

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

Crl. Appeal-D No. 59-DB of 2010 (O&M)
Date of decision: November 30, 2016.

Gurnam Singh Appellant.

Versus

State of Punjab Respondent.

CORAM:- HON'BLE MR.JUSTICE S.S.SARON
HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. P.S. Ahluwalia, Advocate for the appellant.

Mrs. Ritu Punj, Additional Advocate General, Punjab.

LISA GILL, J.

The appellant Gurnam Singh has been convicted vide judgment dated 27.11.2009 passed by the learned Sessions Judge, Jalandhar for the offence punishable under Section 302 of the Indian Penal Code ('IPC' - for short) for committing the murder of Paramjit Singh. By a separate order dated 28.11.2009, he has been sentenced to undergo imprisonment for life, besides, pay a fine of Rs.5,000/- and in default thereof, undergo further rigorous imprisonment for eight months. Aggrieved from the above said judgment of conviction and order of sentence, the appellant has filed this appeal.

The FIR (Ex.PN/2) was registered on the statement (Ex.PN) of PW8 Surjit Kaur on 01.08.2008. PW8 Surjit Kaur wife of Jangi in her statement (Ex.PN) stated that she was resident of village Cheema, Police Station Kartarpur, Jalandhar and did labour work. She was earlier married

with Lalli son of Najar Singh, resident of village Talwandi, Police Station Nakodar. A child, namely, Paramjit Singh (deceased in this case) was born from the said wedlock. After about one and a half years of the birth of son, her husband Lalli died. She thereafter married Jangi son of Munshi Ram resident of village Cheema, Police Station Kartarpur, Jalandhar. From this marriage, they had two sons and a daughter. Paramjit Singh, the son of the complainant, who was born from her first marriage and was living in his maternal grandparents' village Chitti with his maternal grandparents Anait Masih (PW7) and Bimla Rani for the last 20 years, was brought by her to village Cheema about two months back prior to the incident in question which took place on the intervening night of 25/26.07.2008. He was brought for living with her and he did labour work in the village itself.

Appellant Gurnam Singh, the son-in-law of the complainant's husband's elder brother (i.e. her 'jeth'), came to their village Cheema on 24.07.2008 to meet his in-laws. Then he (appellant) came to the complainant's house on 25.07.2008 at about 11:00 a.m. and stated that he had to take money from someone and he would like Paramjit Singh - the complainant's son to accompany him. Initially, the complainant refused to send Paramjit Singh along with the appellant but gave in to persuasion by Gurnam Singh. She received a telephone call on 26.07.2008 at about 06:00 a.m. from village Safipur that Gurnam Singh (appellant) had inflicted injuries with a 'datri' (sickle) to her son Paramjit Singh and had got him admitted in Civil Hospital at Jalandhar. On this, the complainant along with her husband's younger brother ('devar') Charanjit Singh (PW11) son of Munshi Ram and his wife Smt. Krishna reached Civil Hospital, Jalandhar.

There her son Paramjit Singh (deceased) informed her that he and Gurnam Singh (appellant) after having their meals slept together in a room at the residence of Gurnam Singh (appellant) in village Safipur. He further stated that in the morning while he was sleeping, Gurnam Singh (appellant) attacked him with a 'datri' (sickle) and inflicted injuries with a 'datri' on his entire body. As blood in substantial quantity had oozed out from his body, Gurnam Singh (appellant) and his brother Bhola sons of Sarwan Singh, residents of village Safipur, got him admitted in the Civil Hospital at Jalandhar. Their entire family till date of lodging the complaint, i.e. 01.08.2008, was getting Paramjit Singh treated at the Civil Hospital and the night previous to the lodging of the complaint at about 01:00 a.m. her son Paramjit Singh died at the Civil Hospital. The cause of grievance was that Gurnam Singh (appellant) suspected that his wife Sarabjit Kaur @ Raja had illicit relations with her son Paramjit Singh. The statement had been heard by her and was accepted as correct. Action was asked to be taken against Gurnam Singh (appellant).

Surjit Kaur's statement (Ex.PN) was recorded by PW9 Inspector Tarlok Singh Mangat, SHO Police Station Maksudan. The statement was signed by the complainant Surjit Kaur in Punjabi. It was witnessed by Tirath Ram son of Khushi Ram, resident of Chitti, Police Station Lambra and was attested by Inspector/SHO Tarlok Singh (PW9).

Police Proceedings (Ex.PN/1) were recorded by PW9 Inspector Tarlok Singh Mangat within the area of Civil Hospital, Jalandhar at about 11:30 a.m. which were to the effect that he was present at Police Station Maksudan on 01.08.2008 when a telephone call was received from the

guard at Civil Hospital informing that Paramjit Singh son of Lalli, resident of Cheema, Police Station Kartarpur, Jalandhar who was admitted in Civil Hospital, Jalandhar on 26.07.2008 due to the injuries that he had suffered, died at the hospital during the previous night at 01:05 a.m. On this, Inspector Tarlok Singh along with SI Sukhdeep Singh, HC Lakhwinder Singh, Constable Joginder Singh, SPO Paramjit Singh, SPO Singara Singh in government vehicle No.PB-12H-7210 make 'Trax' reached the civil hospital where Smt. Surjit Kaur wife of Jangi, resident of village Cheema, Police Station Kartarpur along with Tirath Ram, Ex-Sarpanch, village Chitti, Police Station Lambra, Jalandhar met them and Surjit Kaur aforesaid got her statement (Ex.PN) recorded with him. The statement was written, read over and explained to her. She after accepting her statement signed in Punjabi beneath it which was attested by Inspector/SHO Tarlok Singh. In this regard, report No.22 dated 26.07.2008 had already been entered at Police Post Basti Bawa Khel. From the statement, a cognizable offence punishable under Section 302 IPC was made out. The writing after it was written was being sent to the police station through Constable Joginder Singh. After registering a case, its number was asked to be intimated. The control-room was also asked to be informed. The special reports were also asked to be issued. Inspector/SHO Tarlok Singh along with his companions was busy with the investigation. The MHC at Police Station Maksudan registered FIR No.201 dated 01.08.2008 (Ex.PN/2) for the offence under Section 302 IPC vide report No.15/17 dated 01.08.2008 at 11:55 a.m./12:40 p.m. The copy of the FIR was received by the learned Judicial Magistrate 1st Class on 01.08.2008 at 02:30 p.m.

Investigation in the case was conducted by PW9 Inspector/ SHO Tarlok Singh Mangat and he after registration of the case recorded statements of witnesses. He prepared inquest report (Ex.PO) in respect of dead body of Paramjit Singh. The dead body was identified by PW7 Anait Masih and Balbir Singh. An application (Ex.PK) was written to the doctor at the Civil Hospital, Jalandhar for getting post-mortem examination conducted on the dead body of Paramjit Singh. For this purpose, the dead body was handed over to HC Lakhwinder Singh and SPO Paramjit Singh. PW7 Anait Masih produced before Inspector Tarlok Singh a vest and an underwear, which were converted into a parcel MO-3 and sealed with the seal 'TS'. The seal of parcel was taken in possession vide memo Ex.PM. PW9 Inspector Tarlok Singh Mangat went to the place of occurrence and prepared rough site plan Ex.PP with correct marginal notes.

Secret information was received by PW9 Inspector Tarlok Singh on 02.08.2008 that the person who had caused injuries to Paramjit Singh was waiting for a bus on the culvert of the canal. A raid was conducted at that place and the said person tried to slip away but he was apprehended. The person apprehended disclosed his name as Gurnam Singh (appellant). His personal search was conducted and an amount of Rs.55/- was recovered. Memo Ex.PQ was prepared regarding the personal search; besides, arrest memo Ex.PR was also prepared. After post-mortem examination, the apparels found on the dead body were produced before PW9 Inspector Tarlok Singh by PW6 HC Lakhwinder Singh. These were converted into a parcel and sealed with the seal 'TS'. The sealed parcel MO-2 was taken in possession vide memo Ex.PL.

As per the post-mortem report (Ex.PA), seven injuries were found on the body of the deceased. The cause of death, as per the opinion of PW1 Dr. Kashmiri Lal, was septicemia and hemorrhage in the peritoneal cavity due to the injuries suffered by Paramjit Singh. Septicemia and hemorrhage were sufficient to cause death in the ordinary course of the nature. All the injuries were ante-mortem in nature. The probable duration between the injuries and the death is mentioned to be 'as per hospital record' and between death and the post-mortem within 24 hours. The clothes over the dead body were handed over to PW6 HC Lakhwinder Singh after the post-mortem. He produced the same before Inspector Tarlok Singh Mangat on 01.08.2008. The said clothes were taken in possession vide memo Ex.PL. The blood stained clothes worn by the deceased at the time of the incident were produced by Anait Masih, the maternal grand-father of the deceased on 01.08.2008. They were taken in possession vide memo Ex.PM. The rough site plan (Ex.PP) was prepared.

It is relevant to note that information with regard to admission of Paramjit Singh in Civil Hospital, Jalandhar was sent on 26.07.2008 to the police authorities. PW6 HC Lakhwinder Singh, Police Post Bawa Khel, Jalandhar moved an application (Ex.PH) before the doctor in charge seeking the status of fitness of the injured to make a statement. As per the endorsement (Ex.PC) on the said application, the doctor in charge, Dr. Gurmit Kaur (PW2) certified that the patient was conscious, well oriented and fit to make a statement. The statement (Ex.PJ) of Paramjit Singh was recorded by PW6 HC Lakhwinder Singh on 26.07.2008 itself at 07:20 p.m. Paramjit Singh (deceased) stated that he was resident of village Chitti

Colony, Police Station Lambra, District Jalandhar, and did work of painting. He had gone to the house of his sister Surjit Kaur wife of Jangi at village Cheema on 25.07.2008 at about 07:00 p.m. to meet her. (It is to be noted that the deceased Paramjit Singh referred to his mother Surjit Kaur as his sister and his maternal grandfather PW7 Anait Masih as his father as he had been brought up by his maternal grandfather.) At that time, the appellant Gurnam Singh was present there along with his family. The appellant was married to the daughter of the elder brother of Surjit Kaur's second husband Jangi. After sunset, both Paramjit Singh and Gurnam Singh went to village Safipur and both of them went to sleep in a room after taking their meals. In the morning, when Paramjit Singh was still sleeping, the appellant Gurnam Singh attacked him and caused injuries all over his body with a 'datri' (sickle). Thereafter, the appellant himself brought him to the Civil Hospital, Jalandhar in an auto-rickshaw where he was being treated. Paramjit Singh was the complainant. He, however, stated that no proceedings be undertaken because after being healed he would after consulting his relatives make a statement because the appellant was related to him. For the present, he did not want any action to be taken against the appellant. In case, he wanted to take some action he would himself inform. He heard his statement and accepted it as correct.

Police proceedings (Ex.PJ/1) were recorded by PW6 HC Lakhwinder Singh which were to the effect that he was present at police post when the Mohrar Head Constable, Basti Bawa Khel got noted from him that Paramjit Singh was admitted in the Civil Hospital due to the injuries that he had suffered and proceedings be conducted after reaching

Civil Hospital, Jalandhar. On this, PW6 HC Lakhwinder Singh along with Constable Joginder Singh, Basti Bawa Khel reached Civil Hospital, Jalandhar and after obtaining a slip from the guard obtained a written opinion from the doctor that the patient was fit to make a statement. The injured then made his statement (Ex.PJ) with him. From the statement, the injured Paramjit Singh for the time being did not want to initiate any action against anybody. On reaching the police station, an entry would be made in the 'roznamcha' (DDR). The statement (Ex.PJ) was sent to Police Post Bawa Khel for recording a Daily Diary Report (DDR) as Paramjit Singh did not want to take action for the time being against anyone.

The admission of Paramjit Singh in the hospital and the seat of injuries found on his person and as described in the Bed Head Ticket (Ex.PB) have been proved by PW2 Dr. Gurmit Kaur, Medical Officer, Civil Hospital, Jalandhar. She stated that on 26.07.2008, she was posted as Emergency Medical Officer in Civil Hospital, Jalandhar. On that day, one unknown patient was brought to the hospital by one Gurnam Das in the emergency. She medically examined that unknown person and found seven injuries on his person, i.e. six incised injuries and one lacerated wound; besides, there were multiple small sized incised wounds all over the body and fresh bleeding was present from all those wounds. The injuries were noted in the Bed Head Ticket, the photostat copy of which is Ex.PB. At the time of admission, the patient was under shock and his blood pressure and pulse were not recordable. The police had moved an application for inquiring about his fitness to make a statement. She declared him fit to make statement vide endorsement (Ex.PC) which was in her handwriting

and under her signatures. The FIR (Ex.PN/2) as noticed above was registered on 01.08.2008 after the death of Paramjit Singh on the statement of his mother Surjit Kaur.

The appellant, after his arrest on 02.08.2008, was interrogated on 04.08.2008 and he made a disclosure statement (Ex.PF) stating that he had concealed the sickle used in the occurrence on the night of 26.07.2008 by wrapping it in a polythene bag in the cannabis bushes beneath the mulberry tree on the left hand side of the road leading to village Gill. He only knew about this 'datri' and he could get it recovered. The disclosure statement (Ex.PF) of accused Gurnam Singh was recorded which was attested by the witnesses. In pursuance of the disclosure statement (Ex.PF), the appellant Gurnam Singh while in custody led the police to the area near the Government School, Safipur situated on the road from village Safipur to village Gill. There he got recovered a sickle wrapped in a black polythene bag from the cannabis bushes grown on the left side beneath the mulberry tree and produced it before PW9 Inspector Tarlok Singh. It was taken in possession by the police as a proof. The recovery memo (Ex.PG) was prepared which was signed by the witnesses. Rough site plan (Ex.PS) of the place of recovery was prepared. Besides, a rough sketch (Ex.PT) of the 'datri' was also prepared.

The parcel of the clothes of Paramjit Singh (deceased) and the parcel of the sickle ('datri') were deposited with the MHC on 01.08.2008 and 04.08.2008, respectively. They were entrusted to PW4 HC Baldev Singh on 29.09.2008 for being deposited in the office of Director, Forensic Science Laboratory, Chandigarh. As per the FSL report (Ex.PX), the

exhibits A and B in the parcels i.e. the vest, underwear and sickle were stained with human blood. The clothes, which were produced on 01.08.2008 by PW7 Anait Masih, i.e. maternal grandfather of the deceased, were also found to be stained with human blood. The appellant also confessed his guilt before PW10 Varinder Singh, a member of the Panchayat of village Safipur. This witness PW10 Varinder Singh, however, did not support the prosecution case.

The report ('challan') under Section 173 of the Code of Criminal Procedure ('Cr.P.C.' - for short) on completion of the investigation was presented against the appellant in the Court of learned Judicial Magistrate 1st Class, Jalandhar on 16.10.2008. The learned Magistrate, in view of the report under Section 173 Cr.P.C. and accompanying documents disclosing the commission of an offence under Section 302 IPC which was exclusively triable by the Court of Session, vide order dated 11.11.2008 committed the case to the said Court.

The learned Sessions Judge, Jalandhar on 01.12.2008 framed a charge against the appellant for the commission of an offence punishable under Section 302 IPC. It was alleged that he on 26.07.2008 in the area of village Safipur did commit murder by intentionally causing the death of Paramjit Singh and thereby committed an offence punishable under Section 302 IPC. The appellant was directed to be tried by the said Court on the said charge. The contents of the charge were read over and explained to him in simple Punjabi language. The appellant heard and understood the contents of the charge and he pleaded not guilty to the charge and claimed trial.

In support of its case, the prosecution examined as many as eleven witnesses; besides, documents including the report (Ex.PX) of the Forensic Science Laboratory were tendered in evidence.

The appellant in his statement under Section 313 Cr.P.C. denied all the incriminating material and evidence put to him and pleaded innocence and false implication. Soni son of Munshi was his father-in-law. Charanjit Singh was the brother of his father-in-law. He stated that seven/eight months prior to this occurrence, his father-in-law Soni had caused injuries to his own brother Charanjit Singh. A criminal case in this regard was pending. Jangi i.e. the complainant's husband (brother of Charanjit Singh and Soni) was a witness for Charanjit Singh. It is stated by the appellant that he used to help his father-in-law. Therefore, the present case was registered against him so that he may not extend any help to his father-in-law in the said case. No evidence was, however, led in defence.

The learned trial Court on considering the facts and circumstances of the case formulated the following points to appreciate the controversy in hand:-

1. Whether the victim last remained in the company of the accused and it is the accused, who got the victim in an injured state admitted in the hospital?
2. Whether the deceased made statement before H.C. Lakhwinder Singh, while he was admitted in the hospital with injuries on his person on 26.07:2008 in the nature of dying declaration?
3. Whether Paramjit Singh deceased made disclosure to his

mother Surjit Kaur on 26.7.2008 in the nature of dying declaration?

4. Whether the story of recovery of weapon from possession of the accused is worthy of credit?
5. What is the effect of delay in lodging the F.I.R. with the police?
6. Whether the motive part of the prosecution story as mentioned by Surjit Kaur in the F.I.R. is trustworthy?
7. Whether the accused made the extra judicial confession of his guilt before PW10 Varinder Singh? and
8. Whether the medical evidence led by the prosecution establishes the charge of murder framed against the accused?

The learned trial Court did not give any credence to the dying declaration allegedly made by deceased Paramjit Singh before his mother Surjit Kaur (complainant) as narrated in her statement (Ex.PN) recorded on 01.08.2008. The extra-judicial confession suffered by the accused before PW10 Varinder Singh (declared hostile) was also not considered and neither was any reliance placed on the motive set-forth by the prosecution. The learned trial Court on appreciation of the rest of the evidence on record and taking into consideration the entire facts and circumstances of the case concluded that the prosecution had proved its case beyond reasonable doubt against the appellant. It was held that even if the statement Ex.PN by Surjit Kaur, the extra-judicial confession before PW10 Varinder Singh and the motive set forth by the prosecution is ignored, there is ample evidence to

prove that the appellant was guilty of the offence for which he was charged. Therefore, finding him guilty of the offence punishable under Section 302 IPC, the appellant was convicted and sentenced as detailed above. Aggrieved there-from, this appeal has been filed by the appellant.

Learned counsel for the appellant has vehemently argued that the evidence on record is woefully insufficient to convict the appellant for the offence punishable under Section 302 IPC. It is submitted that the learned trial Court has rightly not placed any reliance on the statement of Surjit Kaur complainant. There was no occasion for not taking prompt action if the facts had been revealed to her by Paramjit Singh on 26.07.2008. It is not believable that no action would be taken for so many days in case the appellant had caused injuries to him. Furthermore, reliance by the learned trial Court on Ex.PJ, i.e. the statement of Paramjit Singh recorded on 26.07.2008 at 07:20 p.m., is completely erroneous. The said statement has been wrongly considered to be a dying declaration as Paramjit Singh died on 01.08.2008. There is no evidence to show the time at which Paramjit Singh had been certified to be fit to make a statement. The doctor giving the certificate of fitness, i.e. PW2 Dr. Gurmit Kaur, stated that she was on duty from 08:00 a.m. to 02:00 p.m. on 26.07.2008. Statement of Paramjit Singh is allegedly recorded at 07:20 p.m. The explanation for this delay by PW6 HC Lakhwinder Singh lacks credibility. PW10 Varinder Singh, the person before whom the appellant is stated to have suffered an extra judicial confession has not supported the prosecution version. Furthermore, the recovery of the weapon of offence i.e. the iron sickle is shrouded in doubt. There is no independent witness to prove this recovery. The sickle was

never produced before any of the doctors to seek their opinion whether the injuries on the person of Paramjit Singh could be caused with it. Learned counsel for the appellant submits that as per Ex.PD an affidavit of PW3 HC Kamaljit Singh, the weapon (sickle) was deposited on 01.08.2008 in the 'Malkhana' whereas, it was recovered on 04.08.2008 pursuant to the disclosure allegedly made by the appellant. Thus, the entire prosecution case falls like a pack of cards on this ground itself. Learned counsel for the appellant strenuously urged that in case the appellant had inflicted injuries on Paramjit Singh, there was no reason why he himself would have got Paramjit Singh admitted in the hospital. The motive put forth by the complainant Surjit Kaur namely that the appellant suspected the deceased to be having an affair with his wife is baseless and unsubstantiated. Thus, it is prayed that the conviction and consequent sentence imposed upon the appellant is unsustainable in the backdrop of the facts and circumstances as well as evidence on record. Therefore, the impugned judgment dated 27.11.2009 and order dated 28.11.2009 should be set aside and the appellant be acquitted of the charge against him.

Learned counsel for the State while refuting the above said arguments on behalf of the appellant, submits that there is ample evidence on record to prove the culpability of the appellant in this case. The learned Sessions Judge, Jalandhar has rendered a well reasoned and a logical judgment in consonance with the evidence on record. Paramjit Singh had himself revealed in his statement (Ex.PJ) that the injuries were caused by the appellant. The fact that he had expressed his desire for no action to be taken immediately against the appellant is indicative of the offence being

committed by the appellant. This also indicates the truthfulness of the version given by Paramjit Singh (deceased) keeping in view the delicate relationship. Furthermore, the recovery of the blood stained sickle pursuant to the disclosure statement suffered by the appellant as well as the medical evidence on record cogently proves the commission of the offence beyond any reasonable doubt. Thus, it is prayed that the impugned judgment dated 27.11.2009 and order dated 28.11.2009 be upheld.

We have given our thoughtful consideration to the contentions that have been raised by the learned counsel appearing for the parties and with their assistance have gone through the records of the case.

At the very outset, it is necessary to clarify the relationship between the deceased, complainant and the accused in order to appreciate the facts in the correct perspective. The deceased Paramjit Singh was the son of the complainant Surjit Kaur from her first marriage with one Lalli. She entered into a second marriage with Jangi, her present husband. Paramjit Singh was brought up by his maternal grandfather PW7 Anait Masih. Paramjit Singh was about 22 years old at the time of his death. Paramjit Singh used to refer to his maternal grandfather Anait Masih as his father and the complainant Surjit Kaur as his sister even though in fact Surjit Kaur was his mother. Surjit Kaur's second husband Jangi had two brothers, namely, PW11 Charanjit Singh @ Chhindi (younger brother) and Soni (elder brother). Raji i.e. the appellant's wife is the daughter of Soni, the elder brother of Jangi. However, Raji had been duly adopted by PW11 Charanjit Singh @ Chhindi. This fact is mentioned by PW8 Surjit Kaur in her testimony. Learned counsel for the appellant submits that there is no dispute

regarding Raji wife of the appellant Gurnam Singh and real daughter of Soni being adopted by Charanjit Singh @ Chhindi.

As per the medical evidence, the deceased Paramjit Singh suffered as many as seven injuries. PW1 Dr. Kashmiri Lal found the following injuries when the post-mortem was conducted on 01.08.2008:-

- “1. Stitched wound bearing eight stitches in the centre of abdomen in the umbilical region measuring 15 cm in length. On exploring the wound peritoneal cavity contained blood mixed fluid. On further exploration, large intestine showed a stitched wound 4 cm in length.
2. Incised wound on the back of right iliac region 3 x 1 cm in size. On exploration, the wound was deep and extending into the peritoneal cavity.
3. Incised wound on the anterior right iliac region 3 x 1 cm in size. On exploration, the wound was 4 cm deep.
4. Piercing wounds on the right side of the back in the centre 4 x 1 cm in size. On exploration, the wound was deep upto muscles of the back.
5. Piercing wounds three (3) in number in the left hypochondrial region. The wounds were deep upto the muscles.
6. Incised wound 3 x 1 cm just above the left elbow joint on the ventral aspect of the arm.
7. Multiple deep abrasions on the left side of the neck.”

PW1 Dr. Kashmiri Lal opined that the death of Paramjit Singh

occurred on account of septicemia and hemorrhage in the peritoneal cavity due to the injuries described. Septicemia and hemorrhage were sufficient to cause death in the ordinary course of nature.

PW2 Dr. Gurmit Kaur, Medical Officer, Civil Hospital Jalandhar examined Paramjit Singh on his admission to the hospital on 26.07.2008. PW2 Dr. Gurmit Kaur noted the following injuries:-

- “1. Incised wound of 2 cm x 1 cm on right side of abdomen above the iliac crest. Fresh bleeding was present.
2. Incised wound of 2 cm x 1 cm on left side of back, 10cm from midline. Fresh bleeding was present.
3. Incised wound of 2 cm x 1 cm on right side of the back, 8cm from the midline. Fresh bleeding was present.
4. Incised wound of 1.5 cm x 1 cm on left side of abdomen, in the mid auxiliary line.
5. Incised wound of 2 cm x 1 cm on left side of abdomen at the level of umbilicus, 10 cm from umbilicus.
6. Incised wound which was obliquely placed on left side of neck and of the size 8 cm x 1 cm. Fresh bleeding was present.
7. A lacerated wound 2 cm x 2 cm on right eye brow.

There were multiple small size incised wounds all over the body and fresh bleeding was present from all those wounds.”

PW2 Dr. Gurmit Kaur has deposed that an unknown patient was brought to the hospital's emergency on 26.07.2008 by one Gurnam Das.

She was posted as Emergency Medical Officer at the Civil Hospital, Jalandhar on 26.07.2008. An application (Ex.PH) was moved by the police inquiring about the fitness of the patient to make a statement. She declared him fit to make a statement vide endorsement Ex.PC. She has proved the photo copy of the Bed Head Ticket (Ex.PB). Thus, it is proved on record that Paramjit Singh died of septicemia and hemorrhage in the peritoneal cavity due to the injuries suffered by him. The injuries are primarily incised wounds and piercing wounds which are imminently possible to be inflicted with a sickle.

There is sufficient evidence on record to prove that the injuries which led to the death of Paramjit Singh were inflicted by the appellant Gurnam Singh. First and foremost is the statement (Ex.PJ) of Paramjit Singh (deceased) himself recorded by PW6 HC Lakhwinder Singh on 26.07.2008 at about 07:20 p.m. Paramjit Singh was admitted to the hospital on 26.07.2008 itself. He succumbed to his injuries on 01.08.2008. This statement has been rightly considered as a dying declaration by the learned trial court.

The contention of the learned counsel for the appellant that the statement (Ex.PJ) of Paramjit Singh cannot be treated as a dying declaration as he died after six days of receipt of injuries, is devoid of any merit. Hon'ble Supreme Court in Atbir v. Govt. of N.C.T. of Delhi, (2010) 9 SCC 1, after referring to a number of its previous decisions crystallized the evidentiary value of a dying declaration as under:-

- “1. Dying declaration can be the sole basis of conviction if it inspires the full confidence of the Court.

2. The Court should be satisfied that the deceased was in a fit state of mind the time of making the statement and that it was not the result of tutoring, prompting or imagination.
3. Where the Court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.
4. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated - The rule requiring corroboration is merely a rule of prudence.
5. Where dying declaration is suspicious, it should not be acted upon without corroborative evidence.
6. A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.
7. Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.
8. Even if it is a brief statement, it is not to be discarded.
9. When the eye-witness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.
10. If after careful scrutiny, the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and

consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration.”

In Paras Yadav and others v. State of Bihar, (1999) 2 SCC 126, the Hon'ble Supreme Court held that a statement of the deceased recorded by a police officer in a routine manner and not as a dying declaration can be treated as dying declaration after the death of the injured and relied upon if the evidence on record establishes that the deceased was conscious and in a fit state of health to make the statement.

Paramjit Singh (deceased) in his statement Ex.PJ had specifically stated that he had gone to his sister's (in fact mother's) house Surjit Kaur on 25.07.2008 at about 07:00 p.m. The appellant Gurnam Singh was present along with his family at Surjit Kaur's house. Paramjit Singh had accompanied Gurnam Singh to village Safipur. Pursuant to taking their meals after sun set, they slept in a room in Gurnam Singh's house. It is stated that while Paramjit Singh was sleeping, the appellant Gurnam Singh attacked him with an iron sickle and inflicted injuries on his whole body. The appellant himself brought Paramjit Singh to the Civil Hospital, Jalandhar in an auto rickshaw. This fact is corroborated by the statement of PW2 Dr. Gurmit Kaur who has stated that an unknown patient was brought in the hospital's emergency by Gurnam Das. The mention of 'Das' instead of 'Singh' is inconsequential as people in the villages are addressed as such from time to time. Even otherwise, they give their names also in this manner. Paramjit Singh in his statement (Ex.PJ) expressed his desire that no action be taken immediately against the appellant Gurnam Singh. He stated that he would make a statement in this respect after his recovery and after

consultation with his relatives. This was on account of the appellant's relationship with him.

Learned counsel for the appellant has attacked the veracity of the statement (Ex.PJ) on the ground that there was no occasion for PW6 HC Lakhwinder Singh to keep such a statement under wraps till the death of Paramjit Singh on 01.08.2008 and there is no explanation as to why no action was taken thereon by PW6 HC Lakhwinder Singh. It is further contended that PW6 HC Lakhwinder Singh has tried to create a story about leaving the hospital after getting the opinion of the doctor regarding fitness of the patient Paramjit Singh. There is no evidence on record to show that he proceeded to village Variana after getting intimation about a fight which had broken out there. No FIR or documentary evidence has been placed on record to prove the same. It was also argued that the certificate of fitness (Ex.PC) even if accepted to be given by the doctor between 08:00 a.m. to 02:00 p.m. (i.e. the hours of duty of Dr. Gurmit Kaur) it does not necessarily mean that Paramjit Singh was fit to give a statement at 07:20 p.m. in the evening of 26.07.2008.

We find no merit in the above said contentions of the learned counsel for the appellant. The statement (Ex.PJ) inspires confidence. Admittedly, Paramjit Singh was the stepson of Jangi being the son of Surjit Kaur from her first marriage. He had been brought up by his maternal grandfather. Paramjit Singh had been staying with his mother for two months prior to the incident. The relationship between the appellant and the deceased as noted above was indeed a sensitive one. Paramjit Singh's desire to consult his relatives before deciding the course of action against the

appellant is clearly understandable. It is a matter of record that Paramjit Singh died six days after receipt of injuries on 01.08.2008. Therefore, at the time of recording of his statement Ex.PJ, he did not consider his injuries to be so grave as to cause his death. There is cogent evidence to prove that Paramjit Singh was conscious and fit to make a statement on 26.07.2008. The statement was not the result of any prompting or tutoring but rendered in a truthful manner.

The certificate of fitness (Ex.PC) does not mention the particular time at which it was issued by PW2 Dr. Gurmit Kaur, however, Dr. Gurmit Kaur has stated that she was on duty from 08:00 a.m. to 02:00 p.m. on 26.07.2008 and the certificate (Ex.PC) was necessarily given during that period. Even if it is assumed that PW6 HC Lakhwinder Singh did not obtain a fresh certificate of fitness in the evening, this fact by itself does not detract from the veracity of Ex.PJ. From the medical evidence on record including the Bed Head Ticket (Ex.PB) of Paramjit Singh, there is nothing to show that he was unstable, unconscious or unfit to make a statement on 26.07.2008 at 07:20 p.m. The absence of any document on record to show that PW6 HC Lakhwinder Singh had gone to village Variana in connection with a reported fight, is irrelevant in the given facts and circumstances of the case. PW6 HC Lakhwinder Singh has himself stated that after getting a certificate (Ex.PC) from the doctor regarding the fitness of Paramjit Singh to make a statement, he proceeded to village Variana. He recorded the statement of Paramjit Singh at 07:20 p.m. on 26.07.2008 after returning from the said place. There is no occasion to presume that such a statement was in fact never made by Paramjit Singh and was fabricated by PW6 HC

Lakhwinder Singh. No benefit can accrue to the accused for the failure or lapse on the part of the investigating agency in not taking action immediately and not even having the statement of Paramjit Singh recorded before a Judicial Magistrate from 26.07.2008 till 01.08.2008. It has thus been rightly held by the learned trial court that Paramjit Singh suffered the statement (Ex.PJ) in a fit state of mind and this statement is a valuable piece of evidence to prove the charge against the appellant. The above said facts along with other attending circumstances also negate the argument on behalf of the appellant that the identity of the deceased was not established to be Paramjit Singh. Mentioning Paramjit Singh to be son of Anait Masih by PW6 HC Lakhwinder Singh is a natural consequence in the wake of the facts regarding Paramjit Singh's parentage and upbringing discussed in the foregoing paras. PW8 Surjit Kaur has testified that her son Paramjit Singh was admitted in the hospital on 26.07.2008 on receipt of injuries. The patient admitted on 26.07.2008 is proved to have died on 01.08.2008. PW9 Tarlok Singh Mangat, Inspector received this information on 01.08.2008. No suggestion or question raising suspicion about the identity of the victim who was admitted to the hospital on 26.07.2008 and who died on 01.08.2008 was put to any of the witnesses. It is relevant to note that PW2 Dr. Gurmit Kaur has specifically deposed that an unknown patient was got admitted by Gurnam Das. This fact in itself lends credence to the prosecution version. PW2 Dr. Gurmit Kaur has no axe to grind against the appellant. There is no reason as to why she would make a false statement to this effect. There is no evidence to negate the facts mentioned in the Bed Head Ticket (Ex.PB). Thus the identity of the deceased is clearly

established. It was none other than Paramjit Singh who was admitted to the hospital with injuries on 26.07.2008 by Gurnam Singh. Paramjit Singh succumbed to his injuries on 01.08.2008.

The contentions of the learned counsel for the appellant that there was no occasion for PW6 HC Lakhwinder Singh to keep such a statement under wraps till the death of Paramjit Singh on 01.08.2008 and that there is no explanation as to why no action was taken thereon by PW6 HC Lakhwinder Singh, are also devoid of merit. It may be noticed that the said statement was not kept under wraps as Paramjit Singh had himself stated in his statement (Ex.PJ) that no action be taken because he would make a statement in consultation with his relatives because Gurnam Singh (appellant) was related to him and he did not want any action against him for the time being. Besides, Daily Diary Report No.22 dated 26.07.2008 was entered at Police Post Basti Bawa Khel which fact is mentioned in the police proceedings (Ex.PN/1) below the statement (Ex.PN) of the complainant by PW9 Inspector Tarlok Singh Mangat. Therefore, in view of the DDR No.22 dated 26.07.2008 being entered at Police Post Basti Bawa Khel and Paramjit Singh stating that he did not want any action for the time being, it cannot be said that the statement (Ex.PJ) of Paramjit Singh was kept under the wraps.

Another argument raised by the learned counsel for the appellant is that the recovery of iron sickle from the accused on 04.08.2008 vide Ex.PG in pursuance to the appellant's disclosure statement (Ex.PF) is suspect. It is vehemently argued that as per affidavit (Ex.PD) sworn by PW3 HC Kamaljit Singh, the sickle in question was deposited with him in

the police Malkhana on 01.08.2008. Therefore, the recovery of the iron sickle on 04.08.2008 vide recovery memo (Ex.PG) and pursuant to the disclosure statement (Ex.PF) is clearly fabricated. No such recovery was in fact made. No independent witness was joined at the time of the alleged recovery. Furthermore, the blood group on the iron sickle was not identified in order to link the appellant with the offence in question.

In order to test the argument of learned counsel for the appellant, we have perused the vernacular affidavit (Ex.PD) sworn by PW3 HC Kamaljit Singh. In the translated version of Ex.PD, which is attached with the paper-book, there is a clear error. A bare reading of the vernacular affidavit (Ex.PD) reveals that PW3 HC Kamaljit Singh has sworn an affidavit on 06.01.2009 clearly mentioning that on 01.08.2008, Inspector Tarlok Singh deposited the case property of this case with him. It included one parcel containing a white colour vest, a yellow colour underwear which were stained with blood and one parcel containing a blood stained bed sheet having black pattern bearing seal impression 'TS'. One parcel containing an iron sickle bearing seal 'TS' was deposited with him on 04.08.2008. He deposited the same in the 'Malkhana' of the police station. The date of deposit of iron sickle, i.e. 04.08.2008, which is mentioned in the original vernacular affidavit (Ex.PD) was inadvertently omitted in the translation copy of Ex.PD.

Therefore, there is no discrepancy in the affidavit Ex.PD and the recovery effected from the appellant on 04.08.2008. The sickle in question was clearly deposited on 04.08.2008 with PW3 HC Kamaljit Singh while the other parcels were deposited earlier on 01.08.2008.

The iron sickle was recovered from the cannabis bushes underneath the mulberry tree grown on the left side of the Government School, Safipur in pursuance of recovery memo Ex.PG. The sickle was wrapped in a black polythene bag. The fact that no independent witness was joined at the time of recovery of sickle; besides, the blood group on the sickle was not determined are also not of any consequence. These do not in any manner render the recovery of sickle inadmissible. There is nothing on record to disbelieve the said recovery. As per FSL report, the iron sickle was found to be stained with human blood. Thus, the recovery of the iron sickle stained with human blood is indeed a circumstance which clearly connects the appellant to the commission of the offence.

Learned counsel for the appellant also urged that once the learned trial court has not placed any reliance on the statement of PW8 Surjit Kaur regarding the disclosure of the sequence of events by Paramjit Singh nor believed the story of motive put forth, the entire prosecution case falls to the ground. We find this contention to be devoid of any merit.

Even if the statement (Ex.PN) made by Surjit Kaur to this effect is ignored, there is otherwise ample evidence on record to prove that the appellant had inflicted injuries on Paramjit Singh which ultimately resulted in his death.

The contention of learned counsel for the appellant that the motive behind the occurrence that the deceased was having an affair with the appellant's wife was not proved is also of no consequence in the light of the facts and circumstances as discussed above. No benefit can accrue to the appellant on this account.

Similarly, the contention that the appellant Gurnam Singh has been falsely implicated due to inimical relations between Charanjit Singh @ Chhindi and the appellant's father-in-law Soni is equally devoid of any merit. We say so for the reason that it is not in dispute that the appellant's wife Raji is the daughter of Soni duly adopted by Charanjit Singh @ Chhindi. Soni, Charanjit Singh @ Chhindi and Jangi (husband of Surjit Kaur and mother of the deceased) are real brothers. PW11 Charanjit Singh @ Chhindi has not supported the prosecution version. Therefore, it cannot be said that due to pending litigation, the appellant has been falsely implicated. Even otherwise, nothing has been brought on record by the appellant to show that there was any litigation between Charanjit Singh @ Chhindi and Soni as is the stand taken by him under Section 313 Cr.P.C.

Keeping in view the entire facts and circumstances of the case, we do not find any infirmity or illegality in the impugned judgment of conviction dated 27.11.2009 and order of sentence dated 28.11.2009. The prosecution has successfully proved beyond the shadow of reasonable doubt that the appellant is guilty of the commission of the offence punishable under Section 302 IPC.

In the alternate, learned counsel for the appellant submits that the appellant be punished for a lesser offence under Section 304 Part II of the Indian Penal Code instead of Section 302 IPC. It is submitted that it can be safely inferred that there was no intention on the part of the appellant Gurnam Singh to cause the death of Paramjit Singh. It is submitted that the appellant died after six days of the occurrence on account of septicemia and hemorrhage in the peritoneal cavity. The medical evidence on record does

not prove that the injuries by themselves were sufficient to cause death in the ordinary course of nature. Therefore, the appellant be convicted for a lesser offence punishable under Section 304 Part II IPC and the sentence imposed upon him be reduced.

We have considered the alternate submission made by the learned counsel for the appellant but do not find any merit therein. At this stage, it would be gainful to refer to a decision of the Hon'ble Supreme Court in Rajwant Singh v. State of Kerala, AIR 1966 SC 1874. While discussing the third clause of Section 300 IPC it has been held that:-

“11. The third clause discards the test of subjective knowledge. It deals with acts done with the intention of causing bodily injury to a person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. In this clause the result of the intentionally caused injury must be viewed objectively. If the injury that the offender intends causing and does cause is sufficient to cause death in the ordinary way of nature the offence is murder whether the offender intended causing death or not and whether the offender had a subjective knowledge of the consequences or not. As was laid down in Virsa Singh v. State of Punjab, 1958 SCR 1495 (AIR 1958 SC 465) for the application of this clause it must be first established that an injury is caused, next it must be established objectively what the nature of that injury in the ordinary course of nature is. If the injury is found to be sufficient to cause death one test is satisfied. Then it must be

proved that there was an intention to inflict that very injury and not some other injury and that it was not accidental or unintentional. If this is also held against the offender the offence of murder is established.”

The injuries suffered on vital parts of the body of Paramjit Singh are duly proved by the medical evidence on record. The appellant it has come on record had inflicted repeated blows with a sharp edged weapon (iron sickle) in the abdomen and other parts of the body of Paramjit Singh while he was sleeping in his house, which clearly shows his intention and knowledge of the injuries that he inflicted. There is no evidence on record to suggest that there are any mitigating circumstances in the appellant's favour. Neither has such a stand been taken by the appellant nor was any such suggestion put to the witnesses. The appellant pleaded innocence and false implication. As per the opinion of PW1 Dr. Kashmiri Lal, the cause of death was septicemia and hemorrhage in the peritoneal cavity due to the injuries described by him. Septicemia and hemorrhage was sufficient to cause death in the ordinary course of nature. Therefore, to say that the injuries in question have not been specified to be sufficient to cause death in the ordinary course of nature would be incorrect. We are not inclined to accept the argument of the learned counsel for the appellant that once death is due to septicemia and hemorrhage after a period of five-six days, the appellant cannot be convicted for the offence punishable under Section 302 IPC. To convict the appellant for a lesser offence would be a complete travesty of justice in the facts and circumstances of the case. After inflicting as many as seven repeated injuries upon the vital organs of Paramjit Singh, the appellant

brought him to the hospital and abandoned him there without even mentioning his own name.

Learned counsel for the appellant has not been able to point out any circumstance which can persuade us to convict the appellant for a lesser offence and consequently reduce the sentence of imprisonment imposed upon him.

Keeping in view the discussion above, the impugned judgment of conviction dated 27.11.2009 and the order of sentence dated 28.11.2009 passed by the learned Sessions Judge, Jalandhar are upheld.

Consequently, this appeal is dismissed.

(S.S. SARON)
JUDGE

(LISA GILL)
JUDGE

November 30, 2016.
'om'

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No