

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

CRA-D-898-DB-2009
Date of decision:21.09.2016

Amandeep Singh

.....Appellant

Versus

State of Punjab

.....Respondent

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

Present: Mr. Sandeep Kumar, Advocate
as legal aid counsel for the appellant.

Mr. S.S. Dhaliwal, Addl. A.G., Punjab.

GURMIT RAM, J.

This appeal is presented on behalf of abovesaid appellant-
Amandeep Singh against the judgment of conviction dated 27.04.2009
and order of sentence dated 29.04.2009 passed by the Court of learned
Additional Sessions Judge, Amritsar in criminal case bearing FIR No.533
dated 25.12.2007 under Section 302 read with Section 34 of the Indian
Penal Code ("IPC"- for short) Police Station, Sadar, Amritsar vide which
he was held guilty for the offence punishable under Section 302, IPC,
whereas his co-accused Sarabjit Singh @ Vicky and Deepak Kumar @
Deepak were acquitted in this case.

2. Concisely stated the case of the prosecution as put forth

before the learned trial Court was that on 25.12.2007 Joginder Singh SI/SHO Police Station Sadar, Amritsar alongwith HC Manjit Singh and other police officials was present at drain bridge, village Mahal bypass, in connection with patrolling and search of bad elements. During this time C.Baljinder Singh No.3606 Amritsar C-S No.41-complainant (PW-1) came there and he made his statement Ex.PA before said SI/SHO, the gist of which was as under:-

“That he along with C.Gurdev No.878/ASR is doing duty on motorcycle CS-41 and the area of their patrolling is from Mahal bypass/dirty drain to India Gate. On that day, he along with his co-official was on patrolling in their abovesaid area on motorcycle No.PB02-AX-5138, make Pulsar and when at about 11:15 a.m. they reached a little ahead of Dera Baba Darshan Singh, then a cycle carriage (Rehri) was found parked on the left side of the drain. They alighted from the motorcycle and started looking to and fro in order to check the owner of the Rehri. Then he saw that a dead body of young man aged about 35/36 years, moderate height, clean shaven, was found lying in the vacant ground along the backside of Guru Nanak Dev University towards right side of the road. There were injuries on his mouth, neck and left wrist caused by sharp edged weapon and huge blood was lying around his head. It appeared that some unknown persons had murdered this deceased after inflicting injuries

with sharp edged weapon and threw his dead body there. It also appeared that the abovesaid cycle carriage (Rehri) was belonging to that deceased person. After leaving his co-official C.Gurdev Singh therein in order to safeguard the dead body, he was coming to make his statement to apprise the police about this incident. Request was made to take action into the matter.”

Complainant C. Baljinder Singh signed his statement in English after admitting it to be correct, upon which SI/SHO Joginder Singh made his endorsement Ex.PC and sent ruqa to police station on the basis of which the FIR Ex.PC/1 was recorded in this case. SI Joginder Singh visited the spot of the occurrence and prepared rough site plan after its inspection. He also lifted the bloodstained earth lying near dead body and took the same into his possession after converting it into a sealed parcel. Inquest proceedings under Section 174, Cr.P.C., were conducted. Post-mortem examination on the dead body of the deceased was also got conducted. During investigation of the case, Naresh Kumar s/o Late Tilak Raj, Ramesh Kumar s/o Inderjit and Komal @ Nisha w/o Satish Kumar @ Disha identified the dead body of the deceased from his clothes, photos and cycle (Rehri) to be of his brother, son-in-law and husband respectively namely Satish Kumar @ Disha s/o Late Tilak Raj r/o Gali Transform Wali near Bharti Kariyana Store, Adarsh Nagar, Police Station Ishlamabad, Amritsar.

During investigation, Amandeep Singh s/o Narinder Singh,

Sarabjit Singh @ Vicky s/o Joginder Singh and Deepak Kumar @ Deepak s/o Prem Lal were named as the accused persons in this case on 27.12.2007. They were formally arrested in this case on 31.12.2007. On the same day, the '*Datar*' which was allegedly used in the commission of the offence was recovered from accused Amandeep Singh, whereas Motorola mobile phone (Tata) belonging to deceased was recovered from accused Sarabjit Singh @ Vicky. Three-wheeler bearing registration No.PB02-AD-9814 which was allegedly used in the commission of the crime was recovered from accused Deepak Kumar @ Deepak on 1.1.2008. The identification of the abovesaid mobile phone Motorola (Tata) of deceased was made by his father-in-law Ramesh Kumar. Parcel containing bloodstained earth lifted from the spot and parcel containing '*Datar*' i.e. weapon of offence were sent to the office of Forensic Science Laboratory Punjab, Chandigarh for the purpose of the chemical analysis. Statement of witnesses were recorded. On the completion of the investigation, challan was presented in the Court of learned Illaqa Magistrate, Amritsar i.e. Additional Chief Judicial Magistrate, who after making compliance of provision of Section 207, Cr.P.C., committed the case to the Court of learned Sessions Judge, Amritsar for the trial.

3. Finding a prima facie case punishable under Section 302, IPC, against all the accused, they were chargesheeted accordingly vide order dated 18.03.2008 to which accused pleaded not guilty and claimed the trial.

The prosecution during trial of the case examined 16 PWs in

all, besides, tendering the report Ex.PX of Forensic Science Laboratory.

4. Then statements of the accused under the provisions of Section 313 Cr.P.C. were duly recorded, in which the entire incriminating evidence brought on record by the prosecution against them during trial of the case was put to them, which they denied entirely. Further they pleaded their innocence and false implication in this case. In their defence they also examined four witnesses.

5. The learned trial Court after hearing the learned counsel for both the parties and going through the record as well acquitted abovesaid two co-accused of the appellant-herein (accused-Amandeep Singh) and convicted him (accused-Amandeep Singh) for the offence punishable under Section 302, IPC, vide the impugned judgment and awarded him sentence as detailed below:-

Amandeep Singh	302, IPC	Rigorous imprisonment for life and to pay a fine of ₹5,000/-.	In default of payment of fine, the convict shall undergo rigorous imprisonment for a further period of six months.
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6. The appellant-herein (accused-Amandeep Singh) being dissatisfied with the impugned judgment of conviction and order of sentence has filed the instant appeal, notice of which was given to the respondent-State. Record of learned trial Court was also requisitioned.

7. We have heard learned counsel for both the parties at length

and also perused the record thoroughly with their assistance.

8. At the very beginning of the arguments, the learned State counsel has admitted that no appeal against the acquittal of two co-accused namely Sarabjit Singh @ Vicky and Deepak Kumar @ Deepak of the present appellant (accused) has been preferred either by State or by the complainant. Meaning thereby, the impugned judgment so far as it relates to the acquittal of abovesaid two accused has become final. So now it is to be seen by the Court in the instant appeal as to whether the evidence on the record is sufficient and reliable in order to uphold the conviction of the appellant-herein (accused-Amandeep Singh) or not.

Evidence on the record so far as it relates to abovesaid two accused (since acquitted), there is no need to discuss the same as the said two accused (Sarabjit Singh @ Vicky and Deepak Kumar @ Deepak) are not present before this Court in any capacity.

9. Now let us see the evidence on the record relating to the appellant-herein (accused-Amandeep Singh).

PW-3 Ramesh Kumar was the father-in-law of Satish Kumar (since deceased). His daughter Komal @ Nisha was married with the deceased who was having mobile No.9217780756. His statement was to the effect that his daughter told him that her husband had not come back home on the night of 25.12.2007. On coming to know about the demise of deceased through telecast of Citi Cable, they went to police station where the police displayed them clothes of deceased, photographs and his 'Rehri' from which the death of deceased was confirmed. He learnt that

deceased had been murdered by Amandeep Singh appellant-herein (accused) since he used to roam about with the deceased. Then this witness further stated that when they went to police station on 25.12.2007, accused Amandeep Singh was detained there in the police station.

PW-4 Shanti was the mother of the deceased. Her statement was to the effect that she had strong suspicion that her son Satish Kumar was done to death by appellant-herein (accused-Amandeep Singh) since he used to roam with her said son all the time. This accused told her said son 8/10 days prior to occurrence in her presence that he (Amandeep Singh) could help him to purchase certain goods from two boys and as such, he should arrange a sum of ₹10,000/-.

Now herein the relevant part of the cross-examination of this witness is required to be discussed wherein she stated that she does not know as to whether her daughter-in-law i.e. wife of deceased Satish Kumar was also a suspect in this case or that she had also moved an application for anticipatory bail. Then it was also found recorded in her cross-examination that she knew one Ashok Kumar @ Titu s/o Rattan Chand with whom her said son had business dealings. Further she admitted that this Ashok Kumar @ Titu was also apprehended in this case by the Police as a suspect who was anyhow released after his interrogation. Then it was also in her cross-examination that she stated before the police that about 8/10 days prior to occurrence accused-Amandeep Singh asked her son in her presence to arrange a sum of

₹10,000/- and that he (Amandeep Singh) would help him to purchase scrap from two boys. But when this witness was confronted with her statement Ex.DA recorded under Section 161, Cr.P.C., then the abovesaid fact was not found to be so recorded in it. Then it was also in her cross-examination that she did not state before the police that her daughter-in-law, her *Kuram* i.e. father of her daughter-in-law and her son Naresh Kumar had disclosed to her that they had come to know from police station that her son had been killed by some unknown persons, but when she was confronted with her alleged statement Ex.DA portion A to A1, then the abovesaid fact was found to be so recorded therein. Then she further revealed that accused persons were shown to her on 26.12.2007.

PW-5 Naresh Kumar was the brother of Satish Kumar (since deceased). His statement was on the same lines as made by PW-3 and PW-4 before the Court and as also above discussed. He had also strong suspicion that his said brother had been killed by appellant-herein (accused-Amandeep Singh) since the latter used to loiter with the former all the time.

The cross-examination of this witness is also need to be discussed in some brief. In his cross-examination, this witness stated that he did not state before the police that Amandeep Singh had killed his brother and also used to roam with his brother. Though at the same time he stated that he came to know about this fact later on. Then it was also found recorded in his cross-examination that Amandeep Singh who used to reside in front of the house of his brother Satish Kumar (since

deceased) had accompanied them on 25.12.2007, when they were looking for said Satish Kumar and at that time he (Amandeep Singh) also told Ramesh Kumar, father-in-law of his brother, that they can look out for him in the area of Malhi bypass. Then this witness in his cross-examination stated categorically that in the cable news Amandeep Singh was shown while confessing his crime telecast on 26.12.2007 at about 10:00 a.m.. It was also shown in the cable news that Amandeep Singh was in police custody in the police station.

PW-8 Komal is the wife of Satish Kumar (since deceased). Her statement was to the effect that her husband who left the house on 24.12.2007 at about 11 a.m. for his work did not come back till the next morning upon which she brought this fact to the notice of her mother-in-law and her parents as well. They tried to contact her husband on his mobile phone No.9217780756, but there was no reply. She saw the dead body of her husband and cycle '*Rehri*' in the cable news on 25.12.2007 at about 10:30 p.m. and then they went to the police station on the same day. On seeing the photographs, clothes, cycle *Rehri* and mobile of her husband in the police station, she identified the same to be of her husband. Then she learnt that her husband had been killed by Amandeep Singh, Sarabjit Singh @ Vicky and Deepak Kumar @ Deepak. Then this witness in her cross-examination stated without any ambiguity that on 25.12.2007 she had seen Amandeep Singh in the cable news while stating that he had killed Satish Kumar. At that time police was also shown to be standing nearby this accused.

PW-7 Sat Pal Singh was the Ex-Sarpanch of village Galab and also working as a property dealer at Baba Darshan Singh Avenue, Amritsar. During the construction of his house in this avenue, he engaged accused Amandeep Singh for the white wash and paint work of his house. He had gone for walk on 24.12.2007 at about 9 p.m. and he found Amandeep Singh and his two co-accused going in three-wheeler near Gumtala bypass near Darshan Singh Avenue. He intercepted them by making a call and asked them as to where they were going, upon which accused Amandeep Singh told him that they were going towards Gumtala with Satish Kumar for fetching some scrap material from there. He saw a photograph of Satish Kumar in newspaper on 26.12.2007 which he recognized, since he (Satish Kumar) used to come in their street also for collecting scrap goods. Thereafter he went to police station on 27.12.2007 and got recorded his statement. In brief his statement was to the effect that he had last seen the deceased in the company of the appellant-herein (accused-Amandeep Singh) and his abovesaid two co-accused (since acquitted) on the night of 24.12.2007 at about 9 p.m.

PW-9 Ashok Kumar was running a scrap shop at Ram Nagar colony. His statement was to the effect that Satish Kumar used to come to his shop to supply scrap material. On 24.12.2007 said Satish Kumar took from him a sum of ₹2,000/- for the purchase of material and left his shop along with his *Rehri*. He contacted him on his mobile phone No.9217780756, who told him that he had been taking liquor and would come to his shop to return his money. Then on 25.12.2007 Amandeep

Singh along with Satish Kumar's father-in-law came to his shop several time since they were looking for Satish Kumar throughout the day. He came to know about the death of Satish Kumar on 26.12.2007 in the morning on reading a news item in the newspaper. Then it had come on record in the cross-examination of this witness that he alongwith accused-Amandeep Singh was apprehended on 26.12.2007 in the murder case of Satish Kumar and he was detained in police station for a week.

PW-14 SI/Joginder Singh was posted as SHO Police Station Sadar, Amritsar on 25.12.2007. He recorded the statement Ex.PA of PW-1 C. Baljinder Singh of PCR upon which he made his endorsement Ex.PC, on the basis of which FIR Ex.PC/1 was recorded by ASI Paramdeep Kaur in this case. He went to the spot where the dead body of an unknown person was lying and prepared its inquest report Ex.PD. Further he also proved the rough site plan Ex.PE of the spot of occurrence, memo Ex.PF vide which bloodstained earth lifted from the spot was taken into police possession after preparing its parcel and memo Ex.PG vide which a cycle '*Rehri*' standing on the left side of the road was also taken into police possession. Further he sent the dead body of deceased for postmortem through police officials vide request Ex.PI. Further he also proved the memo Ex.PW12/A vide which photos Ex.P1 to Ex.P3 of the dead body were taken into possession and memo Ex.PJ vide which clothes of the deceased after post-mortem were taken into police possession. Then it was further in his statement that photos of the dead body, clothes of deceased and cycle '*Rehri*' were shown to witnesses

namely Naresh Kumar, brother of the deceased and Ramesh Kumar in the police station who identified the deceased to be Satish Kuamr and identification memo Ex.PK was also prepared in this connection. Lastly, he stated that he was transferred on 29.12.2007 and till then accused were not arrested in this case and further investigation of this case was handed over to somebody else. Besides this, he also proved the bloodstained earth Ex.P2 and parcel containing clothes of the deceased Ex.P3.

PW-16 SI Swaran Singh was posted as SHO Police Station Sadar, Amritsar on 30.12.2007 and investigation of this case was with him. On 31.12.2007 he along with other police officials was present at village Mahal in relation with the investigation of this case, where he received a secret information that accused Amandeep Singh along with his co-accused Sarabjit Singh @ Vicky and Deepak Kumar @ Deepak (since both acquitted by the trial Court) was standing in front of Dera Baba Darshan Singh. Accordingly he conducted a raid and apprehended all of them. During interrogation, accused Amandeep Singh suffered a disclosure statement Ex.PD regarding concealment of a '*Datar*' in the bushes situated near the wall of Guru Nanak Dev University, who thereafter, led the police party to the said disclosed place and got recovered the '*Datar*', sketch of which Ex.PB was prepared and the same was taken into police possession vide memo Ex.PW after preparing its parcel. The remaining part of statement of this witness was pertaining to the disclosure statements suffered by accused Sarabjit Singh @ Vicky and Deepak Kumar @ Deepak and the recoveries got recovered by them.

Since as abovesaid both of them were acquitted in this case by learned trial Court, so there is no need to discuss this part of his statement.

PW-15 ASI-Varinder Kumar had joined the police parties headed by PW-14 SI Joginder Singh and PW-16 SI Swaran Singh during the investigation of this case and he corroborated the above discussed statements of PW-15 and PW-16.

10. Then as per case of prosecution accused made an extra judicial confession before PW-6 Dr. Basant Singh Bhangu on 29.12.2007 at his hospital at about 10: a.m. situated at Ram Tirath Road, village Mahal. His statement was to the effect that all the three accused present in the Court who were acquainted with him had come to him on 29.12.2007 at the abovesaid time. Accused Amandeep Singh told him that he was having friendship with one Satish Kumar who was working as a scrap dealer. Due to this friendship, he was on visiting terms with Satish Kumar and during this period he developed illicit relations with the wife of Satish Kumar (since deceased). When Satish Kumar came to know about his illicit relations with his wife, he became a hindrance in their said relationship. Then he killed Satish Kumar with the help of his co-accused namely Deepak Kumar @ Deepak and Sarabjit Singh @ Vicky who were his friends. He further requested him (this witness) to help them as they had committed a gaffe, since he had a good say with the police. He told them that he would talk with the police in this matter, but thereafter the accused persons never came to him.

11. PW-11 Dr. Kirpal Singh, Lecturer, Government Medical

College, Amritsar conducted postmortem examination on the dead body of the deceased on 25.12.2007. He found six injuries on the dead body of the deceased during postmortem as narrated in the copy of postmortem report Ex.PW11/A and as also shown in the pictorial diagram Ex.PW11/B pointing out the seats of injuries. All the injuries were stated to be ante-mortem in nature. The cause of death in this case as per his opinion was haemorrhage and shock, sufficient to cause death in the ordinary course of nature.

12. The remaining prosecution witnesses were formal in nature.

13. From the above discussed statements of PW-3, PW-4, PW-5, PW-8 and PW-9, one thing is clearly established on the record beyond all shadow of reasonable doubt that Amandeep Singh appellant-herein (accused) was in the custody of police of Police Station Sadar, Amritsar on 25.12.2007/26.12.2007.

Then as above discussed as stated by PW-16 SI Swaran Singh, Investigating Officer, that his police party apprehended the appellant-herein (accused-Amandeep Singh) along with his abovesaid two co-accused (since both acquitted) on 31.12.2007 on the basis of secret information in the area of front of Dera Baba Darshan Singh. They during interrogation suffered disclosure statements and got the alleged recoveries made of incriminating articles as per their disclosures .

14. So, if the above discussed statements of PW-3, PW-4, PW-5, PW-8 and PW-9 are to be believed, then version of prosecution as stated by PW-16 SI/Swaran Singh, Investigating Officer with regard to the arrest

of the accused on 31.12.2007 and the alleged recoveries got made by them thereafter, in pursuance of their disclosure statements is to be completely wiped out. On the other hand, if the prosecution version as stated by PW-16 is to be believed, then whatever is revealed by PW-3, PW-4, PW-5, PW-8 and PW-9 is nothing, but a white lie being found out of place. So due to this reason, there has occurred a serious schism in the prosecution story as alleged qua which it has no substance for its reconciliation.

15. For the abovesaid reason, the extra judicial confession allegedly suffered by the appellant-herein (accused-Amandeep Singh) along with his two co-accused (since both acquitted) before PW-6 Dr.Basant Singh Bhangu on 29.12.2007 has also no leg to stand, since it had come on record in the depositions of abovesaid PW-3, PW-4, PW-5, PW-8 and PW-9 that accused were in the police custody on 25.12.2007/26.12.2007 and no evidence had come on record to show that they were ever released by the police at any point of time, thereafter during the period 27.12.2007 to 30.12.2007.

16. Then it was the plea of prosecution that motive behind this occurrence was that appellant-herein (accused-Amandeep Singh) was having illicit relation with the wife of Satish Kumar (since deceased). Since this fact had come to the notice of Satish Kumar, so appellant-herein (accused-Amandeep Singh) with the help of his co-accused (since both acquitted) eliminated him in order to clear his way to meet wife of Satish Kumar (since deceased) frequently without any impediment. But

in this connection, no concrete evidence was led by prosecution to establish the fact that deceased was murdered by the appellant-herein (accused-Amandeep Singh) with the aid of his abovesaid two co-accused for the purpose of his said illegal motive.

17. Then there remains on the record only statement of PW-7, Sat Pal Singh which has already been discussed in detail in para No.8 of this judgment. This case was entirely rested upon circumstantial evidence, since there was no eye-witness to the alleged occurrence. The other relevant evidence led by the prosecution as above discussed has been discredited for the reason aforementioned. So it is neither safe nor wiseable to convict any accused on the basis of the sole evidence of last seen. The law on this point has been laid down by the Hon'ble Apex Court in a latest case law titled as **Rambraksh alias Jalim vs. State of Chhattisgarh, AIR 2016 (SC) 2381**, wherein it was held as under:-

“It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last

seen together itself would not be sufficient and the prosecution has to complete the chain of circumstances to bring home the guilt of the accused.”

No other point was raised by either of the parties.

18. For the reasons recorded above, the appeal is allowed. Impugned judgment of conviction and order of sentence stand set aside and the appellant is acquitted of the charges framed against him by granting him benefit of doubt. He be released from custody forthwith unless wanted in some other case.

Intimation be sent to the quarter concerned for strict compliance.

21.09.2016
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(GURMIT RAM)
JUDGE

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| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |