

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

Crl. Appeal D-774-DB of 2009
Date of Decision : April 11, 2016

Roop Singh and others

.....Appellants

VERSUS

State of Punjab

.....Respondent

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

Present : Mr. A.P.S.Deol, Senior Advocate with
Mr. Vishal Rattan Lamba, Advocate
for the appellants.

Mr. S.S.Dhaliwal, Addl. Advocate General, Punjab.

T.P.S. MANN, J.

Roop Singh, Gurcharan Singh, Balvir Singh and Jarnail Singh-appellants have filed the instant appeal for challenging the judgment and order dated 20.8.2009 passed by learned Additional Sessions Judge, Mansa whereby they were convicted under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one year.

According to the prosecution, on 9.3.2006, SI Bimal Kumar, Station House Officer, Police Station Boha alongwith other police officials was present at bridge of canal minor in Gadar Patti, Boha in connection with patrolling where Baldev

Singh-complainant alongwith Bhola Singh met him. The complainant got recorded his statement Ex. PD to him alleging therein that he was resident of village Rampur Mander and an agriculturist. They were four brothers and two sisters. Sukhpal Singh @ Pal was the youngest. All the brothers were married and residing separately. The complainant and his brother Gurcharan Singh and Sukhpal Singh @ Pal resided in village Rampur Mander. On that day, his nephew Rajwinder Singh son of Jugraj Singh came to meet him. At about 3.00 p.m., the complainant and his nephew Rajwinder Singh were going towards the water works of their village to enquire about the release of water as on that day it had not been released. When they reached adjacent to the fields of Dhanraj son of Raghunath Pandit, the complainant found his brother Sukhpal Singh @ Pal, Roop Singh and Balvir Singh standing near the kotha in the fields. He asked his brother Sukhpal Singh @ Pal as to what was he doing in the fields. On this, he replied that they were eating and drinking and he need not worry. The complainant and his nephew went to water works of their village but no employee met them. At about 4.30 p.m., when they were coming back, they reached near the kotha of Balvir Singh to enquire about his brother Sukhpal Singh @ Pal. They saw the hands and legs of Sukhpal Singh @ Pal tied with rope and parna i.e. piece of cloth and he was lying

on the ground. With their sight, Roop Singh gave two blows with kulhari to complainant's brother Sukhpal Singh @ Pal on the left side of his neck. Jarnail Singh gave a blow with ghop below his chin whereas Balvir Singh gave takua bow on the left side of the face near the ear. The complainant and his nephew Rajwinder Singh raised an alarm that Sukhpal Singh @ Pal be not killed but Gurcharan Singh gave takua blow to complainant's brother on his left shoulder. When the complainant and his nephew stepped forward to save his brother Sukhpal Singh @ Pal, the accused threatened them that in case they stepped forward, they would also be killed. Out of fear, they retraced their steps. All the accused after coming out of kotha, ran away from the spot with their respective weapons. When the complainant and his nephew were looking after his brother Sukhpal Singh @ Pal, he died within a few minutes due to the injuries. The motive of the occurrence was that about 10/15 days before the occurrence, a common tap was to be installed in the village. Balvir Singh, who was the Panch wanted the tap to be installed in front of his house whereas Sukhpal Singh @ Pal, who was also a Panch wanted the same in front of his house. Due to this reason, Balvir Singh-accused was having a grudge against Sukhpal Singh @ Pal and, accordingly, he alongwith his brother Gurcharan Singh and nephews Roop Singh and Jarnail Singh in connivance with each

other and after taking Sukhpal Singh @ Pal with them to their fields on the pretext of drinking, murdered him by inflicting injuries with their respective weapons. The complainant left his nephew Rajwinder Singh near the dead body and after taking Bhola Singh with him, left for Police Station Boha to report the matter but on the way, he met SI Bimal Kumar before whom he got recorded his statement Ex.PD on the aforementioned lines.

Further case of the prosecution was that SI Bimal Kumar, after making endorsement Ex. PD/1, forwarded the statement through Constable Surinder Singh to Police Station Boha where on its basis, FIR Ex. PD/2 was recorded. During investigation of the case, SI Bimal Kumar alongwith police officials, complainant-Baldev Singh and Bhola Singh reached the place of occurrence. SI Bimal Kumar prepared inquest report Ex. PC and lifted plain and blood stained earth from the spot. He then prepared rough site-plan Ex. PF of the place of occurrence and recorded the statements of the witnesses. The dead body was sent for post-mortem. On return to the Police Station, SI Bimal Kumar deposited the case property with the MHC. On 12.3.2006, Roop Singh and Balam Singh-accused were arrested. During interrogation, accused Balam Singh suffered disclosure statement, pursuant to which he got recovered one blood stained kahi (spade) from the disclosed place. After completion of

investigation, challan was presented against Roop Singh and Balam Singh-accused whereas Gurcharan Singh, Balvir Singh and Jarnail Singh were declared innocent. The case was, thereafter, committed to the Court of Sessions. Subsequently, Gurcharan Singh, Balvir Singh and Jarnail Singh were summoned under Section 319 Cr.P.C. to face trial alongwith their co-accused. All the five accused were charged for committing the offences under Sections 148, 302 and 302 read with Section 149 IPC to which they pleaded not guilty and claimed trial.

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

PW1 Dr. Sharad Kumar stated that on 10.3.2006 at about 11.40 a.m., he conducted post-mortem examination on the dead body of Sukhpal Singh alias Pal son of Pritam Singh, resident of Rampur Mander, aged 40 years and found the following injuries:

- “1. Incised wound 8x2x4 cm spindle shaped, reddish coloured, muscles, large blood vessels, nerves cut, underlying C-1 and C-2 (Cervical vertebra) also cut into many pieces, on the left side of the neck at its back and middle obliquely placed.
2. Incised wound 10x2.5x3.5 spindle shaped red coloured, muscle, large blood vessels and nerves all cut, underlying cervical vertebra present on the left side of the neck below the

injury No.1.

3. Swelling diffuse 6x4 cm over the upper and back part of the neck just above the injury No.1. On incision collection of blood clotted present.
4. Incised wound 6x2x1cm on the upper and outer part of the left shoulder blade.
5. Incised wound 4x2x1cm on the upper and outer part of the left arm.”

He further stated that in his opinion person died due to injuries No.1 to 3 resulting in haemorrhage and shock. He further stated that all the injuries were ante mortem in nature and sufficient to cause death in ordinary course of nature. He further stated that probable time that elapsed between injury and death was instantaneous and between death and post mortem was within 24 hours. He proved copy of post mortem report Ex.PA and pictorial diagrams showing the seats of the Injuries EX.PA/1 and Ex.PA/2. He further stated that the post mortem examination was conducted on the application of police Ex.PB which was marked to him by Dr. Kulwant Singh vide endorsement Ex.PB/1. He further stated that request was accompanied by the police papers which were also signed by him including the inquest report Ex.PC.

PW2 Baldev Sngh, complainant in his statement in substance reproduced the allegations contained In his statement Ex.PD as narrated above. He deposed about the whole

occurrence. He stated that about one year and nine months back at about 3.00 p.m. he alongwith his nephew Rajwinder Singh was going to water works to enquire about the supply of the water as the flow was not opened on that day in the village and when they reached near the fields of Dhanraj Pandit, they found his brother Sukhpal Singh alias Pal along with Roop Singh and Balvir Singh accused standing near the room in the fields of Balvir Singh. He further stated that he asked his brother Sukhpal Singh as to what was he doing there on which he replied that they were enjoying there and he should not worry and then he and Rajwinder Singh went to water works but no employee was found present in the water works and they came back. He further stated that it was at about 4.30 p.m. when they reached near the room of Balvir Singh, they saw that Sukhpal Singh was lying in the room and his legs and arms were tied with parna and rope. He further stated that Roop Singh was armed with kulhari Jarnail Singh armed with ghop, Balvir Singh was armed with takua and Gurcharan Singh was also armed with takua. He identified them in Court. He then stated that accused Roop Singh gave two blows with his kulhan hitting on left side of neck of his brother Sukhpal Singh. Accused Jarnail Singh gave a ghop blow under the chin of his brother Sukhpal Singh. Accused Balvir Singh inflicted a takua blow below his left ear and accused Gurcharan Singh gave two takua blows,

one on the left shoulder and other below that injury. He further stated that he and Rajwinder Singh tried to intervene to save his brother Sukhpal Singh but all the accused threatened them with dire consequences and they retreated back feeling scared and thereafter all the accused ran away with their respective weapons towards the fields. He further stated that they went to take care of his brother Sukhpal Singh but he succumbed to his injuries within four or five minutes at that very place. He then stated that Rajwinder Singh was left at the place to guard the dead body and he went to the village and took Bhola Singh with him and they went towards police station for reporting the matter. He further stated that the police met them on the way near the bridge of canal in the area of village Gadar Patti, Boha and he got recorded his statement Ex.PD. He further stated that Bhola Singh was also present at that time and he also thumb marked his said statement. He then stated that a panchayati tap was to be installed in the village and accused Balvir Singh and his brother Sukhpal Singh, both are Panchayat members but accused Balvir Singh wanted to get that tap Installed in front of his house which is on the outskirts of the village while his brother Sukhpal Singh wanted to install that tap in the middle of the village near his house. He further stated that due to this dispute the said panchayati tap could not be installed in the village and Balvir

Singh kept this fact in his mind and was nursing a grudge on this score and with common intention of other accused inflicted injuries to his brother Sukhpal Singh. He further stated that police accompanied by him and Bhola Singh went to place of occurrence, inspected the dead body, conducted inquest proceedings there and sent the dead body for post mortem examination. He further stated that police inspected the spot on the next day also at his instance.

Statement of PW3 Rajwinder Singh, another eye witness of the occurrence is also to the same effect. He also deposed about the whole occurrence and corroborated the statement of the complainant.

PW4 SI Bimal Kumar, IO stated that on 9.3.2006 he was posted as SHO at Police Station Boha and on that day along with other police officials was present at Police Post Gadar Patti, Boha and Baldev Singh son of Pritam Singh along with Bhola Singh came there and he recorded statement of Baldev Singh Ex.PD which was read over and explained to him and he thumb marked it. He further stated that Ex.PD was also verified by Bhola Singh son of Gurbax Singh. He then deposed about making his endorsement Ex.PD/1 below the statement of the complainant and sending it to police station through C.Surinder Singh on the basis of which FIR Ex.PD/2 was recorded. He then

deposed about going to the spot alongwith above mentioned witnesses and preparing inquest report Ex.PC and further lifting plain and blood stained earth and after converting the same into two separate parcels and sealing it with his seal bearing Impression BS, taking it in his possession vide memo Ex.PE. He also proved on record rough site plan EX.PF prepared by him. He further deposed about sending dead body of Sukhpal Singh for post mortem through HC Sukhpal Singh and HC Harinder Singh alongwith request Ex.PB and producing clothes of deceased by HC Sukhpal Singh in a sealed parcel bearing impression SK and taking the same in his possession vide memo EX.PG. He further deposed about arresting accused Roop Singh and Balam Singh on 12-3-2006 and further suffering disclosure statement Ex.PK by accused Balam Singh and recovery of a kahi in pursuance thereof. He also deposed about other investigation conducted by him in this case.

PW5 HC Sukhpal Singh, PW6 HC Gurjant Singh and PW7 HC Balwinder Singh, all formal witnesses in their statements simply tendered their affidavits Ex.PT, Ex.PU and Ex.PV respectively into evidence.

When examined under Section 313 Cr.P.C., all the accused denied the prosecution allegations and pleaded their innocence. Accused Roop Singh took the plea that he was falsely implicated in this case at the instance of Sukhwinder

Singh, Baldev and Rajwinder Singh and there was no reason for him to kill Sukhpal Singh as he was his best friend. Accused Balam Singh only pleaded that he was falsely implicated in this case. Accused Gurcharan Singh and Balvir Singh took the plea that they have falsely been implicated being father and uncle of Roop Singh and have separate residence as well as separate cultivation from Roop Singh. Accused Jarnail Singh took the plea that he has been falsely implicated being brother of Roop Singh and at the instance of Baldev Singh and Rajwinder Singh though he is living separate for more than four years and has separate cultivation. He had no enmity with deceased Sukhpal Singh. In defence, accused examined DW1 Jawala Singh and DW2 Sukhchain Singh.

DW1 Jawala Singh stated that about 2-1/4 years back he was standing on the ring road of his village near Kulana road near village pond and at about 5.00 p.m. he saw that Roop Singh and Balam Singh were coming on a camel cart containing 'Javvi' fodder. He further stated that they were coming at a speed towards the village and after 2/3 days he narrated this story to the police when police came to their village for enquiry of above said case.

DW2 Sukhchain Singh stated that Ajmer Singh is his uncle and he and Ajmer Singh met with an accident by falling

from a scooter and due to survival in the accident their family decided to get recital of Path of Shri Guru Granth Sahib. He further stated that on 4-3-2006 they consulted Atma Singh Pathi in this matter who told that he will start the Path of Shri Guru Granth Sahib on 6-3-2006 and they called Jarnail Singh accused for helping in reciting of Path a day before beginning of Path. He further stated that Bhog of Path was held on 12-3-2006 and Jarnail Singh remained in their house at Borhawal upto 12-3-2006.

After hearing learned counsel for the parties and on going through the record, learned trial Court acquitted Balam Singh accused of the charge against him. However, the remaining four accused who are the appellants herein, were convicted and sentenced, as mentioned above.

This Court has heard learned counsel for the appellants, learned State counsel and also perused the evidence with their able assistance.

From a conjoint reading of the testimonies of PW2 Baldev Singh and PW3 Rajwinder Singh, it is made out that they had first seen Roop Singh and Balvir Singh-accused with Sukhpal Singh @ Pal-deceased and when asked by PW2 Baldev Singh and PW3 Rajwinnder Singh, Sukhpal Singh @ Pal had informed them not to worry as he was having drinks with Roop Singh and Balvir Singh. Some time thereafter when PW2 Baldev Singh and

PW3 Rajwinder Singh were returning from the water works and wanted to enquire about Sukhpal Singh @ Pal, they saw the hands and legs of Sukhpal Singh @ Pal tied with rope. They also saw Roop Singh, Jarnail Singh and Balvir Singh accused causing injuries to the deceased. An alarm was raised by PW2 Baldev Singh and PW3 Rajwinder Singh but accused Gurcharan Singh also caused injuries to Sukhpal Singh @ Pal. The presence of PW2 Baldev Singh and PW3 Rajwinder Singh at the time and place of the occurrence cannot be doubted as they had initially passed from near the kotha of the accused and had seen the deceased having drinks with Balvir Singh and Roop Singh and subsequently when they had gone to the kotha of the accused to enquire about Sukhpal Singh @ Pal. Despite being cross-examined at length, both PW2 Baldev Singh and PW3 Rajwinder Singh stuck to their stand that they had witnessed the occurrence.

DW1 Jawala Siungh testified that he had seen Roop Singh and Balam Singh about two and quarter years back when they were coming on a camel cart containing fodder. After 2/3 days, he narrated the story to the police. When cross-examined, he stated that he was not an eye-witness of the occurrence. He also did not know whether Sukhpal Singh @ Pal was murdered by the accused or not. He went on to state that his daughter was

married at village Dhani Khera in Ratia. His son-in-law was murdered and, accordingly, he used to stay at Dhani Khera as well. He admitted that he himself was convicted for the murder of his son-in-law.

With the credentials as DW1 Jawala Singh has, as noticed above, no reliance can be placed upon his testimony, more-so, when he had not witnessed the commission of the crime and he himself stood convicted for the murder of his son-in-law.

DW2 Sukhchain Singh deposed that his family had arranged recital of Path and on 4.3.2006 they had consulted Atma Singh, Pathi in this regard, who stated that he would start the Path on 6.3.2006. The Bhog was held on 12.3.2006. Jarnail Singh-accused had been called for helping in the work of Path a day before the beginning of the Path and the Bhog was held on 12.3.2006. In his cross-examination, he admitted that Jarnail Singh-accused was brother-in-law of his cousin and his uncle Ajmer Singh, who had also met with an accident, was having separate mess. Under these circumstances, possibility of his testifying in order to save brother-in-law of his cousin cannot be ruled out.

Merely because Balam Singh-accused had been acquitted by the learned trial Court of the charge against him is no ground to reject the prosecution case in its entirety. The name

of Balam Singh-accused did not figure in the FIR. Even while deposing before the learned trial Court, PW2 Baldev Singh and PW3 Rajwinder Singh did not name Balam Singh as the assailant. Only PW4 SI Bimal Kumar stated that Balam Singh-accused had suffered a disclosure statement, pursuant to which he got recovered a kulhari.

At the same time this Court finds that Jarnail Singh-appellant was attributed giving of a ghop blow below the chin of Sukhpal Singh @ Pal but according to the testimony of PW1 Dr.Sharad Kumar, no such injury below the chin was found at the time of post-mortem. This witness was also re-examined by the learned Additional Public Prosecutor in order to confront him with the inquest report but he stuck to his stand that there was no injury below the chin. It appears that the police officer, who had prepared the inquest, saw blood clot below the chin of the deceased although there was no such injury below the chin.

Similarly, Balvir Singh-appellant was attributed causing of takua blow below the left ear of the deceased. However, no injury on or below the left ear was noticed on the dead body of Sukhpal Singh @ Pal by PW1 Dr. Sharad Kumar. Coupled with the same is the conclusion of the investigating agency which had found Jarnail Singh and Balvir Singh besides Gurcharan Singh-appellants as innocent. The case of Gurcharan

Singh-appellant is not para materia as that of Jarnail Singh and Balvir Singh-appellants as the injuries caused by him with a takua on the left shoulder and below left shoulder were noticed in the shape of injuries No.4 and 5 respectively on the dead body.

In view of the above, the Court finds that the involvement of Jarnail Singh and Balvir Singh-appellants in the commission of the crime is doubtful and, accordingly, both of them deserve to be acquitted of the charge against them. At the same time, the prosecution has been successful in establishing the guilt of Roop Singh and Gurcharan Singh-appellants and, thus, their conviction and sentence deserve to be upheld.

Resultantly, the appeal of Jarnail Singh and Balvir Singh-appellants is accepted and they are acquitted of the charge against them. The appeal of Roop Singh and Gurcharan Singh-appellants is without any merit and, therefore, dismissed. Their conviction and sentences are upheld.

(T.P.S. MANN)
JUDGE

April 11, 2016
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No