

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

CRA-D-991-DB-2012

Date of decision:24.08.2016

Sukhwinder Singh

.....Appellant

Versus

State of Punjab

.....Respondent

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

Present: Mr. Manoj Kumar, Advocate
for the appellant.

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

GURMIT RAM, J.

This appeal is at the instance of aforementioned appellant (accused) Sukhwinder Singh against the judgment of conviction and order of sentence dated 01.08.2012 passed by the Court of learned Additional Sessions Judge, S.A.S. Nagar (Mohali) in criminal case bearing FIR No.70 dated 03.10.2008 under Sections 302, 201, 34 and 120-B of the

Indian Penal Code (“IPC” – for short), Police Station GRPS Sirhind, vide which the appellant-herein (accused) was held guilty for the offences under Sections 302 & 201, IPC and awarded sentences thereunder whereas his co-accused Kamaljit Kaur @ Jyoti was acquitted in this case by granting her benefit of doubt.

2. Precisely stated the prosecution case as projected before the learned trial Court was that on receipt of an information from HC Charanjit Singh, Incharge Assault Post GRP Kharar at Police Station GRPS Sirhind on 02.10.2008, SI/SHO Gian Chand along with SI Krishan Kumar and other police officials reached at the spot i.e. KM No.22/05 in between Railway Stations Kharar and Mohali, on 03.10.2008 at about 1:00 p.m. Aforesaid Charanjit Singh alongwith other police officials met him there. Spot inspection was initiated. Place of occurrence was in between Kharar and Mohali Railway Stations. The railway line was leading from northern to southern side and vice-versa. On the eastern side of this spot was Landran Town, whereas on its western side was village Swara. Alongwith railway line there was one *Kaccha* passage on the western side. Deadbody of an unknown sikh person in semi-burnt condition was found lying in this *Kaccha* passage with face downwards. Deceased was of 'fair complexion, conical nose, moderately built, about 5' 6/7" height, aged approximately 35/36 years, his head hair were burnt and beard open. He was wearing a shirt of cream colour and navy blue pant, one vest of white shabby colour and one pair of shoes (*Gurgabi*) of brown colour'. There were three cut wounds above his right ear caused by sharp edged weapon. Blood had oozed out from these wounds which was

present on his face. Blood in heavy quantity was also found lying on the ground. More than half of the front portion of the dead body was burnt, hands were also burnt. At the spot, prints of the motorcycle tyres were found and red chilli powder was also found scattered near the dead body. Towards the northern side of the deadbody, one motorcycle make TVS bearing chassis No.MD625MF5971N94105 and engine No.CF5N71051349 was found lying fully burnt in the fields at the distance of 4/5 hundreds yards. From the spot inspection, examination of the deadbody and other attending circumstances, it was found that an unknown sikh person had been murdered by some unknown persons by causing injuries with sharp edged weapon on his head. Thereafter, in order to conceal the evidence, the deadbody was set on fire by pouring oil on it. So the ruqa Ex.PA was sent to Police Station by SI/SHO Gian Chand, on the basis of which FIR Ex.PA/1 was registered at Police Station GRPS Sirhind with regard to present occurrence.

During investigation, the said unknown deceased person was identified as Gurcharan Singh s/o Dalip Singh r/o # 1559/2 Sector 30-B, Chandigarh. Inquest report in respect of deadbody was prepared. Postmortem on the deadbody was got conducted. One parcel containing clothes of deceased i.e. one shirt of cream colour bloodstained, one pant of navy blue colour, one vest of white shabby colour bloodstained in burnt condition alongwith one pair of shoe (Gurgabi) bearing soil was received from the doctor. Parcels of ash-cum-soil, burnt ash of iron parts of motorcycle, *dabbi* plastic containing red chilli powder and one *dabbi* plastic containing earth smeared with blood lifted from the spot were

prepared and sealed with seal bearing letters of "GC". Reports in respect of these parcels were received from the office of Forensic Science Laboratory, Chandigarh and Public Analyst, Punjab Food Laboratory, Chandigarh.

Then Joga Singh, brother of Gurcharan Singh (since deceased), got recorded his statement to the effect that Kamaljit Kaur @ Jyoti wife of Gurcharan Singh (since deceased) and her uncle (Massar) Sukhwinder Singh r/o Ambala used to make conversation several times with each other during day time for considerable long durations. Even both of them were also seen in some objectionable position. Joga Singh expressed suspicion that his brother Gurcharan Singh had been murdered by said Sukhwinder Singh in connivance with Kamaljit Kaur @ Jyoti wife of Gurcharan Singh (since deceased). Record of call details of phone numbers 98720-29962, 94644-72438, 94161-13751 and 99887-56054 with regard to the conversations which took place between Sukhwinder Singh and Kamaljit Kaur @ Jyoti were taken into police possession. Then from the statement of Balbir Singh, who was working as servant, at the shop of Gurcharan Singh (since deceased) situated at Badala Road, Kharar, it was found that one person of the description of Sukhwinder Singh came at the shop on 1.10.2008. At the time of incident, deceased was using mobile No.97799-23619 which connection was in the name of one Rajesh Verma s/o Satpal Verma r/o # 1391/2 Sector 22-B, Chandigarh. During further investigation, it was also revealed that on 02.10.2008, in the evening, conversation was made from STD No.98882-71593 Landran-Banur Road, bus stand, Tangori at phone No.97799-23619

and from phone No.98155-37444 Sirhind Road, bus stand Landran at abovesaid phone No.97799-23619 which was attended on both the sides by the caller and the person called. It was transpired on 2.10.2008 from evidence available at spot that Gurcharan Singh was murdered during night by 8/8:15 p.m. It was also found that Kamaljit Kaur @ Jyoti received a phone call on Phone No.99887-56054 during night time at about 10:52 p.m. from Phone No.97799-23619, which was with Gurcharan Singh and in this regard call detail record was taken into police possession. Then it was also found that on 03.10.2008 from STD phone No.0171-2600909, call was made at phone No.99887-56054 at about 04:12 a.m. which phone was with Kamaljit Kaur @ Jyoti wife of Gurcharan Singh (since deceased), since at that time she alone alongwith her mother-in-law Surjit Kaur was present in the house. Only she could tell about the caller who made call to her from abovesaid STD phone number.

On 12.04.2009, one Paramjit Singh s/o Swaran Singh r/o H. No.50, Palsaura, Chandigarh got recorded his statement before the police that Sukhwinder Singh accused, who was a builder had constructed his kothi and as such, he was having acquaintance with him. Said Sukhwinder Singh came to him on 11.04.2009 and during conversation he revealed that he was having illicit physical relation with the daughter of his sister-in-law namely Kamaljit Kaur @ Jyoti. Said Kamaljit Kaur @ Jyoti was married with Gurcharan Singh (since deceased) in the month of July, 2008. Earlier, they were in touch with each other through phone which was stopped since the phone was snatched from her. In-laws of Kamaljit Kaur @ Jyoti started harassing her due to her illicit relations with him. He

and Kamaljit Kaur @ Jyoti were considering Gurcharan Singh (since deceased) as an obstacle in their way. In order to remove this obstacle from their way, he and Kamaljit Kaur @ Jyoti connived with each other and called Gurcharan Singh at *Kaccha* path near railway line Landran on the pretext of providing him electricity fitting work as pre-planned on 02.10.2008 in the evening where he was killed after inflicting injuries on his head by an iron *Sabbal*. His dead body was set on fire. Motorcycle of deceased was also burnt at some distance therefrom in the heap of fodder. Now the police of GRP has been tracing him. He requested him to produce him before the Police and to save from the police torture since he is having good acquaintance with the police. On this, he called him at Gurudwara Shri Fatehgarh Sahib on 12.4.2009 at 8:00 A.M. where he did not come and as such he got recorded his statement.

In the light of the above statements of witnesses, call details' record and extra judicial confession, Sukhwinder Singh was named as an accused in this case who was apprehended in this case on 18.04.2009. During interrogation, he confessed 'that he was having illicit physical relations with Kamaljit Kaur @ Jyoti daughter of his brother-in-law (*Sandu*) Satnam Singh r/o Rajpura. Said Kamaljit Kaur @ Jyoti was married on 13.07.2008 with Gurcharan Singh, the deceased in this case and as such they both ceased to meet each other and their conversation on phone started which was also stopped later on. On this, he and Kamaljit Kaur @ Jyoti made a plan to eliminate Gurcharan Singh who was an obstacle in their way. Accordingly said Gurcharan Singh was called on the *Kaccha* path along side railway line leading from railway bridge made

on Chunni Landran road on 02.10.2008 in the evening on the excuse of providing him electricity fitting work and murdered him by inflicting injuries on his head. His deadbody was set on fire by using camphor. He took out mobile phone, voter identity card and sim of the mobile from the pocket of deceased Gurcharan Singh. Motorcycle was also set on fire in the heap of fodder at some distance from the spot where deadbody of Gurcharan Singh was burnt. He threw away the *Sabbal* (iron rod) which was used as weapon for murdering Gurcharan Singh in a vacant site alongside road while going back to Landran. Mobile, which he had taken out from the pocket of Gurcharan Singh (since deceased) he threw the same in Ghaggar river on the next date i.e. 03.10.2008. Further, he put voter card of Gurcharan Singh (since deceased) and phone sim in an envelope and had concealed the same in the shuttering works' shop of his father Kartar Singh at Ambala'. Thereafter, he got recovered the abovesaid voter card and sim No.89910-20208,10823-6586 of mobile No.98720-29962 as per his disclosure statement, which were taken into police possession vide a memo.

On 21.04.2009, accused Sukhwinder Singh was made to stand amongst some persons whose description was identical to Sukhwinder Singh and then his identification was got made from Manpreet Singh, Savinder Singh and Balvir Singh separately, who identified accused Sukhwinder Singh. Statements of witnesses were recorded. Offence under Section 120-B, IPC, was added in this case. Kamaljit Kaur @ Jyoti was also named as an accused in this case. Initially, she was absconding and PO proceedings were initiated against

her. On the completion of investigation, challan against accused Sukhwinder Singh was presented before learned Illaqa Magistrate. Later on accused Kamaljit Kaur @ Jyoti was also arrested in this case. On the completion of investigation, challan against her was also presented in the Court of learned Illaqa Magistrate, who after making compliance of the provisions of Section 207 of the Code of Criminal Procedure ("Cr.P.C." - for short) committed this case to the Court of learned Additional Sessions Judge, Mohali.

3. Finding a prima facie case punishable under Sections 302, 201 and 120-B, IPC, against both the accused, they were charge-sheeted accordingly vide order dated 07.04.2010 by the learned trial Court, to which, they pleaded not guilty and claimed trial.

4. During trial, prosecution examined 27 witnesses in all to prove the guilt of the accused.

5. On the closure of the prosecution evidence, both the accused were duly examined as required under the provisions of Section 313, Cr.P.C. The entire incriminating evidence as came on record during trial of the case against them was put to them, which they denied entirely. Further, accused Sukhwinder Singh took the plea that accused Kamaljit Kaur @ Jyoti was like his daughter. He was not having any illicit relations with her. He has been implicated in this case falsely by PW Sharanjit Kaur in connivance with her husband Joga Singh since they wanted to grab the property of deceased Gurcharan Singh i.e. house of Chandigarh. Accused Kamaljit Kaur @ Jyoti also took the same very plea in her statement recorded separately. Further both of them pleaded their

innocence.

6. In their defence, they also examined three witnesses.
7. The learned trial Court after hearing the learned counsel for both the parties and perusing the record as well, acquitted accused Kamaljit Kaur @ Jyoti by granting her benefit of doubt, whereas accused Sukhwinder Singh was held guilty for the offences punishable under Sections 302 & 201, IPC and awarded him sentences as narrated below:-

Sukhwinder Singh	302, IPC	Imprisonment for life alongwith fine of ₹10,000/-.	In default of payment of fine, the convict shall undergo rigorous imprisonment for a further period of six months.
Sukhwinder Singh	201, IPC	Rigorous imprisonment for three years alongwith fine of ₹3,000/-.	In default of payment of fine, the convict shall undergo rigorous imprisonment for a further period of one month.

Both the substantive sentences were ordered to run concurrently.

8. Appellant-herein (accused) being not satisfied with the impugned judgment of conviction and order of sentence has come up with the instant appeal, notice of which was given to the respondent-State. Record of learned trial Court was also requisitioned.
9. Learned counsel for both the parties were heard. Record was also analyzed minutely with their eminent assistance.
10. The learned counsel for the appellant-herein (accused) has

contended that the extra judicial confession allegedly made by the appellant-herein (accused) before Paramjit Singh (PW-9) was the main plank of the prosecution evidence in order to prove the complicity of the appellant-herein (accused) in the commission of the alleged crime in connivance of Kamaljit Kaur @ Jyoti -accused (since acquitted) in this case. Herein the learned counsel for the appellant-herein (accused) has pointed that the extra judicial confession allegedly made by appellant-herein (accused) before PW-9 has no element of truth as it was made as per prosecution version before him on 11.04.2009 i.e. after a gap of more than 6 months from the date of alleged occurrence. It is further his contention that such like extra judicial confession has no substance for its reliability and is liable to be rejected on the face of it. But as per prosecution version, appellant-herein (accused) suffered alleged confessional statement before this witness on 11.04.2009 who advised him to come on 12.04.2009, but he (accused) did not turn up as agreed. Thereafter, this witness got recorded his statement before the police to that effect on the same very day without any delay. So it is not a case in which the alleged confessional statement was made before any person and that person waited for months together in making statement in this regard before the police on the failure of the accused to turn up as agreed. So for this reason, this contention of learned counsel for the appellant is held to be not tenable.

11. With regard to the testimony of PW9, the learned counsel for the appellant – herein (accused) has also contended that this PW did not support the prosecution version while appearing in the Court and as such

he was declared hostile and that accused Kamaljit Kaur @ Jyoti was acquitted by learned trial Court while discarding the testimony of this witness. Once this lady was acquitted by disbelieving the testimony of this witness, so a serious chink was caused in the prosecution version as alleged, the benefit of which was certainly to be extended to the appellant-herein (accused) also and learned trial Court has committed a grave error by not extending this benefit to this appellant.

Now let us see the testimony of this witness in order to appreciate the weightage of above contention of learned counsel for the appellant.

His testimony in brief as PW-9 was to the effect that he got repaired his house from Sukhwinder Singh-accused present in the Court who was a contractor for building houses. Accused-Sukhwinder Singh came to him on 11.04.2009 and told him that he had committed the murder of Gurcharan Singh and requested him to produce him before the police since he (PW-9) was having acquaintance with the police. He also revealed him that he had some relation with some lady without disclosing her name. This witness gave him time to see him near Gurudwara Jyoti Sarup Fatehgarh Sahib on 12.04.2009 in the morning who did not turn up. Thereafter, he got recorded his statement Ex.PW9/A before the police in this regard which he admittedly had made to the police. This witness was declared hostile and during his cross-examination made by learned Public Prosecutor, the remaining part of his abovesaid statement Ex.PW9/A was put to him in small portions such as regarding the illicit relation of appellant-herein (accused) with that of

Kamaljit Kaur @ Jyoti, regarding the conspiracy part alleged to be made between appellant and said Kamaljit Kaur @ Jyoti, the manner in which Gurcharan Singh was murdered by calling him as per pre-plan as well as regarding the complicity of accused-Kamaljit Kaur @ Jyoti (since acquitted) in the commission of murder of her husband-Gurcharan Singh. In answer to all these questions, his simple reply was that he did not remember as to whether he had made such disclosures to the police or not. In other words he did not deny specifically as to whether he had made such disclosures to the police.

So the above discussed statement of PW-9 is held to be up to the mark to establish the fact that appellant-herein (accused) had made alleged extra judicial confession before this witness regarding his involvement in the commission of alleged crime and his statement to the extent above discussed can be validly used in order to prove the guilt of the appellant-herein (accused) in this case. So the learned trial Court was justified in relying upon the statement of this witness in order to hold appellant-herein (accused) guilty in this case since it is the primary duty of Court to separate grain from the chaff and further to find out as to whether the grain separated from the chaff is suffice to prove the involvement of the accused concerned in the commission of alleged crime or not.

12. The learned counsel for the appellant has further pointed out about the inconsistency between the ocular version which had come on the record during trial with regard to the injuries allegedly caused to the deceased and the medical version. Herein he has contended that as per prosecution version, the appellant-herein (accused) suffered disclosure

statement Ex.P13/A disclosing various incriminating facts inter alia that he caused injuries to deceased on his head with an iron *Sabbal* in committing his murder. As per his disclosure statement, he threw away this *Sabbal* on one side of the Sirhind Landran road after committing the crime. Later on he got demarcated this place as per his said disclosure statement and the memo prepared in this regard was Ex.PW13/D, though recovery of *Sabbal* was not affected.

Then he also contended that as per ruqa Ex.PA, SI/SHO Gian Chand detected three injuries above the right ear of the deceased when he initially examined his deadbody.

Then regarding medical version, he has submitted that during post-mortem on the deadbody of the deceased, the injuries which were found by PW-2 Dr. Arvindo were as under:-

- “1. *Lacerated wound right temporo parietal region 12 cm x 3 cm, 5 cm above right pinna. Bleeding was present.*
2. *Lacerated wound left fronto parietal region 2.5 cm x 2 cm, 7 cm above left eye brow. Bleeding was present.*
3. *Lacerated wound parietal region (middle) 3 cm x 2.5 cm, 10 cm above right eye brow.*
4. *Fracture right temporal bone.*
5. *Fracture left frontal bone and fracture parietal bone.*
6. *Incised (stab) wound right side chest, lateral aspect 3 cm(L) x 2 cm (B) x 8 cm (D) 15 cms below right arm pit.*
7. *Incised (stab) wound right side chest lateral aspect 2 cm (L) x 1 cm (B) x 3.5 cm (D) 17 cms. below arm pit.*

8. *Grazed abrasion left arm (middle).*

9. *Superficial to deep burns present (post mortem burns).*

9-A Face burnt; 9-B superficial burns were present over right arm; 9-C superficial burns were present over left arm; 9-D left forearm deep burns present and left hand fully burnt; 9-E superficial burns present over chest; 9-F deep burns present over whole abdomen with viscera protruding out and burnt; 9-G right thigh deep burns present with underlying bone exposed; 9-H right lower leg superficial to deep burns present; 9-J left leg deeply burnt with underlying bone exposed”.

Further this witness proved the carbon copy of postmortem report of the deceased as Ex.PW2/A and the pictorial diagram showing seats of injuries as Ex.PW2/B. Then, as per his opinion Ex.PW2/D, the injuries No.1 to 5 were caused by the blunt weapon and injuries No.6 and 7 were caused by sharp edged weapon. Then, as per his further opinion, cause of death in this case was due to injuries No.1 to 5 causing injuries to vital organ i.e. Brain and injury No.6 causing injuries to another vital organ i.e. Right lung. The remaining injuries as per the record were on account of burns.

Injuries No.1 to 5 as per above discussed statement of PW-2 were caused by blunt weapon and these injuries were also found as per skigram Ex.PW2/B on both sides of head of deceased and hence it justified the fact that the alleged injuries were caused to deceased with

blunt weapon like *Sabbal*.

PW-24-Gian Chand, Inspector Retd., the then SI-SHO, P.S. G.R.P, Sirhind could not have noticed the remaining injuries on the person of deceased other than the injuries above his right ear, when he checked dead body firstly for the reason that more than half portion of the deadbody of deceased was found charred which particularly included the frontal portion. The remaining injuries found on the dead body of deceased as abovesaid were on account of burns. Moreover, in this case there was no eye-witness account with regard to injuries allegedly caused to deceased. So, there is nothing on the record to accept the above contention of the learned counsel for the appellant-herein (accused) that the ocular evidence/version is not corroborating with the medical version with regard to injuries found on the person of deceased.

13. Learned counsel for the appellant has further argued that as per prosecution version, deceased was last seen in the company of the appellant-herein (accused) which fact the prosecution has miserably failed to establish on the record since the material witness in this regard namely Shawinder Singh-PW-4 could not identify the Sikh gentleman with whom the appellant-herein (accused) had allegedly accompanied on his motorcycle.

As per the prosecution case, this witness at the relevant time was running a STD bearing No.98155-37444 at Sirhind road, Landran bus stand. He deposed to the effect that on 02.10.2008 at about 6 to 7 p.m., one Sikh gentleman made a telephone call from his STD to phone No.97799-23619 for calling somebody. After sometime a back call was

received from the opposite side which was attended by the said Sikh gentleman. After sometime one Sikh gentleman came on motorcycle and the Sikh gentleman who had made a phone call from his STD boarded the said motorcycle and went away. Further he identified the accused present in the Court as the person who had given a call from his STD. But he failed to identify the said motorcyclist due to dark little bit at that time.

Then this witness was also declared hostile and cross-examined by the Public Prosecutor. During his cross-examination at his hand, he admitted that his statement Ex.PW4/A was recorded by police. Whatever he stated before the police at that time was narrated correctly. Then he also admitted that at 7/7.15 p.m. a phone call was received from phone No.97799-23619 which was attended by the accused. Then he also admitted that accused had told that person called to reach at the earliest as he was waiting for him on the road. Then thereafter the accused stood in front of his shop and started waiting for someone. Then it was also admitted that after boarding the motorcycle, both of them proceeded towards Chunni. Then in his cross-examination made on behalf of accused-Sukhwinder Singh, it came on the file that this witness identified this accused just for the reason that he stayed there for some time while waiting for his back call. So from the above discussed statement of PW-4 it is summed up that this witness succeeded to identify the appellant-herein(accused), but failed to identify the person (motorcyclist) with whom the accused had accompanied on his motorcycle. Then it is also established from his statement that on 2.10.2008 at about 6/7:00 p.m., accused had made a phone call from his (PW-4) STD to phone No.97799-23619 and further a

call was received back from this number at his abovesaid STD which was attended by accused. Now the record of call details which the prosecution had brought on the file during trial of the case is to be seen as to whether the same has any kind of nexus with abovesaid phone call made by appellant-herein (accused) to phone No.97799-23619 or not.

PW-5 Manpreet Singh was running a STD vide No.99882-71593 in his shop of general store. His statement was to the effect that on 02.10.2008 at 6:00 p.m. one Sikh gentleman who resembled the accused present in the Court came to his shop and he had given a phone call from his STD at phone No.97799-23619. Further, he identified accused at Fatehgarh Sahib out of many people to be the person who had given a phone call from his STD on 02.10.2008.

PW-10 Gurinderpal Singh, SDE(CC), BSNL Headquarters Punjab, Circle Office, Sector 49, Chandigarh produced original record in respect of phone No.94173-23619 which was stated to be issued in the name of Gurcharan Singh, deceased in this case and proved the photocopy of its allotment letter as Ex.PW10/A. Then he also produced the original record pertaining to allotment of phone No.94644-72438 and proved its computerized details as Ex.PW10/B being prepared in due course of computer functioning. Further, he also proved the call details of this number for the period 01.01.2008 to 15.10.2008 as Ex.PW10/C being prepared on computer in due course, automatically, without any addition or alteration. Then this witness also proved the call details record in respect of phone No.94161-13751 w.e.f. 01.01.2008 to 15.10.2008 including SMS's prepared on computer in due course automatically as

Ex.PW10/D. As per his statement, the record of said call details was sent to the office of ADGP (Intelligence) Punjab, Chandigarh as per his request letter Ex.PW10/E.

PW-14 Prabhakar Singh, JTO, BSNL Office, Ambala Cantt. produced the original record pertaining to mobile No.94161-13751 issued in the name of Sukhwinder Singh, the accused of this case. He also proved the call details of this number as Ex.PW10/D stated to be correct and automatically recorded in the server installed at Chandigarh for whole of the north zone.

PW-17 Ajay Kumar stated to the effect that he was having a mobile No.98154-99939 and on 02.10.2008, he had a talk with Gurcharan Singh at about 10/11 a.m. on his mobile, the number of which he did not remember at present, who told him that motor of his exhaust-fan was not repairable and as such the same was to be replaced altogether. On the same day, the said Gurcharan Singh came to his house at about 05:30 p.m. to collect money for the purchase of new fan and in the meantime, he received a phone call who thereupon left the work and left his house after about half an hour on the plea that he had to receive his relation. Then this witness was also declared hostile and during his cross-examination by the learned Public Prosecutor 'he disclosed the mobile number of Gurcharan Singh as 97799-23619 on which he had a talk with him from his mobile No.98154-99939. Then it also came in his cross-examination that after talking on telephone Gurcharan Singh told him that he had to receive the relation of his wife. Then he also admitted that Gurcharan Singh was talking to his wife that her *Masar*-Sukhwinder Singh was

waiting for him at Landran bus stop for providing him work of electricity fitting. Then he also admitted that deceased was also talking to his wife that after looking at the work with Sukhwinder Singh he would come late at night. After having this talk with his wife, Gurcharan Singh immediately left his house'. So in the cross-examination made by learned Public Prosecutor, this witness had supported the version of prosecution qua which he was cited as a witness in this case.

PW-18 Kultar Singh was also running a STD-PCO at Railway Station Ambala Cantt. vide phone No.0171-2600909 in the year 2008. He stated that on 03.10.2008 at about 4/4:15 a.m., accused present in the Court had given a phone call from his STD on Mobile Phone No.98887-56054.

PW-19 Rajesh Verma, who was working as a Head-constable in Computer Wireless Punjab, Police Headquarters, Sector 9, Chandigarh, got done the work of electricity fitting in his house from Gurcharan Singh (since deceased). He got issued connection of Mobile Phone No.97799-23619 in his name and further handed over the same to said Gurcharan Singh for its use. This mobile phone number was being used by said Gurcharan Singh, who used to pay its bill.

Then PW-21 SI Avtar Singh, Incharge Crime Cell, G.R.P., Patiala deposed to the effect that he received letter dated 06.10.2008 from SHO PS GRP Sirhind to get the record of call details in respect of phone numbers 98720-29962, 97799-23619, 98155-37441, 99887-56054, 99887-71593 and 94173-23619. On receipt of necessary information from the office of ADGP (Intelligence), Punjab, Chandigarh vide letter

Ex.PW21/A, he sent the record of call details in respect of the said phone numbers which was in the shape of one CD Ex.PW11/B to the SHO, P.S. G.R.P., Sirhind. Further, he also sent the record of phone calls in shape of CD Ex.PW21/B in respect of phone No.94644-72438 and 94161-13751 to the SHO, G.R.P. Sirhind on receipt of necessary information from the office of said ADGP (Intelligence), Punjab, Chandigarh. Further, he also sent the call details' record in respect of phone Nos.93554-56211 and 99961-60569 to SHO, G.R.P., Sirhind on receipt of the requisite information from the office of ADGP (Intelligence), Punjab, Chandigarh. Information with regard to SIM No.8991020208108236586 as well as tower Nos.1882, 17003, 17002, 1433 and 1732 was also supplied to SHO, P.S., GRP Sirhind on the basis of his request letter on receipt of the same from the office of above said ADGP.

PW-25 Damandeep Singh, Nodal Officer, Vodafone, Mohali produced the record with regard to Mobile Nos.99887-56054 and 99882-71593. As per his statement, the said phone No.99887-56054 was allotted in the name of Sharanjit Kaur wife of Joga singh r/o H. No.1559/2, Sector 30-B, Chandigarh, whereas phone No.99882-71593 was in the name of Manpreet Singh s/o Labh Singh r/o Village Bhago Majra, Tehsil Rajpura, Distrcit Patiala. Further, he proved the record of call details in respect of said Mobile No.99882-71593 for the period 01.09.2008 to 02.10.2008 as Ex.PW25/A and phone No.99887-56054 for the period 01.09.2008 to 15.11.2008 as Ex.PW25/B. This record of call details was stated to be correct print out of the computerized record having no manual intervention in it.

PW-27 Debo Chakravartty, Nodal Officer, Bharti Airtel Ltd. Chandigarh produced the original record of mobile No.98720-29962 of the year 2008 issued in the name of Gurcharan Singh (since deceased) in this case. SIM number of this mobile phone number was 8991020789673216203F. Ex.PW27/C was the record pertaining to this mobile phone calls for the period 15.07.2008 to 02.10.2008. Further, this witness also produced original record with regard to mobile No.97799-23619 which was stated to be issued in the name of Rajesh Verma r/o H. No.1391/2, Sector 22-B, Chandigarh, who was working as Constable in Punjab Police. The record of call details of this mobile phone number w.e.f. 01.09.2008 to 02.10.2008 was Ex.PW27/A. Then this witness also produced the record of mobile No.98155-37444 allotted in the name of Shawinder Singh s/o Gurdev Singh of village Landran and proved the record of call details of this mobile number from 01.09.2008 to 02.10.2008 as Ex.PW27/B. Then these call details were stated to be correct print out of computer data fed in the computer of Airtel company automatically without any addition or alteration. Ex.PW21/D was stated to be tower location of relevant towers.

14. From the perusal of abovesaid record of call details of mobile phone No.94644-72438 Ex.PW10/C and of mobile phone No.94161-13751 Ex.PW10/D both of period from 01.01.2008 to 15.10.2008, it is transpired that Kamaljit Kaur @ Jyoti accused (since acquitted) in this case and Sukhwinder Singh, appellant – herein (accused) were in constant touch with each other through conversation on aforesaid mobile numbers. They were making frequent calls to each-other daily or

alternatively, some of which are of long durations, even more than 10 to 15 minutes. Then it is also established on the record from above discussed testimony of PW10 Gurinderpal Singh S.D.E. that mobile No.94644-72438 abovementioned was issued in the name of Kamaljit Kaur @ Jyoti daughter of Satnam Singh r/o H. No.127, Dhakansu Kalan Part-I, Guru Teg Bahadur Nagar, Rajpura, District Patiala, who as per prosecution version was later on married to Gurcharan Singh (since deceased). Then it was also established as per statement of PW-14, Prabhakar Singh JTO, that abovesaid mobile No.94161-13751 was issued in the name of Sukhwinder Singh s/o Kartar Singh r/o Ambala City i.e. appellant-herein (accused).

Then as above discussed, the appellant-herein (accused) made a phone call from STD-PCO No.0171-2600909 situated at railway station Ambala Cantt. on 03.10.2008 at phone No.99887-56054 in the morning at about 4/4:15 a.m. as had come on record in the above discussed statement of PW-18, Kultar Singh.

Then from the perusal of record of call details in respect of mobile phone No.99887-56054 Ex.PW25/B, it is found recorded in it that a phone call from No.0171-2600909 was received at this mobile number on 03.10.2008 at 04:12 a.m. This entry corroborates with the above statement of PW-18 that the accused had made a call from his STD No.0171-2600909 at phone No.99887-56054 on 3.10.2008 early in the morning. Then it also came on the record that deceased was using mobile phone No.97799-23619 at the time of alleged occurrence and this mobile as per prosecution case was taken away by the appellant-herein (accused) after committing his murder. Then as per record of call details of mobile

phone No.99887-56054 Ex.PW25/B, a phone call made from mobile phone No.97799-23619 was also received at phone No.99887-56054 on 02.10.2008 at about 10:52 p.m. Then it also came in the statement of PW-06 Sharanjit Kaur that Kamaljit Kaur @ Jyoti was also using Mobile No.98720-29962 which was arranged for her by her husband Gurcharan Singh (since deceased). The record of call details of this phone number has come on record in the statement of PW-27 as Ex.PW27/C which was stated to be issued in the name of Gurcharan Singh. Then from the perusal of the record of call details Ex.PW27/B it is found that a phone call was received at phone No.97799-23619 which the deceased was allegedly using at the time of incident from telephone No.98155-37444 on 02.10.2008 at 6:52 p.m. and its duration was of 102 seconds. Then from mobile phone No.97799-23619 a back call was received at abovesaid phone No.98155-37444 on the same day at 7:19 p.m. Then as above discussed, it came in the statement of PW-4 Shawinder Singh that he was running STD bearing No.98155-37444 at Sirhind road Landran and from his STD, accused had made a call to someone at mobile phone No.97799-23619 on 02.10.2008 at about 6/7 p.m. So the above discussed record of call details corroborates the prosecution version that appellant-herein (accused) had called the deceased on 02.10.2008 at about 6/7 p.m on the plea of providing him some electricity fitting work, which followed the alleged occurrence.

15. The remaining evidence of prosecution was as under:-

PW-3 HC Charanjit Singh was posted as In-charge Assault Post, GRP Kharar on 02.10.2008. On receipt of information from District

Police that deadbody of a person was burning near kilometer 22/05 on Kharar Mohali railway line, at kaccha path, he went to that spot and further telephonically informed in this regard to SHO GRPS Sirhind. Thereupon PW-24 Gian Chand (Inspector Retd.) the then SI/SHO, GRPS Sirhind reached at the spot and prepared the site plan Ex.PW24/A after inspecting the spot. On examining the deadbody of deceased and other circumstances appearing at the spot, he sent ruqa Ex.PA to police station on the basis of which FIR Ex.PA/1 was recorded by PW1 HC Amrit Pal Singh. From the spot, he took into possession bloodstained earth, burnt clothes and red chilli powder vide memo Ex.PW3/B after converting the same into different parcels duly sealed with the seal bearing impressions 'GC'. Then he also took into possession ash and motorcycle parts from the spot after converting the same into parcels duly sealed with the seal of 'GC' alongwith the motorcycle vide memo Ex.PW3/C. He also prepared the inquest report of the deadbody of the deceased Ex.PW24/B. Then he got conducted post-mortem on the deadbody of deceased vide his application Ex.PW2/C. Then he also proved memo Ex.PW24/D vide which clothes of deceased after the post-mortem were taken into possession after preparing the parcels thereof alongwith shoes. Further he proved the abovesaid parcels of bloodstained earth Ex.P1, parcel containing clothes taken from the spot Ex.P2, ash of motorcycle parts Ex.P3, motorcycle parts Ex.P4, motorcycle Ex.P5, clothes of deceased after post-mortem Ex.P6 and pair of shoes Ex.P7 and Ex.P8. Then he also proved the memo Ex.PW24/F vide which five marriage photographs produced by Joga Singh were taken into police possession. Then he was

transferred from this police station.

Further investigation of this case was conducted by PW-26 Inspector Krishan Kumar. In the initial investigation of this case, he joined the police party headed by PW-24, the then SI/SHO GRPS Sirhind. He moved application Ex.PW7/A at the instance of PW24 to the concerned registration and licensing authority in order to ascertain the ownership of the motorcycle in question, upon which report Ex.PW7/B was made by the said office that Gurcharan Singh, the deceased in this case, was the owner of this motorcycle which was bearing registration No.CH04-E-5771. Then during investigation of the case, it was also learnt that Gurcharan Singh (since deceased) was having mobile Nos.97799-23619 and 94173-23619. He recorded statement Ex.PW9/A of Paramjit Singh on 12.04.2009 correctly without any addition or alteration vide which appellant-herein (accused) had allegedly confessed his guilt before said Paramjit Singh (PW9). Then he apprehended accused Sukhwinder Singh on 18.04.2009 vide memo Ex.PW26/A. Then during interrogation, this accused suffered disclosure statement Ex.PW13/A on 20.04.2009 and further disclosed about the manner in which the crime was committed and the concealment of voter card of Gurcharan Singh (since deceased) and the SIM of mobile phone no.98720-29962 in the shuttering works' shop of his father. Thereafter, he led the police party on Rajpura-Ambala road at the bridge of Ghaggar where he had thrown the mobile hand set of deceased on 04.10.2008. Rough site plan prepared in this regard was Ex.PW26/C and memo prepared regarding pointing out of this place was Ex.PW13/B. Then he led the police party to the shop of his

father and got recovered voter I-card Ex.P9 and SIM Ex.P10 of abovesaid mobile number from the place of concealment and the same were taken into police possession vide memo Ex.PW13/C. Rough site plan prepared with regard to place of this recovery was Ex.PW26/D. Then he led the police party to the area of Landran where he had thrown *Sabbal* used in the crime and pointed out the place. Rough site plan Ex.PW26/E in this connection was prepared and the memo prepared in this connection was Ex.PW13/D. Then he also led the police party to the place of occurrence by pointing out that place, rough site plan of which Ex.PW26/F was prepared and the memo prepared in this regard was Ex.PW13/E. Then he also pointed out the place where he burnt the motorcycle of the deceased. Rough site plan Ex.PW26/F in this regard was prepared. Then on 21.04.2009, he (PW26) summoned the owners of the STDs from where the accused had given the phone calls in question, in the police station where the accused was made to sit in many people and his identification was got done from Manpreet Singh (PW-5), Shawinder Singh (PW4) and servant Balbir Singh (PW12) who pointed him out to be the person who had made phone calls from their STDs. He recorded statements of witnesses and on the completion of investigation, challan was presented in the Court.

PW-6 Sharanjit kaur w/o Joga Singh stated to the effect that Gurcharan Singh who was brother of her husband was married to Kamaljit Kaur accused (since acquitted) on 13.07.2008. Then she also stated that Kamaljit Kaur @ Jyoti was using Mobile No.98720-29962 which was taken back from her by her husband due to some suspicion. Then she started using Mobile phone No.94644-72438 which she was using even

prior to her marriage. Then it was further in her statement that when Gurcharan Singh became suspicious about the character of his wife Kamaljit Kaur @ Jyoti, then he got back her this mobile phone also. Thereafter mobile phone No.99887-56054 which was in her name was kept in the house for the use of all the family members. It was further in her statement that on 02.10.2008, she alongwith her husband and children was away to Jagadhari to attend the marriage of her sister and the abovesaid mobile phone No.99887-56054 was left with Kamaljit Kaur @ Jyoti. On 03.10.2008 at about 1/1:30 a.m., accused Kamaljit Kaur gave a call to her husband Joga Singh that Gurcharan Singh had not come back to the house upon which her husband Joga Singh immediately rushed back to Chandigarh, whereas she alongwith her children returned on the next day in the morning. It was further in her statement that Gurcharan Singh was killed by Kamaljit Kaur @ Jyoti in connivance with Sukhwinder Singh accused in order to protect her illicit relations with him by eliminating Gurcharan Singh who was taken as a hindrance in their said relations.

The learned counsel for the appellant has contended that statement of this witness was recorded by police in the month of March 2009 i.e. after a gap of more than 5 months from the date of alleged occurrence and as such it is not safe to rely upon her statement. Then it is further his contention that when this witness found Kamaljit Kaur-accused in objectionable position with accused Sukhwinder Singh, then this matter was not reported to the police nor any Panchayat was convened in this connection. But it is a fact that in our society if the lady member of any family is found to be having illicit relations with somebody, the same is generally kept

concealed with the motive to solve the same by way of persuasion of that lady member of the house not to indulge in such like activities. Then it is also to note that Kamaljit Kaur @ Jyoti was daughter of real sister-in-law of accused Sukhwinder Singh. Meaning thereby both the parties were also related to each other by way of said relation. So the above plea of learned counsel for the appellant does not hold any water.

PW-8 Harpreet Singh deposed to the effect on 02.10.2008 Balbir Singh and his nephew Gurpreet Singh told him 'that information had been received from one Swarn Singh @ Kala that fodder has been set on fire in the fields of his brother Jaspal Singh. Thereupon, they both went to that spot on motorcycle where they saw a deadbody burning by the side of railway line on *Kaccha* path. When they saw their fodder burning, there they found one motorcycle was also burning. Thereafter, they came back and informed him in this regard'. On this, this witness informed the police of PP Mazat and also called Mohan Singh, the husband of lady Sarpanch of the village and one member Panchayat.

PW-11 Jagjit Singh was running a Studio near Gurudwara Singh Sahidan. On 03.10.2008, he was called at the spot by the Police of GRP Kharar. He took photographs of the spot and prepared one CD of said photographs which was Ex.PW11/A and photographs Ex.PW11/1 to Ex.PW11/7.

PW-12 Balbir Singh was employed in the shop of Gurcharan Singh (since deceased) in the year 2008 which dealt with electrical goods. His statement was to the effect that about 2 days prior to the occurrence, the accused came to the shop and inquired about Gurcharan Singh on the

pretext to provide him (Gurcharan Singh) some electrical work at Landran road. Accused also told him that he was *Masar* (uncle) of wife of Gurcharan Singh.

PW-13 HC Sanjeev Kumar was one of the members of the police party headed by SI Krishan Kumar (PW-26) during investigation of the case. He corroborated the above discussed statement of PW-26 and as such there is no need to discuss his statement in detail in order to avoid repetition.

PW-15 Karam Singh, Patwari proved the scaled site plan Ex.PW-15/A which he prepared on the spot of occurrence on 05.03.2009 at the instance of SI Krishan Kumar.

PW-16 Ashok Kumar, JE of Railway Department also proved the scaled site plan Ex.PW16/A of the spot of occurrence which he prepared after visiting the spot on 16.03.2009.

PW-20 Gurnam Singh, Photographer, took photographs of the post-mortem proceedings on the deadbody of deceased at the asking of Dr. Arvind Mitra, Civil Hospital, Kharar on 03.10.2008.

PW-22 HC Taj Mohd. and PW-23 HC Charan Dass were the formal witnesses in this case and they tendered their duly sworn affidavits Ex.PW22/A and Ex.PW23/A as a part of their respective statements.

16. Regarding defence version, DW-1 Joginder Bali, Municipal Councillor of Ambala City stated that accused Sukhwinder Singh is working as a carpenter and lives quite peacefully like a gentleman without breaking any law. But in his cross-examination he stated that he does not know if said Sukhwinder Singh is an accused in the murder case of

husband of his co-accused Kamaljit Kaur @ Jyoti.

DW-2 Gurdeep Singh stated that accused Kamaljit Kaur @ Jyoti is the daughter of his brother who expired about 7/8 years ago. Mother of Kamaljit Kaur @ Jyoti had been making representations regarding false implication of her daughter in this case. But neither any record of such representations was produced at any point of time nor mother of accused Kamaljit Kaur @ Jyoti dared to step into witness-box to substantiate this plea.

DW-3 Gurmeet Kaur, Handwriting and Finger Print Expert proved her report Ex.DW3/B. As per her statement, she examined disputed signatures of Kamaljit Kaur @ Jyoti in Gurmukhi marked as Q1 to Q6 from application form for pre-paid cell cash card connection of BSNL dated 9.4.2008 and compared the same with specimen signatures of Kamaljit Kaur @ Jyoti marked as S1 to S3 and came to the conclusion that disputed signatures marked Q1 to Q6 are not of the same person who wrote specimen signatures marked S1 to S3. But it is difficult to believe her report on the ground that application form for pre-paid card connection of BSNL on its receipt after required processing is kept in the proper custody. There is no reason to believe as to why the officials of BSNL in connivance with somebody will prepare said record by way of forgery and fabrication.

17. Then abovesaid prosecution witnesses i.e. PW4, PW5, PW10, PW14, PW18, PW21, PW25 and PW27 who produced the record with regard to call details in question and who were the owners of the STDs from where accused had given the disputed calls were independent

witnesses and they had no axe to grind to depose against the accused either for any consideration or any ulterior motive. Then these witnesses also stated that record of call details produced by them are the correct print out of the data fed into their computers automatically, without any alteration or addition as well as manual intervention. They stated all these facts in the Court on oath and were also duly cross-examined by learned counsel for the accused. So the purpose of the provisions of Section 65-B of the Indian Evidence Act has also been duly achieved even if no certificate of the competent authority as required under this section is annexed to the record of these call details.

18. Then injuries No.6 and 7 as depicted in the post-mortem report Ex.PW2/A of the deceased, these were caused by the sharp edged weapon. The investigating agency did not make any effort to probe this fact of this case nor any attempt was made to recover the sharp weapon in question vide which the said injuries No.6 and 7 were caused to deceased. Faulty or partial investigation of any case on the part of Investigating Officer does not make out any ground in favour of the accused to grant him benefit of doubt.

19. In the light of above discussion, this appeal stands dismissed being meritless. Resultantly, judgment of conviction and order of sentence under appeal are upheld.

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

24.08.2016
Gaurav Sorot/Brij

(T.P.S.MANN)
JUDGE

(GURMIT RAM)
JUDGE

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|----|------------------------------|--------|
| 1. | Whether reportable? | No/Yes |
| 2. | Whether reasoned / speaking? | No/Yes |