

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

CRA-AD-131-of 2015
Date of Decision: 19.1.2016

Davinder Singh

..... Appellant

Versus

State of Punjab and ors.

..... Respondent

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

Present: Ms. Gursharan K. Mann, Advocate
for the appellant.

S.S. SARON, J.

This appeal has been filed by the appellant – Davinder Singh who is the brother of Paramjit Singh (deceased in the case).
In the prayer clause, the appellant has made the following prayers:

- (i) It therefore respectfully prayed that this appeal may kindly be allowed and order dated 16.9.2015 passed by the learned Additional Sessions Judge, Gurdaspur, vide which the respondent No.2 is acquitted is against the law and facts and liable to be set aside.
- (ii) It is further prayed that the sentence of the other respondents be enhanced from life to death, as it was a cold blood murder committed by them.
- (iii) It is further prayed that compensation to be awarded to the son of the deceased Karanbir Singh.
- (iv) It is further prayed that certified & true copy of judgment dated 16.9.2015, may kindly be exempted,

in the interest of justice.

It is accepted by the learned counsel for the appellant that the sentences as imposed on respondents No. 3 to 6 i.e. other than Baljit Singh (respondent No.2) cannot be enhanced in an appeal filed by a 'victim' in terms of the proviso to Section 372 of the Code of Criminal Procedure ('Cr.P.C.' - for short). The said provision provides for appeal by a 'victim' against an order passed by the Court (i) acquitting the accused, (ii) acquitting him for a lesser offence or (iii) imposing inadequate compensation. The same does not provide for an appeal against inadequate sentence. Therefore, it is accepted that prayer for enhancement of the sentences in respect of respondents No.3 to 6 i.e. other than Baljit Singh (respondent No.2) would not be maintainable.

As regards compensation awarded to Karanbir Singh son of the deceased – Paramjit Singh, it is submitted by the learned counsel that she does not press for the same and she would file necessary applications in CRA-D-1662-DB of 2015 filed by Pawan Kumar and another as also CRA-D-1629-DB of 2015 filed by Kuldeep Singh @ Kuldeep and another for grant of compensation, for which necessary permission be given.

The only prayer, therefore, that requires consideration is whether the acquittal of Baljit Singh (respondent No.2) by the learned Additional Sessions Judge, Gurdaspur is proper.

We have heard learned counsel for the appellant and perused the judgment.

FIR in the case was registered on the statement of Davinder Singh (complainant) - appellant who is the younger brother of deceased Paramjit Singh. According to the appellant –

complainant, he has two brothers namely Paramjit Singh (deceased) and Dalbir Singh. His elder brother Paramjit Singh (deceased) was married to Gurpreet Kaur (convict – respondent No.6) daughter of Daljit Singh, resident of village Bhadur and was residing in USA along with his family. His second brother Dalbir Singh was resident of Australia. His brother Paramjit Singh (deceased) along with his wife Gurpreet Kaur (convict-respondent No.6) and son Karanbir Singh aged about 5/6 years had come to their village from Australia on 19.1.2011.

Paramjit Singh along with his wife Gurpreet Kaur and son Karanbir Singh had gone to his in-laws house at village Bhadur in his car on 22.2.2011. The complainant had also gone to village Bhadur on his separate motorcycle. At about 4:30 p.m., his brother Paramjit Singh, wife of his brother Gurpreet Kaur and their son started for Gurudawara Bibi Sundri Ji in his car bearing registration No.PB-06-D-8474. The complainant followed them on his motorcycle bearing registration No.PB-58-E-5928. After paying obeisance at Gurudawara Bibi Sundri Sahib, they started for their village along the storm water drain ('saem nala'). When they had just crossed the bridge of the storm water drain ('saem nala'), a white colour car, make I-10 came from behind. The complainant could not read its complete number and could read only PB-09. Three young men were travelling in the car. They overtook the car of the brother of the complainant and stopped the car of his brother Paramjit Singh. Thereafter, two unknown persons came out of the said white colour car and attacked his brother Paramjit Singh with 'kirch' like weapons. His brother suffered serious injuries on account of the 'kirch' blows that were inflicted and he fell down on the

ground. The complainant parked his motorcycle and ran towards his brother to save him. In the meanwhile, both the said unknown persons fled away from the spot in their car towards G.T. Road leading from Mukerian towards Gurdaspur. The complainant put his brother Paramjit Singh in his Maruti car and took him to Civil Hospital, Gurdaspur where he was declared dead.

The complainant left his sister-in-law Gurpreet Kaur with dead body of his brother and went towards Police Station, Purana Shalla for reporting the matter. On these allegations, case FIR No.10 dated 22.2.2011 for the offence under Section 302 read with Section 34 Indian Penal Code (IPC – for short) was registered at Police Station Purana Shalla, District Gurdaspur against unknown persons.

During investigation, it was brought out that the accused were Pawan Kumar (respondent No.3), Kuldeep Singh @ Kuldeep (respondent No.4), Lalit Kumar @ Sonu (respondent No.5) as also Baljit Singh @ Sahbi (respondent No.2). It also transpired that the accused had entered into a conspiracy with Gurpreet Kaur (respondent No.6) wife of Paramjit Singh to commit his murder. Investigations were completed and police report (challan) was filed against respondents No.2 to 6 alleging commission of offences punishable under Sections 302,382, 120-B, 148 and 149 IPC.

The respondents No.2 to 6 were charged for the offences punishable under Sections 120-B, 148, 302 read with Section 149 and Section 392 IPC. They pleaded not guilty to the same and claimed trial.

The prosecution in order to establish its case, examined as many as thirteen witnesses; besides, tendered documents in

evidence and closed its evidence.

The statements of the accused in terms of Section 313 Cr.P.C. were recorded in which all the incriminating evidence appearing against them during the trial of the case was put to them. They denied the same and pleaded innocence.

In defence, the accused-respondents No.2 to 6 examined Daljit Singh as DW1 and Kartar Singh, Medical Laboratory Technician, Civil Hospital, Gurdaspur as DW2.

The learned Additional Sessions Judge, Gurdaspur after considering the evidence and material on record has convicted Pawan Kumar, Kuldip Singh, Lalit Kumar and Gurpreet Kaur (respondents No.3 to 6) for the offences punishable under Sections 120-B IPC and 302 read with Section 120-B IPC. However, Baljit Singh alias Sahbi (respondent No.2) has been acquitted.

As already noticed the acquittal of Baljit Singh (respondent No.2) only is to be considered. In this regard, learned counsel for the appellant has submitted that Karanbir Singh - child witness (PW8) had identified Baljit Singh alias Sahbi (respondent No.2) in Court. However, the learned trial Court has wrongly given benefit of doubt to him; besides, there is an extra judicial confession made by him before PW4 Vijay Kumar, Sarpanch of village Kunde Lalowal, which has also not been given due consideration and weightage. Therefore, the acquittal of Baljit Singh alias Sahbi (respondent No.2) is liable to be set aside and he is also liable to be convicted and sentenced.

We have given our thoughtful consideration to the matter.

The learned trial Court after considering the case in

respect of Baljit Singh (respondent No.2), has found his presence at the time of incident to be doubtful. It was held that the prosecution had failed to establish the identity of Baljit Singh (respondent No.2) beyond shadow of reasonable doubt. In fact presence of fourth accused at the spot was doubtful.

It is to be noticed that test identification parade in respect of the accused-respondents No.2 to 6 was conducted and complainant Davinder Singh (PW1) and Karanbir Singh child witness (PW8), during test identification parade identified Pawan Kumar, Kuldip Singh @ Kuldip and Lalit Kumar (respondents No.3 to 5). They, however, did not identify Baljit Singh (respondent No.2). There is no other witness examined to establish the presence or identity of Baljit Singh (respondent No.2) at the time of occurrence. However, Nishan Singh (PW2) and Vijay Kumar, Sarpanch (PW4) were examined to establish the involvement of Baljit Singh (respondent No.2) as well, in the murder of Paramjit Singh. The learned trial Court held that not much reliance could be placed on the statements of the said witnesses in view of the fact that the prosecution had failed to establish the presence or identity of Baljit Singh (respondent No.2) at the time of occurrence.

Nishan Singh (PW2) stated that on 25.2.2011, i.e. after the incident had occurred on 22.2.2011, he had gone to Hotel Dolphin, Mukerian. He came out of the hotel after taking his meal and then he noticed four persons, i.e. the accused (respondents No.2 to 6) changing the number plate of their car. The car was a white colour make 'A-Star'. He was known to the said persons earlier. They exchanged wishes at that time. The said persons were

conversing with each other that they had committed the murder of

one NRI Paramjit Singh near the storm water drain ('saem nala') near Gurudawara Sahib of Bibi Sundri. They had used the said car for that purpose and as such, they should change the number plate of the same and should leave the place where they were immediately. The said car was with the registration No.PB-08-8476. It was also stated by Nishan Singh (PW2) that all the said persons had earlier met him on 17.2.2011 in the same hotel. At that time, he was taking his meal on a separate table. On that day, they had exchanged their introduction with each other and the accused persons had disclosed their names as Baljit Singh, Pawan Kumar, Lalit Kumar and Kuldip Singh. He also identified all the accused present in Court.

It was noticed that the meeting of Nishan Singh (PW2) insofar as Baljit Singh (respondent No.2) was concerned, was not of much consequence as his identity had not been established during trial of the case. The complainant Davinder Singh (PW1) as also the child witness Karanbir Singh (PW8) had failed to identify respondent No.2 Baljit Singh during the test identification.

The other witness PW4 – Vijay Kumar, Sarpanch of village Kunde Lalowal stated that he was present in his house on 23.2.2011. At about 5:00 p.m., four persons namely Pawan Kumar, Lalit Kumar, Baljit Singh and Kuldip Singh came to his house on car bearing registration No.PB-08-BS-8476. They informed him (Vijay Kumar) that Paramjit Singh of his village had been murdered by them. Pawan Kumar further disclosed to him that he had illicit relations with Gurpreet Kaur wife of Paramjit Singh and that Paramjit Singh had come to know about that. Therefore, on account of the same, they had been hired for ₹3 lacs to commit the murder

of Paramjit Singh. They further stated before him that being Sarpanch of village, he (Vijay Kumar) had close proximity with the police officials and as such he should produce them before the police. Upon this, Vijay Kumar (PW4) told them that he had no time on that day and that they should come on the next day for the said purpose but they did not come to him on the next day. He identified the accused present in Court. On the next day, he had gone to village Tibri for some work and he informed the matter to the police, who recorded his statement.

The said statement of Vijay Kumar (PW4) is of not of much consequence insofar as Baljit Singh (respondent No.2) is concerned and would not in any manner go to establish the guilt of Baljit Singh alias Sahbi (respondent No.2).

The learned trial Court has recorded cogent and convincing reasons for acquitting Baljit Singh @ Sahbi (respondent No.2) and merely because another view could be taken would not be a ground to interfere with the same.

For the reasons recorded above, the appeal against acquittal of Baljit Singh @ Sahbi (respondent No.2) is dismissed summarily in terms of Section 384 Cr.P.C. However, nothing stated herein shall be construed as an expression of opinion in the appeals filed by respondents No.3 to 6 against their conviction and sentence and the same are to be considered on the basis of evidence and material on record. Besides, the learned counsel does not press for enhancement of sentence awarded to respondents No.3 to 6 as prayer for enhancement in terms of proviso to Section 372 Cr.P.C. would not be maintainable at the behest of a 'victim'. The prayer for award of compensation is also not pressed so as to enable

Karanbir Singh (PW8) to make necessary applications in this regard
in the pending appeals of the convicts – respondents No.3 to 6.

(S.S. SARON)
JUDGE

19.1.2016
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(GURMIT RAM)
JUDGE