

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

Crl. Appeal No.D-137-DB of 2003 (O&M)

Date of Decision: January 18, 2018

Bakhshish Singh @ Shisha and another

...Appellants

VERSUS

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE A.B.CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Ms.G.K.Mann, Advocate
for the appellants.

Ms.Ruchika Sabharwal, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellants Bakhshish Singh @ Shisha and Kulwant Singh @ Ladi against the judgment of conviction and order of sentence dated 16.01.2003, passed by learned Sessions Judge, Amritsar, whereby appellant Kulwant Singh @ Ladi was convicted under Section 302 IPC and appellant Bakshish Singh @ Shisha was convicted under Section 302/34 IPC and they were sentenced to undergo imprisonment for life and to pay fine of ₹500/- and in default of payment of fine, to undergo rigorous imprisonment for a period of three months and they were also convicted and sentenced to undergo rigorous imprisonment for seven years and to pay fine of ₹500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of

three months each under Section 201 IPC. All the sentences were ordered to run concurrently.

The brief facts of the case are that the FIR in the present case has been registered on the statement of Santa Singh, who got recorded his statement to SI Govinder Singh on 08.12.2001. Complainant Santa Singh stated that he has two sons and three daughters. He had performed marriage of his daughter Jaswant Kaur @ Jassi with Bakshish Singh. She had two daughters. About 6-7 years back, Jaswant Kaur died and the complainant had suspicion that his son-in-law Bakshish Singh had killed her but on account of intervention of relatives, he kept mum. The complainant further stated that Bakshish Singh got remarried and after the death of his daughter, he never visited the house of Bakshish Singh. The complainant also stated that about 15 years ago, his wife died and about 10 years ago, his daughter Bholi died due to illness and his third daughter Raj, who was married to Parkash Singh, is residing at Gwalior. It is also stated by the complainant that he is residing alone. His both sons Gurbux Singh and Juj Singh are truck drivers since long at Calcutta. They had much love and affection with Bakshish Singh and whenever they return from Calcuatta, most of the time, they reside with him. Few days ago, Gurbux Singh had told the complainant on telephone that he would return in few days with money and they have to purchase one truck. On that day, complainant came to know from village Bhandal that his son Gurbux Singh came to village from Calcutta on 25.11.2001 and instead of visiting to complainant, he straightway went to the farm house of Bakshish Singh @ Shisha and thereafter, nobody had ever seen him till that day. On that day, complainant

regarding Gurbux Singh. Avtar Singh informed the complainant that Bakshish Singh told him that Gurbux Singh had gone to village Tibbi on that very day after quarreling with him. Complainant enquired about his son from Dara Singh and Shingara Singh, residents of Tibbi and they told that Bakshish Singh is telling lie as Gurbux Singh had not come to them. Then complainant came back to his house while searching for his son. At about 8.00 p.m., Nirmal Singh, Ex-Sarpanch, Sukhdev Singh and many other persons of their village were sitting with the complainant in house, then Charanjit Singh Sarpanch and Jaswant Singh came there and informed them that they have come to know that Gurbux Singh had been murdered on the intervening night of 29/30.11.2001 by Bakshish Singh @ Shisha, Kulwant Singh @ Ladi and Chanan Singh, after conniving with each other and had thrown his dead body somewhere. Then complainant reached the police station for giving information along with Nirmal Singh, Ex-Sarpanch. The statement was got recorded to SI Govinder Singh at Police Station Khalra and FIR was registered.

Then Investigating Officer SI Govinder Singh along with other police officials accompanied by Santa Singh and Nirmal Singh went to the behaks of accused persons but same were found locked. On 03.12.2001, he again visited the behak of Bakshish Singh along with police officials and Santa Singh also reached there along with 30-35 persons. There Joginder Singh had made statement before him that Kulwant Singh @ Laddi accompanied with Bakshish Singh had given eight blows with knife on the person of Kulwant Singh in his (Joginder Singh) presence and thus murdered him. On 08.12.2001, on the information having supplied by Santa

Singh, dead body of Gurbux Singh was recovered from the defence drain

near bridge in the area of village Rajuke, which was put in a gunny bag along with 10 bricks. The gunny bag was taken into police possession. The dead body was sent for post-mortem examination. At that place, one Bhagwan Singh had joined the investigation and made statement that on 30.11.2001, he was going on cycle from village Rajuke to village Lakhna and on the way, Bakshish Singh and Kulwant Singh were found standing and he had asked Kulwant Singh and Bakshish Singh as to what they were doing there at that odd time but they have not given any satisfactory reply. Tractor make 5911 was also there and on the backside of lift of the tractor, something heavy tied in a palli was found lying and that palli was thrown by Bakshish Singh and Kulwant Singh in the canal. Extra judicial confession was also made regarding murder of Gurbux Singh by Bakshish Singh and Kulwant Singh. Site plan was prepared. The statements of the witnesses were recorded. Accused were arrested. After necessary investigation, challan was presented against the accused-appellants.

On presentation of challan, copies of challan and other documents were supplied to the accused-appellants under Section 207 Cr.P.C. Finding prima facie case, the appellants were charge-sheeted under Sections 302, 201 and 34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Dr.Sukhwinder Singh Sandhu, Medical Officer, who conducted post-mortem examination on the dead body of Gurbux Singh on the police request Ex.PA and found following injuries:-

1. *An incised penetrating wound 2 x 0.75 cm on left side of chest, 4.0 cm below nipple;*

2. *An incised penetrating wound 1.5 x 0.5 cm on left side of chest, 3 cm below injury No.1.*
3. *An incised penetrating wound 1.5 x 0.5 cm, 5.0 cm below injury No.2;*
4. *An incised penetrating wound 4 x 2 cm on right upper part of chest front side;*
5. *An incised penetrating wound 1.5 x 0.25 cms on epigastric region of abdomen;*
6. *An incised penetrating wound 1.5 x .3 cm, 2 cm below and on right of injury No.5.*
7. *An incised penetrating wound 2 cm x .5 cm on epigastric region 3 cm below on the left to injury No.5.*
8. *An incised penetrating wound 2.5 x .5 cm on lower part of sternum; On dissection injury No.1 and injury No.4 had cut the pleura and left and right lung respectively. Injury No.8 was bone deep. Other injuries 2, 3, 5, 6 and 7 were muscle deep.*
9. *Diffuse swelling was present on left side of forehead and frontal region of scalp. On dissection underlying frontal bone was fractured, meningies were torn, brain matter was liquified and sutures of skull loosen.*

In the opinion of the doctor, death was caused by shock and haemorrhage due to injuries No.1, 4 and 9, which were sufficient to cause death in ordinary course of nature. The probable duration between injuries and death was immediate and probable duration between death and post-mortem was one to two weeks. PW-2 Head constable Balwinder Singh, formal witness, tendered into evidence his affidavit Ex.PF. PW-3 Rishi Ram, Draftsman, proved the scaled site plan. PW-4 Chanan Singh had not supported the prosecution version and turned hostile. He stated that accused never made any confession before him regarding murder of Gurbux Singh. He never made any statement to the police. PW-5 Santa Singh,

complainant, mainly deposed same facts as narrated above while giving brief facts of the case. He also deposed that on 08.12.2001, he got information that a gunny bag containing something was in the canal in the area of village Rajuke and after taking police party, he reached that place. From the drain/canal, gunny bag was removed and it was found to contain dead body, which was of his son Gurbux Singh. Ten bricks were also found lying in that bag along with the dead body. The dead body was identified by complainant side. PW-6 Joginder Singh deposed that Gurbux Singh deceased was grand son of his father's sister. He was truck driver and used to go to Calcutta side on truck. On 29.11.2001, he was present at Amritsar where Gurbux Singh had met him in Hall Bazar, Amritsar. He had requested him to accompany him to village Bhandal because he (Gurbux Singh) was to meet Bakshish Singh, his sister's husband, there in order to purchase the truck. This witness further deposed that he and Gurbux Singh had then gone together by bus upto Lakhna and then they had gone from Lakhna to Bhandal on foot. Then they had gone to the behak of Bakshish Singh at village Bhandal. Bakshish Singh was not found present at the behak. He and Gurbux Singh were sitting in the behak of Bakshish Singh when Bakshish Singh reached there after sometime. He also deposed that Kulwant Singh accused present in Court had also reached there after sometime. Kulwant Singh had stated that they should sit at his house for chatting. Then, he (witness), Gurbux Singh, Bakshish Singh and Kulwant Singh had gone to the behak of Kulwant Singh. Then Gurbux Singh asked Bakshish Singh to give him the money which had been earlier given by him (Gurbux Singh) to him (Bakshish Singh) because he (Gurbux Singh) had to purchase a truck. Bakshish Singh stated that he did not owe any money to

Gurbux Singh. Gurbux Singh had insisted that he will get back the money which he had given to him. Then an altercation took place. Bakshish Singh accused took Gurbux Singh in his arms when he was sitting on chair and thrown him on the ground with the help of Kulwant Singh accused who had pulled the legs of Gurbux Singh. Bakshish Singh then asked Kulwant Singh to bring the knife and finish Gurbux Singh once for all. Then Kulwant Singh went inside the room and immediately returned with a knife and gave blow with the knife in thrust-wise manner while sitting on the buttocks of Gurbux Singh who was lying on the ground. It was about 7:30 p.m. At that time, electric light was on. Joginder Singh further stated that hue and cry was raised by him and he requested accused persons not to kill Gurbux Singh and also told them that they should better not return the money to Gurbux Singh but should not kill. But he was threatened by Bakshish Singh accused that he should ran away from that place in case he wanted to save himself. Being afraid of the accused persons, he ran away from that place. This witness stated that Gurbux Singh had died on account of the injuries of the knife given by Kulwant Singh before he had departed from that place. He reached Amarkot on foot and then reached Harike by truck and from Harike he had reached his village Aulakh. PW-6 Joginder Singh further deposed that he had then gone to attend the marriage of his sister's son at village Ratta Khekhra and had reached home at about 3:00 p.m. On 02.12.2001, he had come to know about the arrival of Santa Singh at his home in search of his son Gurbux Singh but Santa Singh had returned before he reached home on 02.12.2001. He also stated that on 03.12.2001 he reached at Lakhna. Santa Singh was not found present in the house. He

and that Santa Singh had gone with the police to village Bhandal. He then gone to village Bhandal where the police party had met him and the statement was made by him to the police there on 03.12.2001 at village Bhandal. The place of occurrence was then shown by him to the police and the rough site plan was prepared by the police. PW-7 Bhagwan Singh mainly deposed that on 30.11.2001, he was going on cycle from village Rajuke to village Lakhna. He started from Rajuke at about 11:00 p.m. When he reached near the bridge of first defence drain, both the accused persons present in Court along with one other person, who was clean shaven, were found standing near tractor. Both the accused persons were well known to him. He further stated that on the back side of lift of the tractor, one plastic palli in which something was tied was found lying. The weight of the thing tied in that palli appeared to be heavy. He had asked accused persons as to what they were doing at that place at that odd time. But they did not give him any precise answer. Then he had gone to his village. When he was just at 20 karams from the place, he heard sound of falling something heavy in the drain but ignoring all that he had gone ahead to my village. After about seven days, he had come to know about the recovery of a dead body from that drain. Then he reached the drain and at that time the police persons along with Santa Singh were found present there. PW-7 Bhagwan Singh further deposed that the place from where the dead body was recovered was exactly the place from where he heard the sound of throwing something heavy in the drain. He then made the statement before the police at that very place. PW-8 LC Gurmit Singh, formal witness, tendered into evidence his affidavit Ex.PJ. PW-9 SI

investigation conducted by him in the present case. PW-10 SI Lakshar Singh deposed regarding arrest of the accused. He further deposed that as per disclosure made by Kulwant Singh, he got recovered knife and there were no blood stains on the knife and the same was taken into police possession. He also deposed regarding presentation of challan after completion of investigation. PW-11 Head Constable Angrej Singh deposed regarding delivering of Special Report. PW-12 Bakshish Singh deposed that tractor bearing engine No.36760, chassis No.39071 HMT 5911 was taken for a test drive by one Bakshish Singh from his employees and it was reported by the employees that said Bakshish Singh had not returned the tractor to them. He further deposed afterwards it was revealed that tractor was in the police station and the same was taken on sapurdari.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves as innocent. Accused Bakshish Singh pleaded that Jaswant Kaur was married previously to his elder brother, who died and thereafter, he had contracted marriage with Jaswant Kaur, who died natural death and at that time, serious efforts were made by Santa Singh complainant to get him prosecuted but since the natural death was proved, he failed to get him prosecuted. Now, after the death of Gurbux Singh, he has falsely implicated him and his relative Kulwant Singh, who helped him in disclosing the factum of natural death as he (Bakshish Singh) was not present in the house when his wife died. Accused Kulwant Singh pleaded that he is related to Bakshish Singh and when his wife dead, he was first to

Panchayat that Bakshish Singh was not present in the house when his wife died. Due to that, his name was mentioned as accused in this case.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

Aggrieved from the above-said judgment of conviction and order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellants argued that PW-4 Chanan Singh, witness to the extra judicial confession has turned hostile. She further argued that presence of PW-6 Joginder Singh is doubtful on the spot. If the injuries are given in his presence, as to why he kept silent and has not reported the incident to Santa Singh, father of the deceased. Learned counsel for the appellants also argued that statement of PW-7 Bhagwan Singh is also not believable as he has not reported the matter at that very time to the police when he met accused at night time. She next contended that knife recovered from the accused as per disclosure statement, was not blood-stained and it was recovered from an open place. She further contended that there is delay in recording the FIR. Learned counsel for the appellant, therefore, argued that there being merit in the present appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that prosecution has duly proved its case by leading cogent evidence. The motive of murder in the present case is to misappropriate the money given by Gurbux Singh deceased to the accused. Learned State counsel further argued that PW-6 Joginder Singh, is the eye witness to the occurrence.

There is nothing in his cross-examination to make his statement unreliable. As threat was given to him by the accused while giving injuries to Gurbux Singh, so he went back to his village but even before the recovery of dead body, he made statement to the police regarding the injuries given by the accused to Gurbux Singh. She next argued that PW-7 Bhagwan Singh is also reliable witness. He had seen the accused along with tractor at the place of recovery of dead body and had also seen something heavy tied on the tractor on the day of occurrence. As per his statement, he heard the noise that something heavy had been thrown in the drain. There is no question of PW-7 Bhagwan Singh to tell anybody because at that time, he was not knowing that accused had thrown dead body in the drain but immediately, when the dead body was recovered, he reached the spot from where the dead body was recovered and got recorded the statement at the spot. She also argued that no material contradictions or improvements have been pointed out by learned counsel for the appellant. There is nothing in the cross-examinations of the PWs which may create doubt in the prosecution version. Learned State counsel, therefore, argued that accused-appellant has been rightly convicted and there being no merit in the present appeal, the same should be dismissed.

We have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

From the record, we find that prosecution has duly proved its case by leading cogent evidence against the accused. No material contradictions have been pointed out in the statements of the witnesses, which may go to the root of the case. There are no material improvements

in the statements of the PWs which may create doubt in the prosecution

version. Similarly, there is no improbability in the version of the prosecution. The FIR in the present case has been registered on 02.12.2001 and till then, dead body was not found. The statement of PW-6 Joginder Singh, eye witness to the occurrence was recorded on 03.12.2001 whereas the dead body was recovered on 08.12.2001. The statement of PW-6 Joginder Singh is duly supported by medical evidence that stab wounds were given by knife. The ocular statement is duly supported by medical evidence. Mere fact that this witness has not reported the matter immediately to the father of the deceased, is no ground to disbelieve his statement. It is in his statement that threat was given and he was asked to run away and he went to his village and came back after 2-3 days and gave statement to the police regarding the occurrence. Moreover, the recovery of knife by accused Kulwant Singh further supports and corroborates the prosecution version. The statement of PW-7 Bhagwan Singh that he met accused at night time on the day of occurrence near the drain/canal along with tractor having a gunny bag containing some heavy thing and he heard the noise of throwing something in the canal, also supports and corroborates the prosecution version. As, at that time Bhagwan Singh was not knowing that there was a dead body in the gunny bag, therefore, there was no question of reporting the matter to the police or anybody else. When he came to know that a dead body was recovered from the canal, immediately he went there and got recorded his statement. Therefore, statement of PW-7 Bhagwan Singh can be relied upon. There is nothing in the cross-examination of the PWs which may make their statements unreliable. Mere fact that PW-4 Chanan Singh, witness to extra judicial confession turned hostile, cannot be held as fatal to the prosecution case. The delay in

recording the FIR has been explained as Gurbux Singh was missing at that time. When Santa Singh came to know about murder of Gurbux Singh from other persons, he got recorded the FIR against the accused on suspicion.

In view of the above discussion, we find that the impugned judgment of conviction and order of sentence dated 16.01.2003, passed by learned Sessions Judge, Amritsar, are correct, as per evidence and law and do not require any interference from this Court.

Therefore, finding no merit in the present appeal, the same is dismissed.

As appellants Bakshish Singh @ Shisha and Kulwant Singh @ Ladi are on bail, their bail bonds stand cancelled and they are directed to surrender themselves before the jail authorities immediately for completing remainder of sentence, failing which the concerned Court/authority shall proceed against them in accordance with law.

(A.B.CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

January 18, 2018
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
No