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

**1. CRA-D-595- DB-2012
Date of Decision : April 18, 2017**

Sarabjit Kaur Appellant

Versus

State of Punjab Respondent

2. CRA-D-699- DB-2012

Gurpreet Singh alias Bachi Appellant

Versus

State of Punjab Respondent

3. CRR-2038-2015

Gurmukh Singh Appellant

Versus

State of Punjab Respondent

**CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE [DR.] SHEKHER DHAWAN**

Present Mr. P.S.Sekhon, Advocate,
for appellant-Sarabjit Kaur.

Ms. Kirti Singh, Advocate,
Legal Aid counsel, for
appellant - Gurpreet Singh alias Bachi.

Mr. C.S.Jattana, Advocate,
for the revisionist.

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Mr. Gaurav Garg Dhuriwal, D. A.G. Punjab,
for the respondent-State.

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SHEKHER DHAWAN, J.

The above mentioned two appeals, bearing Nos. **CRA-D-595-DB-2012** and **CRA-D-699- DB-2012**, filed by Sarabjit Kaur and Gurpreet Singh alias Bachi respectively are directed against the judgment of conviction and order of sentence dated 04.05.3012 passed by learned Additional Sessions Judge, Sangrur, whereby both the appellants were convicted under Sections 302 read with Section 120-B IPC and were sentenced as under:-

Under Section	Sentence	In default
U/S 302 read with section 120-B IPC	Rigorous Imprisonment for Life and to pay a fine of ₹10000/- each.	to further undergo RI for six months each.

2. **CRR-2038-2015** filed by Gurmukh Singh [Juvenile in conflict with law] is directed against the order dated 7.10.2014 passed by learned Principal Magistrate, Juvenile Justice Board, Sangrur, whereby it has been held that the petitioner committed the offence punishable under Section 302 read with Section 34 IPC and, therefore, he has been ordered to be sent to the Observation Home for a period of three years and to pay a fine of Rs.1000/-. The appeal filed by the petitioner was dismissed by learned Sessions Judge, Sangrur vide judgment dated 30.04.2015.

3. As all the above titled three cases, i.e. two appeals and a Revision arise out of a case, bearing FIR No. 227 dated 12.12.2009 [Ex.PW-13/C] registered under Section 302 and 120-B IPC at Police Station, Bhawanigarh [Sangrur], these are being disposed of by this common judgment.

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4. Facts relevant for the purpose of decision of these cases are that process of law in this case was initiated by Sarabjit Kaur who made statement [Ex.PW-13/A] to the Police that she was having two children, i.e. One daughter, Lakhvir Kaur and a son, Gurwinder Singh. Her husband, Harbans Singh [since deceased] was an agriculturist. On 11.12.2009, at about 9.00 PM, her husband, Harbans Singh had gone for watering his fields and he was to return within two hours. Her husband did not return till morning. Sarabjit Kaur alongwith her son, Gurwinder Singh went to the fields to enquire about her husband. She found the bicycle of her husband lying in the fields and the dead body of her husband, Harbans Singh in a pool of blood in front of the kotha [room meant for motor] of Naranjan Singh. There was injury mark on the head of husband of the complainant. Thereafter, she informed the Panchayat of the Village. As per the complainant, in the night intervening 11th and 12th December, 2009, some unknown persons had committed the murder of her husband.

5. On this, the police started investigation and during investigation, rough site-plan [Ex.PW-13/E] of place of occurrence was prepared. Post-mortem examination of the dead-body of Harbans Singh [since deceased] was got conducted. Blood stained earth was lifted from the spot and was sealed with seal 'JS'. However, during investigation, it had come that appellant, Sarabjit Kaur was having illicit relations with one Gurpreet Singh alias Bachi. Harbans Singh [since deceased] used to restrain the complainant from doing that illegal act. But in order to clear her way, Sarabjit Kaur got her husband murdered by accused Gurpreet Singh and thereafter the case

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was also registered against complainant, Sarabjit Kaur. During investigation, Gurpreet Singh was arrested and suffered a confessional statement that he had committed the murder of Harbans Singh with the aid of Harjinder Kaur wife of Avtar Singh, sister-in-law [Darani] of Gurpreet Singh. Accordingly, Harjinder Kaur was also arrested in the case.

6. After completion of investigation proceedings, challan was presented against the appellants in the Court for trial. Separate challan was also presented against Gurmukh Singh, [a juvenile in conflict with law] as he was also involved in the commission of offence of murder of Harbans Singh [since deceased].

7. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused, recording of evidence of the witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution evidence and defence version on record, learned trial Judge held the appellants, guilty and convicted them for commission of offence punishable under Section 302 read with Section 120-B IPC and sentenced them on 4.5.2012. As submitted above, Principal Magistrate, Juvenile Justice Board observed that it has been proved that Gurmukh Singh, a juvenile in conflict with law has committed the offence punishable under Section 302 read with Section 34 IPC and, accordingly he was ordered to be sent to the Observation Home for a period of three years and to pay a fine of Rs.1000/-. The appeal filed by the petitioner was dismissed by learned Sessions Judge, Sangrur vide judgment dated 30.04.2015.

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8. Aggrieved of passing of aforesaid judgment of conviction and order of sentence against appellants - Gurpreet Singh and Sarabjit Kaur; and orders dated 7.10.2014 and 30.4.2015, passed by Principal Magistrate, Juvenile Justice Board and learned Sessions Judge, Sangrur respectively against revisionist, Gurmukh Singh, all the three are before this Court by way of present separate appeals/revision.

9. Learned counsel for appellants - Gurpreet Singh and Sarabjit Kaur submitted that the appellants have been convicted without there being any material or evidence available on the file. In fact, the process of law was set into motion by appellant, Sarabjit Kaur and thereafter at the instance of Avtar Singh [brother of the deceased] and Nachhattar Kaur [mother of the deceased] and Sarabjit Kaur was falsely implicated in this case. There was even no evidence against appellant, Gurpreet Singh. It is further contended that the Court below has not considered the defence version at all, because it has come in the statement of DW-1, Paramjit Kaur and DW-2, Gurmeet Singh, that there were a dispute regarding 11 bighas of land between Harbans Singh and Avtar Singh, brother of Harbans Singh [since deceased] and Avtar Singh and his mother Nachhattar Kaur were not happy with the purchase of said land. Resultantly, Avtar Singh and Nachhattar Kaur had threatened Sarabjit Kaur to involve her in a police case due to dispute of 11 bighas of land and both these prosecution witnesses have deposed in this case against the appellants/revisionist due to personal enmity. DW-3, Dr. Inderjit Singh, Fingerprints and Handwriting Expert deposed that in the inquest report, Ex. PW-13/F, line marked as Q1 was written with different

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ball point pen and ink than the one used to fill the other columns, whereas column having the line Q1 was kept blank.

10. Learned counsel for the revisionist has contended that the petitioner has been falsely implicated in this case as there is nothing on record to connect the petitioner with the commission of alleged crime.

11. While arguing on these points, learned State counsel contended that the prosecution case is based upon the testimony of Avtar Singh [PW-1] and Nachhattar Kaur [PW-2], who have detailed the true facts of the case that Sarabjit Kaur had illicit relations with appellant, Gurpreet Singh and this fact had come to the notice of Harbans Singh [since deceased] as well as Avtar Singh [PW-1] and Nachhater Kaur and other family members. It has come in the evidence that Sarabjit Kaur wanted to get rid of her husband and for that purpose, she in connivance with appellant, Gurpreet Singh and Harjinder Kaur, murdered Harbans Singh.

12. Learned State counsel further contended that the prosecution case stands proved on the basis of expert evidence by way of finger print impressions taken from the spot on two tumblers, empty bottle and mould of right foot print of accused-appellant, Gurpreet Singh vide recovery Memos Ex. PW-4F, Ex. PW-4/E and Ex. PW-4/D respectively. The other incriminating material and evidence collected from the spot i.e., hair recovered from the right hand fist of the deceased; blood stained parna; blood stained earth, taken into possession vide recovery Memos Ex. PW-4/A, PW-4/B, PW-4/C and PW-4/G, which were sent to Forensic Science Laboratory and on the basis of FSL Reports [Ex. MO-21, MO-22, MO-23,

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and MO-24], the alleged offence against the appellants stands established and the Courts below have rightly relied upon the evidence available on record. Apart from the incriminating material recovered from the spot, where dead-body of Harbans Singh [since deceased] was lying, the police recovered chappal of the deceased, one polythene envelop containing empty shell of egg and one bicycle of deceased lying near the place of occurrence. The sample of hair of accused-appellant, Gurpreet Singh and finger print impression of the accused were taken in the Court and on the basis of comparison, the report was submitted, which was rightly relied upon by the Court below. To the contrary, the defence version is plea of denial only. Three witnesses were examined by the accused-appellant in their defence, but their testimony does not establish the innocence of the accused in any way or disprove the prosecution case. The appeals and revision are without merit and thus, the same be dismissed.

13. Having considered the submissions made by learned counsel for the parties and appraisal of the record, we are of the view that the prosecution case is mainly based upon reports and opinion of expert witnesses, which was collected by way of scientific evidence from the spot. During investigation, the police had recovered hair from the right hand of Harbans Singh [since deceased] vide recovery memo Ex. PW4/A and thereafter sample hair of accused - Gurpreet Singh was taken and on the basis of comparison, the same were found to be of the same person as is clear from FSL reports Ex. MO-22. Similarly, during investigation, police could recover two empty glasses and a bottle and there were finger print

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impressions of the accused persons on these articles as per report [Ex. MO-25] of the Finger Print Bureau, Phillaur. Thereafter, impression of finger prints of accused appellant were taken. The foot mould impressions were also taken from the spot and thereafter on the basis of specimen foot mould, the same were found to be of accused-appellants. Dr. Paramvir Singh Klair [PW-3] conducted post-mortem on the dead body of Harbans Singh [since deceased] and observed the following injury on his person:-

- “1. There was depressed fracture of left frontal and occipital bone.
2. Lacerated wound with fracture of frontal bone 1cm X 1.7 cm in mid line 3 cm posterior to hairline. Brain matter was protruding from this injury. On opening skull there was complete fracture of left parietal, frontal and occipital bones alongwith crush injuries of underlying brain matter. There was 45 ml blood in cranial cavity.”

14. As per this witness, the cause of death was neurogenic shock due to extensive injury to vital organ brain and the injury was anti-mortem and sufficient to cause death in ordinary course of nature. The police had recovered the blood stained rod [Ex.MO-24] from the possession of appellant, Gurmukh Singh vide recovery memo Ex. PW-2/B. The reliance placed on the deposition of DW-1 and DW-3 is of no help to the accused as it has come in the cross-examination of DW-1 itself that during investigation, she had not moved any application to the Police alleging false implication of her sister, Sarabjit Kaur. She had not disclosed to any body regarding threats extended by Nachhattar Kaur and Avtar Singh. As regard

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to DW-3, it had come in the cross-examination of this witness that the inquest report was not filled in his presence. The witness had also admitted that the opinion given by him is on the basis of presumption. At the same time, the witness had admitted that all the columns of inquest report were filled with ball point pen only. The Court below has considered the entire statement i.e., examination-in-chief and cross-examination while discarding the testimony of DW-3 and the defence version. On the basis of material and evidence available on the file by way of FSL Reports [Ex. MO-21, MO-22, MO-23, MO-24 and MO-25], coupled with the ocular testimony of PW-1 and PW-2, the prosecution has been able to prove the guilt against appellant Gurpreet Singh. Hence, his appeal stands dismissed. As regards to the revision filed by Gurmukh Singh, both the Courts below have already appreciated material and evidence available by way of FSL report Ex. MO-21. The blood on the rod was found to be "Human Blood" as is clear from FSL report, Ex. MO-24. Both the Courts below have already appreciated the entire evidence. Resultantly, the appeal [CRA-D-699-DB-2012] filed by Gurpreet Singh and the revision petition [CRR No. 2038 of 2015] filed by Gurmukh Singh have no merit and are also dismissed.

15. As regards the appeal filed by appellant, Sarabjit Kaur, the evidence and material against her is that she hatched conspiracy with remaining accused Gurpreet Singh and Gurmukh Singh. Though, there is no expert or scientific evidence available against Sarabjit Kaur, yet it has come in the statements of PW-1, Avtar Singh and PW-2, Nachhattar Kaur that Sarabjit Kaur and Harbans Singh [since deceased] had strained

relations as accused-appellant, Sarabjit Kaur was having illicit relations with accused-appellant, Gurpreet Singh and Harbans Singh [since deceased] and his family members came to know about this fact and Sarabjit Kaur wanted to get rid of Harbans Singh and with that motive, she had hatched a conspiracy with other co-accused and got committed the murder of Harbans Singh. However, except for the deposition of PW-1, Avtar Singh and PW-2, Nachhattar Kaur, there is no direct evidence against appellant, Sarabjit Kaur. The testimony of PW-1 and PW-2 is not sufficient to come to the conclusion that appellant, Sarabjit Kaur got committed murder of Harbans Singh [since deceased] through Gurpreet Singh and Gurmukh Singh or at any stage, she conspired with the main accused to commit this offence. Though, there cannot be any direct evidence for conspiracy because such conspiracy is always in secrecy. But, to hold any person to be guilty of an offence and that too, for such a serious offence punishable under Section 302 IPC, there must be substantial material and evidence available on the file, whereas in the present case, such material and evidence is not available qua appellant, Sarabjit Kaur. Learned trial Judge has failed to appreciate this fact. Hence, the appeal filed by appellant, Sarabjit Kaur is allowed. The conviction and sentence passed by learned trial Judge qua Sarabjit Kaur are set aside. Consequently, accused-appellant, Sarabjit Kaur is acquitted of the charge. She is on bail. Her bail/surety bonds shall stand discharged.

16. In view of the above, the appeal [CRA-D-595-DB-2012] filed by appellant, Sarabjit Kaur stands allowed and the appeal [CRA-D-699-DB-2012] filed by Gurpreet Singh and the revision petition [CRR No. 2038 of

2015] filed by Gurmukh Singh have no merit and stand dismissed.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

April 18, 2017
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes