharma (DW1) and Sher Singh (DW2) to bring on record that from January 03, 1998 to January 06, 1998 appellant Dalbir Singh was suffering from fever and dysentery and had attended doctor's clinic in the morning of January 06, 1998.

08. On appraisal of the evidence in the light of the submissions made at the bar, learned Sessions Judge reached a conclusion that the prosecution was able to fix appellants' guilt beyond reasonable doubt and, accordingly, convicted and sentenced them as here-in-before stated.

09. We have heard learned counsel for the parties besides scanning the record.

10. Learned senior counsel representing the appellants assails the correctness of the findings of conviction recorded by the learned Sessions Judge on more than one grounds. He contends that the deceased was killed by some unknown person and the appellants have been falsely roped in after due deliberations and consultations by using the interregnum between the occurrence and registration of the FIR picking up false witnesses, viz. Rajpal Singh (PW6), Girvar (PW8) and Shiv Dutt (not examined) - all closely related, *inter se*, and with the deceased and, thus, were highly interested in the success of the prosecution story. By referring to the sketch, Exhibit P10, of the recovered knife, Exhibit MO/1, learned senior counsel has attempted to demonstrate that given the length and breadth of the knife, wounds of the ilk of the ones found on the dead body of the deceased are not possible; factum of residence of the complainant (PW6) and the deceased in the house of Paramjit Singh (PW 9) has remained unproved as no rent noteand/or rent receipt have been proved; allegation of illicit relationship of the deceased with Amarjit Kaur wife of appellant Jasbir Singh, has remained unsubstantiated in so far as no tangible evidence has been adduced to establish it and, therefore, motive behind the occurrence has remained unsubstantiated in so far as there is no material available on record to show that the deceased and Amarjit Kaur were either co-workers or neighbours or in proximity with each other by any other means; and above this all, the story put up on behalf of the prosecution is highly improbable because nobody could even think of killing the deceased in a

thickly populated area as the place of occurrence was; if the story of the prosecution that appellant Jasbir Singh was throttling deceased's neck while sitting over him is true, no injuries on his chest and abdomen could be caused and the complainant could not keep himself inside a room without making any efforts to come out of it throughout the night. Learned senior counsel gives up the plea of alibi adverted to on behalf of appellant Dalbir Singh but insists that involvement of appellant Jasbir Singh in the occurrence is ruled out by the fact that no signs of throttling are found on the deceased's neck and, instead, according to Dr. Jaspal Rekhi (PW1) on the neck of the deceased there was a mark of strangulation (and not of throttling).

11. Learned State counsel, on the other hand, submits that presence of Rajpal Singh (PW6) on the spot is quite natural; though PWs Rajpal Singh, Girvar and Shiv Dutt are related, *inter se*, and with the deceased but they cannot be said to be interested or planted witnesses as it is not the plea of the defence that the witnesses were either inimical towards the appellants or have derived any benefit by falsely implicating them; delay in lodging the FIR has been sufficiently explained by PW6, Rajpal Singh; and story of the prosecution as proved on record by PW6, Rajpal Singh finds sufficient corroboration in medical evidence as also from recovery of knife, Exhibit MO/1, pursuant to appellant Dalbir Singh's disclosure, Exhibit P9. He also submits that motive behind the occurrence though has been sufficiently established but it being a case of direct evidence, sufficiency or absence of motive is rendered of little consequence.

12. No other or further point has been urged on either side.

13. Receipt of injuries by, and death of the deceased on account of injuries though are not disputed by the defence, yet it may be relevant to highlight that Dr. Jaspal Rekhi (PW1) has proved on record PMR, Exhibit P1, besides testifying on oath that on examination of the dead body of the deceased, he found (1) a strangulation mark on both the lateral aspects of neck, 06 cms x 01 cm on the left and 05 cms x 01 cm on the right side with abrasion below the marks; (2) a 03 cms x 02 cms x 06 cms deep incised (stab like) wound in the midline injuring the liver, with abdominal cavity full of blood; (3) a 02 cms x 01 cm x 04 cms deep stab wound on the upper abdomen injuring small intestines; (4) a 02 cms x 01 cm x 04 cms deep stab wound below injury No. 3; (5) a 03 cms x 01 cm x 05 cms deep stab wound below injury No. 4 and lateral to it; and (6) a 01 cm x 01 cm x 02 cms deep stab wound near umbilicus besides multiple punctures of the small intestine with presence of blood mixed with chymes with small intestine. According to him all the injuries were ante mortem in nature and were sufficient to cause death under ordinary set of circumstances; weapon used was sharp; and cause of death was shock and hemorrhage. On the knife, Exhibit MO/1, being shown to him, the witness reacted by saying that possibility of the stab wounds on the person of the deceased having been caused by it could not be ruled out and these could possibly be caused by it. In cross-examination the witness was not confronted with a suggestion that the stab wounds on the person of the deceased could not be caused with knife, Exhibit MO/1. Even otherwise, it is evident from sketch, Exhibit P10, that the knife, Exhibit MO/1, had a blade equivalent to width of five fingers in length and more than one centimeter in breadth. Length of its handle was

equivalent to length of its blade. If pierced with force and taken out violently such a knife can cause stab wounds of the sizes found on the person of the deceased.

14. Injury No. 1 on the person of the deceased was a strangulation mark on the neck. Learned senior counsel representing the appellants has attempted to demonstrate that presence of strangulation mark on the neck of the deceased rules out throttling of the neck of the deceased by appellant Jasbir Singh, as claimed by the prosecution. In our well thought view, the effort is directionless and futile. Strangulation has more than one form. It is an activity in which someone's neck is constricted for cutting off blood flow or air supply to the body. This activity can lead to death. In manual strangulation, the constriction is accomplished with the hands, sometimes paired with a tool such as a rod or baton. This form is known as throttling or choking and requires a great deal of force. A rope, wire, or cord can also be used in ligature strangulation, in which the cord does most of the work, and the stranguler simply tightens it to compress the victim's neck. Hanging, in which the victim is suspended on a rope or similar device, is another form of strangulation.

15. Except confronting PW6, Rajpal Singh with a general and routine suggestion that the appellants did not cause injuries to the deceased- which suggestion was denied by the witness, the defence did not cross examine the witnesses on the factum and manner of causing injuries. As is well settled, by not cross-examining the witness (PW6, Rajpal Singh) of the occurrence with regard to his statement pertaining to factum and manner of causing injuries, the defence, by necessary implication, has admitted as

correct the narration given by him with regard to the occurrence. There cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872 (for short, 'the Evidence Act'), which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, *inter-alia*, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.

(See *Khem Chand v. State of Himachal Pradesh*, AIR 1994 SC 226; *State of U.P. v. Nahar Singh (dead)*, AIR 1998 SC 1328; *Rajinder Pershad (Dead) by L.Rs. v. Darshana Devi (Smt.)*, AIR 2001 SC 3207; *Sunil Kumar v. State of Rajasthan*, AIR 2005 SC 1096; and *Laxmibai (Dead) thr. Lrs. & Anr. v.*

Bhagwantbuva (Dead) thr. Lrs. & Ors., Civil Appeal No. 2058 of 2003 decided by Hon'ble Supreme Court on January 29, 2013).

16. It is sought to be projected on behalf of the appellants that as per prosecution story appellant Jasbir Singh was throttling deceased's neck while sitting over his body and in such a situation injuries on his chest and abdomen could not possibly be inflicted. The endeavour is misplaced and misconceived. It is nowhere stated by the complainant in his statement, Exhibit P6, and while appearing as PW6 before the learned Sessions Judge that he saw appellant Jasbir Singh sitting over the body of the deceased. He has only stated that when he went to deceased's room he found that appellant Jasbir Singh was throttling his neck and when he asked what they were doing, appellant Dalbir Singh took out a knife from the right hand side pocket of the pants worn by him and started inflicting knife injuries on the chest and abdomen of the deceased.

17. It is depicted in site plan, Exhibit P5, that house of PW Paramjit Singh comprised of three rooms and a court yard. A boundary wall covered the house on all the four sides. It was bounded on one side by house of Bahadur Singh, on the other by house of Jaswinder Singh while on its one side there was a street and on the other a vacant plot belonging to Shamsher Singh. Correctness of this site plan has not been disputed by the defence as is evident from the deposition of its author, Sewa Singh (PW5). The complainant, while appearing as PW6 before the learned Sessions Judge, has disclosed that wall of house of Jaswinder Singh was very high while the vacant plot belonging to Shamsher Singh as shown in the site plan, Exhibit P5, was, in fact, an abandoned house. He has also revealed

that during those days there was no watchman (Chowkidar) in the mohalla. Out of three rooms, one was in the occupation of the deceased, the second room was with Rajpal Singh (PW6) and the third room, as revealed by Rajpal Singh (PW6) and Paramjit Singh (PW9), was lying locked. It was the month of January-when winter was in full swing. Crime was committed at the dead of the night when the entire town would have been fast asleep and there was none either to take note of the movements of the perpetrators of the crime or to hear the shrieks of the deceased. Constriction of neck of the deceased prevented him from crying aloud. Complainant returned from his work at or around 09.30 p.m. and while passing by the room of the deceased he saw that appellant Dalbir Singh was present there alongwith the deceased. After seeing them he (the complainant) retired to his room without reacting to presence of Dalbir Singh in the deceased's room which is indicative of the fact that appellant Dalbir Singh was a regular visitor to residence of the deceased and that's why his presence there did not surprise the complainant-it has already been stated by this witness that the appellants were known to him. It is after one and half hours that the complainant heard some noise which attracted him to the scene of occurrence. In the meantime appellant Jasbir Singh had also joined the other appellant to execute the well thought plan to annihilate the deceased. As the complainant had witnessed the appellants committing the crime he was chased and was threatened of being treated alike. The situation forced him to bolt himself in his room. The appellants ran away after bolting complainant's room from outside. The entire sequence of events is very natural and spontaneous and demolishes the plea of improbability and introduction of false witnesses, put up on

behalf of the defence. It may be added here that the complainant (PW6), Girvar (PW8) and Shiv Dutt (who has not been examined as a witness) no doubt are related *inter se* and were related to the deceased but from the chronology of events constituting the prosecution story, their presence at the spot and roles played by them appear to be quite natural. Complainant (PW6), and Girvar (PW8) have passed the litmus test of cross-examination successfully and their evidence inspires confidence. Defence has failed to elicit anything from them, as also to bring any evidence, to establish that these witnesses were either inimical towards the appellants or were to derive any benefit for themselves or for anyone else they may be interested in, by falsely implicating the appellants at the cost of letting off the hook the real culprits responsible for prematurely terminating life cord of their close relative, the deceased. It adds to the credit of the aforesaid witnesses that they have not even attempted to hide the factum of their relationship *inter se* and with the deceased.

18. Occurrence, no doubt, took place at or around 11.00 p.m. on January 05, 1998 and the FIR, Exhibit P2/A, came to be recorded a little more than twelve hours thereafter, viz. at 11.10 a.m. on January 06, 1998. However, there is no hard and fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It necessarily depends upon facts and circumstances of each case whether there has been any such delay in lodging the FIR which may cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to the victim, the

distance of the hospital and police station etc. have to be taken into consideration. There is no mathematical formula by which an inference may be drawn either way on account of delay in lodging of the FIR. Delay in lodging the FIR may be fatal in a case wherein it is proved that the delay has been used to rope in innocent person(s) as accused or to introduce false witnesses or to give a twist to the fact situation. In the case in hand, the only witness of the occurrence, namely PW6, Rajpal Singh, was chased and threatened by the appellants of being dealt with in the same manner in which the deceased was dealt with. Afraid of the appellants, he bolted himself in his room which was just adjoining the room where the occurrence took place. Appellants bolted the door, of his room from outside and made good their escape. It was almost midnight and nobody was around to help him out. Incidentally, at or around 08.30 a.m. on January 06, 1998, his relative Girvar (PW8) happened to be there at the house of the complainant and found it bolted from outside. On opening the door he found the complainant to be present inside the room. Accompanied by Girvar (PW8) and Shiv Dutt, complainant went to deceased's room and found that the deceased was lying dead having stab wounds on his abdomen, chest and lower part of his body. Leaving Shiv Dutt behind to take care of the dead body. PWs Rajpal Singh and Girvar set out for the police station but came across the Investigating Officer near the Bus Stand (where he was present alongwith a police party) in connection with patrol duty. PW6, Rajpal Singh suffered statement, Exhibit P6, before the Investigating Officer writing whereof was completed by 11.00 a.m. and based thereupon FIR, Exhibit P2/A, was recorded at 11.10 a.m. at Police Station, Mandi Gobindgarh

which was about two and a half kilometers away from the Bus Stand. There is no material available on record to suggest that the delay has been used to rope in innocent person(s) as accused or to introduce false witnesses or to give a twist to the fact situation. Delay in lodging the FIR has, thus, been sufficiently and satisfactorily explained.

19. Since its very inception, case of the prosecution has been that the deceased and PW6, Rajpal Singh, were tenants in respect of one room each in a house belonging to Paramjit Singh (PW9). In Exhibit P6, statement of PW6, Rajpal Singh (the complainant) made by him before the Investigating Officer, deposition of said PW Rajpal Singh and deposition of PW9, Paramjit Singh, owner of the house in question, it has been so stated. Merely because no rent note was executed and no receipt for the rent received by Paramjit Singh (PW9) was issued, existence of tenancy in favour of the deceased and the complainant cannot be said to have remained unproved, for, there is no dearth of instances where houses are rented out without insisting upon execution of rent note and rent is paid by the tenants without asking for issuance of a receipt therefor. PWs Rajpal Singh and Paramjit Singh have braved successfully strenuous cross examination to which they were subjected on behalf of the defence.

20. On the question of motive it may be stated that the complainant, in his statement, Exhibit P6, and while appearing as PW6 before the learned Sessions Judge, has very specifically and forcefully stated that motive behind the gruesome murder of the deceased was a suspicion in the mind of the appellants that he was illicitly entangled with Amarjit Kaur wife of appellant Jasbir Singh and the two appellants had so

stated while chasing him after he had seen them committing the crime. Contention of the learned senior counsel representing the appellants that there are no circumstances facilitating proximity between the deceased and wife of appellant Jasbir Singh is *ex facie* meritless firstly because the motive behind the commission of the crime was only suspicion in the minds of the appellants that such a relationship existed, secondly, because it has come on record in the deposition of Rajpal Singh (PW6) that only 10-12 houses intervened house of Paramjit Singh (wherein the deceased was putting up) and house of appellant Jasbir Singh which should suffice to show the nearness in the two houses and chances of proximity between the deceased and Amarjit Kaur taking place. Still, assuming that this evidence is insufficient to establish the motive for murder but that by itself is insufficient to lead to an inference adverse to the case of the prosecution. Absence of motive, even if it is accepted, does not come to the aid of the accused because it is not always possible to disinter the mental transaction of the accused which would have impelled him to act in a particular manner. No proof can be expected in all cases as to how the mind of the accused worked in a particular situation. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is

not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction. (See *State of U.P. Vs. Kishanpal & Ors.*, (2008) 16 SCC 73, and *Ranganayaki v. State-AIR 2005 SC 418:(2004) 12 SCC 521*).

21. In view of the above, we do not find any reason to interfere with the impugned judgment of conviction and order of sentence. As a consequence, the appeal fails and is dismissed.

22. Appellants are on bail. Their bail bonds are cancelled. They are directed to forthwith surrender before learned Chief Judicial Magistrate, Fategarh Sahib, failing which learned Chief Judicial Magistrate, Fategarh Sahib shall cause them to be re-arrested and sent to Jail to serve the unexpired portion of sentence awarded to them.

[T.P.S.Mann]
Judge

[Mahavir S. Chauhan]
Judge

March 26, 2015
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