

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

**CRA-S-853-SB of 2004.
Date of Decision: 06.09.2016.**

KARNAIL SINGH

....APPELLANT.

VERSUS

STATE OF PUNJAB

....RESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Bipan Ghai, Senior Advocate with
Mr. Paras Talwar, Advocate for the appellant.

Mr. Surjeet Singh Chaudhary, Deputy Advocate General,
Punjab.

SNEH PRASHAR, J.

This appeal was preferred by appellant Karnail Singh, assailing the judgment of conviction and order of sentence dated 31.03.2004 recorded by learned Additional Sessions Judge (Adhoc) Fast Track Court, Patiala, in case bearing First Information Report No.26 dated 11.03.2002 registered at Police Station Bhadson vide which he (appellant) was convicted and sentenced to undergo Rigorous Imprisonment for 10 years and to pay fine of Rs.2000/- and in default of payment of fine to further undergo Rigorous Imprisonment for one year for commission of offence punishable under Section 306 of the Indian Penal Code (for short, "IPC").

The case of the prosecution, in precise, was as under:-

On 11.03.2002, Darbara Singh son of Chhota Singh Sarpanch of village Simbro came to Police Station Bhadson and gave information to

ASI Bakhshish Singh, which was reduced into writing (Ex.PC) wherein he stated that a dead body of a young man was lying near the electric motor of the tubewell in the fields of Gurnam Singh Lambardar son of Jagir Singh, resident of Simbro and that it appeared to be a case of murder as the dead body had been spotted at 3:30 p.m. After getting the First Information Report registered under Section 302 IPC, ASI Bakhshish Singh alongwith his official companions accompanied Darbara Singh to the tubewell of Gurnam Singh in village Simbro. Inquest report (Ex.PN) in respect of the dead body was prepared. On personal search of the dead body as required under Section 175 of the Code of Criminal Procedure (for short, "Cr.P.C."), the following were recorded from the pocket of the shirt worn by the deceased:-

(i) A Driving Licence No.10694/P-95 in the name of Jagtar Singh, on the first page of which following words under the signatures of Jagtar Singh were written:-

"Karnail Kana has murdered me"

(ii) A paper having following writing:-

"Jo Tudh Bahve Sain Bhali Kar,

Meri Maut Da Karan Sirf Karnail Kana Hai,

Iss Ne Bade Dukh Ditte Ne,

Karnail Kane Ne Maran Vaste Mazboor Kitta

Vallo: Jagtar Singh Nanak Chinta Mat Karo"

(iii) A small envelope meant for keeping medicine, on which also it was written as under:-

"Karnail Kana had killed Jagtar Singh"

(iv) A ball pen red coloured in working condition.

All the above articles were packed in a parcel which was sealed with seal bearing letters 'BS' and was taken into possession by preparing a memo (Ex.PD). A bicycle, a Lohi, pair of shoes and a Parna were also taken into possession from the spot vide memos Ex.PA and Ex.PB. Statements of witnesses were recorded. The dead body was sent for postmortem examination to Civil Hospital Nabha. The viscera and the sealed envelope etc. handed over by the doctor after postmortem examination were sent for chemical analysis to the Department of Pathology, Government Medical College, Patiala.

On 13.03.2003, Sub Inspector Rajesh Chhiber recorded the statement of Jagdev Singh son of Bhag Singh who produced two diaries (Ex.P2 and Ex.P5) written by Jagtar Singh son of Gurbhej Singh (deceased) which were converted into parcels and were sealed. The driving licence, envelope and paper, bearing the writing reproduced above, alongwith the diaries of the deceased were sent for comparison by the Finger Print and Handwriting Expert who gave report that they had been written by one and the same person. Appellant-accused was arrested and on completion of investigation, the appellant was sent to face trial for commission of offence under Section 306 IPC.

Appellant was charge-sheeted and subjected to face trial for commission of offence under Section 306 IPC.

To substantiate the charge, the prosecution examined as many as 11 witnesses namely, PW1 Bachan Singh, PW2 Darbara Singh, PW3 Jagdev Singh, PW4 Avtar Singh, PW5 Dr. Purshotam Goel, PW6 S.I. Rajesh Chhiber, PW7 S.I. Bakhshish Singh, PW8 Constable Gurpreet Singh, PW9 Constable Mann Singh, PW10 Balbir Singh and PW11 Mohan

Singh MHC.

After closure of evidence of the prosecution, in his statement recorded under Section 313 Cr.P.C., the appellant denied the case of the prosecution and pleaded innocence and false implication due to party friction in the village and enmity.

In defence evidence, DW1 Gopal Krishan Sharma, Document Expert, Patiala, was examined.

Analyzing the evidence available on record and the submissions made by learned Additional Public Prosecutor assisted by Shri D.S. Sandhu and learned counsel representing the appellant, learned trial Court convicted the appellant, as indicated above.

Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 31.03.2004 passed by learned trial Court, the appellant preferred the instant appeal.

The submissions made by Mr. Bipan Ghai, learned senior counsel representing the appellant and Mr. Surjeet Singh Chaudhary, learned Deputy Advocate General for the State of Punjab have been heard and record perused.

The allegation of the prosecution was that a criminal cross case had been registered against Jagtar Singh (deceased) and others on one side and Jai Singh etc. on the other side. As stated by PW1 Bachan Singh and PW4 Avtar Singh, respectables of the village were trying for a compromise between the said two parties, but appellant Karnail Singh was creating a hurdle in the settlement. The appellant had told the deceased that as he had caused injuries to his party men, he would get him tortured/beaten by the police which caused tension and fear in the mind of the deceased as was

made out from the words written by him on his driving licence, piece of paper and the small envelope of medicine.

Referring to the said facts extracted from the statements of the prosecution witnesses, learned counsel for the appellant submitted two fold arguments. Firstly, that no evidence was led by the prosecution to prove that talks of compromise mediated by the respectables of the village were going on between the parties to the cross criminal cases, in one of which deceased Jagtar Singh was involved as an accused. None of the witnesses stated when the talks of compromise were being held and how and/or for what reason the appellant was creating hurdle in the settlement. The two investigation officers examined by the prosecution namely PW6 S.I. Rajesh Chhiber as well as PW7 ASI Bakhshish Singh admitted that they did not investigate the alleged factum of compromise in the cross case. So much so that PW6 S.I. Rajesh Chhiber stated that it did not come to his notice during investigation that the parties were going to effect a compromise and the appellant was obstructing the same. The deceased also did not mention in his writings on the driving licence, piece of paper and envelope of medicine the reason for which he was accusing the appellant for having forced him to commit suicide. Absence of evidence on the said material aspects proved that an imaginative reason was fabricated to implicate the appellant in the present case which admittedly was a case of suicide by the deceased.

Secondly, learned counsel asserted that it could not be proved by the prosecution by leading cogent and substantive evidence that the writing on the driving licence, a piece of paper and envelope of medicine were that of deceased Jagtar Singh. The said writings were got compared

Jagdev Singh (brother-in-law of deceased) which as stated by him were taken by him from the wife of the deceased. However, the wife of the deceased did not step into the witness box to say that the writings in the diaries were of the deceased and she had seen him writing the same. As such, it could not be proved that the writings in the diaries were scribed by the deceased. Only if the disputed signatures/writings on the driving licence, piece of paper and envelope of medicine, allegedly recorded from the deceased, had been got compared with some admitted writing of the deceased, it could be accepted that the disputed signatures/writings were of the deceased. In the present case there was no document containing admitted signatures/writing of the deceased. As against the report Ex.PEE of Director, Forensic Science Laboratory (FSL), Punjab, Chandigarh, the appellant examined DW1 Gopal Krishan Sharma, Document Expert, Patiala who after examining/comparing the disputed writings/signatures marked as Q1 to Q6 with the alleged signatures/writing available in the pocket diaries marked as A1 to A21 had opined that the two do not tally with each other. In other words, he gave firm opinion that the disputed signatures/writings had not been written by the person who had written the pocket diaries.

Learned counsel urged that the credibility of a witness examined in defence is equal to that of a witness examined by the prosecution. His evidence cannot be brushed aside merely for the reason that he has been examined by the accused. From the statement of DW1, it is proved that the writings on the driving licence etc. recovered from the deceased as well as the pocket diaries presented to be containing the handwriting of the deceased were fabricated by the prosecution.

The arguments of learned senior counsel for the appellant do

not appear to be forceful or convincing. Deceased Jagtar Singh hailed from village Hirdapur whereas PW1 Bachan Singh was resident of village Kansuan Khurd which he stated was at a distance of four kilometers from village Hirdapur. He also stated that Jai Singh and Kaka Singh, with whom the deceased was involved in cross criminal cases, were known to him for the last 20 years. He may not be knowing the details of the cross cases registered between the deceased and Jai Singh etc., but he stated that on 10.03.2002 Jagtar Singh (deceased) came home and told him that a fight had taken place between him and Jai Singh, Kaka Singh etc. in which both the parties had suffered injuries and that the respectables of the village were trying to settle the dispute but Karnail Singh (appellant) was creating hurdle in the compromise. PW1 added that Jagtar Singh appeared under tension and fear as he told him that a day earlier, the appellant had met him and had told him that they had caused injuries to his party men and he (appellant) would get him abducted by the police and would get him killed by torture. PW1 further stated that the deceased had asked him to think of his safety as he had been threatened of being killed and on the very next day he came to know that the dead body of a youth was lying near the tubewell of Gurnam Singh Lamberdar of village Simbro. He went there and came to know that it was the dead body of Jagtar Singh.

The deposition of PW1 Bachan Singh corroborated the version of PW4 Avtar Singh, brother of the deceased, who too stated that respectables of their village including Rajender Singh and Amar Singh of their village were trying for a compromise between him, his brother (Jagtar Singh) etc. on one side and Sardara Singh, Jai Singh, Nahar Singh etc. on the other side against whom a criminal cross case had been registered as a

result of a quarrel. He stated that the appellant did not let the settlement take place. He also stated that the appellant had been quarrelling with his brother Jagtar Singh and had got him beaten twice by the police earlier. This time also he had been sending them messages that he will get them beaten by the police and being under fear, Jagtar Singh was residing out of the village.

In addition to the statement of PW1 Bachan Singh and PW4 Avtar Singh, there is unimpeachable testimony of PW10 Balbir Singh, a resident of village Marur. He stated that accompanied by Rajender Singh, President of village Hirdapur, the village of the deceased, and two other persons of village Marur they had gone to village Hirdapur on 04.03.2002 for getting a compromise effected between Gurdev Singh etc. and Jai Singh etc. Consequent to the talks of compromise, Jai Singh felt satisfied but then Karnail Singh (appellant) took Jai Singh away and when they came back, they both stated that the compromise cannot be effected.

The argument of learned counsel for the appellant that the veracity of PW10 Balbir Singh was not trustworthy as he could not state the date and day on which the fight had taken place or the number and names of the injured persons on both sides, is devoid of merit. The witness may not have been able to state the date or day but he specifically stated that the fight had taken place in the month of March. He alongwith other persons was mediating for a compromise between the parties and he offered evidence to that effect. Whether he knew the details of the case or had gone to see the injured in the hospital or not was immaterial. Nothing was produced by the appellant to prove that PW10 Balbir Singh had any scores to settle with him or had any reason to be hostile towards him. As such, there appears no ground for suspecting the credibility of the witness.

There is abundant evidence in the shape of deposition of PW1 Bachan Singh, PW4 Avtar Singh and PW10 Balbir Singh to prove the facts which created tension and fear in the mind of the deceased to the extent that he thought of ending his life by taking a poisonous substance. In the light of statements of the said witnesses, two of whom were independent witnesses and they disclosed the reason why the deceased had scribed on three papers that the appellant had forced him to commit suicide and that the appellant was responsible for his death, no further probing into the matter during investigation was required by the investigation officer. By no stretch of imagination, it can be said that the prosecution had failed to lead sufficient and substantive evidence to prove the cause by which the appellant had abetted suicide by the deceased.

Coming to the writing on the driving licence, piece of paper and envelope of medicine which were recovered on personal search of the dead body of deceased Jagtar Singh, it is proved from the testimony of PW2 Darbara Singh that the said articles alongwith ball pen were recovered from the right side pocket of the shirt during personal search of the dead body in his presence. The witness stated that on the paper, it was written that Karnail Kana (Karnail half blind) is responsible for his death and he had compelled him to die. Darbara Singh was the witness, who after the dead body was spotted, had gone to Police Station Bhadson to lodge the report about the same. He had neither stated the cause of death nor had named anyone as accused in his report to the police. It is only after registration of the case when the police accompanied him to the spot for conducting required proceedings and took personal search of the dead body that the driving licence, paper, envelope etc. were recovered on which it was found

that the deceased had written lines accusing the appellant for compelling him to commit suicide. The testimony of PW2 Darbara Singh, an independent witness not related to the deceased in any manner, was competent enough to prove recovery of the writings from the dead body.

The diaries containing the admitted/standard signatures/handwriting of the deceased were handed over to the police by PW3 Jagdev Singh, brother-in-law (wife's brother) of deceased Jagtar Singh. It was with the said standard/admitted writings that the writings recovered from the deceased were got compared from a handwriting expert. No doubt, PW3 stated in his cross-examination that he did not have any letter written and addressed to him by Jagtar Singh but he deposed that he had seen Jagtar Singh writing and was in a position to identify his handwriting. He unequivocally deposed that the writings on driving licence, piece of paper and envelope Ex.P2, Ex.P3 and Ex.P4 were in the hand of the deceased. Wife of the deceased was the natural source for obtaining the standard/admitted signatures/writings of the deceased. She gave the pocket diaries containing the standard/admitted signatures/writings of the deceased to her brother who further handed over the same to the police. Non examination of the wife of the deceased has no bearing on the merits of the case. The prosecution got the disputed signatures/writings of the deceased compared with the standard signatures/writings from Director, FSL Punjab, Chandigarh and as per his report Ex.PEE, the disputed signatures/writings and the standard signatures/writing had been written by one and the same person.

Indeed, the appellant examined a handwriting expert in defence

who stated that the disputed handwriting does not tally with the

standard/admitted writing, but it is commonly seen that the private Finger Print and Handwriting Expert normally give a report in favour of the party who had engaged him. Anyhow, at the most there being two different reports of the handwriting experts, it is always open for the Court itself to examine the disputed and admitted writing. Learned trial Court mentioned in Para No.14 of the judgment that he had gone through the standard/admitted writing and the disputed signatures/ writings and in his view the same had been written by one and the same person. Indeed, with the naked eye, it can be said that the writing on the driving licence, piece of paper and envelope as well as the writing on the diaries were written by one and the same person. When undoubtedly driving licence, piece of paper and envelope were recovered by the police in the presence of an independent witness on personal search of the deceased, it can be said safely that the disputed signatures/writings as well as the admitted/standard signatures/writings were written by the deceased. Accordingly, relying on the writings of the deceased, learned trial Court rightly held the appellant guilty for commission of offence under Section 306 IPC.

Coming to the sentence part, learned counsel for the appellant submitted that as on today the appellant is 79 years of age and is not a previous convict. Never after the present case, he has committed any offence. He is living like responsible and peace observing citizen. As such, the sentence awarded to him be reduced.

Considering the submissions made and the age, character and previous antecedents of the appellant, the sentence of Rigorous Imprisonment for ten years awarded to the appellant under Section 306 IPC

learned trial Court shall remain the same. With the above modification in sentence, the appeal is dismissed.

The appellant is on bail in this case, his bail bonds shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convict arrested and commit him to prison for serving the remaining period of sentence and shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The Registry shall keep track of the submission of compliance report and put up the papers, whether the reports are received or not within the time frame, immediately after the expiry thereof.

(SNEH PRASHAR)
JUDGE

06.09.2016.

jitender

Whether speaking/ reasoned : **Yes**

Whether Reportable : **Yes**