

In the High Court of Punjab and Haryana at Chandigarh

(I) Criminal Appeal-D No.75-DB of 2012
Date of Decision:- August 30, 2017

Sukhmander Singh @ Mander Singh and another

.....Appellants

Versus

State of Punjab

....Respondent

(II) Criminal Appeal-D No.1189-DB of 2011

Sikander Singh

.....Appellant

Versus

State of Punjab

....Respondent

CORAM: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. T.S. Sangha, Senior Advocate with
Mr. Jagjit Singh Lalli, Advocate.
Mr. Ishan Kaushal, Advocate for
Mr. Karanvir Singh Khehar, Advocate for appellants.

Ms. Anju Arora, Additional Advocate General, Punjab.

Mr. Gurvinder Singh Sidhu, Advocate for the complainant.

Gurvinder Singh Gill, J.

1. This judgment shall dispose of the following two appeals as in both the appeals, challenge has been made to the same judgment dated 23.11.2011 passed by the Additional Sessions Judge, Bathinda:-
 - i. CRA-D No.75-DB of 2012 titled as Sukhmander Singh and another versus State of Punjab.
 - ii. CRA-D No.1189-DB of 2011 titled as Sikander Singh versus State of Punjab.
2. Vide impugned judgment all the three appellants have been held guilty of having committed offences punishable under Sections 302 and 364 read with Section 34 of Indian Penal Code, 1860 (for short 'IPC') and have been sentenced as follows:-

Name of convict	Convicted u/s	Sentence Imposed	In default of payment of fine
Sukhmander Singh @ Mander Singh	364 of IPC	R.I. for 10 years and fine of Rs.3,000/-.	Further R.I. for two months
	302 of IPC	R.I. for life and fine of Rs.5,000/-	Further R.I. for three months
Amrit Pal Singh	364 of IPC	R.I. for 10 years and fine of Rs.3,000/-.	Further R.I. for two months
	302 of IPC	R.I. for life and fine of Rs.5,000/-	Further R.I. for three months
Sikander Singh	364 r/w 34 of IPC	R.I. for 10 years and fine of Rs.3,000/-.	Further R.I. for two months
	302 of IPC	R.I. for life and fine of Rs.5,000/-	Further R.I. for three months

3. The prosecution story, in nutshell is that on 11.9.2010, the complainant Naib Singh (PW-2) made a statement (Ex.PW-2/A) before Inspector Nazar Singh wherein he alleged that he is an agriculturist and a resident of village Shekhpura and Jagtar Singh aged about 19 years, who was studying in Guru Kashi Collage, Talwandi Sabo was his only son. On coming to know about his illicit relations with Manpreet Kaur daughter of Mander Singh he withdrew him from college a few days back. On the day of occurrence he and other members of the family slept in the courtyard and his son Jagtar Singh was sleeping on a cot near him. At about 04.00 A.M. when he woke up by chance, he noticed that his son Jagtar Singh was not there on his cot. The complainant along with his brother Nahar Singh went out on a motor cycle in search of his son towards house of Mander Singh. At about 04.45 A.M. they saw Mander Singh and Amritpal Singh taking his son on a scooter who was sitting in between them and who went towards '*motor wala khet*'. The complainant and his brother followed them on their motor cycle. When they stopped a little short of the tubewell motor at about 5:00 A.M. they saw in the light of the motor cycle that Mander Singh armed with a '*Tamba*' (Bludgeon) and Kala Singh son of Hardev Singh armed with a '*dang*' started beating his son Jagtar Singh, who fell down unconscious. When the complainant and his brother tried to rescue Jagtar Singh, then Mander Singh raised a '*lalkara*' saying that they had already eliminated Jagtar Singh and that the complainant and his brother should not be allowed to escape. The complainant and his brother, however, fled away on their motor cycle and on reaching home narrated the entire occurrence to their cousin Boota Singh who accompanied them and they again visited the spot i.e.

the tubewell motor of Mander Singh, where they saw blood and chappals of Jagtar Singh lying on the ground. The complainant accompanied by his brother Boota Singh searched for Jagtar Singh at nearby places but he could not be found. Then all three of them went to house of Mander Singh where they saw dead-body of Jagtar Singh lying which was bearing multiple injuries. The complainant alleged that the motive of killing his son Jagtar Singh was that he had love affair with daughter of Mander Singh and the matter had earlier been got compromised through Ram Kumar of their village but Mander Singh by calling Jagtar Singh to their house and by abducting him and taking him to their fields and beating him with '*tambas*' had murdered him and kept his dead-body in their house to dispose off the same.

4. The aforesaid statement of Naib Singh was recorded by Inspector Nazar Singh (PW-7), when Naib Singh had met the police party while the police party was patrolling in the area of Shekhpura Dhani. The aforesaid statement (Ex.PW-7/A) was sent to the police station on the basis of which formal FIR (Ex.PW-7/B) was lodged. The police investigated the matter during the course of which inquest proceedings were conducted. The dead-body was sent for post-mortem examination. A rough site-plan of the place of occurrence was prepared. Blood-stained earth was lifted from the house of accused Mander Singh as well as from the fields of Mander Singh.
5. The accused Sukhmander Singh and Amritpal Singh were arrested on 13.9.2010. Upon interrogation accused Sikhmandar Singh made a disclosure statement and got recovered a '*tamba*' which had been kept concealed by him underneath the grass under eucalyptus tree. Amritpal Singh also suffered a

disclosure statement and got recovered a 'tamba' from the cotton crop underneath a 'Kinnow' plant near motor of Mander Singh. The accused Sikander Singh was arrested on 14.9.2010 and who upon interrogation made a disclosure statement and got a 'dang' recovered from the fields. Upon conclusion of investigation challan was presented in the Court of learned Sub Divisional Judicial Magistrate (SDJM), Talwandi Sabo on 10.11.2010. The learned SDJM, vide order dated 23.12.2010 committed the case to the Court of Sessions. The case was assigned to the learned Additional Sessions Judge who upon finding sufficient grounds to presume that the accused had committed offences punishable under Sections 364/302/201 read with Section 34 of IPC framed charges against the accused to which the accused pleaded not guilty and claimed trial.

6. The prosecution in order to establish the charges framed against the accused examined as many as 9 witnesses. PW-1 Dr. Beant Singh Mann, Medical Officer, Civil Hospital, Talwandi Sabo who had conducted post-mortem examination on dead-body of Jagtar Singh proved the post-mortem report as Ex.PA. PW-1 stated that there were multiple fracture of ribs on both sides of chest with multiple reddish bluish contusions and that in his opinion the cause of death was due to multiple injuries leading to haemorrhage and shock.
7. PW-2-complainant Naib Singh, father of deceased stated in tune with his statement Ex.PW-7/A on the basis of which FIR (Ex.PW-7/B) was lodged. He specifically stated that on 11.9.2010 at about 4:00 A.M., upon finding his son missing from his cot, he along with his brother went out on motor cycle to look for him and they saw Sukhmander Singh and Amritpal Singh taking his son on

a scooter towards fields and they followed their scooter to the fields, where they saw the accused, who were armed with sticks, giving beatings to his son. PW-3 Nahar Singh who is brother of the complainant stated identically regarding the occurrence as stated by PW-2.

8. PW-4 Boota Singh, Clerk, Guru Kashi College, Damdama Sahib produced the summoned record in the shape of attested copy of order of Principal, Punjab University, Guru Kashi College, Damdama Sahib as per which the name of Jagtar Singh had been struck off the Rolls on 3.8.2010 at the instance of his father due to domestic affairs. He proved the attested copy of the said order as Ex.PW-4/A. PW-5 Iqbal Singh, AMHC has tendered his affidavit in evidence as Ex.PW-5/A, wherein he deposed that he was posted as AMHC at Police Station Talwandi Sabo and that on 11.9.2010 Inspector Nazar Singh had handed over the case property to him and that as long as the case property remained in his possession the same was not tampered with. PW-6 Manpreet Kaur, daughter of Sukhmander Singh (accused), was briefly examined by the prosecution but was declared hostile. Though, the learned Public Prosecutor was permitted to cross-examine the said witness but all the suggestions put to the said witness regarding her relations with the deceased were denied by the said witness.
9. PW-7 Inspector SI Nazar Singh who is Investigating Officer of the present case stated in detail regarding the entire proceeding conducted in the case right from recording initial statement of the complainant upto filing of challan. PW-8 Head Constable Mander Singh is a formal official witness who has tendered his affidavit Ex.PW-8/A in evidence. PW-9 Sukhdev Sharma, Clerk, Sub Tehsil

Jhunir, District Mansa produced record pertaining to registration of scooter bearing registration No.DDR-3297. He deposed that as per entry at serial No.2367 the scooter was transferred in the name of Budh Singh son of Sukhdev Singh resident of Lehra Gaga, District Mansa.

10. After conclusion of the prosecution evidence, statement of accused were recorded in terms of Section 313 Cr.P.C. wherein entire incriminating evidence was put to them to enable them to explain the same but they denied the entire prosecution case in toto and have pleaded false implication at the instance of the complainant due to party faction in the village. The accused were afforded opportunity to lead evidence in their defence but they have not chosen to lead any evidence.
11. The learned trial Court upon appreciating the evidence on record held that the prosecution has been able to establish charges framed against the accused in respect of offences punishable under Section 302 IPC and 364 read with Section 34 of IPC and convicted them for the said offences vide judgment dated 23.11.2011. The appellants, aggrieved by the same, have filed the present appeals.
12. The learned counsel for the appellants while assailing the impugned judgment have submitted that the present case is infact a case of blind murder and the appellants have been falsely implicated in the present case and that the story put forth by the prosecution is absolutely improbable and does not appeal to reason. The learned counsel have submitted that though the complainant alleges that Sukhmander Singh and Amritpal Singh were taking away his son on a scooter who was sitting in between them and that the complainant along

with his brother followed them on their motor cycle and then in their presence the accused caused injuries to his son with sticks but it is practically not possible for two persons going on a scooter to control a young boy sitting in between them on the scooter especially if the accused are not armed with any deadly weapon. It has further been submitted that though the accused were not armed with any sharp edged weapon and were armed with sticks but still the complainant and his brother did not take any effective steps for saving the deceased Jagtar Singh.

13. The learned counsel for the appellants have further submitted that the story of the prosecution that the accused first took the deceased to fields and caused injuries to him due to which the deceased fell down unconscious and thereafter took the deceased to the house of accused Sukhmander Singh is also highly unnatural as no accused would like to create evidence against him by taking the dead-body to his own house especially when the accused had already been noticed by the complainant and his brother.
14. The learned counsel, further, while pointing out some inconsistencies in the testimonies of the witnesses have submitted that the impugned judgment cannot sustain and that the accused are entitled to be acquitted.
15. On the other hand the learned counsel representing the State and has defended the impugned judgment and has submitted that the prosecution has led ample evidence to prove the charges framed against the accused and the clinching evidence is recovery of dead-body of deceased from the house of accused Sukhmander Singh.
16. The learned State counsel has further submitted that since the prosecution has

also proved the motive for causing death of Jagtar Singh, there is no reason to doubt the testimonies of the complainant PW-2 Naib Singh and that of his brother PW-4 Boota Singh who have both stated consistently regarding the manner in which the accused murdered Jagtar Singh. The learned State counsel has thus prayed for dismissal of the appeals.

17. We have considered the rival submissions addressed before this Court by the learned counsel and with their assistance have also perused the record of the case.
18. As far as the factum of death of Jagtar Singh and the same being homicidal is concerned, PW-1 Dr. Beant Singh Mann who had conducted post-mortem examination on the dead body of Jagtar Singh stated that there were multiple fractures on ribs on both sides of chest of deceased with multiple reddish bluish contusions. He has opined that the cause of death was the multiple injuries leading to haemorrhage and shock which were ante-mortem in nature and sufficient to cause death. PW-1 was cross-examined on behalf of the accused but nothing substantial could be elicited during his cross-examination so as to doubt veracity of his statement or his opinion regarding the cause of death. As such the fact that Jagtar Singh died a homicidal death stands duly established.
19. The prosecution mainly relies upon the testimonies of the complainant i.e. PW-2 Naib Singh and that of his brother PW-3 Nahar Singh to establish its case. A perusal of their testimonies shows that both have stated consistently to the effect that Jagtar Singh son of the complainant had earlier been studying at Guru Kashi College, Talwandi Sabo but the complainant Naib Singh withdrew his son from college when he came to know that his son was having love affair

with Manpreet Kaur daughter of Sukhmander Singh. Both have further stated to the effect that on 11.9.2010 at about 04:00 A.M. after PW-2 Naib Singh noticed that his son was missing from the cot, he went to the house of his brother PW-3 Nahar Singh and then both of them went on motor cycle to look for Jagtar Singh and when they were near the house of Sukhmander Singh they saw Sukhmander Singh and Amritpal Singh taking away Jagtar Singh on a scooter who was sitting in between them and that they followed the scooter on their motor cycle and reached the fields of Sukhmander Singh and they stopped at a distance from the tube-well (motor).

20. Both of them have stated that they saw in the light of the motor cycle that Sukhmander Singh, Amritpal Singh and Sikander Singh started beating Jagtar Singh with 'sticks' and when they tried to rescue Jagtar Singh then Sukhmander Singh raised a '*lalkara*' to teach them a lesson and said that they had already killed Jagtar Singh and upon which the complainant and his brother returned back on their motor cycle and narrated the occurrence to Boota Singh and then subsequently all three of them again went to the fields of Sukhmander Singh to look for Jagtar Singh but could not find him. They have further stated that thereafter they went to the house of Sukhmander Singh where they found the dead-body of Jagtar Singh bearing multiple injuries.
21. Though we do find that both PW-3 and PW-4 have stated consistently regarding the manner of occurrence but there are certain circumstances which do have an element of improbability. While the recovery of the dead-body from the house of Sukhmander Singh cannot be denied, but the story of the prosecution that the deceased had been caused injuries at the fields of

Sukhmander Singh in the presence of PW-2 and PW-3 does't sound very probable for the reason that no serious attempt, whatsoever was made by the complainant or his brother to save Jagtar Singh from the hands of the accused, though the accused were stated to be armed with 'sticks' and were not armed with any sharp edged weapon. The post-mortem report Ex.PA also shows that the dead-body was not having any injury caused with sharp edged weapon and the injuries were in the nature of contusions indicative of the fact that blunt edged weapon had been used for causing injuries. In these circumstances, the story of the prosecution that father and uncle of the deceased after seeing son of complainant being caused injuries returned back to the village cannot be termed to be as a normal conduct.

22. Further in case the injuries had been caused at the tubewell motor in the fields of Sukhmander Singh, where as per the case of prosecution the deceased fell down unconscious, it is unlikely that the accused would carry his dead-body to their home rather than making any attempt to dispose of the same elsewhere. The cross-examination of the complainant PW-2 Naib Singh shows that there is a minor canal adjoining the fields of the place of occurrence and there is also a canal on Shekhpura passage which is also at a distance of 7-8 kilometers. The accused could have conveniently disposed of the dead-body in the fields or in the canal and the story that the accused after pulling the deceased in the fields brought home the dead-body is again a conduct which is unnatural and unlikely.
23. Further from the cross-examination it also transpires that there is a Gurudwara on the way but the complainant and his brother did not seek any help. The

relevant extract from the cross-examination of PW-2 is as follows:-

“They also noticed us following them. They did not bother us and we simply followed them. We did not raise any alarm, nor tried to someone or contact from the village or from nearby houses and we simply followed them. I do not know whether lot of persons were present in the Gurudwara Sahib at that time. They and we passed in front of Gurudwara Sahib. The place of occurrence is at a distance of 4/5 killas of distance from Gurudwara Sahib. There might be 15/16 houses inside the Gurudwara Sahib or Sewadars etc. When the accused stopped their scooter in the fields, our motor cycle was at a distance of 5/6 karams. They noticed us following them and even they noticed at that time, when they stopped their scooter. We were at the same distance when the injuries were caused by the accused in one or 1½ minutes. We did not make any attempt to call persons from Gurudwara Sahib.”

24. Though the prosecution story regarding the complainant and his brother not making any attempt to save Jagtar Singh and regarding taking the dead-body from the fields to the house of the accused Sukhmander Singh by the accused does not seem to be probable and it appears that an attempt has been made by the complainant party to rope in maximum number of accused, but the fact remains that the recovery of dead-body from the residence of Sukhmander Singh is too grave a fact to be overlooked. It is not only the complainant and his brother who have stated about the dead-body of Jagtar Singh having been recovered from the house of Sukhmander Singh but even as per the statement of Investigating Officer PW-7 Nazar Singh, the dead body was lying in the house of Sukhmander Singh. A dead-body is not a small object which can be

planted in somebody's house. No explanation whatsoever is forthcoming from Sukhmander Singh as to how the dead-body of Jagtar Singh came to be present in his house and which was bearing multiple injuries. Sukhmander Singh was expected to come out with some explanation for the same but he has simply pleaded false implication due to party faction in the village.

25. Heavy burden lies on the accused to explain the circumstances under which the dead-body of Jagtar Singh bearing multiple injuries was found in his house. In this context, a reference may be made to provisions of section 106 of Indian Evidence Act 1872, which is in the nature of an exception to general rule enshrined in section 101 of Indian Evidence Act, which mandates that the burden of proof lies on the person who asserts the existence of such fact. Section 106 in The Indian Evidence Act, 1872 is reproduced below for the sake of ready reference:

106. Burden of proving fact especially within knowledge.-

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

26. In a judgment reported as (2012) 1 SCC 10 Prithipal Singh v. State of Punjab, the Hon'ble Apex Court has held that if a fact is especially in the knowledge of any person, then burden of proving that fact is upon him and that it would be impossible for the prosecution to prove certain facts particularly within the knowledge of the accused. It was further held therein that Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable

inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, offers any explanation which might drive the court to draw a different inference. Thus it was held that section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused.

27. The Hon'ble Apex Court, in a case reported as (2016) 12 SCC 665 Harijan Bhala Teja v. State of Gujarat in somewhat identical circumstances where dead-body had been found in the house of the accused affirmed the judgment of the High Court reversing acquittal of accused. The relevant extract from cited judgment is reproduced below for the sake of ready reference:

“ Section 106 of the Evidence Act, 1872 provides that when any fact is special within the knowledge of any person, the burden of proving that fact is upon him. Since it is proved on the record that it was only the appellant who was staying with his wife at the time of her death, it is for him to show as to in what manner she died, particularly when the prosecution has successfully proved that she died homicidal death.”

28. In the above cited case, the accused had not come out with any satisfactory explanation regarding death of his wife. The Hon'ble Supreme Court upheld conviction of husband of the deceased despite the fact that there was no direct evidence to connect the accused with the crime. In the present case, the accused has not come out with any explanation to show as to under what circumstances the dead body of Jagtar Singh was found from his home, which

was bearing multiple injuries on his chest.

29. Apart from the recovery of dead-body from the house of appellant Sukhmander Singh, the prosecution has also been able to establish the motive with Sukhmander Singh for causing death of Jagtar Singh. Both PW-2 Naib Singh and PW-3 Nahar Singh have stated consistently to the effect that Jagtar Singh, who was studying in Guru Kashi College, Talwandi Sabo was withdrawn from the college by his father PW-2 Naib Singh when his father came to know that his son was having love affair with Manpreet Kaur daughter of Sukhmander Singh. Though Manpreet Kaur who was examined by the prosecution as PW-6 had resiled from her statement, but the prosecution has atleast been able to establish that PW-2 Naib Singh himself withdrew his son from college as stands established from Ex.PW-4/A, proved by PW-4. Thus it is not the case that Jagtar Singh dropped out of his college on account of having failed but is a case where he was withdrawn from college at the instance of his father, apparently when his father found out that his son was having love affair with Manpreet Kaur. The evidence led by prosecution sufficiently proves the motive with Sukhmander Singh for murdering Jagtar Singh.
30. Thus, the recovery of dead-body of Jagtar Singh, having multiple injuries on his chest, from the house of accused Sukhmander Singh and Sukhmander Singh having furnished no plausible explanation for the same and cause of death of Jagtar Singh, we have no hesitation in upholding conviction of accused Sukhmander Singh for offences under Section 302 IPC and 364 IPC.
31. However, the remaining two accused who, admittedly, are not related to Sukhmander Singh so as to hold that they were residing in the same house with

Sukhmander Singh and can not even be imputed any motive for causing death of Jagtar Singh, deserve to be given benefit of doubt. Infact in the case of Amritpal, the prosecution has improved its case inasmuch as though as per FIR he is unarmed and is not attributed any injury but when the complainant and his brother stepped into the witness-box they stated that all three were armed with sticks and they all caused injuries to deceased. PW-3 Nahar Singh improved the version by stating that Sukhmander Singh and Amritpal Singh after reaching the fields boarded off their scooter and they picked up 'tambas' from the fields and then all the three persons started beating the deceased with their respective weapons. Such like improvement also creates a doubt in the case of prosecution as regards the role of accused Amritpal Singh and shows that an effort has been made to rope in more accused.

32. As a sequel to the discussion made above, while appeals on behalf of Amritpal Singh and Sikander Singh are accepted and they are acquitted of all the charges framed against them giving benefit of doubt, appeal filed on behalf of Sukhmander Singh is dismissed and his conviction in respect of offences under Section 302 and Section 364 of IPC is affirmed. The sentence of imprisonment and fine as imposed by the trial Court upon Sukhmander Singh shall remain unaltered.

(Rajesh Bindal)
Judge
August 30, 2017
pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No