

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

CRA-D-1189-DB-2014
Date of decision: 12.05.2017

Baljit Kaur and another

.....Appellants

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE H.S. MADAAN

Present: Ms. Meena Bansal, Advocate as
Legal Aid Counsel for the appellants.

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

H.S. MADAAN, J.

This appeal has been preferred against judgment and order of sentence dated 27.05.2014 passed by the Court of learned Additional Sessions Judge, Tarn Taran, vide which she had convicted accused-Sukhwant Singh @ Soni for an offence under Section 302 of the Indian

Penal Code (“IPC” – for short) and sentenced him to undergo imprisonment for life and to pay a fine of ₹3,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month, whereas accused-Baljit Kaur was convicted for offence under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life and to pay a fine of ₹2,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month

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

Briefly stated, the prosecution story is that on 26.03.2011, SI Chander Bhushan, SHO, Police Station Sadar, Tarn Taran heading a police party was present in the area of T-point Aladeenpur, where complainant Dilbagh Singh son of Mahinder Singh, resident of village Aladeenpur, Police Station Sadar, Tarn Taran, aged about 35 years accompanied by Kewal Singh and Kabal Singh of the same village came and got his statement Ex.P1 recorded with SI/SHO Chander Bhushan. Inter alia in the statement the complainant stated that he is an agriculturist by avocation; that they were three brothers, eldest Palwinder Singh had passed away about nine years earlier, Ajit Singh-deceased was in the middle, whereas he the complainant is the youngest; that Ajit Singh (since deceased) was married with accused-

Baljit Kaur and the couple was having three children; that Baljit Kaur did not have good moral character as she was maintaining illicit relations with Sukhwant Singh @ Soni-accused, resident of their village Aladeenpur, who has been working as electrician; that Baljit Kaur and Sukhwant Singh @ Soni used to meet with each other secretly, however, Ajit Singh refrained his wife Baljit Kaur from doing immoral and wrong activities and Ajit Singh had disclosed that fact to the complainant. According to the complainant, he had requested Baljit Kaur not to indulge in such wrong activities but she did not mend her ways.

That on 17.03.2011, the complainant alongwith his mother Surjit Kaur and his children, besides, brother's children including elder daughter and son had gone to Anandpur Sahib on the occasion of Hola Mohalla festival. On 19.03.2011 at night, the complainant received a telephonic message that his brother Ajit Singh had expired. Therefore, he alongwith other family members returned to their home in the village; that he saw the dead body of Ajit Singh, which was having injuries on wrist of both hands and other side of head. The complainant inquired from Baljit Kaur, to which she replied that Ajit Singh had received injuries when he had alighted from truck, his leg had slipped due to that he had received injuries and thereafter had expired. The complainant accepted such version of Baljit Kaur to be correct and performed the last rites of Ajit Singh as per tradition. However, thereafter complainant came to know that Baljit Kaur in connivance

with her paramour Sukhwant Singh @ Soni with 2-3 unknown persons had committed the murder of Ajit Singh. The complainant, accompanied by Kewal Singh, Kabal Singh left for the police station to lodge the report on the way he came across police party headed by SI/SHO Chander Bhushan (hereinafter referred to as the Investigating Officer/I.O.) and he got his statement recorded with such police officer. Statement was signed by the complainant in Punjabi, his signatures were attested by the Investigating Officer. The Investigating Officer appended his endorsement Ex.P3 below that statement and sent ruqa to Police Station, Sadar, Tarn Taran through HC Kewal Singh, on the basis of which formal FIR Ex.P4 was registered by SI Ravi Sher Singh.

Then the police party alongwith the complainant who had come alongwith him went to the spot, the Investigating Officer carried out spot inspection and prepared rough site plan thereof. He recorded statements of witnesses.

On 27.03.2011 accused-Baljit Kaur was arrested in this case, necessary documents in that record were prepared. On 31.03.2011 Baljit Kaur-accused while in police custody suffered a disclosure statement Ex.P7 to the effect that she had kept concealed one rope and one *PARNA* (piece of cloth) on the roof of her house in a polythene bag and she could get the same recovered. Thereafter in pursuance of said disclosure statement, she while in police custody got recovered one rope Ex.MO-1 and one *PARNA* Ex.MO-2 from the disclosed place, which were converted into parcels sealed with seal of

the Investigating Officer having monogram "CB" and that parcel was taken into police possession vide recovery memo Ex.P8. The investigating Officer prepared site plan of place of recovery Ex.P9 and recorded statements of witnesses. On 01.04.2011 accused Sukhwant Singh was arrested in this case and necessary documents were prepared at that time.

On 04.04.2011, investigation of this case was entrusted to ASI Gurinderbir Singh who interrogated accused-Sukhwant Singh @ Soni, who disclosed that he had kept concealed one electric wire and one electric shoe in his shop in the area of Aladeenpur about that he had exclusive knowledge and he could get the same recovered. The disclosure statement of accused was reduced into writing, which led to recovery of electric wire with electric shoe (plug) Ex.MO1 from the specified place at the instance of accused. The said wire and electric plug was converted into a parcel sealed with seal having inscription "GS", that parcel was taken into police possession vide memo Ex.P2. The Investigating Officer prepared rough site plan of the place of recovery Ex.PW7/A. On return to the police station ASI Gurinderbir Singh deposited the parcel with MHC.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Tarn Taran. Copies of documents relied therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C..

Then finding that offence under Sections 302 IPC is exclusively triable by the Court of Sessions, the Judicial Magistrate Ist Class, Tarn Taran committed the case to the Court of learned Additional Sessions Judge, Tarn Taran vide his order dated 27.05.2011.

On receipt of the case, finding a prima facie case, charge for the offences under Sections 302 and 201 IPC was framed against the accused, to which they pleaded not guilty and claimed trial. Thereafter, the case was fixed for evidence of prosecution.

During the course of evidence of prosecution, it examined as many as ten witnesses as per details below:-

PW-1 Dilbagh Singh-complainant deposed as per the version given by him in his statement to the police which formed basis for registration of the FIR.

PW-2 Kewal Singh supported the prosecution case stating that on 19.03.2011 at 9 p.m., he and Kabal Singh were coming to their house and when they reached near the house of Ajit Singh they saw Sukhwant Singh @ Soni accused doing the electricity work in the village, entering the house of Ajit Singh; that they thought that he had gone there to do electricity work, however, on the next day they came to know that Ajit Singh had died. Then they went to house of the deceased and saw that there were injury marks on both the hands and near right eye of Ajit Singh and Baljit Kaur-accused told them that Ajit Singh had died when he alighted from truck, which was not believable.

The witness concluded his examination-in-chief by deposing that in the

gathering of 200/400 persons, Baljit Kaur had admitted that she had committed the murder of Ajit Singh by giving him electric shock.

PW-3 Iqbal Singh stated that he was having good relations with Ajit Singh-deceased for the last more than ten years. On 19.03.2011, he received a telephonic message from Dilbagh Singh that Ajit Singh had expired, as such he and his family went to village Deenpur to attend the cremation, where accused-Baljit Kaur told that he (Ajit Singh) had died due to accidental fall from the truck. Then cremation of Ajit Singh was done. At the time of cremation, there was whispering that Ajit Singh had been murdered; that they returned to their village; that on the same day, Baljit Kaur-accused came to his house and told that she was having illicit relation with Sukhwant Singh @ Soni-accused and her husband had seen her in a compromising position with Sukhwant Singh @ Soni and she stated that they (Baljit Kaur & Sukhwant Singh @ Soni-accused) had murdered Ajit Singh by giving him electric shocks and thereby had committed a mistake and he (this witness) should get the matter settled before the police. The witness stated that he went to police station and informed the police and police took action on 26.03.2001. Thereafter Baljit Kaur-accused never returned to him, that his statement was recorded by the police.

PW-4 H.C. Charnjit Singh deposed that on 26.03.2011 he was posted at PS Sadar Tarn Taran and had delivered special reports to Illaqa Magistrate and senior police officers.

PW-5 Harjit Singh-ASI, who on 04.04.2011 had witnessed

disclosure statement made by accused-Sukhwant Singh @ Soni before ASI Gurinderbir Singh deposed in that regard.

PW-6 Inspector Chander Bhushan, who had carried out investigation in this case initially and to the major extent testified in that regard.

PW-7 ASI-Gurinderbir Singh (since promoted as SI) who had investigated the case from 04.04.2011 onwards testified in that regard.

PW-8 Shri Rishi Ram, Draughtsman, District Courts Complex, Amritsar stated that on 30.4.2011 he visited the place of occurrence in village Aladeenpur and prepared scaled site plan Ex.PW8/A at the instance of Dilbagh Singh with correct marginal notes using scale 1" = 20'.

PW-9 L/HC Raghbir Kaur, who on 31.03.2011 was member of the police party headed by SI/SHO Chander Bhushan when Baljit Kaur-accused made disclosure statement Ex.P7, deposed about the same.

PW-10 Kulwinder Kaur proved the death certificate Ex.PW10/A of Ajit Singh-deceased.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to them, but they denied the allegations contending that they are innocent and have been falsely involved in this

case and nothing had been recovered either from them or from their residences.

In their defence, accused examined one DW as per details below:-

DW-1 Balwinder Singh deposed that Sukhwant Singh @ Soni is an electrician and generally used to visit the houses of the locality for repair of electrical goods; that he (Sukhwant Singh @ Soni-accused) was on visiting terms with Ajit Singh-deceased and he (this witness) had seen him (Sukhwant Singh @ Soni-accused) many times doing working in the newly constructed house of Ajit Singh-deceased.

With that the defence evidence got concluded.

After hearing arguments, learned trial Court convicted and sentenced accused-appellants as mentioned above, which left them aggrieved and they have filed the present appeal.

We have heard learned counsel for the appellants and learned Additional Advocate General, Punjab, besides, going through the record and we find that the impugned judgment of conviction and order of sentence against the accused-appellants is not sustainable and is liable to be set aside. In this case there is no direct evidence of the incident available, rather instant case is based upon circumstantial evidence. Law is well settled, that in such an eventuality, the chain of such events must be complete which should lead to hypothesis of guilt of the accused only and not with that of his innocence. If any link in the chain of events is missing, conviction of the accused cannot be

based. Even otherwise as per cardinal principles of criminal jurisprudence, prosecution must prove its case against the accused beyond a shadow of reasonable doubt in that way burden of proving guilt of the accused to the hilt is stationary on the prosecution and it never shifts. The intention of the law makers in laying down such principles was that hundred guilty persons may get scot free but one innocent may not be punished. The prosecution story in this case is quite shaky and unconvincing. The evidence led to prove its case does not come out to be creditworthy and reliable. There are many serious loopholes and lacuna in the prosecution story; Firstly there is gross delay in lodging the FIR. The incident in this case is said to have taken place on 19.03.2011 at night, whereas FIR was lodged on 26.03.2011, i.e. after about 7 days. No cogent and convincing explanation for such delay in reporting the matter to the police has come forth. Law is very well settled on the point that delay in reporting the matter to the police in a criminal case is fatal unless properly explained. Here no such explanation for the delay is coming forth; Secondly, there is no evidence available to show the cause of death of Ajit Singh. No inquest proceedings as envisaged under Section 174 Cr.P.C. had been carried out, no post-mortem examination on dead body of deceased was conducted, therefore, it cannot be made out as what was the reason for death of the deceased. That gives a major jolt to the prosecution story. If we scan the prosecution evidence then it comes out to be highly unsatisfactory and unbelievable. Firstly, taking up statement of PW-1

Dilbagh Singh, brother of complainant, he in his examination-in-chief, had deposed that Baljit Kaur wife of Ajit Singh was maintaining illicit relations with Sukhwant Singh @ Soni-accused of their village; his brother Ajit Singh had refrained Baljit Kaur from doing so and had informed him regarding that fact and he had also refrained her 2/3 times from carrying on such relationship with Sukhwant Singh @ Soni. But then in his cross-examination he stated that he does not remember the date when his brother had allegedly disclosed to him about the illicit relationship of Baljit Kaur and Sukhwant Singh @ Soni; that they had not made any complaint to the police about this relationship; that they did not inform the Panchayat. Although he stated that a gathering of family members had taken place, but he was unable to tell the date of such gathering. Therefore, such allegations regarding there being illicit relations between Baljit Kaur and Sukhwant Singh @ Soni does not come out to have any merit. One thing more to be seen is that if we believe that Baljit Kaur and Sukhwant Singh @ Soni were maintaining illicit relations, with Ajit Singh dying at the age of 42 years, as per reply given by PW-1 Dilbagh Singh in his cross-examination, which is quite a young age, keeping in view the average life expectancy of human being in our country and as stated by PW-1 Dilbagh Singh in his examination-in-chief he had seen injury mark on both the wrist of Ajit Singh and on his right side of his forehead that would have immediately aroused suspicion of Dilbagh Singh and his family members that something was fishy in the matter and report to police at the earliest

needed to have been lodged and then the post-mortem examination would have revealed the exact cause of death of deceased. But quite strangely according to Dilbagh Singh (PW-1) they believed the version put forward by Baljit Kaur-accused and cremated the dead body of Ajit Singh. This very fact gives a severe blow to the case of prosecution and nullify the allegations of illicit relationship of two accused inter se. In his cross-examination PW-1 Dilbagh Singh had stated that in family gathering, it became clear about relationship of Sukhwant Singh @ Soni and Baljit Kaur because, the preceding night a mobile phone was recovered from wall of house of Ajit Singh-deceased. This reply does not make any sense. He has not elaborated as to whom this mobile phone belonged; as to whether Baljit Kaur was also having a mobile phone from which she used to talk with Sukhwant Singh @ Soni quite often. There are no such allegations. Call details were not got generated and proved. However, PW-1 Dilbagh Singh contradicted himself when he stated that when they had reached village Aladeenpur from Anandpur Sahib then they were not having any doubt against Baljit Kaur and her co-accused. This seems to be highly strange and statement of PW-1 Dilbagh Singh comes out to be self contradictory. This witness further stated that house of Kewal Singh and Kabal Singh is at a distance of 20/25 feet from their house. Kabal Singh firstly came to their house and after half an hour Kewal Singh reached there. PW-2 Kewal Singh claimed that on 19.03.2011 at about 9 p.m. he had seen Sukhwant Singh @ Soni coming out of house of Ajit Singh-deceased.

If that was so then he should have informed Dilbagh Singh-complainant about the same, but obviously he did not do so. He should have brought this fact to the knowledge of other persons insisting that police be informed and post-mortem examination be got conducted on the dead body of Ajit Singh. But again nothing of that sort was done by him. He stated that in the gathering of 200/400 persons Baljit Kaur had admitted that she had committed the murder of Ajit Singh by giving him electric shocks not giving details as to at what time, date or place Baljit Kaur-accused had admitted this fact. When dead body of Ajit Singh had been cremated, Baljit Kaur had no reason to make such type of admission or confession before anybody. Depositions of PW-1 Dilbagh Singh and PW-2 Kewal Singh do not come out to be believable. One more important thing PW-1 Dilbagh Singh disclosed in his cross-examination was that father of Sukhwant Singh @ Soni had been murdered by his father since the former had been teasing daughter of the latter, it being so father of Sukhwant Singh @ Soni having been murdered by father, of complainant who happened to be father of deceased-Ajit Singh and father-in-law of Baljit Kaur-accused, it is difficult to believe that two would fall in love and carry on their affair with such type of enmity between the two families. Dilbagh Singh in his cross-examination on behalf of Sukhwant Singh @ Soni-accused stated that on the next day morning at 8 a.m. before cremating dead body of Ajit Singh, Kewal Singh and Kabal Singh had told him about involvement of Sukhwant Singh @ Soni and Baljit Kaur, but he did not

inform the police and did not get post-mortem conducted on dead body of Ajit Singh. This seems to be highly unlikely. Rather it comes out that no such information was given by Kewal Singh and Kabal Singh, rather nothing of that sort had happened otherwise the natural behavior of Dilbagh Singh would have been to put the cremation on hold, call the police immediately, get the FIR registered, ensure arrest of both accused at the earliest, rather than keeping quiet for a week and accepting the version given by Baljit Kaur without rhyme or reason. This witness further stated that police had recorded the statements of some persons i.e. Kabal Singh and Kewal Singh on the same night when Ajit Singh died, again pointing out that something was terribly wrong in the matter. If police had come and recorded statements of such persons that goes to show that no offence against the accused was made out otherwise police would have taken action against them at the earliest. Then it comes out that complainant and police are concealing true facts from the Court. If Dilbagh Singh or any other person had reported the matter of unnatural death of Ajit Singh to the police and police had come to know about the same the police should have at least carried out proceedings under Section 174 Cr.P.C. and got the post-mortem examination performed on the dead body, but police is not shown to have done any such act. Rather the version of police is that it came to know about such incident on being told by Dilbagh Singh on 26.03.2011 at T-point of village Aladeenpur. If we look at cross-examination of PW-2 Kewal Singh, then he also comes out to be a

person of doubtful credibility. In his cross-examination, he admitted it as correct that when dead body of Ajit Singh was cremated, then he did not have any suspicion on Baljit Kaur and Sukhwant Singh @ Soni-accused. This reply cannot co-relate with his contention in his examination-in-chief that on 19.03.2011 at about 9 p.m. he and Kabal Singh had seen Sukhwant Singh @ Soni entering house of Ajit Singh and on the next day, they came to know Ajit Singh had died; that they went to his house and saw that there were injury marks on both hands and near right eye of Ajit Singh and Baljit Kaur-accused told them that Ajit Singh had died when he alighted from the truck. It comes out that he is not a truthful witness. He stated that Sukhwant Singh @ Soni is 15/16 years younger to Baljit Kaur and elder daughter of Baljit Kaur was about 15/16 years at the time of occurrence, so it is highly unlikely that there could be any love affair between two persons having such a huge age difference. This witness admitted it correct that police had not recovered any mobile phone from either of the accused; therefore, there could not be any question of accused talking with each other on mobile phone.

Coming to testimony of PW-3 Iqbal Singh that is equally unconvincing. He stated that at the time of cremation, there was whispering by people that Ajit Singh had been murdered. If that was so then why reporting the matter to the police was delayed so much, could not be explained by this witness or by prosecution. This witness had claimed that on the same day i.e. on the day when dead body of Ajit

Singh was cremated, Baljit Kaur came to his house at village Thathian Mahanta (at a distance of about 12 KMs from village Aladeenpur of accused-Baljit Kaur, as stated by PW-Iqbal Singh in his cross-examination) and made extra judicial confession before him. Baljit Kaur-accused had absolutely no occasion to make any such extra judicial confession, that too before this witness who belongs to a different village, at a distance of about 12 kilometers and is not a leading person of the area. It is highly unusual for a widow of person whose dead body had been cremated on that very day to venture out of the house at that very time with many mourners around and to go to a village at a distance of 12/13 kilometers for the purpose of making extra judicial confession before a man, who does not hold very high social status and who could not help her in any manner when there was no talk of the matter being reported to the police. If she actually wanted to make any extra judicial confession, then she could have done so before any *Sarpnach*, *Lambardar* or other well known or respectable person of her own village. This witness was confronted with the statement made by him to the police and as it came out he had made material improvements therefrom, as such, no reliance can be placed upon his testimony and it is difficult to believe that Baljit Kaur had gone to her and made any extra judicial confession before him.

As regards accused-Sukhwant Singh @ Soni making confessional statement before the Investigating Officer and getting one electrical wire with plug recovered from his possession, PW-5 ASI

Harjit Singh had deposed in that regard, but in his cross-examination he stated that wire was got recovered from shop lying with other articles in the shop. It has to be kept in mind that undisputedly accused-Sukhwant singh @ Soni had been running an electrician shop and recovery of wire and electric plug therefrom is not something strange rather there is nothing to show that such wire and plug had in fact been used in the incident. If we see cross-examination of PW-6 SI-Chander Bhushan promoted as Inspector, he also does not come out be convincing witness. He stated that Dilbagh Singh-complainant on his inquiry had disclosed that earlier they had no suspicion, therefore, they did not opt for conducting post-mortem of the deceased; that he did not investigate the aspect during his investigation that Sukhwant Singh @ Soni had enmity with the family of deceased and he had not investigated the matter from the point that father of victim of this case had murdered father of Sukhwant Singh accused on dispute of teasing and taunting of daughter of Joginder Singh. He stated that he did not investigate the aspect that victim had died while slipping from truck in an intoxicated condition.

Coming to testimony of SI-Gurinderbir Singh in whose presence Baljit Kaur is stated to have suffered disclosure statement and got one *PARNA* and string recovered. Those articles had admittedly not being sent to FSL to show that they were strained with blood, sweat, spit etc. or to find out that they had been used in committing any crime.

PARNA and string are such types of articles, which are usually there in

most of the households in State of Punjab. Unless some distinctive mark is there or their use in the crime stands proved, recovery of such articles cannot result in fastening any criminal liability upon any accused. Similarly the recovery said to have been got effected by Sukhwant Singh @ Soni-accused cannot be connected with the incident. PW-Gurinderbir Singh admitted in his cross-examination as correct that another iron wire has gone through the electric wire through and through & any person using this wire will get electric shock when he will use it. That rules out the possibility of its use in the incident because as per own admission of this witness the person using it would have received electric shock himself. He further stated that Sukhwant Singh @ Soni was interrogated for about one hour and he had asked the accused that they knew electric wire alongwith electric shoe was therein in shop and he should give it to them, otherwise he would be harassed. This is no way of recording statement under Section 27 of the Evidence Act of an accused. Accused must suffer the statement voluntarily without any threat or pressure. As stated by this witness Sukhwant Singh @ Soni had been threatened of harassment in case he did not hand over the electric wire with shoe (plug) to the police. It rather goes to show that police was aware of electric wire alongwith shoe (plug) to be there in shop if that was so then police could have recovered the same itself without indulging in recording statement of accused and then taking him to the shop to effect recovery.

The remaining evidence on file is in the form of

corroborative evidence and is not directly incriminating against the accused.

Thus in view of detailed discussion above there are gaping holes in the prosecution case, many vital links are missing in the chain of events, motive for the incident i.e. illicit relation between accused *inter se* is not proved, prosecution has miserably failed to prove its charge against the accused and a big doubt arise in the mind about guilt of the accused. The benefit of that doubt should have been given to the accused, but it was wrongly denied to them by the trial Court. The judgment of conviction and sentence passed by the trial Court is based upon wrong appraisal & appreciation of evidence and erroneous interpretation of law and it cannot be sustained.

The appeal has merit, the same is accepted, the impugned judgment of conviction and order of sentence against both the appellants are set aside and they are acquitted of the charge framed against them. Accused-appellants be released forthwith, if they are not required in any other case.

Necessary direction in that regard be issued to the quarter concerned.

12.05.2017
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(H.S. MADAAN)
JUDGE

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| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |