

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

**CRA-D-551-DB of 2015
Date of decision:-7.4.2017**

Sukhdev Singh @ Sukha

....Appellant

Versus

State of Punjab

....Respondent

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

Present : Mr. Sanjeev Sharma, Advocate
as legal aid counsel for the appellant.

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

H.S. MADAAN, J.

This appeal is directed against judgment and order dated 29.9.2014 passed by the Court of learned Additional Sessions Judge, Taran Taran vide which she had convicted accused Sukhdev Singh @ Sukha for an offence under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,500/- and in default thereof, to further undergo rigorous imprisonment for one month.

The accused-convict, who is appellant before this Court prays that the appeal be accepted, the impugned judgment of conviction

and sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the prosecution story is that complainant Kulwant Kaur wife of Balhar Singh, resident of village Halluwal, Police Station Mahalpur, District, Hoshiarpur, aged about 58 years was earlier married with one Puran Singh son of Fauja Singh, resident of Kattianwali, Police Station Sadar Malaut, District Muktsar Sahib and she had given birth to two sons, namely, Gursewak Singh @ Sonu and Punjab Singh, besides one daughter, namely, Rinku @ Palwinder Kaur, from that wedlock. She had divorced her first husband Puran Singh about 20 years prior to the occurrence and contracted a second marriage with Balhar Singh son of Joginder Singh, Jat, resident of village Halluwal, P.S. Mahalpur, District Hoshiarpur. After some time of contracting a second marriage with Balhar Singh, complainant had brought her son from her first marriage, namely, Gursewak Singh to village Halluwal. Kulwant Kaur has a sister, namely, Manso married with Sulakhan Singh at village Rurhe Aasal. Manso was having a daughter, namely, Kashmir Kaur @ Sheero and a son, namely, Sukhdev Singh @ Sukha (accused). Kashmir Kaur @ Sheero had come to visit the complainant in her matrimonial home about two months prior to the incident. Sukhdev Singh @ Sukha, brother of Kashmir Kaur @ Sheero had come to take her on 13.9.2007 and she told complainant Kulwant Kaur that a fair was going to be organized in their village and she should go with them to see that. Accordingly the complainant along with her son Gursewak Singh @ Sonu went to village Rurhe Aasal. After taking

meals family members of Manso besides complainant and Gursewak Singh @ Sonu had gone to sleep at night.

On the next day, at about 5:00 A.M. in the morning when the complainant got up for the purpose of answering the call of nature then she saw that Sukhdev Singh @ Sukha armed with *dattar* came into courtyard and inflicted 5-6 blows of *dattar* to Gursewak Singh @ Sonu hitting him on head, neck and left arm besides showering blows upon Kashmir Kaur @ Sheero who was sleeping nearby on a cot, hitting her on mouth and other parts of the body. When complainant raised alarm Sukhdev Singh @ Sukha ran away from the spot with the *dattar*. As the prosecution story goes, an electric bulb was glowing at that time and complainant observed that Gursewak Singh @ Sonu had sustained serious injuries and he had succumbed to those at the spot itself. The complainant ran away towards the fields on account of fear of Sukhdev Singh @ Sukha accused. She telephoned her son Punjab Singh resident of Kattianwali about the incident. The complainant arrived at G.T. Road and was waiting for her son Punjab Singh. When she found that Punjab Singh had not arrived there for considerable time, she proceeded towards the police station to lodge report regarding the incident. On the way near Rasoolpur canal, she came across the police party from Police Station Sadar, Tarn Taran headed by SI/SHO Chander Bhushan (hereinafter referred to as Investigating Officer/IO). She got her statement Ex.P1 (also exhibited as Ex.PC and Mark – A.) recorded. The statement was signed by Kulwant Kaur in Punjabi. Her signatures were attested by SI Chander Bhushan. In the said statement complainant had

stated that the motive behind the incident was that Sukhdev Singh @ Sukha accused had a suspicion that Gursewak Singh @ Sonu son of the complainant was having illicit relations with Kashmir Kaur @ Sheero sister of the accused and for that reason, he had committed murder of Gursewak Singh @ Sonu and caused injuries to Kashmir Kaur @ Sheero. SI Chander Bhushan appended his endorsement below the said statement and sent ruqa to the Police Station Sadar, Tarn Taran through HC Gurmukh Singh from bridge of drain Rasulpur at 11:30 A.M., on the basis of which formal FIR Ex.PW15/B was recorded at police station by SI Tarsem Masih.

Thereafter, the police party accompanied by the complainant went to the place of occurrence. The Investigating Officer carried out the spot inspection. He conducted inquest proceedings with regard to dead body of Gursewak Singh @ Sonu in presence of Dalbir Singh and Kuldip Singh, who had identified the dead body to him. The Investigating Officer prepared inquest report Ex.PW15/C. He recorded statements of witnesses under Section 175 Cr.P.C. He took into possession blood stained earth and jute of the cot stained with blood, from the place where dead body of Gursewak Singh @ Sonu was lying and another cot where injured Kashmir Kaur @ Sheero was sleeping. He had converted such articles into parcels sealing those with his seal having inscription 'CB' and those four parcels were taken into possession vide seizure memo Ex.PW10/A and memo was witnessed by SI Sucha Singh and Bhajan Singh, Sarpanch of Malout, District Sri Muktsar Sahib. Seal after its use was handed over by the Investigating

Officer to SI Sucha Singh. The Investigating officer deputed HC Sukhdev Singh and HC Avtar Singh to get post-mortem examination conducted on the dead body of Gursewak Singh @ Sonu handing over written request Ex.PW5/A to them for the purpose. The Investigating Officer prepared rough site-plan of the place of occurrence as Ex.PW15/D.

On 17.9.2007, HC Sukhdev Singh produced before the Investigating Officer clothes of deceased i.e. one vest without sleeves and one breeches. Those were converted into parcel sealed with the seal of Investigating Officer having inscription 'CB' and said parcel was taken into possession vide recovery memo Ex.PW5/B. He recorded statements of witnesses.

On 27.7.2010 while police party headed by SI Chander Bhushan was present near the canal in the area of Rasoolpur then he received information that accused was standing at Dhotian Road at bus-stand Sherron. Thereafter, the police party proceeded towards the disclosed place. Accused Sukhdev Singh @ Sukha was found to be standing there. He was apprehended and after confirming his identity, he was formally arrested in this case. A memo of arrest Ex.PW15/E was prepared which was thumb marked by the accused and attested by the witnesses. Intimation qua the arrest of accused was given to Gurpreet Singh Gopi and memo of intimation Ex.PW15/F in this regard was prepared which was thumb marked by accused and witnessed by HC Kewal Singh. Personal search of accused was conducted but nothing was recovered from him. A memo Ex.PW15/G was prepared which was

thumb marked by accused and attested by witnesses.

On 29.7.2010, accused while in police custody was interrogated in presence of ASI Gurinderbir Singh and HC Anokh Singh, during the course of which he suffered a disclosure statement that he had kept concealed one *dattar* after cleaning the same in the roof of his house regarding which he had exclusive knowledge and he could get the same recovered. Disclosure statement of accused Ex.PW14/A was recorded which was thumb marked by the accused and attested by the witnesses. Thereafter, accused while in police custody led the police party to the disclosed place and got recovered one *dattar*. The Investigating Officer prepared rough sketch of the *dattar* as Ex.PW14/B which was thumb marked by the accused and attested by the witnesses. The Investigating Officer had prepared rough site-plan of the place of recovery of *dattar* as Ex.PW15/H. On return to the police station, the Investigating Officer deposited the case property with MHC and put the accused in lock-up. 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.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Tarn Taran, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that offences under Sections 302 and 307 IPC, for which the accused had been booked were exclusively triable by Court of Sessions, learned Judicial Magistrate Ist Class, Tarn Taran vide his order dated 18.11.2010 committed the case to the Court

of Additional Sessions Judge, Tarn Taran.

When the case was received in the Court of learned Additional Sessions Judge, Tarn Taran, he finding that prima-facie charge for the offences under Sections 302 and 307 IPC was disclosed against the accused, charge-sheeted him accordingly, to which, he pleaded not guilty and claimed trial. The case was fixed for evidence of prosecution.

During the course of its evidence, the prosecution examined as many as sixteen witnesses as per details below:

PW1 MHC Naresh Kumar and PW2 Parwinder Singh, formal witnesses, tendered in evidence their affidavits Ex.PA and Ex.PB respectively submitting that the same be read as a part of their statements.

PW3 Kulwant Kaur – complainant did not support the prosecution story and was declared a hostile witness at the instance of Additional Public Prosecutor, though in her cross-examination on behalf of the State, she did give replies favourable to the prosecution.

PW4 Kashmir Kaur – injured also did not toe the prosecution line and similar was the position as regards PW6 Manso. Both of them were declared hostile witnesses and permission was granted to the Additional Public Prosecutor to cross-examine them.

PW5 HC Sukhdev Raj stated that on 16.9.2007 while he was posted as such at Police Station Sadar, Tarn Taran, he had joined investigation with SI Chander Bhushan and dead body of Gursewak Singh @ Sonu was handed over to him for the purpose of getting the

post-mortem examination conducted thereon; that he was also given written request Ex.PW5/A in that regard; that he had taken the said dead body to Civil Hospital, Tarn Taran, however, the post-mortem was conducted on 17.9.2007 and thereafter he produced the clothes of deceased before SI Chander Bhushan, who converted those into parcel sealing that with his seal having inscription 'CB' and parcel was taken into possession vide recovery memo Ex.PW5/B attested by him and SI Sucha Singh.

PW7 Dalbir Singh, Chowkidar, who as per prosecution story had identified the dead body of Gursewak Singh @ Sonu during inquest proceedings stated that he had not done so. He was declared a hostile witness at the instance of Additional Public Prosecutor.

PW8 Rishi Ram, Draughtsman stated that on 10.3.2008, he had visited the place of occurrence and prepared scaled site-plan at the instance of Kulwant Kaur – complainant using scale of 1" = 20'. He proved the said site-plan so prepared by him as Ex.PW8/A.

PW9 HC/P Ashok Kumar stated that on 15.10.2007, he was posted at Police Station Sadar, Tarn Taran. He tendered in evidence his affidavit Ex.PW9/A submitting that the same be read as a part of his statement.

PW10 Sucha Singh, Retd. Inspector, who on 16.9.2007 and 17.9.2007 was member of the police party headed by SI Chander Bhushan deposed regarding the proceedings with regard to this case which had taken place in his presence.

PW11 Bhajan Singh son of Jaswant Singh, labourer,

resident of village Kattianwali stated that he never joined the police party in this case and he did not make any statement to the police of Police Station Sadar, Tarn Taran on 16.9.2007. He further stated that he had not accompanied the Investigating officer to the place of occurrence and nothing was taken into possession by police in his presence. Since he did not support the prosecution case, the learned Additional Public Prosecutor came up with a request to declare him a hostile witness. Such request was accepted and learned Additional Public Prosecutor was allowed to put questions to him in the form of cross-examination.

PW12 Dr.Jagjit Singh, Medical Officer, Community Health Centre, Harike, PHC Ghariala, Tehsil and District Tarn Taran stated that on 17.9.2007, he was posted as Medical Officer at Civil Hospital, Tarn Taran. On that day, he conducted post mortem on the dead body of Gursewak Singh @ Sonu son of Puran Singh; that he tendered into evidence his duly sworn affidavit Ex.PW12/A. He proved copy of post-mortem report as Ex.PW12/B and pictorial diagram showing the seats of injuries as Ex.PW12/C.

PW13 Retd. Inspector Balkar Singh stated that on 23.2.2008, while he was posted at Police Station Sadar, Tarn Taran, the file of this case was with him for remaining investigation. He had recorded statements of various witnesses and then presented the challan against Sukhdev Singh @ Sukha accused, who had been declared as a proclaimed offender under his signatures in the Court.

PW14 SI Gurinderbir Singh, who on 29.7.2010 had joined investigation of this case being conducted by SI Chander Bhushan

deposed regarding what had transpired in his presence.

PW15 SI Chander Bhushan, since promoted as Inspector, testified regarding the investigation conducted by him proving various documents.

PW16 Dr.Dhiraj Kumar Vashisht, Medical Officer ESI Hospital, Mohali deposed that on 17.9.2007, he was posted as Junior Resident at Sri Guru Nanak Dev Hospital, Amritsar and on that day police moved an application for recording the statement of injured Kashmir Kaur @ Sheero daughter of Sulakhan Singh and he declared her fit to make the statement vide his endorsement Ex.PW16/A. He proved the bed-head ticket as Ex.PW16/B. He further deposed that injured refused to get conducted the MLR.

With that the prosecution evidence stood closed.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him, but he denied the allegations contending that he is innocent and has been falsely involved in this case.

Accused did not lead any evidence in his defence.

After hearing arguments, learned trial Court convicted and sentenced the appellant-accused-convict as mentioned supra, which left him aggrieved and he has filed the present appeal.

We have heard learned counsel for the appellant-accused-convict and learned Additional Advocate General, Punjab besides going through the record and we find that the impugned judgment of conviction is not sustainable and is liable to be set aside by way of

acceptance of appeal.

In the instant case, the prosecution had relied upon three witnesses to provide eye-witness account of the incident i.e. PW3 Kulwant Kaur (complainant), PW4 Kashmir Kaur @ Sheero (injured) and PW6 Manso. Of the three, PW4 Kashmir Kaur @ Sheero and PW6 Manso did not utter even a single word which might be taken as incriminating against the accused. PW4 Kashmir Kaur @ Sheero stated that 5-6 years earlier at about 4:00 A.M., three persons came to their house and caused injuries to her and deceased Gursewak Singh @ Sonu; that Gursewak Singh @ Sonu had expired and that she could not recognize those three persons. The Additional Public Prosecutor came up with a request to declare her a hostile witness for the reason that she was suppressing the truth. His request was allowed. Additional Public Prosecutor subjected her (PW4) to lengthy cross-examination but without any fruitful result and she stuck to her guns. She denied having made statement Mark PW4/A to the police. Resultantly the deposition of this witness does not help the prosecution in advancing its case. Similarly, PW6 Manso stated that she does not know about this case and nothing had happened in her presence. The Additional Public Prosecutor came up with a similar request for declaring her a hostile witness and granting permission to him to cross-examine her on the plea that the witness was suppressing the truth. His such request was accepted. Additional Public Prosecutor cross-examined the witness at length but failed to elicit any reply favourable to the prosecution. Therefore, testimony of this witness is not helpful to the prosecution.

Though PW4 Kashmir Kaur @ Sheero is real sister and PW6 Manso is mother of accused and they might be interested in saving him from conviction but the Court is to consider the statements made by them during the trial. In those statements, they have not said anything incriminating against the accused.

Coming to the testimony of PW3 Kulwant Kaur – complainant in her examination-in-chief, she had not toed the line of prosecution. The relevant part of her examination-in-chief runs as under:

“I do not remember exact date, month and year however four years back Sukhdev Singh went to bring back his sister. Sukhdev Singh accused present in the Court is son of my sister. He went to bring his sister back as there was festival in the village of accused. I do not know the name of village of accused. My son Gursewak Singh also came with Sukhdev Singh. I also came with the accused on that day. It was about 4:00 A.M. I went outside to ease myself in the morning. When I came back, I saw that Gursewak Singh was lying cut into pieces from various parts of the body. I did not see the accused giving the injuries to deceased Gursewak Singh. Volunteered, I was at far away distance at that time. Sukhdev Singh accused also gave injuries to his mother Manso and sister Sheero. I did not see the accused giving injuries to abovesaid ladies. I saw the accused while running from the place of occurrence.”

The Additional Public Prosecutor came up with a similar request to declare the witness as hostile for the reason that she was suppressing the truth. The request was acceded to by the trial Court and Additional Public Prosecutor was permitted to cross-examine the witness. During cross-examination by Additional Public Prosecutor, she admitted having made statement Ex.PC to the police and making statement under Section 164 Cr.P.C. Ex.PD before the Magistrate. She admitted contents of those statements which are in consonance with the prosecution story except for the motive part that Sukhdev Singh @ Sukha was suspecting that Gursewak Singh @ Sonu was having illicit relations with his sister Kashmir Kaur @ Sheero. In her cross-examination on behalf of the accused, she again started giving replies adversely affecting the merits of the prosecution story. She admitted it as correct that police asked her to put signatures at Point-A on Ex.PC telling her that they would write on their own. She stated that on 16.9.2007 after 5:00 p.m., she went to her village Halluwal whereas body of Gursewak Singh was taken to village Kattianwali by cousins of Gursewak Singh. Thus the stand taken by this witness has been wavering and vacillating and we do not find it safe to rely upon her testimony so as to give verdict of guilty to the accused. It is dangerous to place reliance upon such type of a person who can change her stance as and when suits her. Though there is no dispute that conviction can be based upon testimony of a solitary witness but then such testimony should be without any blemish, reliable, cogent, convincing and creditworthy. Here we find that testimony of PW3 Kulwant Kaur does not pass that test.

One more thing to be taken note of is that it seems that Kulwant Kaur had not seen the incident and as stated by her, she had got up in the morning and went outside to answer the call of nature and when she returned, by that time the incident had taken place and whatever she narrated regarding the incident was not based upon her personal knowledge, may be based upon some suspicion. This aspect has to be examined in view of the fact that as per the prosecution story, the incident had taken place at 5:00 A.M. whereas statement of complainant was recorded by the police and ruqa was sent at 11:30 A.M. i.e. after 6 ½ hours of the incident. The prosecution has not provided any satisfactory explanation for such delay in reporting the matter to the police. That also affects the credibility of the prosecution story.

One more thing to be noticed is that the recovered weapon is not connected with the incident. According to the prosecution story, after causing injuries to Gursewak Singh @ Sonu and Kashmir Kaur @ Sheero, the accused had fled from the spot along with the *dattar*. The incident had taken place on 16.9.2007 in the morning whereas accused was arrested on 27.7.2010 i.e. after about 3 years of the incident. As per the prosecution version and as deposed by PW15 Inspector Chander Bhushan, on 29.7.2010 the accused while in police custody was interrogated in presence of ASI Gurinderbir Singh and HC Anokh Singh and accused disclosed that he had kept concealed one *dattar* after cleaning the same in the roof of his house regarding which he had exclusive knowledge of the same and could get the same recovered and thereafter in pursuance of disclosure statement Ex.PW14/A had got the

dattar recovered which was taken into possession. PW14 SI Gurinderbir Singh had also deposed in that regard. This *dattar* was admittedly not sent to Forensic Science Laboratory to find out whether any blood stain was present there or not. The explanation given is that it was for the reason that the *dattar* had been cleaned by the accused as stated by him before the Investigating Officer. May it be so but there could be chance of some blood stains remaining even if the weapon is cleaned. The Investigating Officer should have sent the *dattar* to Forensic Science Laboratory in an attempt to find out whether any blood stain was present there or not but it was not so done which is clearly a lacuna in the investigation. As a matter of fact, the recovery of the *dattar* itself is suspect. If we see the recovery memo with respect to the *dattar* Ex.PW14/C, it is mentioned therein that the *dattar* having length of 2 ½ feet was found in dangling position attached with the wooden pole of the roof of the room, which goes to show that it was not concealed and was visible to a naked eye. In that way it could very easily be recovered by the police when police had visited the spot after the incident. If we go by the prosecution story, after the incident the accused had ran away from the spot along with *dattar*, then how and under what circumstances the *dattar* was attached with the roof in dangling position has not been explained satisfactorily by the prosecution. The recovery of the *dattar* in pursuance of the disclosure statement said to have been made by the accused before the Investigating Officer becomes suspect.

It may be mentioned here that no medical document is available on the file to show that any injury was caused on the person of

Kashmir Kaur.

Thus a reasonable doubt arises in the mind about the truthfulness of the prosecution story and the prosecution had failed in its endeavour to prove its charge against the accused beyond shadow of a reasonable doubt. The trial Court by misappraisal of evidence and misinterpretation of law wrongly came to the conclusion that the prosecution had proved its charge against the accused. The said judgment is bound to be set aside. Therefore, we accept the appeal, resultantly, the impugned judgment of conviction and order of sentence passed against the accused – convict is set aside and he is acquitted of the charge framed against him.

7.4.2017
Brij

(T.P.S. MANN)
JUDGE

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No