

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CRA-D-566-DB of 2011
Date of decision : 15.3.2017

Harchand Singh

...

.....Appellant

vs.

State of Punjab

.....Respondent

2) CRA-D-244-DB of 2012

...

Harjant Singh

.....Appellant

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice T.P.S. Mann
Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Rahul Bhargava, Advocate for the appellant
in CRA-D-566 DB of 2011

Mr. Sameer Sachdeva, Advocate as Legal Aid Counsel
for the appellant in CRA-D-244 DB of 2012

Mr. S.S. Dhaliwal, Additional Advocate General,
Punjab.

...

H. S. Madaan, J.

Vide this judgment, we propose to dispose of two
appeals i.e. CRA-D-566 DB of 2011, filed by Harchand Singh and
CRA-D-244 DB of 2012, brought by Harjant Singh., both of them

being accused, who were tried by the Court of Additional Sessions Judge, Tarn Taran, convicted for offence under Section 302/34 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- each, in default of payment of fine to undergo further rigorous imprisonment for two months, vide judgment dated 19.2.2011.

The accused – convicts, who are appellants before this Court, pray that the appeals filed by them be accepted, the impugned judgment of their conviction and order of sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated, the prosecution story, as it unfolded during the trial is that on 2.8.2007, at about 6 P.M. when complainant Ranjit Singh, working as a Guard in Forest Department, was present in the forest area of Rakh Sarai Amanat Khan, in connection with his duty and had gone near metalled road in the area of Village Gehri, then he observed dead body of a young person, aged about 25 years, height 5'-10", clean shaven, wearing pant of grey colour and T-shirt of blue, red and white colour, lying there. A belt of black colour was found to be there around his neck, with which the neck had been pressed. Complainant called his colleague Dilbagh Singh. The dead body could not be identified. The complainant left Dilbagh Singh near the dead body and was himself going to Police Station Sarai Amanat Khan to lodge a report, on the way at Village Bhuse, he came across a police party, headed by SI/SHO Kanwaljit Singh (hereinafter referred to as 'Investigating Officer/IO' also), from Police Station, Sarai Amanat Khan.

The complainant got his statement Exhibit PW 5/A recorded with the police. The statement was signed by the complainant, his signatures were attested by the Investigating Officer/IO. The Investigating Officer/IO put his endorsement Exhibit PW 6/A below that statement and sent *ruqa* to the Police Station for registration of FIR and formal FIR Exhibit PW 6/B was accordingly registered at Police Station, Sarai Amanat Khan, by ASI Mukesh Kumar. Thereafter the police party accompanied by the complainant went to the spot. The Investigating Officer/IO found the dead body to be lying there. He carried out inquest proceedings with respect to the dead body of an unidentified person preparing report Exhibit PW 5/B in that regard. One pair of *chappal* lying near the dead body, was taken into possession vide recovery memo Exhibit PW 4/B. The leather belt with which that person had been strangled was taken into custody vide Exhibit PW 4/A. The Investigating Officer/IO prepared rough site plan of the spot as Exhibit PW 6/D. He summoned a photographer there and got clicked photographs of the dead body. He recorded statements of the witnesses.

During the course of investigation, the Investigating Officer/IO received a secret information and arrested accused - Harchand Singh and Harjant Singh from turning of village Bhuse. While arresting them grounds of arrest were furnished to them and memos Exhibit PW 6/F and Exhibit PW 6/G, respectively, were prepared. Personal searches of such accused were also conducted and memos Exhibit PW 6/I and Exhibit PW 6/H, were prepared. Information regarding their arrest was given and memos Exhibit PW

6/J and Exhibit PW 6/K, respectively, were prepared.

On 12.8.2007, accused Harchand Singh, while in police custody, during the course of interrogation, suffered a disclosure statement that he could get recovered the *parna* (piece of cloth), used in the incident, besides purse, identity card of the deceased and his photograph, which had been kept concealed in his house, about which he had the exclusive knowledge. That disclosure statement was reduced into writing as Exhibit PW 6/L.

Thereafter, accused Harjant Singh, on being interrogated also suffered a disclosure statement to the effect that motorcycle, make Suzuki of red colour, belonging to deceased Charanjit Singh, had been kept concealed by him at Village Marri Udhoke, about which he had the exclusive knowledge and he could get the same recovered. As such, his statement was recorded as Exhibit PW 6/M.

Thereafter, accused Harchand Singh, in pursuance of the disclosure statement suffered by him, while being in police custody, led the police party and got recovered the *parna*, purse, Identity card and photograph of Charanjit Singh deceased, from his house, which articles were converted into a parcel, sealed with seal of Investigating Officer/IO having inscription 'KS' and then said parcel was taken into possession vide recovery memo Exhibit PW 6/N. The Investigating Officer/IO prepared a rough site plan of the place of recovery as Exhibit PW 6/P and recorded statements of the witnesses.

Then accused Harjant Singh, in pursuance of the disclosure statement suffered by him, got recovered motorcycle bearing registration No. PB-02-AC-3074, which was seized vide

memo Exhibit PW 3/A. The Investigating Officer/IO prepared rough site plan of the place of recovery as Exhibit PW 6/P. During the course of investigation, the Investigating Officer/IO recorded statements of various witnesses. After completion of investigation and other formalities, challan against both the accused was prepared and filed in the Court.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Tarn Taran, copies of documents relied upon therein were supplied to the accused free of cost, as provided under Section 207 Cr.P.C. Then observing that offence for which the accused had been booked was exclusively triable by the Court of Sessions, as such, Judicial Magistrate Ist Class, Tarn Taran, vide his order dated 4.3.2008, committed the case to the Court of Additional Sessions Judge, Tarn Taran.

When the case was received in the Court of Additional Sessions Judge, Tarn Taran, he found that prima facie charge for offence under Section 302 IPC read with Section 34 IPC was disclosed against both the accused, as such both the accused were charge sheeted accordingly, to which they pleaded not guilty and claimed trial and the case was fixed for evidence of the prosecution.

During the course of evidence of prosecution, it examined the following witnesses.

PW-1 Rishi Ram, Draughtsman, deposed that on 10.8.2007, he had gone to the place of occurrence and prepared site plan Exhibit PW 1/A, on demarcation of Ranjit Singh – complainant.

PW-2 Balwinder Singh (initially wrongly numbered as

PW-1), father of Charanjit Singh – deceased, stated that his son Charanjit Singh was a tractor driver and on 1.8.2007, he alongwith his wife Swaran Kaur, daughter Karamjit Kaur was present in their house, at about 6.00 P.M.; that his son Charanjit Singh told them that he was going with Harchand Singh in search of work; that Charanjit Singh was having friendship with accused Harchand Singh, who is resident of their village; that Charanjit Singh had gone with accused Harchand Singh on his motorcycle of red colour; that thereafter Charanjit Singh did not return home. The witness stated that he kept searching for Charanjit Singh for 2-3 days and also went to the house of Harchand Singh, but he was not available; that he had gone to the house of Harjant Singh @ Janta, resident of village Marri Udhoke, which is at a distance of 1 km from his village; he was also not present there; that family members of both the accused told him that they had gone out of station. In his deposition, this witness stated that on 4.8.2007, a news was published in newspaper 'Jagbani' and a photograph of an unidentified person was also published there, which he identified to be of his son Charanjit Singh. The witness proved the newspaper as Mark A, stating that after coming to know that dead body was of his son, he went to Police Station, Sarai Amanat Khan, where the police officials showed him photographs and he identified his son in those photographs Mark B, C, D, E and F. A memo of identification Exhibit PW 1/A was prepared by the police, which was thumb marked by him. The witness further added that the accused had killed his son Charanjit Singh for possessing his motorcycle and the motorcycle Exhibit PW 3/A, was later on

recovered from the accused; that this motorcycle was owned by Charanjit Singh deceased.

PW-3 Avtar Singh, a resident of Village Marri Udhoke, stated that on 1.8.2007, at about 7.15 P.M. he alongwith his friend Pargat Singh, resident of Village Marri Kamboke, had gone to the area of Rasulpur on tractor-trolley to take sand from a canal; that while he and Pargat Singh were standing near the road on the bank of the canal and waiting for the labour to load the sand in the trolley, then a Suzuki motorcycle of red colour came from the side of the road of his village; that the motorcycle was being driven by Harchand Singh – accused, known to him as he was doing work of boring in their village; that Charanjit Singh @ Sonu, son of the sister of his wife, was sitting behind Harchand Singh on the motorcycle, whereas Harjant Singh @ Janta accused, resident of his village was sitting behind Charanjit Singh on that very motorcycle; that the motorcycle went towards Village Sarai Amanat Khan; that the accused did not see them at that time. Going further, the witness stated that they got loaded sand in their trolley and returned to their village and on 4.8.2007, the police of Police Station, Sarai Amanat Khan, showed the police file containing photographs Mark B to Mark F, of Charanjit Singh and he identified the same. Going further, the witness stated that on 12.8.2007, he had joined the investigation of this case; that both the accused were with the police. Accused Harjant Singh @ Janta got recovered motorcycle from his house, which was concealed under the empty jute bags; the motorcycle was taken in police possession vide recovery memo Exhibit PW 3/A, attested by

him.

PW-4 ASI Kuldeep Singh, who on 2.8.2007, while posted at Police Station, Sarai Amanat Khan, was a member of police party headed by SI/SHO Kanwaljit Singh, which had gone to the place of occurrence and had observed the dead body which was then unidentified, deposed regarding what had transpired in his presence.

PW-5 Ranjit Singh - complainant, testified that on 2.8.2007, at 6.00 P.M., he was patrolling in the Rakh Sarai Amanat Khan, Forest area towards Gehri, he had observed a dead body lying in the forest area; that a belt of black colour was around its neck and one pair of chappal of blue colour was lying near the dead body; that the dead body was wearing pant of grey colour and a T-shirt of blue, red and white colour; that the belt around the neck was in a tied position; that then he called Dilbag Singh, who was his co-employee, they could not identify the dead body; that he left Dilbag Singh near the dead body to guard it and himself went to Police Station, Sarai Amanat Khan, to lodge a report; that at the turning of Village Bhuse he came across police party headed by SI/SHO Kanwaljit Singh and got his statement Exhibit PW 5/A recorded. Thereafter, he came with the police to the place where dead body was lying, where police officials carried out necessary proceedings, including preparing inquest report Exhibit PW 5/B and took into possession a pair of *chappal* vide memo Exhibit PW 4/B and the belt was seized vide memo Exhibit PW 4/A and he had attested those memos.

PW-6 SI Kanwaljit Singh, Investigating Officer/IO of this case deposed regarding the investigation conducted by him,

proving various documents.

PW 7 HC Jatinder Singh, who on 2.8.2007 was posted as MHC and Record Keeper at Police Station, Sarai Amanat Khan, stated that on that day belt was handed over to him by SHO Kanwaljit Singh, which was kept in police malkhana and on 12.8.2007 a motorcycle bearing registration No. PB-02-AC-3074 was handed over to him by SHO Kanwaljit Singh and he had kept the same in police malkhana.

PW-8 Harjit Singh, photographer, stated that he had gone to the place of occurrence and clicked photographs there. He proved photographs as Exhibit PW 8/1 to Exhibit P 8/5, stating that he had handed over photographs to SI/SHO Kanwaljit Singh.

PW-9 HC Hardeep Singh, who on 2.8.2008, while posted at Police Station Sarai Amanat Khan, was member of the police party headed by SI/SHO Kanwaljit Singh, deposed regarding the police party going to the site and dead body of the unidentified person having been recovered from there. He stated that such dead body was handed over to him and Constable Heera Singh, for getting the post mortem examination conducted from Guru Nanak Dev Hospital, Amritsar, on 3.8.2008 by submitting application Exhibit PW 6/C and that dead body of unidentified person was cremated in the cremation ground of Shivpuri, Durgiana Mandir, Amritsar. The belongings of the dead body were handed over to SI/SHO Kanwaljit Singh, which were taken into possession by preparing a parcel thereof.

PW-10 Rajwinder Singh, Reader to SDM, Khadoor

Sahib, after seeing registration book of motorcycle bearing registration No. PB-02-AC-3074, stated that it was transferred in the name of Charanjit Singh son of Balwinder Singh, resident of Village Marri Kamboke, under signatures of Tarlochan Singh Bhatti, SDM-cum-Registration Authority. He proved transfer order as Exhibit PW 10/A.

PW-11 Dr. Kirpal Singh, deposed that on 3.8.2007, while he was posted as Medical Officer at Medical College, Amritsar, he had conducted the post mortem examination on the dead body of unknown person, aged about 25 years, male; that dead body was brought to mortuary at 1.15 P.M. by HC Hardeep Singh and Constable Hira Singh and post mortem examination was started at 1.20 P.M.; that it was putrefied dead body of a male, wearing pant of grey colour, *dharidar* blue T-shirt and NIKI was mentioned on it, was moderately built, skin was peeled off at places, facial features were bloated, hair pulled out easily, marbling was present over the chest, nails and teeth could not be pulled out easily, rigor mortis was passed off, smegma was present over glans penis, circumference of neck was 42.7 cm. He found the following injuries on the dead body:-

1. Injury No.1 ligature mark 28.7 x 3.4 - 4 cm, on anterior and lateral parts of the neck at level of thyroid cartilage and was horizontally present and was running little upwards. On dissection, infiltration of blood was present along with torn muscle fibre.

2. Reddish brown abrasion 2.2 x 2 cm on left wrist in its lateral part.
3. Reddish brown abrasion 3.3 x 1.4 cm on left elbow.
4. Reddish brown abrasion 3.2 cm on right elbow in its medial part.
5. Reddish brown abrasion 2 x 2 cm on right malleolus and 2.7 x 2 cm on left malleolus.

This witness further stated that on dissection of peritoneum hissing was present. Lungs, brain were congested. The cause of death in this case, in his opinion was asphyxia as a result of strangulation which was sufficient to cause death in ordinary course of nature. He further stated that he had sent viscera to Chemical Examiner for detection of poison and that the deceased had not performed sexual intercourse 24 hours before death; probable time that elapsed between injuries and death was rapid and between death and post mortem examination was within 3 days. He further stated that on receipt of the Chemical Examiner report dated 5.11.2007, no poison was detected and he handed over the report to the police vide No. 213 dated 5.11.2007. He had brought the original post mortem report and carbon copy of the same was Exhibit PW 11/A and report of Chemical Examiner was Exhibit PW 11/B.

PW-12 HC Sukhdev Singh, a formal witness, tendered in evidence his affidavit Exhibit PW 12/A.

With that the prosecution evidence stood closed.

Statements of the accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing

against such accused were put to them, but they denied the allegations contending that they are innocent and have been falsely involved in this case. The accused did not lead any evidence in defence.

After hearing arguments, the trial Court convicted and sentenced the accused as mentioned supra, which left them aggrieved and they have filed the present appeals praying that the same be accepted, the impugned judgment of conviction and sentence be set aside and they be acquitted of the charge framed against them.

We have heard learned counsel for the appellants, learned Additional Advocate General for the State of Punjab, besides going through the record and we are of the considered view that there is no element of merit in both the appeals.

The instant case is based upon circumstantial evidence, since no direct evidence of the incident is available. However, the prosecution has been successful in proving the chain of events leading to the irresistible conclusion that it were both the accused-appellants who while sharing a common intention had committed murder of Charanjit Singh.

The prosecution case mainly rests upon four factors, firstly, the deceased having left his house on 1.8.2007 at 6.00 P.M. on his motorcycle alongwith accused – Harchand Singh of his village, for the purpose of searching for work. However, he had not returned home thereafter. PW-2 Balwinder Singh, father of Charanjit Singh – deceased had deposed in that regard. Then there is statement of PW-3 Avtar Singh, uncle of Charanjit Singh – deceased, who had deposed that he had seen accused Harchand Singh driving the motorcycle with

Charanjit Singh @ Sonu, sitting behind him and Harjant Singh @ Janta, sitting behind Charanjit Singh. The motorcycle was proceeding towards Sarai Amanat Khan on that very day at 7.15 P.M. Deceased Charanjit Singh was not seen thereafter, rather his dead body was recovered from the forest area of Rakh Sarai Amanat Khan towards Gehri on 2.8.2007 at 6.00 P.M. i.e. on the next day. Charanjit Singh had been strangled to death. It was a case of unnatural death. Obviously, it were both the accused who were last seen in company of the deceased, to explain as to how and under what circumstances, Charanjit Singh had expired. But they have miserably failed to render any such explanation, which is a very strong incriminating circumstance against them.

Then both the accused were found to be absent from their houses, after the incident. That means they had absconded. PW-2 Balwinder Singh, father of the deceased has categorically stated that he had gone to house of both the accused in search of his son Charanjit Singh, but he did not come across the accused, rather their family members told him that they had gone out of station. Thus the accused having absconded from their residential houses after the incident, also points towards their involvement in the incident.

Another major factor to be taken into consideration is that both the accused were found in possession of the articles belonging to Charanjit Singh deceased, which are to be taken as stolen property. Since the articles belonged to Charanjit Singh deceased, the accused had no right or concern there with, as such they were not justified in coming in possession thereof and retaining

of their custody. From statement of PW-10 Rajwinder Singh, it comes out that motorcycle bearing registration No. PB-02-AC-3074, had been transferred in the name of Charanjit Singh son of Balwinder Singh, resident of Village Marri Kamboke. Charanjit Singh - deceased, as deposed by Balwinder Singh, had left his house alongwith Harchand Singh accused on that very motorcycle on 1.8.2007 at about 6.00 P.M. As testified by PW-3 Avtar Singh, accused Harchand Singh was spotted driving that motorcycle with Charanjit Singh sitting behind him and accused Harjant Singh sitting behind Charanjit Singh on that very motorcycle on 1.8.2007 at about 7.15 P.M. That motorcycle was got recovered by accused Harjant Singh @ Janta from his possession on 9.8.2007, in pursuance of the disclosure statement Exhibit PW 6/M, which was taken into possession vide memo Exhibit PW 3/A. Similarly, PW-6 SI /SHO Kanwaljit Singh, has proved such accused making statement under Section 27 of the Evidence Act and getting recovered said motorcycle from his possession. DW-3 Avtar Singh had corroborated such recovery got effected by Harjant Singh @ Janta. From the testimony of PW-6 SI/SHO Kanwaljit Singh, it further transpires that accused Harchand Singh, on 12.8.2007 also while in police custody on being interrogated, had suffered a disclosure statement Exhibit PW 6/L and thereafter in police custody got recovered the *parna* Exhibit P-4 used in the incident, purse of the deceased Exhibit P-5, Identity card of the deceased Exhibit P-6, which were converted into a parcel, and then taken into possession vide recovery memo Exhibit PW 6/N. Under Section 114 of the Indian Evidence Act, the Court may

presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. The first illustration given below said provision provides that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. Thus this presumption can very well be drawn in this case, which not only goes to show that the accused had taken away such articles belonging to Charanjit Singh - deceased and it further lead to the inference that it were the accused who had committed murder of Charanjit Singh - deceased. PW-2 Balwinder Singh, father of the deceased has stated in no uncertain terms that accused have killed his son Charanjit Singh for possessing his motorcycle, which provides motive for the incident.

Thus the prosecution had successfully proved its charge against the accused beyond a shadow of reasonable doubt. The trial Court was justified in convicting both the accused for offence under Section 302 IPC read with Section 34 IPC. The impugned judgment of conviction and sentence passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment is upheld, whereas both the appeals are found to be without any merit and are dismissed accordingly.

Appellant – accused convict Harjant Singh is stated to be on bail in terms of order dated 10.11.2014 passed by this Court. The bail

order is cancelled and he is ordered to be taken into custody, so that
accused – convicts undergo the remaining sentence.

(T.P.S. Mann)
Judge

(H.S. Madaan)
Judge

15.3.2017
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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No