

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

**CRA-D-855-DB of 2010
Date of decision:29.02.2016**

(1)

Gurcharan Singh

..... Appellant

VERSUS

State of Punjab

..... Respondent

(2)

CRA-D-991-DB of 2010

Chamkaur Singh

...Appellant-Complainant

Versus

Gurcharan Singh and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE GURMIT RAM**

**Present: Mr. Siddharth Gupta, Advocate
for the appellant in CRA-D-855-DB of 2010 and
for the respondent No.1 in CRA-D-991-DB of 2010.**

**Mr. Sanjeev Sharma, Advocate as Amicus Curiae
for the appellantCRA-D-855-DB of 2010.**

**Mr. G.S. Sidhu, Advocate
for the complainant in CRA-D-855-DB of 2010 and
for the appellant in CRA-D-991-DB of 2010.**

Mr. P.P.S. Thethi, Additional A.G., Punjab.

GURMIT RAM, J.

1. Vide this order, we are going to dispose of the above-said both appeals together since these pertain to one and the same occurrence as well as judgment for the sake of convenience and also in order to avoid conflict of judgments.

2. The above noted **CRA-D-855-DB of 2010** is preferred by above-said appellant – Gurcharan Singh whereby assailing the judgment and order of sentence dated 3.6.2010 passed by the learned Sessions Judge, Bathinda in criminal case bearing FIR No.44 dated 10.5.2007 under Sections 302/148 read with Section 149 of the IPC, Police Station Dialpura vide which he was held guilty for the offence punishable under Section 302, IPC and awarded the sentence thereunder.

CRA-D-991-DB-2010 is preferred by complainant/appellant - Chamkaur Singh for the grant of compensation qua the murder of his mother Jaswinder Kaur against respondents i.e. Gurcharan Singh (accused) and State of Punjab. It is his grievance that the learned trial Court while convicting respondent No.1 in this case vide the impugned judgment has not granted any compensation which necessitated to file the instant appeal.

3. The case of the prosecution as put forth before the learned trial Court in brief was that on 10.5.2007 SI/SHO Jagjit Singh of Police Station Dialpura along with SI Sukhdev Singh and other police officials was present at drain bridge, Baja Khana Road, Bhagta Bhai Ka in connection with patrolling and checking of suspects. There came to him complainant Chamkaur Singh son of Gurcharan Singh, resident of Kothe Bhagta Bhai Ka along with one Sulakhan Singh and made his statement

(Ex.PA) before him, the gist of which was as under:

“That he is an agriculturist by profession. They are two brothers who are married. They have also one sister namely Jasvir Kaur who is also married. His younger brother Amritpal Singh is living with his parents. He (Chamkaur Singh) is residing along with his family in the front portion of his house separately from his parents for the last about three years. His brother Amritpal Singh along with his mother Jaswinder Kaur and father Gurcharan Singh has been residing in the rear portion of the house. Both the said families are residing in one house, and are using the common gate. About three years prior to 10.5.2007 when both the brothers separated, then at that time his father and brother had made a written agreement with him (complainant) that they would get a separate house constructed for him after three years. Now on the completion of three years since the date of said separation when he asked his father and brother above-said for getting a separate house constructed for him, then they both refused to comply with the same. After this refusal on their part, he raised a boundary wall of 4/5 feet in height in his portion near to his two rooms and gallery after leaving 13 feet passage towards the rear portion of his father and brother. His father and brother were anyhow annoyed due to raising of this wall in the house by him, though he had raised its construction with their consent as well as of relatives. His father and brother had already mortgaged the land of their share. His father has also got issued jamabandi of the land from Halqa Patwari. At the time of the above-said separation, six kanals land was got transferred in the name of his mother by his father. But thereafter his mother had transferred this six kanals land of her share in his favour through a registered sale deed without any consideration. When his father got issued jamabandi of their land from Halqa Patwari, then he came

to know about the transfer of this six kanals land in his favour by his mother of her share. Yesterday, he raised a quarrel with him and his mother. Thereafter, his father gave his cattles to Shamsher Singh alias Sheri, resident of his village. Yesterday, on 9.5.2007 his sister-in-law (wife's sister) namely Paali wife of Amandeep Singh, resident of Budhlada had come to see them. After taking meal, they were talking with each other in the house. Then at about 10:30 p.m. suddenly they heard shrieks from the house of his father. Upon this, he along with his wife Amanpreet Kaur and sister-in-law Paali saw from the courtyard after opening the door of the drawing room which fell to their share that his mother was lying in the courtyard. His father Gurcharan Singh who was armed with a small axe (kulhari) and his brother Amritpal Singh who was armed with Toka (Chopper) were inflicting injuries on the mouth, head, chest and abdomen of his mother with their respective weapons. Shamsher Singh @ Sheri above-said had caught hold the legs of his mother. At that time 3-4 unidentified more persons who were armed with ghops, kapas and kirchs were also present at the spot along with his father Gurcharan Singh and brother Amritpal Singh. At that time, electric light was glowing inside and outside their house. On raising alarm by them for help, the above-said all the assailants ran away from the spot along with their respective weapons through stairs leading from their varandah through the house of their neighbour Makhan Singh. When they went near to their mother, then they found her dead who was lying cut very badly and smeared with blood. After leaving his wife Amanpreet Kaur and sister-in-law Paali near the dead body of his mother, he along with Sulakhan Singh proceeded to the police for lodging FIR qua this occurrence.”

After recording the above-said statement of the complainant,

it was read over to him by SI/SHO, which he had signed in Punjabi after admitting it to be correct. On this statement Ex.PA of the complainant, SI/SHO Jagjit Singh made his endorsement Ex.PA/1, on the basis of which FIR Ex.PA/2 in this case was registered. Then SI/SHO Jagjit Singh along with the police party reached at the spot and found the dead body of Jaswinder Kaur wife of Gurcharan Singh resident of Kothe Bhagta Bhai Ka lying inside the house. He also inspected the spot and prepared the rough site-plan. Photographs of the dead body of deceased were got snapped through photographer. Teams of Finger Print Expert and dog squad also reached at the spot which submitted their respective reports. Inquest report with regard to the dead body of deceased was prepared. Then dead body of deceased was sent to Civil Hospital, Rampura Phul for post-mortem through HC Kapur Chand and Constable Bogha Singh. At the spot, he prepared parcels of blood stained axe, blood stained toka, blood stained ring and of denture which was cut, blood stained earth and of blood after sealing the same with his seal bearing impressions 'JS'. Specimen seal was also prepared separately. Statements of witnesses were recorded. Matter was investigated from the persons who were present at the spot. After the post-mortem examination, above-said HC Kapur Chand produced before him clothes of deceased and one parcel duly sealed stated to be containing ear-lets of deceased and the same were taken into police possession. Accused Gurcharan Singh was arrested in this case on 19.5.2007 after disclosing him grounds of arrest. Memo with regard to his personal search was also prepared. Then while in custody he got recovered one iron rod on the basis of his disclosure statement. Accused Shamsher Singh @ Sheri and

Amritpal Singh moved an application before S.S.P. Bathinda qua their innocence which was under investigation with DSP Sh.Baljinder Pal Singh. Action against both of them is to be initiated on receipt of said inquiry report, but subject to its approval by SSP. So initially challan against accused Gurcharan Singh alone was presented in the Court of learned Illaqa Magistrate on the completion of investigation, who after making compliance of the provisions of Section 207 of the Cr.P.C. committed this case to the Court of learned Sessions Judge, Bathinda for its trial.

4. Then after going through the record and hearing the learned counsel for both the parties, a prima facie case under Section 302, IPC, was found to be made out against the accused and as such he was charge-sheet accordingly by the learned trial Court to which he pleaded not guilty and claimed trial.

5. After recording the statements of PW1 Chamkaur Singh and PW2 Dr. Kuldeep Rai, the prosecution moved an application under Section 319 of Cr.P.C. for summoning of above-said Amritpal Singh and Shamsher Singh @ Sheri as additional accused in this case to face trial along with co-accused Gurcharan Singh. This application was declined qua accused Shamsher Singh @ Sheri, whereas it was accepted qua accused Amritpal Singh by the learned Sessions Judge, Bathinda vide order dated 22.11.2008.

Accused Amritpal Singh was summoned as an additional accused, but his presence could not be secured and as such he was declared as proclaimed offender vide order dated 24.4.2009.

6. Thereafter, statements of remaining PWs were recorded.

The prosecution examined six PWs in all to prove its version and to bring the culprit to book.

7. Then the accused was duly examined as required under the provisions of Section 313, Cr.P.C. During his examination, the entire incriminating evidence brought against him by the prosecution during the trial of the case was put to him which he denied entirely and claimed his innocence and false implication in the present case. He also took the plea that his elder son Chamkaur Singh in fact had committed the murder of his wife when they were sleeping. He ran away through the house of Makhan Singh neighbour in order to save his life. Further he also examined five witnesses in defence.

8. The learned trial Court after hearing learned counsel for both the parties and going through the record as well held the accused guilty for the offence punishable under Section 302, IPC and sentenced him to undergo life imprisonment.

9. Appellant (accused) feeling aggrieved from this judgment and order of sentence has come up in the instant appeal. Notice of appeal was given to the respondent-State. Record of the learned trial Court was also requisitioned and perused.

10. We have heard the learned counsel for both the parties and also scrutinized the record with their able assistance.

11. Learned counsel for the appellant has contended that the impugned judgment and order of sentence dated 3.6.2010 are against the law and facts on the record and as such the same are not tenable in the eyes of law. Then it is further his contention that the motive for the commission of the alleged crime as put forth by the prosecution is very

frail and the evidence on the record is also lacking to prove the same and on this score also, the impugned judgment is liable to be set aside. Herein he has also contended that it is the case of prosecution that the appellant was annoyed with his wife Jaswinder Kaur (since deceased) since she had transferred six kanals of the land of her share in favour of complainant Chamkaur Singh (PW1). In order to further illustrate his contention, he has also referred to one compromise regarding family partition Mark D1 dated 17.5.2004 vide which six kanals of land was given to both the brothers each i.e. Complainant (PW1) and his brother Amritpal Singh. Then he has also referred to one sale deed Mark D2 dated 17.5.2004 allegedly executed by Jaswinder Kaur (since deceased) in favour of complainant Chamkaur Singh (PW1). Then he has also pointed out to one Will Mark D-3 dated 1.6.2005 executed by said Jaswinder Kaur (since deceased) in favour of accused Amritpal Singh i.e. brother of complainant Chamkaur Singh (PW1). Due to the execution of this Will by the deceased in favour of Amaritpal Singh, the complainant was not lief with his mother. Further he contended that the alleged murder of Jaswinder Kaur was also committed by him and had implicated the present appellant along with his son Amritpal Singh in this case falsely.

12. Then the learned counsel for the appellant has also submitted that as per the case of prosecution, the alleged occurrence took place on 9.5.2007 at 10:30 p.m. and intimation in this regard was given to the police by the complainant vide his statement Ex.PA which he made before SI/SHO Jagjit Singh on the next day at about 4:30 a.m. on the drain bridge, Baja Khana Road, Bhagta Bhai Ka. So there is delay of about six hours in lodging the FIR qua the alleged

occurrence, but the prosecution miserably failed to explain the same and as such it is quite fatal to the case of prosecution. Then he has also submitted that distance between the place of alleged occurrence and the place where the above-said statement Ex.PA of the complainant was recorded was not more than 1 km.

13. Then the counsel for the appellant has also submitted that factum of previous enmity between the parties is also clearly established on the record and on this ground also, the possibility of false implication of the appellant in this case could not be ruled out. Herein he has referred to the cross-examination of PW1 Chamkaur Singh wherein he admitted that his relation with the appellant had been sustained. Further he also admitted that his father had disowned him on 28.7.2003 by giving a publication to that effect in Newspaper 'The Tribune'. Then he also admitted that Sumanpreet Kaur wife of his younger brother Amritpal Singh had moved an application against him on 30.4.2004 with the police of Police Station Dialpura to the effect that he (Chamkaur Singh) had taken away their tractor forcibly. Besides this, complainant himself had also moved an application against the appellant with the police of said police station on the basis of which proceedings under Sections 107/151, Cr.P.C., were initiated against the appellant before S.D.M., Rampura Phul.

14. Then it is also contended by learned counsel for the appellant that the alleged fact of transfer of six kanals of land in favour of the complainant by his mother was in the knowledge of the appellant w.e.f. 17.5.2004, so the plea of the prosecution that appellant had come to know about this fact when he obtained the copy of the jamabandi from

Halqa Patwari did not appear either to be reasonable or reliable.

15. Lastly, he has also submitted that as per the case of prosecution appellant was armed with an axe, whereas alleged co-accused Amritpal Singh was armed with a toka of steel at the time of alleged occurrence with which they caused injuries to deceased. Then herein he has also submitted that according to the statement of PW2 Dr. Kuldip Rai, injuries No.6, 7 and 8 which were found on the dead body of deceased during post-mortem were penetrating wounds and same could be caused with a pointed weapon. There is no explanation on the part of prosecution as to how and by whom these injuries on the person of deceased had been caused. Then prayer is made for the acceptance of the appeal by setting aside the impugned judgment of conviction and order of sentence and to acquit the appellant by granting him the benefit of doubt.

16. But on the other hand, the learned State Counsel has vehemently denied the above contentions of learned counsel for the appellant and has contended that the learned trial Court has passed the impugned judgment keeping in view the entire evidence led by both the parties. The learned trial Court has correctly appreciated the evidence of both the parties while passing this judgment and as such there is no scope for making any kind of interference in it. Further he has contended that the contentions raised by learned counsel for the appellant are not tenable and prayed for dismissal of the appeal.

17. Before proceeding to appreciate the above rival contentions of learned counsel for both the parties, we deem it essential to have a glance on the evidence of both the parties which came on the record during trial of the case, the brief resume of which is as under:

Complainant Chamkaur Singh as PW1 deposed about the prosecution version as narrated by him before the police on 10.5.2007 vide his statement Ex.PA. It was further in his statement that motive behind this occurrence was that his mother had transferred six kanals of land of her share in his favour. The police lifted the blood stained earth and simple earth from the spot of occurrence and took the same into its possession after preparing parcels thereof duly sealed with the seal bearing letters 'JS' vide memo Ex.PB.

PW3 Amanpreet Kaur is the wife of PW1 Chamkaur Singh – complainant. She also supported the version of prosecution by lending corroboration to the statement of PW1.

PW2 Dr.Kuldip Rai, Medical Officer was one of the members of the Board of doctors constituted to conduct post-mortem on the dead body of deceased Jaswinder Kaur wife of Gurcharan Singh. His testimony was to the effect that on 10.5.2007, he along with Dr.Seema Garg conducted post-mortem on the dead body of said deceased on police request Ex.PC bearing endorsement Ex.PC/1 made by SMO. During post-mortem, following injuries were found on the dead body of deceased:

- 1. Incised wound 16 x 2.5 cm with clotted blood on left side of neck and going across on back of neck extending towards right side. Underlying muscles cut, bones are also cut, meninges cut and spinal cord cut, vessels and nerves were also cut.*
- 2. Incised wound 8 x 1.5 cm parallel to injury No.1 on lower side on neck. Clotted blood present. Underlying muscles, nerves, vessels, bones, meninges, and cord were also cut. Clotted blood was present.*
- 3. Incised wounds three in number lying parallel to each other, 6 x 1.5 cm each on lower back in middle in sacral area. Clotted blood was*

present.

4. *Incised wound 5 x 1 cm with clotted blood on left parietal area.*

Clotted blood was present.

5. *Incised wound 6 x 1.5 cm with clotted blood on middle of breast.*

Clotted blood was present.

6. *Penetrating wound 1 x 1 cm with clotted blood on left inguinal area.*

7. *Penetrating wound 1 x 1 cm on pubis. Clotted blood was present.*

8. *Penetrating wound 1 x 1 cm on back of right thigh near knee. Clotted blood was present.*

9. *Multiple incised wounds 6 x 0.5 cm each on both buttocks, back of left thigh.*

10. *Multiple incised wounds 6 x 0.5 cm each on both breasts, abdomen, right shoulders, clotted blood was present.*

11. *Multiple incised wounds 3.5 x 0.5 cm each on lips, chin and right temporal region. Clotted blood was present.*

12. *Multiple incised wounds 3.5 x 0.5 cm each on right knee and leg. Clotted blood was present.*

13. *Incised wound with clotted blood 2 x 0.5 cm on left ankle.*

In their opinion, the deceased had died due to shock and haemorrhage as a result of injuries No.1 and 2 which were ante-mortem in nature and sufficient to cause death in the ordinary course of nature. Further he produced the original post-mortem report of deceased in the Court and proved its carbon copy as Ex.PD and the pictorial diagram Ex.PD/1 showing the seats of injuries on the person of deceased. Then he also gave opinion that possibility of injuries being caused by *kulhari* and *toka* on the person of deceased except injuries No.6, 7 and 8 cannot be ruled out.

PW6 SI Jagjit Singh was posted as SHO on the relevant date at Police Station Dialpura. He recorded the statement Ex.PA of complainant – Chamkaur Singh upon which he made his endorsement

Ex.PA/1 on the basis of which the FIR Ex.PA/2 was recorded in the instant case. Then he along with his police party including Chamkaur Singh – complainant visited the spot of occurrence and prepared its rough site-plan Ex.PG. He also prepared the inquest report Ex.PE in respect of dead body of deceased. Further he sent dead body through HC Kapur Chand and Constable Bogha Singh along with the application Ex.PC for conducting port-mortem. Then he also proved the memo Ex.PB vide which blood stained earth and simple earth lifted by him from the spot of occurrence were taken into police possession after converting the same into separate parcels. Then he also took *kulhari* which was found lying near the dead body at the spot of occurrence into police possession vide memo Ex.PH after preparing its parcel. Then it was also in his statement that one blood stained *Kapa* was also found lying at the spot near the dead body which was also converted into a parcel and the same was taken into police possession vide memo Ex.PJ. Then HC Kapur Chand produced before him one duly sealed parcel containing clothes of deceased which was taken into police possession vide memo Ex.PF. He deposited the case property with MHC in an intact condition. He also deposed that from the spot one ear ring and broken teeth were recovered and the same were also taken into police possession. He also proved the above-said *kulhari* and *kapa* as Ex.P1 and Ex.P2, ear ring Ex.P3 and a set of denture with one tooth separated Ex.P4.

Further investigation of this case was conducted by PW5 SI Sukhdev Singh. His statement was to the effect that he arrested accused Gurcharan Singh in this case on 19.5.2007. A pair of blood stained *chappal* which the accused was wearing was converted into a parcel and

same was taken into police possession vide memo Ex.PK. Then it was also in his statement that during interrogation accused suffered disclosure statement Ex.PN regarding concealment of one iron rod and thereafter he led the police party to the place of concealment and got recovered the same from the back side of his residential house. Rough sketch Ex.PQ of this rod was prepared and the same was taken into police possession vide memo Ex.PR.

In defence version, HC Kewal Singh as DW1 produced the original application dated 8.5.2007 of Gurcharan Singh appellant presented before DSP, Rampura Phul, the photocopy of which was Ex.DD.

DW2 HC Bhola Singh produced the original record of DDR No.13 dated 28.4.2004 and of calendra under Section 107/151, Cr.P.C., initiated against Gurcharan Singh (appellant) on the basis of complaint of Chamkaur Singh. Photocopies of this calendra and rapat No.13 were brought on the record as Ex.DE and Ex.DF, respectively.

DW3 HC Sukhwinder Singh deposed to the effect that as per record brought by him, one complaint of Sumanpreet Kaur wife of Amritpal Singh was received in the office of DIG Faridkot Range, Bathinda which was marked to S.S.P., Bathinda, on 4.5.2004.

DW4 AMHC Sulakhan Singh produced the record qua the complaint of Sumanpreet Kaur wife of Amritpal Singh, inquiry of which was conducted by Baljinder Singh, the then SHO, Police Station Dialpura. Then he also produced the record pertaining to complaint of Gurcharan Singh against his son Chamkaur Singh, inquiry of which was conducted by Inspector Des Raj, the then SHO, Police Station Dialpura.

Further he proved the photocopies of above-said inquiry reports as Ex.DG and Ex.DH, respectively.

DW5 HC Kewal Singh deposed that inquiry report Ex.DX was sent by the office of DSP, Kotkapura to DIG, Faridkot Range, Bathinda vide rod No.6346 dated 6.7.2004.

18. Regarding motive, learned counsel for the appellant has argued that it was the case of prosecution that Jaswinder Kaur (since deceased) mother of PW-1 had transferred the land measuring 6 kanals of her share in favour of PW-1 without any consideration vide a transfer deed (sale deed). When his father - Gurcharan Singh (appellant) came to know about this fact, on obtaining copy of Jamabandi, then he felt infuriated and quarreled with him as well as his mother (since deceased). Herein he has contended that photocopy of this sale deed came on the record during trial of the case as Mark D2 dated 17.05.2004. The alleged occurrence took place on 09.05.2007 and as such, there was a gap of about 3 years between the alleged transfer of land vide Mark D2 and the date of this occurrence. Then the copy of jamabandi from which the appellant had allegedly come to know about the transfer of this property was also not brought on the record by prosecution and as such the fact as to when the appellant had got the said copy of jamabandi had remained unestablished on the record. Then complainant-Chamkaur Singh as PW-1 in his cross-examination had admitted the execution of transfer deed Mark D2 by his mother Jaswinder Kaur (deceased) in his favour and as such it could be looked into for appreciating the above contention of learned counsel for the appellant.

Then in the cross-examination, PW-1 Chamkaur Singh had

also admitted the execution of one compromise for domestic partition Mark D1 dated 17.05.2004. Important clauses of this compromise were that the land measuring 6 kanals which was to be given to Chamkaur Singh-complainant (PW-1), the same was to be given to him out of the land measuring 7 acres 6 kanals situated on the passage leading to village Kesar Singh Wala. Then in this compromise Mark D1, it was also undertaken by the appellant that he would transfer 6 kanals of land in favour of his both the sons i.e. complainant-Chamkaur Singh and Amritpal Singh each by executing the sale deed and in lieu thereof, both of them would not demand from him a sum of ₹2,25,000/- as the amount of dowry received in their respective marriages each. These clauses of this compromise pin point one thing that its terms and conditions were to be acted upon in future and nothing had come on the record during trial of this case to show as to whether the same were ever acted upon subsequent thereto or not. Then it was also the case of prosecution that when both the brothers i.e. complainant - Chamkaur Singh (PW1) and Amritpal Singh separated about 3 years ago, then at that time the appellant - the father of the complainant and his brother Amritpal Singh had agreed to get constructed a separate house for the complainant in writing, within 3 years of this separation, who later on refused to abide by the same. But no such agreement in writing was brought on the record by the prosecution nor any such clause was found mentioned in the abovesaid compromise Mark D1. The only relevant fact which is found recorded in it is that the wall was to be constructed in the house in the same manner in which his both the sons are living in the house. Now it was also the case of prosecution that when complainant raised construction of the wall in the

house about one week prior to this occurrence, then his father (appellant) and brother Amritpal Singh (alleged accused) felt annoyed for the same. So raising of this wall in the house could be root cause of the latest bickering between the complainant and his father (appellant) which ensued the present occurrence.

19. Then the case in hand does not rest merely upon circumstantial evidence and as such the alleged motive could not be of any paramount importance. The motive as alleged carries some significance in any case which is purely based upon circumstantial evidence and there is no eye-witness to the alleged occurrence. But in the case in hand, PW-1 Chamkaur Singh and his wife PW-3 Amanpreet Kaur were the eye-witnesses to the alleged occurrence and both of them had supported the version of prosecution in their respective depositions made in Court. Hence the above contention of learned counsel for the appellant is rejected and disposed of accordingly.

20. Then it is further submitted by learned counsel for the appellant that Jaswinder Kaur (since deceased) had executed a Will in favour of her son Amritpal Singh (alleged accused) whereby bequeathing her entire property (moveable as well as immovable) in his favour and due to this reason, the present complainant-Chamkaur Singh (PW-1) had been nourishing a grudge against his mother. Due to this ill-will, he committed the murder of his mother Jaswinder Kaur and dragged the present appellant and his brother-Amritpal Singh in this case falsely. Then complainant-Chamkaur Singh as PW-1 had admitted in his cross-examination that his mother had executed a registered Will in favour of his brother Amritpal Singh on 01.06.2005, the photocopy of which was brought on

record as Mark D-3. Then it was also his admission that mutation on the basis of this Will was sanctioned in favour of his said brother regarding inheritance of his mother. But as abovesaid this Will is dated 01.06.2005 and the alleged occurrence took place on 09.05.2007 i.e. after a gap of about 2 years since the date of execution of this Will. So the above plea of learned counsel for the appellant that deceased was annihilated by her son i.e. complainant-Chamkaur Singh and that later on the present appellant and Amritpal Singh were involved in this case falsely at the instance of this complainant does not appeal to any reasoning nor there is any material substance on the record to rely upon the same.

21. Then the learned counsel for the appellant has also pointed out that there were strained relations between the appellant and his son Chamkaur Singh - complainant and on this score also, the possibility of false implication of the appellant in this case could not be ruled out. Herein he has again referred to the cross-examination of PW-1 Chamkaur Singh (complainant) wherein he had admitted that his relations with his father were strained. His father had moved different applications against him before Incharge, Police Post Bhagta Bhai Ka and other senior police officials. Then he also admitted that he had moved an application against his father before the Police of Police Station Dialpura and that his father was produced before Sub-Divisional Magistrate, Rampura Phul in the proceedings initiated under Section 107/151, Cr.P.C., by the Police of said Police Station on his application. Then it was also his admission in cross-examination that Sumanpreet Kaur wife of his younger brother Amritpal Singh had also moved an application against him that he (PW-1) had taken away their tractor forcibly. In order to muster strength to his

above contention, learned counsel for the appellant has also referred to documents i.e. calendra Ex.DE, complaint Ex.DD and inquiry report Ex.DG proved in the above discussed statements of DW-2, DW-1 and DW-4 respectively. All the above discussed circumstances are having the tendency to tilt towards one conclusion that relation between complainant (PW-1) and his father (appellant) were not cordial. So in this situation, the complainant was to commit murder of his father Gurcharan Singh (appellant) and not of his mother Jaswinder Kaur (since deceased). The alleged enmity between appellant and his son Amritpal Singh on one hand, and the complainant Chamkaur Singh-PW1 on the other hand cannot be taken to be a valid and reasonable ground to reach at the conclusion that deceased Jaswinder Kaur was done to death by complainant Chamkaur Singh and that appellant and his son Amritpal Singh had been ensnared later on in this case falsely at the instance of complainant-Chamkaur Singh.

22. Then it was specific stand of prosecution that at the relevant time deceased - Jaswinder Kaur had been living in rear portion of the house along with her husband Gurcharan Singh - appellant and her son Amritpal Singh, whereas her another son Chamkaur Singh-complainant (PW-1) along with his family had been residing in front portion of the same very house. Alleged occurrence took place during night time at about 10:30 p.m. on 09.05.2007 and dead body of deceased during police investigation was also found from the same very portion of the house, wherein she along with her husband (appellant) and son Amritpal Singh had been residing on the said date. So as a matter of common prudence and natural human conduct, the appellant as well as his son Amritpal

Singh were legally bound to inform the police with regard to murder of deceased which they did not do. After the alleged occurrence the appellant fled away from the spot and he was apprehended in this case by the police on 19.05.2007 vide memo Ex.PF. Then it is also to note that accused Amritpal Singh was summoned as an accused in this case on the application filed under Section 319, Cr.P.C. and he was declared as a proclaimed offender since his presence could not be secured. So all this act and conduct of the appellant goes against him. Then appellant in his statement recorded under Section 313, Cr.P.C., took specific plea that when his elder son Chamkaur Singh had committed the murder of his wife Jaswinder Kaur, then they were sleeping. He ran away through the house of his neighbour Makhan Singh in order to save himself. So in these circumstances as per the provisions of Section 106 of the Indian Evidence Act also, he was legally bound to approach the police in order to lodge the report to explain the circumstances relating to the murder of his wife against his son Chamkaur Singh and then to depose against him in the Court during trial of the case. Even he also did not examine his said accoltent - Makhan Singh through whose house he ran away after the alleged occurrence and defended himself.

23. Then the learned counsel for the appellant as abovesaid has submitted that as per statement of PW-2 Dr. Kuldeep Rai, the possibility of injury Nos.6, 7 and 8 found on the person of the deceased having been caused by a pointing weapon could not be ruled out. In order to elaborate his contention, he also submitted that as per the case of prosecution one axe and a toka were recovered from the spot by the police during spot inspection. Then one iron rod was alleged to be got recovered by

appellant later on on the basis of his disclosure statement Ex.PN. None of these weapons was pointing one and hence on this score also, the case of prosecution becomes highly suspicious. But as per the post-mortem report Ex.PD, there were 13 injuries found on the dead body of the deceased during post-mortem including abovesaid injury Nos.6, 7 and 8. Matter would have been different had there been only said injury Nos. 6, 7 and 8 on the person of deceased. Then as per the prosecution version 3/4 other unidentified persons along with the present appellant and Amritpal Singh were also present at the spot at the time of alleged occurrence who were armed with *ghops*, *kirchs* and *kapa*, though during the investigation nothing was found qua the involvement of these unidentified persons in this case. So in these circumstances, the above contention of learned counsel for the appellant also does not have any substance to lend any support either to prove innocence of the appellant or his false implication in this case.

24. Admittedly in this case delay of about 6 hours was occurred in reporting the matter to the police qua the alleged occurrence. In this connection, it is to be noted that as per the case of prosecution the alleged occurrence took place on the night of 09.05.2007 at about 10:30 p.m. in the area of Kothe Bhagta Bhai Ka. The matter with regard to this occurrence was reported to the police by complainant-Chamkaur Singh vide his statement Ex.PA on 10.05.2007 at 4:30 a.m. In the FIR Ex.PA/2, the distance of the place of the alleged occurrence from Police Station Dialpura is recorded as 5 miles towards west. So the contention of learned counsel for the appellant that distance of the spot at which statement Ex.PA of complainant was recorded from the spot of the

alleged occurrence could not be more than one kilometer does not carry any weight in the eyes of law, when it is established on record that police station concerned was at a distance of 5 miles from the spot of occurrence. Then as per the case of prosecution after the alleged occurrence, complainant - Chamkaur Singh was proceeding towards Police Station in order to lodge the report qua this occurrence, but the Police party of SI/SHO Jagjit Singh, Police Station Dialpura met him per chance at the drain bridge, Baja Khana Road, Bhagta Bhai Ka, wherein he made his statement Ex.PA before him, which put the machinery of criminal law into motion qua this case. So in the light of above discussed circumstances, the said alleged delay of 6 hours in reporting the matter to the police could not be construed to be any inordinate delay nor anything worthwhile had come on the record to say that any prejudice had been caused to the interest of the appellant (accused) on account of this delay. Hence this contention of learned counsel for the appellant also does not hold any water and the same stands consequently terminated.

25. Then in this case the alleged occurrence took place in a residential house during night time, so in such a case the persons who had been putting up in **the house** could only had the occasion to see the alleged occurrence and then to tell about the same to the police during investigation and further to depose about it in the Court during trial of the case. In the case in hand Chamkaur Singh-complainant (PW-1) along with his family had been residing in the front portion of the house, whereas deceased along with her husband-appellant and son Amritpal had been residing in the rear portion of same very house at the relevant

time and hence the presence of PW-1-Chamkaur Singh (complainant) and his wife Amandeep Kaur (PW-3) at the spot at the time of the occurrence and further to witness the same could not be mis-trusted on any count. The plea that PW-1 and PW-3 were the interested witnesses to secure the conviction of the appellant itself cannot be taken to be a ground to undermine their depositions when their presence at the spot at the relevant time had been found to be natural one.

26. The learned counsel for the appellant has further submitted that case of prosecution is not believable from another angle also because as per the case of prosecution, the appellant suffered disclosure statement Ex.PN during interrogation qua the concealment of an iron rod which he further got recovered as per his disclosure statement. Then in this connection, it is also his submission that as per the prosecution version, the assailants after the alleged occurrence fled away from the spot while leaving behind **an axe and a toka** on the spot which weapons were also found lying near the dead body of the deceased at the spot by the police authorities during its inspection and took the same into its possession. Herein he has also contended that if as per the case of prosecution the assailants had left axe and *toka* at the spot while running away from the spot after commission of the alleged crime, then certainly the appellant was not to carry any iron rod which he allegedly got recovered as per his disclosure statement Ex.PN and hence the prosecution version qua its recovery is not confidence inspiring. But it is a hard fact that when any person commits any barbarous crime such like murder, then he usually losses good senses and feeling of right thinking person whereby leaving some incriminating material at the spot of alleged occurrence, while

carrying the remaining one along with him, when running away **helter skelter** from there after commission of alleged crime. Hence the above contention of learned counsel for appellant is also found to be not sustainable.

27. Then the learned counsel for the appellant has also tried to raise plea that Amritpal Singh co-accused of the present appellant was arrested later on in this case and tried by the trial Court. After the trial, he was acquitted in this case and as such the present appellant also deserves for the same very benefit. But there is no denial to the fact that trial of said accused Amritpal Singh was conducted separately and independently from the trial of present appellant, so evidence recorded during trial of said accused Amritpal could not be evaluated for any purpose for the disposal of this appeal for the simple reason that trial of present appellant and trial of said accused Amritpal Singh were conducted separately as well as distinctively from each other. So this contention of learned counsel for the appellant is also rejected being found not legally tenable.

CRA-D-991-DB-2010

28. This appeal was presented by complainant-Chamkaur Singh for the grant of compensation qua the murder of his mother Jaswinder Kaur against respondents i.e. Gurcharan Singh-respondent No.1 (accused) and State of Punjab. It is his grievance that learned trial Court while convicting respondent No.1 in this case vide the impugned judgment has not granted any compensation, which necessitated to file the instant appeal. This appeal was admitted by this Court vide order dated 04.10.2010 with the direction that same be heard along with **CRA-**

D-855-DB-2010.

29. No doubt as per the provision of proviso attached to Section 372, Cr.P.C., appeal does not lie in a case in which no compensation has been granted. Then it is also a fact that this appeal was admitted in the year 2010 for its disposal along with abovenoted **CRA-D-855-DB-2010**. So interest of justice requires that this appeal be disposed of on merits instead of dismissing it on technical grounds by treating the same as application under Section 357, Cr.P.C., for the grant of compensation qua the death of Jaswinder Kaur (since deceased).

Then it is also a settled law that it is the duty of the Court to grant compensation, in the light of facts and circumstances of each case when the accused is held guilty for the commission of any offence. In this regard the Hon'ble Apex Court after discussing the law on this point has laid down in ***Ankush Shivaji Gaikwad vs. State of Maharashtra, 2013 (2) R.C.R. (Criminal) 1036*** which is as follows:-

“.....xxxx the power to award compensation was intended to reassure the victim that he or she is not forgotten in the criminal justice system. The victim would remain forgotten in the criminal justice system if despite legislature having gone so far as to enact specific provisions relating to victim compensation, Courts choose to ignore the provisions altogether and do not even apply their mind to the question of compensation.....xxxx

Then the principle laid down in this case law are further followed by the Hon'ble Apex Court in an another latest case law as delivered in ***Manohar Singh vs. State of Rajasthan and others, 2015(1)***

R.C.R. (Criminal) 747.

30. As per the post-mortem report Ex.PD, deceased was 53 years of age at the time of her death i.e. when she was murdered. No documentary evidence had come on record with regard to the work being done by her at the said relevant time or with regard to her income, if any. So her status for the purpose of determining compensation, if any, could be treated as that of a housewife. Respondent No.1 (accused-Gurcharan Singh) is in jail in this case since 19th May, 2007. In his statement recorded under Section 313, Cr.P.C., on dated 20.08.2009 his age was mentioned as 52 years. So by this date he may be around 59/60 years of age.

So keeping in view the above circumstances and living conditions prevailing in the year 2010, the monthly income of deceased for the purpose of grant of compensation in this case is assessed to be ₹3,600/-. After deducting a sum of ₹1,800/- out of it as her own personal dependency, dependency of her lawful LR's upon her, if any, comes to ₹1,800/- per month X 12 = ₹21,600/- per annum. Multiplier of 10 is held to be applicable to the facts of the case in hand and as such the total amount of compensation which could be granted in this case to the LR's of deceased comes to ₹21,600/- X 10 = ₹2,16,000/-. Respondent No.1 is directed to pay this amount of compensation within a period of 6 months from the date of receipt of copy of this order, failing which the LR's of deceased would be at liberty to recover the same from respondent No.1 in due course of law. In view of above, this appeal bearing **CRA-D-991-DB-2010** stands accepted and disposed of accordingly.

31. In the light of above discussion, **CRA-D-855-DB-2010** stands dismissed being found meritless and disposed of accordingly. The impugned judgment of conviction and order of sentence stands upheld.

So far as pending criminal miscellaneous application No.9049 of 2015 is concerned, there is no need to pass any separate order on it since the documents mentioned in it i.e. Mark D1 to Mark D3, which the applicant/appellant wanted to produce on the record in additional evidence are admitted by both the parties and the legal evidentiary value of these documents has also been discussed while disposing of the above noted **CRA-D-855-DB-2010**. Remaining criminal miscellaneous application, if any, stands dismissed as having been rendered infructuous.

Copy of this judgment be sent to the quarter concerned for strict compliance.

(S.S. SARON)
Judge

(GURMIT RAM)
Judge

29.02.2016
Brij/Gaurav Sorot

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest? Yes