

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-50-MA-2016

Date of decision: 30.03.2016

Jasmail Kaur and another

..... Applicants

Versus

Jagsir Singh Fauji and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. H.S. Sangha, Advocate
for the applicants.

RAMENDRA JAIN, J.

The present application under Section 378(4) Cr.P.C. seeking leave to appeal has been filed by the applicants-parents of deceased-Gulab Singh being victims as defined under Section 2 (wa) Cr.P.C. against acquittal of respondents No. 1 to 3 under Sections 302, 365, 201 read with Section 34 of the Indian Penal Code (IPC) vide impugned judgment dated 08.10.2015, passed by the learned Additional Sessions Judge, Sangrur.

2. In nutshell, in the evening of 26.02.2014, Gulab Singh (since deceased) son of the applicants had gone to supply milk at Verka Dairy, but did not return. On contact, his both the mobile numbers i.e. 98781-71711 and 94781-41094 were found switched off. Intensive search of Gulab Singh was made, but no clue of him could be found. Consequently, applicant No. 2-Jodha Singh father of Gulab Singh made a written complaint to the police about his missing. On the basis thereof, a case under Section 365 IPC was registered at Police Station, Lehra. Thereafter, on 28.02.2014, on telephonic information by applicant No. 2, the police recovered the dead body of Gulab Singh from a well situated in the fields of Chhota Singh resident of Khandebad. Photographs of the place of occurrence were got clicked. Inquest proceedings were conducted. Blood sample of Gulab Singh and blood stained earth were collected and converted into sealed parcels. Post-mortem examination of the dead body of Gulab Singh was got conducted from Civil Hospital, Sunam. Applicant No. 2-Jodha Singh raised suspicion over respondents No. 1 to 3 for killing his son. Consequently, Sections 302 and 201 IPC were added. Statements of relevant witnesses were recorded.

3. On 28.04.2014, Baru Singh made a statement to the police that around 4.00 p.m. on 25.02.2014, he had seen respondent No. 1-Jagsir Singh Fauji and deceased-Gulab Singh talking with each other. Respondent No. 1 was asking the deceased to not to follow his friend Lady Constable Bhupinder Kaur with whom he would perform marriage. Respondent No. 1 had also warned the deceased that in case, he would follow Lady Constable Bhupinder Kaur then he would face dire

consequences. Thereafter, he went away in anger. Resultantly, call details of respondent No. 1, Lady Constable Bhupinder Kaur and deceased-Gulab Singh were obtained and on scrutiny thereof, it was found that respondent No. 1 had lastly talked with the deceased. Respondents No. 1 to 3 were arrested and they were interrogated. Respondents No. 2 and 3 namely, Baghel Singh and Gurpiar Singh, were found innocent. After completion of investigation, final report under Section 173 Cr.P.C. was filed only against respondent No. 1 before the Illaqa Magistrate.

4. Since, respondent No. 1 was a Army Personnel, therefore, after obtaining necessary permission, the case was committed to the Court of Sessions, Sangrur by the learned Illaqa Magistrate after complying with the provisions of Section 207 Cr.P.C.

5. Upon an application, respondents No. 2 and 3 were summoned as additional accused under Section 193 Cr.P.C. and were jointly charge-sheeted with respondent No. 1 under Sections 365, 302 and 201 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

6. The prosecution in support of its case examined as many as following 19 witnesses.

7. PW-1 Complainant-Jodha Singh (applicant No. 2) supported the prosecution case in its entirety.

8. PW-2 Baru Singh, testified that around 4.00 P.M. on 25.02.2014, he had seen respondent No. 1 talking with deceased-Gulab Singh near the side of Guga Mari. Respondent No. 1-Jagsir Singh was

asking Gulab Singh to not to follow Lady Constable Bhupinder Kaur with whom he has to solemnize marriage. Respondent No. 1 was very angry and had threatened the deceased to face dire consequences in case, he would not obey his command.

9. PW-3 Dr. Rajiv Kumar Jindal, by way of his affidavit Ex. PW-3/A has proved the post-mortem report Ex. PW-3/B along with pictorial diagram Ex. PW-3/C of deceased-Gulab Singh. He also deposed that as per his opinion cause of death of Gulab Singh was due to ante mortem injuries which were sufficient to cause death independently, besides due to consumption of organo phosphorus as per report of Chemical Examiner Ex PW-3/D. He further testified that on police request, he along with Dr. Vikas Dhir opined that injuries No. 1, 2 and 3 on the person of Gulab Singh could be caused with a 'kahi'.

10. PW-4 Lady Constable Bhupinder Kaur, deposed that though she knew respondent No. 1, but had no relations with him. Talks regarding her engagement with him were going on. They were talking with each other on phone. She never came across the fact of murder of Gulab Singh at the hands of respondent No. 1. Finally, she turned hostile.

11. PW-5 Constable Baljinder Singh, PW-6 HC Suresh Kumar and PW-16 HC Gurmail Singh, have simply tendered their affidavits Ex. PW-5/A, Ex. PW-6-/A and Ex. PW-16/A respectively.

12. PW-7 Surinder Singh @ Chhinda Singh, deposed about the videography of the dead of Gulab Singh and the place of recovery.

13. PW-8 Inspector Parminder Singh (Investigating Officer), deposed about the steps taken by him during the investigation.

14. PW-9 Makhan Singh, testified that he knew respondent No. 1. On 26.02.2014, respondent No. 1 had taken his motorcycle, but did not return the same to him, rather returned the same to Sukhwinder Gir.

15. PW-10 Sukhwinder Gir, testified only about handing over of motorcycle of PW-9 Makhan Singh to him by respondent No. 1.

16. PW-11 Ramesh Kumar retired Patwari deposed about preparation of scaled site plan Ex. PW-11/A.

17. PW-12 Kulwinder Singh, has deposed about taking of photographs Ex. PW-12/1 to Ex. PW-12/11 of the place where the dead body of Gulab Singh was found lying.

18. PW-13 ASI Paramjit Singh testified that on 05.03.2014, respondent No. 1 was produced by Swaran Singh, Ex-sarpanch of village Daska before the Investigating Officer who formally arrested him vide memo Ex. PE.

19. PW-14 Naib Subedar Amrik Singh, has proved the leave period of respondent No. 1.

20. PW-15 Swaran Singh, Ex-sarpanch of village Daska turned hostile and did not support the prosecution case.

21. PW-17 Ajay Kumar, JTO, has proved the application form and identity proof of Gulab Singh-deceased as Ex. PW-17/A and Ex. PW-17/B respectively along with call details and tower location Ex. PW-17/C.

22. PW-18 S.P. Jain, Nodal Officer, Bharti Airtel Limited, has proved the application form and identity proof of other mobile number of Gulab Singh-deceased as Ex. PW-18/A and Ex. PW-18/B, respectively. This witness also proved the application form and identity proof of one Mandip Singh S/o of Lal Singh as Ex. PW-18/D and Ex. PW-18/E, respectively along with call details Ex. PW-18/F.

23. PW-19 Surjit Singh, Nodal Officer II, Idea Cellular Ltd., has proved the application form and identity proof of mobile number of respondent No. 1 Ex. PW-19/A and Ex. PW-19/B, respectively. He also proved the call details and tower location of the mobile of respondent No. 1 as Ex. PW-19/C and Ex. PW-19/D along with call details Ex. PW-17/D.

24. In their statements under Section 313 Cr.P.C., respondents No. 1 to 3 denied the entire incriminating evidence brought on record against them and pleaded their false implication. In defence, they examined DW-1 Constable Gaganvir Singh.

25. Learned counsel for the applicants contended that the impugned judgment is based on surmises and conjectures. The learned trial Court has failed to appreciate the foolproof evidence brought on record by the prosecution. It was clearly evident on record from the statement of PW-2 Baru Singh that on 25.02.2014, respondent No. 1 had threatened the deceased with dire consequences, in case, he would follow Lady Constable Bhupinder Kaur with whom he was going to solemnize marriage. The deposition of this witness has wrongly been ignored by the learned trial Court despite the fact that he was an independent witness.

Motive of respondents No. 1 to 3 was also proved in commitment of murder of deceased-Gulab Singh.

26. After giving our thoughtful consideration to the submissions made by learned counsel for the applicants, we find no merit in the instant application for the reasons to follow.

- (i) Last seen evidence is missing in this case. PW-2 Baru Singh is not a last seen witness of Gulab Singh and respondent No. 1-Jagsir Singh Fauji as had simply seen them talking with each other.
- (ii) As per prosecution case, extra judicial confession was made by respondent No. 1 before PW-15 Swaran Singh, Ex-sarpanch of village Daska, who did not support the prosecution case, rather turned hostile. He testified that respondent No. 1 never came to him and confessed that on 26.02.2014, he had committed the murder of Gulab Singh. Respondent No. 1 never requested to produce him before the police. Neither he produced him before the police as alleged on 05.03.2014 nor he ever gave any statement on 19.05.2014.
- (iii) The whole prosecution story revolves around the statement of PW-1 Jodha Singh-complainant (applicant No. 2) and PW-2 Baru Singh. Rest of the witnesses are formal in nature as their role came into picture after the occurrence. Admittedly, PW-1 is not

an eye-witness. He has deposed about the search of his deceased son and the manner in which his dead body was found lying in a well. Hence, his testimony is of no consequence to convict respondents No. 1 to 3 more particularly, when in his initial complaint, he did not raise any suspicion over anyone. He named respondent No. 1 on the basis of call details of his deceased son which is a very weak type of evidence without any corroboration.

The testimony of PW-2 Baru Singh (somewhere his name is mentioned as Babu Singh also in the impugned judgment) is not worth reliance, because as per his deposition, he had seen deceased-Gulab Singh with respondent No. 1 around 4.00 P.M. on 25.02.2014 and has come to know about his death after about 10-12 days, on his return to village. However, he did not disclose this fact to anyone for about two months. The above conduct of PW-2 Baru Ram in not disclosing the factum of threatening of respondent No. 1 to deceased Gulab Singh with dire consequences is completely untruthful and unreliable, because no person of ordinary prudence would behave in such a manner on coming to know about the murder of his friend. Hence, his testimony has rightly been discarded by the learned trial Court.

27. In view of discussion above, the prosecution case falls short of (a) last seen evidence; (b) eye-witness account; (c) extra-judicial confession and (d) non-recovery of any weapon of offence. We have gone through the impugned judgment and found no illegality or perversity in the same.

28. The instant application, being completely devoid of any merit is dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

March 30, 2016
rishu