

In the High Court of Punjab & Haryana at Chandigarh.

Crl. Appeal D-775-DB-2011
Date of decision: 16.12.2016

Jatinder Singh and another

..... Appellants

vs.

State of Punjab.

..... Respondent

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

Present: Mr. Pankaj Bhardwaj, Advocate
for the appellants.

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

H.S. MADAAN,J.

This appeal has been filed against the judgment dated 24.05.2011 passed by the Court of Sessions Judge, Shaheed Bhagat Singh, Nagar, vide which he had convicted and sentenced accused Jatinder Singh and Gurjinder Singh as follows:-

Offence under Section	Sentence Awarded
302 IPC	<i>Both the convicts were sentenced to undergo rigorous imprisonment for life and were also imposed a fine amounting to ₹3,000/- each. In default of payment of fine, they were to further undergo rigorous imprisonment for a period of two months.</i>

The accused, who are appellants before this Court, pray that the appeal be accepted, the impugned judgment of conviction and sentence be set aside and they be acquitted of the charges framed against them.

Briefly stated facts of the case as per prosecution version are

that complainant Amarjit Singh, son of late Shri Faqir Singh, Caste Jat, resident of Gulpur, Police Station Balachaur, District SBS Nagar, aged about 62 years has been doing agricultural work. He had remained Sarpanch of the village Gulpur. On 22.04.2009, when he was present at his house, he received a telephonic call from his sister-in-law Harbans Kaur wife of Shri Nath Singh, resident of Mahindpur that a dead body was lying near the road on the *kacha* path of village Jainpur and as told by the people of said village, it was the dead body of Kewal Singh. Complainant- Amarjit Singh went to that place on scooter and found that the dead body lying by the side of the road was of Kewal Singh son of Harbans Kaur and Nath Singh. Complainant observed that injuries caused with sharp edged weapon were there on the left ear in addition to marks of injuries on the right eye, cheek, left shoulder, both the knees and on both the inner ankles. Complainant was sure that Kewal Singh has been murdered by Sandeep Singh son of Sohan Singh and Jatinder Singh, Gurjinder Singh, Tejinder Singh sons of Jujhar Singh, Caste Jat, residents of Mahindpur because earlier also a quarrel had taken place between them once or twice. Complainant left his brother-in-law Nath Singh, who happened to be father of deceased Kewal Singh near the dead body and was going to Police Station Balachaur to lodge a report regarding the incident, on the way at Bus stand Majari, he came across the police party led by SI/SHO Swaran Singh from Police Station Balachaur (hereinafter referred to as the Investigating Officer/I.O.). The complainant got his statement Ex. PA recorded with SI Swaran Singh. The statement was signed by Amarjit Singh in English and the said signatures were attested by SI/SHO Swaran Singh who put his endorsement Ex. PA/1 below that statement and sent *ruqa* to police station through PHC Gurdev Singh at

11:10 A.M., on the basis of which formal FIR Ex. PA/3 was recorded and thereafter the police party accompanied by complainant went to the spot. The Investigating Officer observed that the dead body of Kewal Singh was lying there. Since it was a case of unnatural death, he carried out inquest proceedings with regard to dead body of Kewal Singh. The dead body was identified by Nath Singh and Amarjit Singh. The I.O. prepared the inquest report. He had summoned a photographer to the spot, who clicked the photographs of the place of incident and that of the dead body. The I.O. lifted the blood stained earth from the place of incident and prepared a parcel thereof sealing it with his seal having impression 'SS'. Then the said parcel was taken into possession vide memo. Ex PT. The I.O. deputed HC Lakhwinder Singh to get the post-mortem examination conducted on dead body of Kewal Singh and handed over the application in that regard to him. The I.O. had prepared the rough site plan of the place of incident with correct marginal notes and recorded statements of various witnesses.

After getting the post-mortem examination conducted on dead body of Kewal Singh, HC Lakhwinder Singh, produced clothes of deceased before the I.O. which were converted into a parcel and sealed with the seal of I.O. having inscription 'SS'.

On 12.06.2009, accused Gurjinder Singh was arrested in this case from the area of Mehandpur. While arresting him, grounds of arrest were furnished to him and intimation regarding his arrest was also given. A memo in that regard was prepared as Ex. PW which was signed by the accused and attested by SI Bhag Mal and HC Kashmir Singh. Personal search of the said accused was also conducted but nothing incriminating was recovered as a result thereof. A memo of personal search Ex. PV

(*Jama talashi*) was prepared which was signed by the accused and attested by SI Bhag Mal and HC Kashmir Singh. The accused was brought to the police station and put in the lock-up.

On 14.06.2009, accused Gurjinder Singh was taken out of the lock up and interrogated. During course of interrogation, he had suffered a disclosure statement that on 21.04.2009 at about 6:00 a.m., he alongwith his brothers Jatinder Singh and Tejinder Singh had gone to the fields to ease themselves where they saw Kewal Singh in an objectionable position with their mother. However, their mother had left the spot but they caught hold of Kewal Singh and committed the murder of Kewal Singh by pressing his neck and causing him injuries inasmuch as, Gurjinder Singh had strangled the neck of Kewal Singh, whereas, Jatinder Singh gave a *kirpan* blow on the head of Kewal Singh. Tejinder Singh gave baseball bat injuries on the person of Kewal Singh. Resultantly, Kewal Singh had succumbed to those injuries and in the evening they had thrown the dead body of Kewal Singh on the *katcha* path of Jainpur, on the main road of Balachaur-Garhshankar by placing the dead body on a motorcycle. (The said disclosure statement is inadmissible in evidence being hit by Section 25 of the Evidence Act). However, the I.O. had recorded the disclosure statement of Gurjinder Singh which is Ex. PX, signed by Gurjinder Singh and attested by SI Bhag Mal.

During the course of investigation, Jaspal Singh, photographer produced the photographs before the I.O. Those were taken into police possession vide memo Ex. PF, attested by SI Bhag Mal and signed by Jaspal Singh.

The investigation of this case was taken up by S.I. Gurdip

Singh, the then SHO of the police station, Balachaur. On 06.07.2009, the police party had stopped the Motor Cycle which was driven by Jatinder Singh on which Tejinder Singh was pillion rider. Both the accused wanted in the case were apprehended and formally arrested in this case. While arresting them, their personal searches were conducted but nothing incriminating was recovered from them, as a result thereof. The I.O. had prepared a personal search memo of both the accused as Ex. PJ which was signed by both the accused and attested by SI Kashmir Singh. The grounds of arrest were furnished to both the accused and intimation regarding their arrest was given vide memo Ex. PK which was signed by both accused and attested by SI Kashmir Singh.

The I.O. then interrogated accused Jatinder Singh, who suffered a disclosure statement that he had kept concealed a *kirpan* (sword) near the *khala* in the sarkanda (weeds) about which only he knew and could get the same recovered. The I.O. recorded the disclosure statement of Jatinder Singh as Ex. PL which was signed by the said accused and attested by ASI Joginder Singh and HC Kashmir Singh.

Thereafter, accused Tejinder Singh was interrogated who also suffered a disclosure statement that he had kept concealed a baseball bat in the sarkanda (weeds) near *khala* (water channel) about which only he knew and could get the same recovered. Such disclosure statement of accused was recorded as Ex. PM which was signed by the said accused and attested by Joginder Singh and HC Kashmir Singh.

Thereafter, both the accused in the police custody led the police party to the disclosed place. Accused Jatinder Singh got *kirpan* (Ex.P1) recovered in pursuance of the disclosure statement. I.O. prepared a rough

sketch of the recovered *kirpan* as Ex. PN and the *kirpan* was taken into possession vide memo Ex. PO, attested by the witnesses. Thereafter, Tejinder Singh accused in the police custody led the police party to the disclosed place and got recovered one baseball bat. The I.O. prepared rough sketch of the recovered baseball bat as Ex. PP. Thereafter, the said baseball bat was taken into police possession vide memo Ex. PO. The motor cycle which both the accused were riding was taken into police custody vide Memo Ex. PR. The I.O. had prepared a rough site plan of the place of recovery as Ex. PS and recorded the statement of witnesses. During the course of investigation, the I.O. got prepared scaled site plan of the place of incident from Baldev Singh, Draughtsman. After completion of investigation and other formalities, challan against accused Jatinder Singh, Gurjinder Singh and Tejinder Singh was filed in the Court of Sub Divisional Judicial Magistrate, Balachaur, he supplied the copies of documents to the accused free of costs as provided under Section 207 Cr. P.C. and then finding that offence under Section 302 IPC, is exclusively triable by the Court of Session vide his commitment order dated 14.09.2009, committed the case to the Court of Additional Sessions Judge, 1st, Nawanshar. When the case was received in the Court of Additional Sessions Judge, 1st, Nawanshar, an inquiry into the matter was made. It was found that accused Tejinder Singh was a juvenile, therefore, his challan was separated and charge for offence under Section 302 IPC was framed against Jitender Singh and Gurjinder Singh only to which they pleaded not guilty and claimed trial.

The case was fixed for evidence of prosecution. After the prosecution had examined PW Amarjit Singh, the prosecution came up with an application under Section 319 Cr. P.C. for summoning of Sandeep Singh

as an additional accused to face the trial with accused Jatinder Singh and Gurjinder Singh. That application was accepted. Sandeep Singh was accordingly summoned and he had put in appearance. After summoning of Sandeep Singh as an additional accused, the prosecution examined the following witnesses:-

PW-3 Dr. Ashutosh Chadha, Medical Officer, Civil Hospital, Balachaur, who had performed post mortem examination on the dead body of Kewal Singh deposed in that regard providing medical evidence; PW-2 Nath Singh, father of deceased-Kewal Singh; PW-1 Amarjit Singh deposed as per prosecution version; PW-4 Jaspal Singh, photographer, testified that he had gone to the spot on 22.04.2009 and taking five photographs Ex. P1 to Ex. P5 with digital camera, which after developing, he had handed over to I.O. who had taken those into possession vide memo. Ex. PF. PW-5 HC Bhola Amit Singh, who on 22.04.2009, was posted as MHC at police station Balachaur, submitted his affidavit Ex. PH; PW6 SI/SHO Gurdip Singh, who had conducted investigation in this case from 06.07.2009 onwards deposed regarding what had been done by him. He proved various documents; PW7 SI Bhag Mal, who on 22.04.2009, while being posted at Police Station Balachaur, was member of the police party headed by SI/SHO Swaran Singh, deposed regarding what had been done in his presence; PW8 SI Joginder Singh, who on 08.07.2009, was member of the police party headed by SI/SHO Gurdip Singh, deposed with regard to accused Jatinder Singh and Tejinder Singh suffering the disclosure statements in his presence and then getting the *kirpan* and baseball bat recovered from their respective possession which had been seized by the I.O.; PW-9 HC Lakhwinder Singh, who on 22.04.2009 was a member of the policy party, deposed that he on

being deputed by the I.O. had got post-mortem examination conducted on the dead body of Kewal Singh from Civil Hospital, Balachaur; PW10 Inspector Swaran Singh, who had carried out the investigation in this case initially and to a considerable extent testified in that regard proving various documents; PW11 Mandhir Singh, President of Sikh Student Federation of Punjab State before whom the accused had made an extra judicial confession as regards their having committed murder of Kewal Singh, as per prosecution story did not toe the prosecution line and rather stated that none of the accused had come to him or had made any confessional statement. He was declared a hostile witness at the instance of Additional Public Prosecutor and Additional Public Prosecutor was allowed to put questions to him in the form of cross-examination; PW12 Baldev Singh Saini, Draughtsman, District Courts, SBS Nagar, deposed that on 31.08.2009, he had visited village Jainpur and had prepared the site plan Ex. PBB, and further he had gone to village Mehatpur and prepared the site plan Ex. PCC, at the instance of SI Gurdip Singh. Learned Public Prosecutor tendered in evidence report of FSL Ex. PDD and closed the evidence of prosecution.

Statements of accused under Section 313 Cr. P.C. were recorded, in which all the incriminating evidence appearing against the accused was put to them but they denied the allegations contending that they are innocent and have been falsely involved in this case. The accused did not lead evidence in defence, though in their statements under Section 313 Cr. P.C., they had stated that they wanted to lead evidence in defence.

After hearing the arguments, the trial Court convicted and sentenced the accused as mentioned above.

We have heard Shri Pankaj Bhardwaj, learned counsel for the

appellants and Shri S.S. Dhaliwal, Additional Advocate General, Punjab besides going through the record.

It is to be seen, as to whether the impugned judgment of conviction and sentence passed against the accused is sustainable or not. The answer has to be in negative. It is to be noticed here that the present case is based upon circumstantial evidence. Law is well settled that in such an eventuality, the chain of circumstances/events must be complete and if even one vital link in the chain is missing then the conviction of the accused cannot be held.

In the instant case, there are many important and crucial links in the chain, which are missing, resultantly, it cannot be concluded that it were the accused, who had committed murder of Kewal Singh. There is no sufficient cogent, convincing, reliable, ocular or documentary evidence to connect the accused with the crime so as to record a finding of guilt against them. Of the PWs examined PW3 happened to be Dr. Ashutosh Chadha, Medical Officer, Civil Hospital, Balachaur, who on 22.04.2009 was member of board of doctors, which had performed the post-mortem examination on the dead body of Kewal Singh and had prepared report Ex. PC observing various injuries on the person of deceased. However, his deposition is merely of corroborative nature and in the absence of enough cogent, convincing and reliable incriminating evidence led by the prosecution, this deposition is not of much value. From his statement at the most, it can be taken that several injuries including on vital parts were found to be there on dead body of Kewal Singh. But the important question remains as to who had caused those injuries. The prosecution had been unable to bring plausible and satisfactory evidence in that regard on the file. PW2 Nath

Singh, father of the deceased, is admittedly not an eye witness of the incident rather he stated that on the fateful day, at about 3:00 P.M, he after thrashing the wheat crop had gone to his house where he inquired from his wife and daughter regarding whereabouts of Kewal Singh, to which they replied that he had not come to the house. Then he started the work in his cattle shed. He did not search for him due to darkness and on the next day i.e. 22.04.2009, at about 8/8:30 A.M., on being informed, he went to the spot and found the dead body of his son Kewal Singh, having various injuries on his person, then the police had recorded his statement. The motive behind the crime was that the mother of accused was having illicit relation with the deceased to which they objected. His statement more or less is based upon suspicion. Suspicion can certainly not take place of legally admissible evidence, therefore, testimony of this witness is not of much incriminating nature against the accused. Similarly testimony of PW1 Amarjit Singh-complainant does not provide sound basis to conclude that it were the accused who had committed murder of Kewal Singh. As per his own admission, he had gone to the spot on being told that the dead body of Kewal Singh was lying at a particular place where he went and found the dead body to be lying there. Though, he has also pointed out accusing finger towards the accused stating that as they nursed a grudge that their mother was maintaining illicit relation with Kewal Singh, for that reason, they committed his murder but then the suspicion by this witness at best could provide motive in the instant case but the clear cogent positive evidence that it were the accused who had infact murdered Kewal Singh is clearly missing.

PW-4 Jaspal Singh, Photographer, had proved the photographs

taken by him as Ex. P1 to Ex. P5. Though, these photographs support the prosecution story as regards homicidal death of Kewal Singh but do not constitute any direct incriminating evidence against the accused.

PW-5 HC Bhola Amit Singh, on 22.04.2009, was posted as MHC at Police Station Balachaur, with whom case property had been deposited and who had furnished an affidavit Ex. PH, also does not have much significance so as to slap incriminating liability upon the accused.

PW6-S.I. Gurdip Singh, I.O., had carried out investigation in this case and his evidence is of supportive nature only since admittedly he himself had no personal knowledge regarding the incident.

PW7-SI Bhag Mal, who was a member of the police party, on 22.04.2009 and 14.06.2009, had deposed regarding what had taken place in his presence. Similarly, testimony of PW8 SI Joginder Singh, a witness of disclosure statement said to have been made by Jatinder Singh and Tejinder Singh and then their getting weapons *kirpan* and baseball bat recovered from the respective possession, also does not provide evidence which could form basis for conviction of the accused. PW9 HC Lakhwinder Singh, who was a member of the police party, on 22.04.2009, on being deputed had got post-mortem examination conducted on the dead body of Kewal Singh is also more or less formal witnesses.

PW10-Inspector Swaran Singh, had carried out the investigation in this case initially, also did not provide direct incriminating evidence against the accused.

PW11-Mandhir Singh, before whom, the accused on 07.05.2009, had made an extra-judicial confession regarding their having committed murder of Kewal Singh, as per case of prosecution, did not toe

the prosecution line rather stated that no-one had come to him to talk about the present case and he had not made any statement before the police. It further stated that the accused present in the Court had not come to him to make any of the statement. He was declared a hostile witness at the instance of learned Additional Public Prosecutor who was allowed to put question to him in the form of cross-examination. But lengthy cross-examination by learned Additional Public Prosecutor failed to elicit any reply favourable to the prosecution. As a matter of fact, this witness gave big jolt to the prosecution story by not supporting it. PW12- Baldev Singh Saini, Draughtsman, who had prepared scaled site plan of the place of incident is more or less a formal witness.

As a result of detailed discussion above, the prosecution had miserably failed in its endeavour to bring home guilt to the accused clearly and affirmatively and to show that in fact they had committed murder of Kewal Singh.

There is no direct evidence of involvement of accused in this case and as regards the circumstantial evidence, the same is quite weak, shaky and unreliable. As regards the accused suffering disclosure statements before the I.O., these statements are inadmissible in evidence being statements made by the accused in custody to the police officer and any incriminating evidence contained in those statement with regard to the accused having committed murder of Kewal Singh cannot be read against them. Admittedly, Gurjinder Singh had not got any weapon recovered from his possession in pursuance of the disclosure statement made by him, therefore, his such statement is completely inadmissible and cannot be taken into consideration. As regards, the disclosure statements made by other

accused in pursuance of which they had allegedly got sword and baseball bat recovered from their possession, the statements are admissible to that extent only with regard to recovery of weapons but the other contention that the weapons had been used in the incident for causing injuries to Kewal Singh cannot be considered. Further more, it is not the case of prosecution that the sword and baseball bat were found to be blood stained. Those weapons were admittedly not sent to Forensic Science Laboratory (FSL) Punjab, to find out as to whether they were having any blood stains thereon and if so, of human blood. This is a major lacuna in the investigation. In the absence of such evidence, it cannot be said that the weapons were used in any incident. The weapons in the form of sword and baseball bat are easily available in the open market. No peculiar feature of such weapons has been mentioned which could distinguish those from weapons of similar type. Thus, possibility of weapon being planted was always there.

It needs to be mentioned here that the approach of the trial Court in coming to the conclusion that charge against the accused stood proved has been erroneous. The factors which were taken into consideration by the learned trial Court were that; firstly the accused are named in the FIR as suspects but the FIR is not a piece of substantive evidence and this is only to set the criminal machinery in motion. The allegation in the FIR do not get approved *ipso-facto* and they are required to be established by leading cogent and convincing evidence which unfortunately in this case is clearly missing. The second circumstance taken into consideration by the trial Court was that soon after the incident the accused had absconded from the village, again no adverse inference can be drawn against the accused for such reason. On coming to know that they had been named as suspect in the

case, the accused going away from their places of residence in order to get justice may be saving themselves from being harassed, cannot be construed as any circumstance leading to drawing of an adverse inference.

The trial Court has relied upon the disclosure statements of accused, but as discussed above those disclosure statements do not lead us anywhere and most part of the statements are inadmissible being self-inculpatory as stated by accused in custody before the police officer. The other reasoning given is also least convincing. The judgment passed by the trial Court is not based upon the legally admissible evidence and is rather result of mis-appraisal of evidence and wrong interpretation of law, the same cannot be sustained and is liable to be set aside by way of accepting of appeal.

Resultantly, the appeal is allowed, impugned judgment of conviction and sentence is set aside and the appellants are acquitted of the charge framed against them.

The appellants be released from custody forthwith unless wanted in some other case.

(T.P.S. MANN)
JUDGE

(H.S. MADAN)
JUDGE

16.12.2016
smriti

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No