

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-1178-DB of 2010

Date of Decision : January 16, 2018

Chandan Kirkata and another

....Appellants

Versus

State of Punjab

....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE DEEPAK SIBAL

Present : Ms. Tanu Bedi, Advocate as Legal Aid Counsel with
Ms. Monita Mehta and
Mr. Vibhu Agnihotri, Advocates
for the appellants.

Mr. Gaurav Garg Dhuriwala, Senior Deputy A.G., Punjab.

Mr. Surinder Singh Siao, Advocate
for the complainant.

T.P.S. MANN, J.

The appellants, namely, Chandan Kirkata and Khettar Kumar Sharma @ Raju were tried for committing the offence punishable under Section 302 IPC on the allegations that on 26.11.2008, they, alongwith Mohtan Dungdung @ Govinda committed the murder by intentionally or knowingly causing the death of Jagdish Singh. Vide judgment and order dated 1.10.2010, learned Sessions Judge, Kapurthala convicted them for the aforementioned offence and sentenced them to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months.

Aggrieved of their conviction and sentence, the appellants filed the present appeal, which stands admitted and notice issued to the State.

Complainant-Jasbir Singh, brother of deceased Jagdish Singh has also filed an appeal, i.e. Criminal Appeal D-523-DB of 2011, praying therein for enhancing the sentence of the two convicts to death sentence and also for awarding adequate compensation. The said appeal also stands admitted and ordered to be heard alongwith the present appeal, i.e. Criminal Appeal D-1178-DB of 2010.

As both the appeals arise out of the same judgment of conviction and sentence, they are being disposed of by a common judgment.

According to the prosecution, complainant-Jasbir Singh son of Bishan Singh, resident of Mohalla Khu-Shekhwan, Kartarpur and aged about 62 years made statement Ex.PC before Inspector Ravinder Singh, Station House Officer, Police Station Sadar, Kapurthala on 27.11.2008 at 10.30 a.m. to the effect that he alongwith his younger brother Jagdish Singh, (deceased in the case), aged about 45 years used to cultivate the land of their father's sister (bhua) Rattan Kaur wife of Karam Singh, resident of village Dhapai as the entire family of their bhua lived in England. A temporary residence (dera) was set up in the land and the deceased used to live in the same. Earlier the complainant and the deceased used to cultivate the land together but from the last ten years it was the deceased who cultivated the said land. On that day, i.e. 27.11.2008, the complainant came to village Dhapai to meet his relatives. He, alongwith Balbir Singh son of Tara Singh, resident of Dhapai went to the dera to see

his younger brother and saw that the dead body of his brother Jagdish Singh was lying on a cot having injuries on his person and an axe (kulhari) was lying near the dead body. Goods were lying scattered. There used to live four servants with the deceased at the dera. They were Chandan, Driver; Raju @ Chhotu, Cook; besides Raju and Govinda. All of them had run away after committing the murder of his brother Jagdish Singh since the last night. They had also taken the purse, mobile phone, hand bag, licensed revolver and other articles belonging to Jagdish Singh with them. The complainant had reached the dera at about 8.30 a.m. The complainant stated that he would give the full names and addresses of the servants later on after verification. After leaving Balbir Singh son of Tara Singh at the spot, the complainant alongwith Amarjit Singh son of Balwan Singh, resident of village Dhapai, started for the Police Station and came across Inspector Ravinder Singh near Wadala Fatak (railway crossing) and got recorded his statement on the aforementioned lines.

It is also the case of the prosecution that as the statement Ex.PC made by complainant-Jasbir Singh disclosed commission of offences under Sections 302, 120-B/34 IPC, it was sent to the Police Station through HC Praveen Kumar with direction that a case be registered and FIR number be intimated. Special report be also forwarded to the higher authorities. Control room be informed whereas dog squad, Fingerprint Expert, Photographer and Forensic Expert Team be sent to the spot. Accordingly, FIR No.180 (Ex.PJ)

under Sections 302/120-B/34 IPC was registered at Police Station Sadar, Kapurthala on 27.11.2008 at 11.00 a.m. by ASI Sucha Singh.

It is also the case of the prosecution that after reaching the spot and on the identification of dead body to be that of deceased Jagdish Singh, Inspector Ravinder Singh undertook inquest proceedings Ex.PE/2. He also took into possession one blood stained datar from the chaubara and blood stained axe lying near the bed on which the dead body was lying, were also taken into possession. He also took into possession from the cot a piece of blanket, a piece of talai (mattress), a piece of dari, one pillow cover and turban of the deceased. All the articles were stained with blood. He prepared rough site plan Ex.PT of the place of occurrence. He also took into possession one bed. He moved application to the S.M.O., Civil Hospital, Kapurthala for conducting post-mortem on the dead body of the deceased. After the post-mortem, he took into possession the clothes of the deceased.

It is further the case of the prosecution that on 29.11.2008, complainant-Jasbir Singh got recorded supplementary statement in which he gave the full names of the accused and their parentages and addresses, besides stating about the theft of Rs.55,000/- of the deceased. The complete names of the accused were incorporated in the case as Chandan Kirkata, Khettar Kumar Sharma @ Raju, Mohtan Dungdung @ Govinda and Raju Kumar @ Jony Kumar. On 18.12.2008, Inspector Ravinder Singh recorded the statement of Jagjit Singh under Section 161 Cr.P.C. who mentioned about making

of extra judicial confession by the accused before him on 15.12.2008. On 19.12.2008, Raju Kumar @ Jony Kumar accused was arrested and Rs.3,000/- cash and one mobile phone were recovered from him. On 19.2.2009, Chandan Kirkata was arrested and from his search, Rs.14,700/- cash was recovered from the right pocket of the trouser worn by him. On the same day, Chandan Kirkata accused suffered disclosure statement that he had kept concealed one revolver, rounds and license of deceased Jagdish Singh after wrapping the same in polythene bag in the area of abandoned factory on Rasoolpur Brahmana and could get the same recovered. The accused led the police party to the disclosed place and got recovered from the said place one pistol of 22 bore alongwith holster (pistol case), one plastic dabbi containing 27 live cartridges of 22 bore and one arm license of the deceased. On 19.2.2009, Khettar Kumar Sharma @ Raju accused was arrested and from the search of bag carried by him on his right shoulder, one DVD player, five CDs, one passport and Rs.12,000/- cash were recovered. On 19.2.2009, Mohtan Dungdung @ Govinda was arrested and from his search one mobile phone and Rs.8,000/- cash were recovered.

After completion of codal formalities, challan was presented against the appellants and also against Raj Kumar @ Jony and Mohtan Dungdung @ Govinda. Raju Kumar @ Jony was, however, declared a juvenile and his case was sent to the Juvenile Justice Board, Kapurthala for enquiry. The appellants and Mohtan Dungdung @ Govinda were charged under Section 302 IPC.

Subsequently, Mohtan Dungdung @ Govinda was also declared as juvenile and was directed to be produced before the Juvenile Justice Board, Kapurthala.

In support of its case, the prosecution examined 13 witnesses.

PW1 HC Kulbir Singh testified that he had taken the photographs Ex.P1 to Ex.P8 at the spot with his digital camera.

PW2 Sukhwinder Singh, Patwari proved the scaled site plan Ex.PA of the place of occurrence.

PW3 Raj Kumar Bali, Superintendent, proved the passport Ex.P9 issued by the Regional Passport Office, Jalandhar in favour of Jagdish Singh son of Bishan Singh.

PW4 HC Kuldip Singh deposed that he alongwith Paramjit Singh took the dead body of Jagdish Singh to the Civil Hospital for post-mortem and subsequently, he handed over the belongings of the deceased to the Investigating Officer.

PW5 HC Balbir Singh deposed that he had taken the special report of the case and handed over the same to the Ilaqa Magistrate on 27.11.2008 without any delay.

PW6 Jasbir Singh, complainant, elder brother of Jagdish Singh deceased, deposed on the lines of the prosecution case. He also stated that he had given information to the police regarding the murder of his brother.

PW7 Jagjit Singh deposed that on 26.11.2008, he had gone to the dera of Jagdish Singh and found him alongwith his four servants, who are the accused in the case.

PW8 Mahesh Kumar, Clerk, DDPO Office, Jalandhar proved the arm license of Jagdish Singh.

PW9 HC Rattan Singh tendered in evidence his duly sworn affidavit Ex.PD.

PW10 Dr. Amandeep Kapila, Medical Officer, Civil Hospital, Kapurthala deposed that on 27.11.2008, he performed postmortem on the dead body of Jagdish Singh and found the following injuries on his dead body :-

- “1. 9 cm x 1 cm bone deep incised wound on right side of face and forehead placed obliquely 3 cm in front of tragus and right ear. Clotted blood was present. On dissection underlying skull bone was cut 6 cm x 4 cm haematoma present extradurally beneath the skull bone.
2. 13 cm x 1.5 cm incised wound on left side of face extending from left cheek obliquely upward to a point 3 cm above middle of left eyebrow. Clotted blood was present. On dissection underlying facial bone, nasal bone and left side of frontal bone found cut.
3. Tailing of about 5 cm present on lower aspect of above wound.
4. 7 cm x 1 cm incised wound present on left side of face just below injury No.2.

5. 15 cm x 3 cm incised wound on right side of face about 9 cm in front of right ear lobule extending upwards and obliquely towards left upto left molar bone. On dissection lower part of mandible found cut with fracture of upper jaw upto left facial bone.
6. 15 cm x 1 cm C-shape incised wound in front of lower jaw about 3 cm below lower lip extending on both sides of face. On dissection the mandible was cut into two parts with a portion having teeth almost completely cut off from rest. Clotted blood was present.
7. 5 cm x 1 cm incised wound present on right side of face extending from lower lip upto middle of upper lip cutting both lips through and through.”

He also deposed that after receiving report of the Chemical Examiner, he gave his opinion that cause of death was due to shock and haemorrhage as a result of injuries Nos.1 to 7, which were sufficient to cause death in ordinary course of nature.

PW11 HC Baldev Singh tendered in evidence his duly sworn affidavit Ex.PW11/A.

PW12 Neeraj Aggarwal proved invoice Ex.PH vide which the deceased had purchased the mobile phone from his dealership of Idea Cellular.

PW13 Inspector Ravinder Singh, who was posted as Station House Officer and the Investigating Officer in the case had deposed about the various steps taken by him during the investigation of the case.

When examined under Section 313 Cr.P.C., the appellants pleaded that they had been falsely implicated. However, they did not produce any evidence in their defence.

After hearing learned counsel for the parties and on going through the record, learned trial Court accepted the prosecution case and convicted and sentenced the appellants, as mentioned above.

This Court has heard learned counsel for the parties and scanned the evidence with their able assistance.

In order to connect the appellants with the commission of crime, the prosecution has relied upon circumstantial evidence. However, the various circumstances led by the prosecution are not sufficient to convince the Court about the culpability of the appellants and their involvement in the crime.

According to the prosecution, Gyan Singh and Jaswinder Singh had identified the dead body to be that of Jagdish Singh, deceased. Gyan Singh happened to be the son of complainant-Jasbir Singh, whereas Jaswinder Singh was brother of deceased Jagdish Singh. None of them was, however, examined by the prosecution before the learned trial Court. It may also be worthwhile to mention here that in their statements Ex.PK and Ex.PL recorded under Section 175 Cr.P.C., Gyan Singh and Jaswinder Singh had not mentioned that the deceased had hired servants in order to cultivate the land which belonged to his aunt and was situated in village Dhapai or such servants used to reside in dera of the deceased.

What was stated by them was that the murder of Jagdish Singh was committed during the previous night with sharp edged weapon and they had identified the dead body to be that of Jagdish Singh.

Jasbir Singh, complainant, in his statement Ex.PC made before Inspector Ravinder Singh, on the basis of which the FIR was registered, had stated that when he alongwith Balbir Singh went to the dera of Jagdish Singh deceased he saw the dead body lying on a cot and having injuries. An axe was lying near the dead body whereas the goods were lying scattered. He had also stated that the deceased had four servants who were living with him in the dera. He gave out their names as Chandan, Driver; Raju @ Chhotu, Cook; Raju and Govinda and all four of them had run away after committing the murder of Jagdish Singh. He had also stated that he would supply full names and addresses of the servants lateron after verification. The statement Ex.PC was made on 27.11.2008 and two days later, i.e. on 29.11.2008, he made supplementary statement in which he gave full names of the accused alongwith their parentage. However, in his examination-in-chief, PW6 Jasbir Singh did not state anywhere that he had made supplementary statement before the Investigating Officer and, that too, on 29.11.2008. In his cross-examination, he deposed that he had come to know about the full names of the accused on 29.11.2008. However, he did not know the names of those persons/bhayias, who had disclosed to him the full particulars of the accused. He stated that those persons were not permanently employed but were daily wagers. Balbir Singh son of Tara Singh, who

was resident of village Dhapai and had accompanied Jasbir Singh complainant for going to the dera of the deceased and, thus, a material witness was not examined by the prosecution. He was given up as having been won over by the accused. The accused happened to be labourers and permanent residents of Jharkhand and Bihar States and having come over to the State of Punjab for earning their livelihood. Both the appellants were in custody throughout the trial of the case and, therefore, it is highly unlikely that they would have been successful in winning over said Balbir Singh, who is an agriculturist and permanent resident of village Dhapai in District Kapurthala. As such, it will be difficult to rely upon the prosecution evidence to the extent of names and parentages of the accused.

According to the prosecution, on 26.11.2008, all the accused were present at the dera of the deceased and Jagjit Singh saw them there as he knew the deceased and had gone there to meet him. He also stated that the accused were Chandan Kirkata, Khettar Kumar Sharma @ Raju, Mohtan Dungdung @ Govinda and Raju Kumar @ Jony. Further, on 15.12.2008, when Jagjit Singh was present at his dera, Chandan Kirkata confessed before him that he alongwith other accused had committed the murder of Jagjit Singh at his dera for the sake of money. Said Jagjit Singh asked the accused turn by turn and they confessed similarly of having committed the murder of Jagjit Singh and requested him to produce them before the police. He told them that they should come to him on the following day but they did not turn up. He waited for another two days and then

went to the police where his statement was recorded. Said Jagjit Singh was examined by the prosecution as PW7. However, in his cross-examination he was confronted with his statement Ex.DA made before the police wherein he had not stated about the accused requesting him to produce them before the police. He also deposed that he had got no connection with the police officials. Further, when the accused confessed before him, he did not apprehend them. He did not go to the police on 15.12.2008 for giving the information. He also did not give any application or information to any police official regarding the confessional statement. He deposed that he had no relation with Jagdish Singh. He went on to add that he was neither a Sarpanch nor holding any respectable post in the village. Going by the aforementioned material which came on record during the cross-examination of PW7 Jagjit Singh, it would be highly improbable that the accused would approach him so as to seek assistance from him for producing them before the police. If the accused could come to him on 15.12.2008, they could very well come to him on the following day for seeking his assistance for avoiding hostile attitude of the police. Moreover, he was neither the Sarpanch nor holding any respectable post in the village and, thus, was not the one whom the accused could have approached and make extra judicial confession before him. Even while applying for remand Investigating Officer did not make mention about the accused having made extra judicial confession before PW7 Jagjit Singh. As such, it is difficult to accept the prosecution case qua making of extra judicial confession by the

accused.

While making endorsement Ex.PC/1 on the statement Ex.PC made by Jasbir Singh complainant, Inspector Ravinder Singh had issued directions for sending dog squad and Fingerprint Expert at the spot. However, neither the services of dog squad nor that of a Fingerprint Expert seemed to have been availed by the prosecution as no such material is available on the file in that regard.

Coming to the recoveries which were effected from the spot, the prosecution has relied upon memo. Ex.PN regarding datar Ex.P9 and memo. Ex.PP in respect of axe Ex.P10. To prove the said recoveries, the prosecution has relied upon the testimonies of PW13 Inspector Ravinder Singh. No attempt had been made to join any independent witnesses regarding the aforementioned recoveries. Even SI Dalbir Singh and ASI Parminder Singh, who were witness to the recoveries of the weapons, were not examined at the trial. There is only bald testimony of PW13 Inspector Ravinder Singh and going by the peculiar facts and circumstances of the case, it will be difficult to rely upon his testimony in support of the recoveries of the weapons.

From the photographs which were available on the record it is made out that there was a watch and a ring on the body of the deceased. However, no mention was made about the watch and ring when the inquest proceedings were conducted. Even no mention was made about the watch and ring in the articles which were part of the

case properties. If the watch and ring were on the deceased at the time clicking of the photographs during the investigation of the case and, thus, not removed from the wrist, the motive of greed on the part of the accused pales into insignificance.

In view of the above, this Court has no other option but to hold that the prosecution has failed to complete the chain of circumstantial evidence so as to come to one and the only conclusion that it were the appellants who had committed the murder of Jagdish Singh. Accordingly, extending the benefit of doubt to them would be in order.

Resultantly, the appeal, i.e. Criminal Appeal D-1178-DB of 2010 filed by Chandan Kirkata and Khettar Kumar Sharma @ Raju against their conviction and sentence is accepted and both of them are acquitted of the charges against them. As a corollary, Criminal Appeal D-523-DB of 2011 filed by complainant-Jasbir Singh is dismissed.

January 16, 2018
satish

(T.P.S. MANN)
JUDGE

(DEEPAK SIBAL)
JUDGE

Whether reasoned/speaking : YES / NO

Whether reportable : YES / NO