

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

CRA-D-253-DB of 2003
Date of decision:- 30.9.2016

Surjit Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr. S.S.Swaich, Advocate
for the appellant.

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

GURMIT RAM, J.

The above noted criminal appeal at the instance of above-said appellant (accused) has been preferred against the judgment of conviction and order of sentence dated 17.1.2003 passed by the Court of learned Sessions Judge, Fatehgarh Sahib in criminal case bearing FIR No.95 dated 12.12.1999 under Sections 302, 328 and 379 of the Indian Penal Code (for short – 'IPC'), Police Station Khamano, vide which he was held guilty for the offences punishable under Sections 302 and 328 of

the IPC and awarded sentences as narrated below:

Under Section 302, IPC	Accused was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months.
Under Section 328, IPC	Accused was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month.

Both the sentences were ordered to run concurrently.

2. The case of the prosecution, in nutshell as projected before the learned trial Court, was that on 12.12.1999, complainant Shiam Singh son of Rachan Singh resident of village Kotla Badla, Police Station Kheri Naudh Singh came to the police station and made his statement Ex.PW17/A before Major Singh SI/SHO, which was as under:

“That they are three brothers of whom he is the eldest one, whereas Surjit Singh and Gurjit Singh are younger to him. They all reside separately and his father Rachan Singh has been residing with his said brother Gurjit Singh. His father who owned 22 acres of land, distributed 5 acres of land to each of them and each of them had sold 1 ½ acres of land from their respective shares. His father retained remaining 7 acres of land with him for his livelihood. Further, his father executed a Will in favour of complainant's son Jasbir Singh and complainant's younger sister-in-law Paramjit Kaur wife of Gurjit Singh, regarding the land of his share. His father did not execute the Will in favour of Surjit Singh since he was disinherited by him and due to this reason, he (Surjit Singh) was nursing a grudge.

Further, he used to threaten his son Jasbir Singh and his brother Gurjit Singh that he would eliminate them and not allow them to enjoy the fruits of said land. On last Saturday i.e. 4.12.1999, said Surjit Singh offered liquor to his brother Gurjit Singh and then they both caused injuries to Constable Mukhtiar Singh. Thereafter, Surjit Singh fled away alongwith his brother Gurjit Singh, who was not arrested by the police. Yesterday i.e. on 11.12.1999, one Bhan Singh son of Ajaib Singh, resident of village Bhari came to complainant's house at about 12:00 noon, who revealed him that 'Gurjit Singh is lying at the tubewell of Ajaib Singh, resident of Bhari and is crying due to pain. It appears that he has taken poisonous substance'. Upon this, he along with Mohinder Singh, Lambardar of his village and Rachhpal Singh @ Kala resident of village Bhari reached at the spot where he found his brother Gurjit Singh lying on the ground crying bitterly. When they asked him as to what had happened to him, then he told that 'they were living outside since the day they inflicted injuries to Constable. Yesterday, they borrowed a sum of Rs.1,500/- from a commission agent, Khanna, out of which they spent half of the amount and reached there at about 9/10 p.m. Surjit Singh put poisonous tablets in his mouth and he remained lying there in unconscious condition

throughout the night. Surjit Singh while fleeing away from there grabbed money from him'. Firstly, they took him to Civil Hospital, Fatehgarh Sahib, then to Rajindra Hospital, Patiala where he (Gurjit Singh) expired during night. Surjit Singh implicated Gurjit Singh in the above-said case for causing injuries to Constable due to the reason that his father did not make the Will in his favour and thereafter he took him (Gurjit Singh) along with him and killed him by administering some poisonous tablets. Request was made to take legal action against the culprit.”

The abovesaid statement was signed by the complainant after admitting it to be correct. SI/SHO Major Singh made his endorsement Ex.PW17/B on the above statement of complainant and sent ruqa to the police station, on the basis of which the FIR Ex.PW17/C was registered at Police Station Khamano qua the alleged occurrence.

During the investigation of the case, inquest report in respect of the dead body of deceased was prepared. Post-mortem on his dead body was got conducted. Rough site-plan as well as scaled site-plan of the spot of alleged occurrence were got prepared. Statements of the witnesses were recorded. Accused was apprehended in this case on 15.1.2000. On the completion of investigation, challan was presented in the Court of learned Area Magistrate, who further committed this case to the Court of learned Sessions Judge, Fatehgarh Sahib for trial, after making compliance of the provisions of Section 207 of Code of Criminal Procedure (for short – Cr.P.C.) vide order dated 22.4.2000.

3. Finding a prima-facie case punishable under Sections 302, 328 and 379 of the IPC against the accused, he was charge-sheeted accordingly vide order dated 26.7.2000, to which, he pleaded not guilty and claimed trial.

4. During trial of the case, the prosecution examined as many as seventeen witnesses in total in order to prove its version and further to punish the accused according to law.

5. Then the accused was duly examined as required under Section 313 of Cr.P.C. Entire incriminating evidence and other culpable circumstances as brought and appearing on the file against him were put to him, which he denied entirely and pleaded his innocence and false implication in this case. Further, he took the plea that previously he and his brother Gurjit Singh (since deceased) were arrested by the police in a case registered under Section 307 of the IPC. Police caused severe injuries to both of them and his brother had died due to serious injuries caused by the police. He was released by the police on account of warrants issued by the Hon'ble High Court. The police had registered a false case against him with a view to conceal the truth with regard to death of his brother Gurjit Singh (since deceased).

But the accused did not lead any evidence in his defence.

6. The learned trial Court after hearing the learned counsel for both the parties and going through the record as well held the accused guilty for the offences punishable under Sections 302 and 328 of the IPC and awarded him sentences as mentioned in para No.1 of this judgment.

7. The appellant - herein (accused) being not satisfied with the impugned judgment of conviction and order of sentence has approached

this Court by way of instant appeal, notice of which was given to the respondent – State. Record of the learned trial Court was also requisitioned.

8. We have heard the learned counsel for both the parties at length and made appraisal of the evidence as available on the record with their assistance.

9. During the trial of the case, prosecution examined complainant - Shiam Singh as PW4. He partly supported the case of prosecution and his testimony as made by him before the Court was to the effect that they were three brothers, namely, he himself, Surjit Singh (accused) and Gurjit Singh (since deceased) and their father Rachan Singh had given five acres of land to each of them and kept the remaining 7/8 killas of land with him. His father Rachan Singh used to reside with Gurjit Singh (since deceased) and his family who was having cordial relations with him also. His father had given his land to his son. On 11.12.1999, one Bhan Singh informed him at about 10:00 A.M. that his brother Gurjit Singh had been lying in the fields of his father Ajaib Singh and it appeared that he had taken some poisonous substance since froth was coming from his mouth. On receipt of this information, he along with Mohinder Singh, Lambardar and others went to that spot and Paramjit Kaur also followed them. On reaching there, Gurjit Singh was found lying in the fields while froth was coming out from his mouth. He was begging to save his life and not talking anything-else. He informed the police telephonically since police had been wanting to arrest his brothers Gurjit Singh and Surjit Singh in earlier case for causing beatings to a Constable a few days prior to this occurrence. Police came at the spot, who took

Gurjit Singh to Civil Hospital, Fatehgarh Sahib in police vehicle from where he was taken to Rajindra Hospital, Patiala and got admitted therein. Gurjit Singh did not tell anything to him as to what had happened to him.

Then this witness was declared hostile and cross-examined by the learned State counsel but during his cross-examination, nothing had come out to support the remaining part of prosecution version.

Above-said Paramjit Kaur, who was wife of Gurjit Singh (since deceased) appeared as PW3. She supported the prosecution version tooth and nail. Her statement concisely was to the effect that accused Surjit Singh was not a man of good character and that he was disowned by her father-in-law Rachan Singh due to his bad habits. Her father-in-law had willed away his 7 acres of land in her favour and in favour of Jasbir Singh son of Shiam Singh and due to this reason, Surjit Singh was feeling annoyed. Further, he had also been telling her husband Gurjit Singh that he will not allow him to enjoy the land given to her vide a Will by her father-in-law. Then it was further in her statement that on 4.12.1999, accused Surjit Singh took her husband along with him from her house. Then both of them caused beatings to Constable Mukhtiar Singh and went missing. Her husband took a loan of Rs.1,500/- from a commission agent on 10.12.1999. The above-said facts were told to her by her husband Gurjit Singh.

Then it was further in her statement that on 11.12.1999, one Bhan Singh, resident of village Bhari came to her during noon time at about 12:00 and narrated to her that her husband Gurjit Singh was lying in the fields of village Bhari who appeared to have taken some poisonous substance. Upon this, she along with Shiam Singh, Mohinder Singh -

Lambardar, Rachhpal Singh @ Kala and others reached at the spot where they found Gurjit Singh lying in the fields while lifting his arms and legs in agony. He told them that Surjit Singh had put poisonous tablets in his mouth and also took out the money lying in his pocket which was left unspent out of the loan of Rs.1,500/-. They took him to Civil Hospital, Fatehgarh Sahib and then to Rajindra Hospital, Patiala. He breathed his last on 11.12.1999 at about 11:00 p.m. Regarding motive, she stated that accused had killed her husband due to the reason that her father-in-law had willed away the land in her name.

Gurdeep Singh, brother of above-said PW3 Paramjit Kaur, was examined by the prosecution as PW2. He stated to the effect that accused Surjit Singh served liquor to his brother-in-law Gurjit Singh on 4.12.1999 in order to make him join in inflicting injuries to Constable Mukhtiar Singh. Thereafter, accused Surjit Singh took his brother Gurjit Singh along with him and both of them disappeared. They could not find both of them despite search. On 11.12.1999, he came to know that his brother-in-law was lying in the fields of village Bhari having taken some poisonous substance and taken to Civil Hospital, Fatehgarh Sahib for treatment. On coming to know about this fact, he also rushed to Civil Hospital, Fatehgarh Sahib from where he learnt that Gurjit Singh had been referred to Rajindra Hospital, Patiala for treatment. When he reached Rajindra Hospital, Patiala, Gurjit Singh was found admitted in emergency ward. When he arrived near him, he was talking. On asking as to what had happened to him, Gurjit Singh told him that 'on 10.12.1999, he took a loan of Rs.1,500/- from Gurdial Singh, Commission Agent, Khanna, out of which he and Surjit Singh spent more than half of the amount on

drinking etc. and the remaining Rs.600/700/- were left with him. He also told that on the previous night, Surjit Singh put poisonous tablets in his mouth forcibly as a result of which, he became unconscious and remained lying in the fields in cold throughout the night. He also revealed that by leaving him in this state of affairs, Surjit Singh took away the remaining amount of Rs.600/700/- from his pocket'. He also stated about the motive in clear terms that accused Surjit Singh was nursing a grudge against the deceased for the reason that his father Rachan Singh had willed away the land of his share in favour of his wife Paramjit Kaur and one Jasbir Singh son of PW4 Shiam Singh. He had also threatened the deceased to kill him and not to allow him to enjoy the fruits of the land given to his wife Paramjit Kaur by her father-in-law vide a Will.

PW7 Rachhpal Singh stated that on 11.12.1999 at about 12:00 noon on coming to know that Gurjit Singh was lying in the field of Ajaib Singh of village, Bhari, he went to the spot where he found present Shiam Singh(PW4), Lambardar - Mohinder Singh, Paramjit Kaur wife of Gurjit Singh, and Gurjit Singh who was lying in the field. It was further in his statement that 'in his presence Gurjit Singh who was conscious revealed that he and Surjit Singh accused present in the Court had gone to Khanna and took a loan of Rs.1,500/- from commission agent on 10.12.1999. Out of this amount, they spent Rs.600/700/- and the remaining amount was taken away by Surjit Singh from his pocket. Surjit Singh left him in the *Taur* of Ajaib Singh adjoining the field after putting poisonous tablets in his mouth. While leaving him there in this condition, Surjit Singh had remarked that he had done so due to his getting a Will from his father Rachan Singh in his name. As a result of putting poisonous tablets

in his mouth by Surjit Singh, he became unconscious and remained lying in cold weather in the open'.

PW5 Dr. Avinash Kaur was on emergency duty in Civil Hospital, Fatehgarh Sahib on 11.12.1999 and during her duty time, patient Gurjit Singh son of Rachan Singh as a case of suspected poisoning arrived in the hospital who was admitted in the hospital by her as per entry No.3660 made in the emergency OPD register, the photocopy of which was proved by her as Ex.PE. On preliminary examination, she found the patient smelling of some chemical, conscious, B.P. 90/80 with pulse rate 90 per minute and his pupils constricted. He gave the history of consumption of some tablets given by somebody. She also proved the admission file as Ex.PF and deposed that after giving emergency treatment, the patient was referred to Rajindra Hospital, Patiala since Medical Specialist was not available.

PW12 Dr. Ravi Kumar produced the admission file of patient Gurjit Singh son of Rachan Singh of Rajindra Hospital, Patiala who was admitted in that hospital on 11.12.1999 and expired on the same date at 11:10 p.m. Further, he proved the correct copy of above-said admission file (book) as Ex.PW12/A. As per his statement, patient came to their hospital in unconscious state not responding to any stimuli.

PW1 Dr.D.S. Bhullar conducted post-mortem examination on the dead body of deceased on 12.12.1999 at 2:50 p.m. which was a case of death after consuming some poison as per police information. During post-mortem, he observed as under:

Rigor mortis was present on all body parts. Post Mortem staining was present on dependent body part except pressure

points and was fixed. Tip of nose, lips, nails, were deeply cyanosed. Frothy secretion from mouth and nose was coming out. Whitish grey material was visible on the lips. Brain and its membranes were congested. Visceras in the chest cavity were congested. Mild smell of alcohol was coming from pleural cavity. Larynx and trachea showed frothy secretions. Left chambers of heart were empty and right chambers contained little blood.

It was a case of suspected death due to poisoning and alcohol intake. From the post-mortem findings and report of chemical examination of viscera, he gave the opinion that the cause of death in this case was by poisoning from Aluminium Phosphide, sufficient to cause death in the ordinary course of nature. Further, he proved the carbon copy of the post-mortem report as Ex.P1 and the original report showing the cause of death of deceased as Ex.P2.

PW17 Sub-Inspector Major Singh, the Investigating Officer, was posted as SHO, Police Station Kheri Naudh Singh on 12.12.1999. On that day, he recorded the statement Ex.PW17/A of complainant - Shiam Singh in the premises of police station, on which he made his endorsement Ex.PW17/B on the basis of which, the FIR Ex.PW17/C was recorded by Sadhu Ram, ASI. Then thereafter, he went to Rajindra Hospital, Patiala along with the complainant and prepared inquest report Ex.PW17/D in respect of dead body of Gurjit Singh. Then on his request Ex.PW17/E, post-mortem on the dead body of deceased was conducted. Further, he visited the spot of occurrence and prepared the rough site-plan

of the spot Ex.PW17/F. Then after post-mortem, clothes of deceased and jar containing viscera duly sealed were produced before him vide memo Ex.PW17/G which he deposited with the MHC of the Police Station. Further, accused Surjit Singh was produced before him on 15.1.2000 and he recorded the statements of witnesses.

Then PW15 Bhupinder Singh SHO, took the investigation of this case on 17.1.2000 from the previous Investigating Officer, Sub-Inspector Major Singh. He proved the memo Ex.PW15/A vide which Maruti Van bearing registration No.PB-52-2527 was taken into police possession. Then vide request Ex.PW15/B, he took into possession bed head ticket of injured. On receipt of the report of Chemical Examiner Ex.PW15/C, accused was challaned by Bhola Singh, Inspector.

10. Remaining prosecution witnesses were formal in nature. PW8 Ashok Kumar, Clerk produced the record containing entry at Serial No.503 dated 11.5.1998 made in the register of New Driving Licence vide which one scooter/car driving licence was issued to Surjit Singh, the accused in the present case and proved the copy of this entry as Ex.PJ.

PW9 Neelam Khullar deposed that as per summoned record, one Maruti Van bearing registration No.PB-52-2527 is in the name of Ashok Kumar son of Chuni Lal, resident of Bassi Pathana, District Fatehgarh Sahib which vehicle was transferred in his name on 29.1.1996.

PW10 Mehar Singh, Patwari proved the scaled site-plan Ex.PK of the spot of occurrence.

PW11 ASI Mohan Lal produced the original FIR No.92 dated 4.12.1999, under Sections 364/307/34, IPC, Police Station Khamano and

proved its carbon copy as Ex.PL.

PW13 Head Constable, Suresh Kumar, PW14 Constable Sukhdev Singh and PW16 Head Constable, Inderjit Singh tendered their duly sworn affidavits Ex.PW13/A, Ex.PW14/A and Ex.PW16/A as a part of their respective statements.

11. Learned counsel for the appellant on the very onset has contended that complainant (PW4) – Shiam Singh was the star witness of the prosecution since it was the case of prosecution that this witness made his statement Ex.PW17/A before the police qua the alleged occurrence and further on its basis the machinery of criminal law was set into motion. Herein, he has contended that this PW4 – Shiam Singh while appearing before the trial Court did not support the prosecution version as per his above statement Ex.PW17/A allegedly made by him before the police, so far as it relates to complicity of the appellant – herein (accused) in the alleged occurrence. Resultantly, a serious dent has been caused in prosecution story as alleged, which further has shattered its genesis from its very core. Admittedly, this witness did not support the prosecution version as far as it relates to the involvement of the appellant – herein (accused) in the killing of Gurjit Singh (since deceased).

12. Now let us see as to whether there has come on record any other evidence for proving the involvement of the appellant – herein (accused) in the alleged occurrence and if so, then to appreciate as to whether the same is sufficient and confidence inspiring to bring home his guilt and further to uphold his conviction.

As above discussed, it came on record in the statement of PW3 – Paramjit Kaur that one Bhan Singh came to her on 11.12.1999 at

12:00 noon and apprised her that her husband Gurjit Singh was lying in the field in the area of village Bhari while appearing to have taken some poisonous substance. On this when she along with Shiam Singh(PW4), Mohinder Singh - Lambardar, Rachhpal Singh @ Kala and others reached at the spot, she found that her husband Gurjit Singh was lying there raising his arms and legs due to palpitation. He (Gurjit Singh) also expressed to them that accused Surjit Singh had put poisonous tablets in his mouth and also pilfered the unspent amount from his pocket out of the amount of Rs.1,500/- which was borrowed from a commission agent.

Then PW7 – Rachhpal Singh had also supported the above version of prosecution by lending corroboration to the above discussed statement of PW3 – Paramjit Kaur.

As above discussed, he vividly explained the disclosures allegedly made by Gurjit Singh (since deceased) in his presence and other persons present at the spot at the relevant time. He was an independent witness having neither any motive nor any consideration to depose against the accused in order to secure his conviction for any ulterior reason.

PW3 Paramjit Kaur could not have accompanied her husband to Civil Hospital, Fatehgarh Sahib and then to Rajindra Hospital, Patiala for the reason that she became nervous and perplexed on seeing her husband lying in an injured condition, as stated by her in her cross-examination. Then it had also come on record in the testimony of PW5 Dr.Avinash Kaur that when patient Gurjit Singh was brought to Civil Hospital, Fatehgarh Sahib, he was admitted in the hospital by her and at that time, he was conscious with BP 90/80 and pulse rate 90 per minute.

So whatever was stated by PW3 Paramjit Kaur and PW7 Rachhpal Singh qua the disclosures made by Gurjit Singh (since deceased) before them at the spot cannot be either discounted or undermined on any ground.

PW2 Gurdeep Singh as above discussed was brother-in-law of Gurjit Singh (since deceased) as his sister - Paramjit Kaur (PW3) was married with him (Gurjit Singh). His presence in the premises of Rajindra Hospital, Patiala wherein Gurjit Singh (since deceased) was got admitted for treatment is held to be natural and expected one keeping in view the normal behaviour of a prudent man if put in the circumstances as that of the case in hand as discussed above in para No.2 of the judgment. On coming to know about the serious condition of his brother-in-law (JIJA) Gurjit Singh, he immediately first rushed to Civil Hospital, Fatehgarh Sahib and then to Rajindra Hospital, Patiala where he was referred to for his better treatment due to his precarious condition. But so far his statement as it relates to the disclosures allegedly made to him by Gurjit Singh (since deceased) is concerned, the same cannot be held to be sustainable or believable for the reason that it had come in the statement of PW12 Dr. Ravi Kumar that when the patient Gurjit Singh was admitted in the Rajindra Hospital, Patiala, he was observed to be in unconscious state not responding to any stimuli, also not reacting to light, B.P.60 mm hg systolic at the time of admission, pulse rate 120 per minute, very feeble and respiratory rate 30 per minute.

13. If the above discussed statement of PW3 Paramjit Kaur and PW7 Rachhpal Singh are to be considered as a whole, then the irresistible conclusion is that the appellant-herein (accused) had put poisonous tablets in the mouth of deceased after serving him liquor which

resulted into his demise. So the fact that PW4 Shiam Singh did not support the prosecution version so far as it relates to the involvement of the appellant – herein (accused) in the commission of alleged crime is not held to be up to the mark either to prove his innocence or his false implication in this case. With the passage of time, he might have propitiated the matter with the family of appellant – herein (accused) and further changed his mind while appearing before the Court as prosecution witness to the extent not to support the prosecution version as far as it relates to his implication in this case.

14. Then the learned counsel for the appellant has also argued that at the time of the medical examination as well as during post-mortem on the dead body of the deceased, no injury was found on his person, so as such it is difficult to say that the alleged poisonous tablets were administered to him by appellant – herein (accused). Normally when a person attempts to administer any poisonous substance to any other person, then the person to whom the same is to be administered is to show some sort of resistance to save his life and in this process some sort of injuries either on the face, lips, hands, neck etc. are caused. Herein, the learned counsel for the appellant has also contended that in the light of the above circumstances of this case, the possibility cannot be ruled out that the alleged poisonous tablets were consumed by deceased himself and the same were not administered to him by the appellant – herein (accused).

But herein we want to see statement of PW1 Dr. D.S. Bhullar, who conducted the post-mortem on the dead body of deceased. It came in his statement that mild smell of alcohol was coming from pleural cavity,

larynx and trachea showed frothy secretions. Further, smell of alcohol and garlic were present in the stomach and its contents. Initially, this witness was of the opinion that it was a case of suspected death due to poisoning and alcohol intake, though on receipt of report of Chemical Examiner Ex.PW15/C, he gave his opinion that cause of death in this case was poisoning from aluminium phosphide. So in the light of the above discussed statement of PW1, it can be held that deceased had consumed liquor prior to administering poisonous tablets to him. As per the evidence of prosecution on record, deceased was left at the spot by his brother Surjit Singh, the appellant – herein (accused) on the night of 10.12.1999 at about 9:00/10:00 p.m., where he was detected on the next morning by Bhan Singh who further informed PW3 Paramjit Kaur and PW4 Shiam Singh. Deceased died on 11.12.1999 at about 11:20 P.M. Post mortem on his dead body was conducted on the next day i.e. 12.12.1999 at 2:50 p.m. So the post-mortem on the dead body of deceased was conducted after a gap of about 40 hours from the time he was allegedly left at the spot on the night of 10.12.1999 by the appellant – herein (accused), where he was found on the next morning. Even despite this gap of 40 hours, the smell of alcohol was found present in some organs of his body as above mentioned at the time of his post-mortem. So as such it can also be held that since the deceased was under the influence of excess drinking, so he was not able to show any kind of resistance when the poisonous tablets were allegedly administered to him by the appellant – herein (accused) and resultantly no injury on his person was caused.

15. Then the learned counsel for the appellant has also pointed out the delay in lodging the FIR Ex.PW17/C. Herein he has contended

that as per prosecution version, the alleged occurrence took place on the night of 10.12.1999 at about 9:00/10:00 p.m. whereas the matter was reported to the police on 12.12.1999 at about 10:10 A.M. i.e. after the delay of about 36 hours which had been consumed by the complainant party to make out a mendacious version to entrap the accused in this case falsely. As per the prosecution version, one Bhan Singh of village Bhari detected Gurjit Singh (since deceased) at the spot on 11.12.1999 at about 9:00 A.M. who further informed in this regard to PW4 Shiam Singh (complainant) and PW3 – Paramjit Kaur wife of said Gurjit Singh. Thereupon, PW4 – Shiam Singh along with other persons including PW3 Paramjit Kaur reached at the spot where Gurjit Singh was found lying. Seeing his precarious condition, firstly they took him to Civil Hospital, Fatehgarh Sahib from where he was referred to Rajindra Hospital, Patiala after giving him emergency treatment due to his critical condition. So in this situation, the first priority of the family members of the injured/victim was to take him to some better hospital nearby in order to save his life by providing him all the possible medical help. In this process as above mentioned, the injured was firstly taken to Civil Hospital, Fatehgarh Sahib and then referred to Rajindra Hospital, Patiala on 11.12.1999 where he expired on the same day at 11:20 p.m. The alleged occurrence as above-said came to the notice of complainant party on 11.12.1999 at about 10/11:00 A.M. and not prior to that. So for this reason, the delay of about 24 hours was caused in lodging the FIR. Moreover, above-said Shiam Singh while appearing in the Court as PW4 did not support the prosecution version qua the involvement of the appellant-herein (accused) in the alleged occurrence. Nothing on the record has come to suggest that

the above delay had ever been consumed by the complainant party in connivance with the police to make out a concocted version with the view to entrap the appellant – herein (accused) in this case falsely.

16. Then it hardly matters whether Gurjit Singh (since deceased) was taken to Civil Hospital, Fatehgarh Sahib either by the police or by the complainant party since it had come on record that he(Gurjit Singh) and his brother Surjit Singh, the appellant – herein (accused) were wanted by the police in a criminal case for causing injuries to Constable Mukhtiar Singh prior to the occurrence of this case. With regard to the occurrence for causing injuries to Constable Mukhtiar Singh, FIR No.92 dated 4.12.1999, under Sections 364/307/34, IPC (Ex.PL) was registered at Police Station Khamano.

17. Then as per the statement of PW3 – Paramjit Kaur, the appellant - herein (accused) took her husband Gurjit Singh (since deceased) from her house on 4.12.1999. They both after causing injuries to Constable Mukhtiar Singh went missing. Then as per the overall disclosures made by Gurjit Singh (since deceased) before PW3 – Paramjit Kaur and PW7 – Rachhpal Singh, he (Gurjit Singh) was in the company of his brother Surjit Singh, appellant – herein (accused) on the night of 10.12.1999, who after administering poisonous tablets to the deceased left him there in the open field of village Bhari during the night and fled away from there after grabbing the amount from his pocket as well. On the next morning, Gurjit Singh was found lying there and on intimation to his family members, he was taken to hospital for his treatment. So the disclosures made by Gurjit Singh (since deceased) before PW3 – Paramjit Kaur and PW7 – Rachhpal Singh can be treated as an oral dying

declaration since at the time when the same were made, he was palpitating due to pain under the influence of poisonous tablets. Even before PW5 Dr. Avinash Kaur, patient Gurjit Singh gave the history of consumption of some tablets given by some body. So the above discussed evidence is also quite convincing to prove the involvement of the appellant – herein (accused) in the alleged occurrence.

18. As per the prosecution version, the appellant–herein (accused) was feeling annoyed since his father had executed a Will in favour of PW3–Paramjit Kaur wife of Gurjit Singh (since deceased) and Jasbir Singh son of PW4–Shiam Singh qua the land measuring 7 acres which was kept by him for his own maintenance after distributing his land to the extent of 5 killas to each of his sons namely PW4 Shiam Singh, Gurjit Singh (since deceased) and Surjit Singh, the appellant – herein (accused). Appellant – herein (accused) might have been annoyed with his father also due to his executing the said Will in favour of Paramjit Kaur and Jasbir Singh aforementioned, but he would not have thought to kill him for the reason that in case he killed his father, then in that event under the law, he was to be debarred from inheriting the entire estate of his father. Jasbir Singh, one of the beneficiaries of the Will might be child at that time, so Gurjit Singh (since deceased) was his target since it came on record in the statement of PW3 – Paramjit Kaur that appellant – herein (accused) used to threaten her husband–Gurjit Singh (since deceased) that he will not allow him to enjoy the fruits of the land which was willed away in her favour by her father-in-law. Moreover, motive to commit any crime is such an element which always remains undetermined, uncertain as well as inexplicable due to unstatic state of human mind like a barometer

as per wind pressure. In the case in hand, motive to commit the crime was very much clear as the appellant – herein (accused) was feeling disappointed on account of Will allegedly executed by his father in favour of PW3 – Paramjit Kaur and Jasbir Singh aforementioned without giving any share to him from his 7 acres of land kept by him for his own use and maintenance.

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

Copy of this order be sent to the quarter concerned for strict compliance.

30.9.2016
Brij

(T.P.S.MANN)
JUDGE

(GURMIT RAM)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No