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

**Date of decision: September 12, 2018  
CRA-D-353-DB of 2012 (O&M)**

Sunny @ Ghogha

.....Appellant

Versus

State of Punjab

....Respondent

**CRA-D-885-DB of 2012 (O&M)**

Roshan Singh @ Roshi

.....Appellant

Versus

State of Punjab

....Respondent

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

**Present:** Mr. Vishal Handa, Advocate for the appellant  
(in CRA-D-353-DB of 2012).

Mr. Sanjeev Sharma, Legal Aid counsel for the appellant  
(in CRA-D-885-DB of 2012).

Ms. Anju Arora, Addl. AG Punjab.

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**A.B. CHAUDHARI, J**

These two criminal appeals are being decided by the present  
common order.

2. Appellants-Sunny @ Ghogha and Roshan Singh @ Roshi  
have filed these two criminal appeals, namely CRA-D-353-DB of 2012  
and CRA-D-885-DB of 2012, respectively, against judgment and order  
dated 06.02.2012 passed by the learned Sessions Judge, Amritsar in  
Sessions case No.27 of 2010, by which both these appellants were

convicted for commission of offence punishable under Sections 364, 302 and 201 of Indian Penal Code, 1860 (for short 'IPC') and sentenced to undergo Rigorous Imprisonment for a period of seven years, along with fine in the sum of ₹5,000/-; in default of payment of fine, to further undergo Rigorous Imprisonment for six months, for commission of offence punishable under Section 364 IPC, to undergo Rigorous Imprisonment for life, along with fine in the sum of ₹10,000/-; in default of payment of fine, to further undergo Rigorous Imprisonment for one year, for commission of offence punishable under Section 302 IPC, and to undergo Rigorous Imprisonment for a period of three years, along with fine in the sum of ₹5,000/-; in default of payment of fine, to further undergo Rigorous Imprisonment for six months, for commission of offence punishable under Section 201 IPC.

### **FACTS**

3. The prosecution case, in brief, is that on 11.09.2009, SI Jagdish Chander of Police Station Chheharta was informed by the complainant-Sukhchain Singh (Exhibit PA) that he and his brother Avtar Singh (the deceased) were doing Transport business. They had purchased one Innova vehicle bearing number PB-02-AN-0678, of silver colour for plying as Taxi. On 21.08.2009, he along with his brother Avtar Singh, the deceased and driver Jasbir Singh were present at Taxi Stand, Chheharta, when at about 11:00 A.M., appellant-Roshan Singh @ Roshi known to them and one Hindu young man enquired about the rate of Taxi stating that they wanted to go to Srinagar. The complainant and his brother

quoted ₹9,000/- as hire charges, but the accused persons offered to pay only ₹7,000/- and went away. On 23.08.2009, at about 4:00 P.M., appellant-Roshan Singh made a phone call on the mobile phone of Avtar Singh stating that they were willing to pay ₹9,000/- and they would leave from Loharka Petrol Pump on 24.08.2009 at 3:00 P.M. and accordingly, Avtar Singh should go there with the vehicle. Accordingly, Avtar Singh picked up Roshan Singh and his companions and left for Srinagar. Thereafter, Sukhchain Singh did not receive any telephone call or information about Avtar Singh. However, on 27.08.2009 at about 6/7:00 P.M., a telephone call was received from Taxi Stand, Chheharta that Innova vehicle was lying parked in the premises of Police Station, Sadar, Anantnag, Srinagar. The complainant and his relatives went to see that Innova car was parked, but there was no trace of Avtar Singh. The complainant expressed suspicion on Roshan Singh and his companions. SI Jagdish Chander thereafter, recording the FIR proceeded further. On 30.08.2009 at about 4:15 P.M., SHO Ajay Jamwal, Police Station Ramban (J&K) received a phone call from one Gopal Singh of village Marog that an unidentified dead body in the age group of 35/40 years was lying in a dry rivulet passing through that village near national highway. Ajay Jamwal reached the spot and carried out necessary proceedings after recording DDR. The dead body was handed over by him to Mohammad Safi for burying the same. Thereafter on 14.09.2009, SI Jagdish Chander along with the complainant Sukhchain Singh and others went to see the dead body, which was exhumed with necessary protection. Sukhchain

Singh, the complainant identified the dead body along with pant on the dead body and also from the photographs. Thereafter, the dead body was handed over for cremation. Investigation was undertaken by the police officers and the vehicle was brought to Chheharta Police Station. During investigation, SI Jagdish Chander, on 29.09.2009 arrested Roshan Singh @ Roshi and Sunny @ Ghogha. Personal search of Roshan Singh @ Roshi revealed that he was wearing a gold chain with locket and mobile phone belonging to deceased Avtar Singh while one wallet containing ₹150/- on the person of accused Sunny @ Ghogha. These articles were recovered. Thereafter, investigating officer filed the charge-sheet in the Court. The trial Court heard the evidence and convicted the appellants for above offence. Hence, these appeals.

### **ARGUMENTS**

4. In support of the appeals, learned counsel for the appellants vehemently argued that there is no iota of evidence against the appellants much less any direct evidence, according to him. The reliance placed by the trial Court on the alleged last seen evidence is also misplaced because none saw the deceased going along with the appellants. The reliance placed by the prosecution for convicting them was only on the basis of alleged discovery/recovery of the ornaments and a mobile phone. The discovery was false as the same was planted on the accused persons in order to show the solving of the murder case. But then the prosecution did not have any satisfactory evidence to show the evidence of complicity of the appellants in the alleged crime. No independent witness was examined

to prove the recovery of the articles. There could be no conviction only on the basis of such type of evidence, which is a weak piece of evidence. Learned counsel contended that had there been any intention to rob the deceased of Taxi in Innova vehicle, the same would not have been parked on the road and left away. Therefore, the prosecution story is unbelievable and improbable. Hence, both these appellants are required to be acquitted and prayed for allowing of the appeals.

5. *Per contra*, learned State counsel supported the impugned judgment and order and submitted that there is strong circumstantial evidence against the appellants and therefore, the trial Court rightly convicted them. Both the appellants were rightly identified in the Court as the persons who had come for hiring the Taxi and had thereafter offered ₹2,000/- more for hiring charges with a view to commit the crime. Learned State counsel submitted that the finding of the vehicle by itself would not absolve the appellants from the crime in question because the discovery of the articles including the mobile phone of the deceased was a tale-telling circumstance and therefore, the appellants were rightly convicted. He, therefore, prayed for dismissal of the appeals.

### **CONSIDERATION**

6. We have heard learned counsel for the rival parties at length. We have carefully seen the entire evidence tendered by the prosecution before the trial Court. The complainant-Sukhchain Singh (PW1) is the witness who clearly stated about the appellant-Roshan Singh alias Roshi, to whom he knew, approaching at the Taxi Stand and offering ₹7,000/- for

hiring Taxi and that he had taken the telephone number of Avtar Singh, the deceased. He, further stated that on 23.08.2009, appellant-Roshan Singh alias Roshi made a telephonic call to him and called him at 3:00 P.M. and was willing to pay ₹9,000/-. Accordingly, Avtar Singh left the Taxi Stand who was having ₹20,000/- cash with him and a mobile phone and used to wear a gold chain with locket of *khanda* around his neck. At about 3/3.30 P.M., he had picked up both the accused persons and left towards destination. Perusal of the cross-examination of this witness does not show material dent regarding the appellant-Roshan Singh atleast approaching at the Taxi Stand and trying to negotiate about the higher charges. Further the evidence that Avtar Singh had received a phone call from Roshan Singh for hiring Taxi and agreeing to pay ₹9,000/- and calling him at a particular place has not been shaken in the cross-examination. The evidence of the complainant, is therefore, trustworthy.

7. Coming to the evidence of PW2-Jasbir Singh, he has corroborated the evidence of the complainant in full particulars on the aforesaid aspect. It is, therefore, clear that both the appellants had approached the Taxi Stand and who were identified in the Court. Roshan Singh was already known to the complainant. Then there is evidence of PW4-Inspector Jagdish Chander who had gone to the place along with the complainant and others. After arresting Roshan Singh alias Roshi, he found the articles from his possession. We quote the following evidence from his deposition before the trial Court:-

“..... *Personal search of Roshan Singh, accused, was*

*conducted. He was found wearing a gold chain with locket, which, belonged to Avtar Singh, deceased. A mobile phone, was recovered from the right side pocket of pant of Roshan Singh, which, was having the same EMI number, which, was of mobile phone of Avtar Singh, deceased. I got the gold chain with locket weighed fro a Goldsmith, which, came to be 5 grams and 450 miligrams. I put the same in a small plastic container and converted it into a parcel, sealing it with my seal having impression 'JC'. That parcel, was taken into possession by me vide memo Ex.PV, attested by witnesses. Nothing else was recovered from Roshan Singh and a separate memo of jamatalasi in that regard, was prepared, which, is Ex.PW. From personal search of accused, Sunny, Rs.150/- currency notes and a wallet, were recovered. ....*

*Both the accused, were interrogated there. I produced the accused before the Court at Amritsar and got there police remand for seven days. On 01.10.2009, Rajbir Kaur wife of deceased, Avtar Singh, came to the police station and she identified the recovered chain and locket to be belonging to her deceased husband, Avtar Singh. She also identified the recovered nokia mobile phone to be that of Avtar Singh. A memo of identification was prepared by me, which, is Ex PZ, signed by Rajbir Kaur and attested by HC Sarwan Singh. After completion of investigation and other formalities, challan against the accused, was prepared and filed in the court by the SI/SHO, Gurpreet Singh, whose, signatures, I identify.”*

8. The above evidence regarding recovery of the articles belonging to the deceased Avtar Singh including Nokia mobile phone and gold chain is not shaken in the cross-examination. It is then significant to

note that wife of Avtar Singh, the deceased was examined as PW6. She stated thus, in her evidence before the trial Court:-

*“..... on 01.10.2009, I went to P.S. Chheharta and I identified gold chain with pendent of khanda and a mobile phone belonging to my husband, there. My husband used to wear gold chain and khanda all the times and keep mobile phone with him. A memo of identification, had been prepared, which, was signed by me and HC Sarwan Singh. The said memo, is Ex. PZ, already exhibited. I have brought the gold chain with khanda and mobile phone belonging to my deceased husband, which, I have got released on sapurdari from the court, today with me. My statement was recorded by the police”*

9. It is clear from her evidence that she clearly identified the gold chain and *khanda* and mobile phone belonging to the deceased which articles were recovered from the person of the appellant-Roshan Singh alias Roshi. It is thus, clear that the evidence regarding recovery of articles belonging to the deceased from the person of the appellant-Roshan Singh alias Roshi is a very strong evidence straightway connecting him with the crime in question for which he has no explanation.

10. In so far as the other accused Sunny alias Ghogha is concerned, what is claimed by the prosecution is recovery of ₹150/- and a wallet. Neither the wallet nor ₹150/- have been identified as belonging to the deceased. Except this evidence, there is no evidence against him. We, therefore, find that the trial Court's finding about convicting Sunny alias Ghogha is illegal and cannot be countenanced. We, therefore, set aside the

judgment of the trial Court for convicting the appellant-Sunny alias Ghogha.

11. To sum up, we are satisfied that the appellant-Roshan Singh alias Roshi alone could be convicted for offence in question in the wake of the evidence collected and proved against him, while the other accused, namely Sunny @ Ghogha cannot be convicted for want of legal and proper evidence against him. In the result, we make the following order:-

**ORDER**

- (i) **CRA-353-DB of 2012** filed by appellant-Sunny @ Ghogha is allowed;
- (ii) The impugned judgment and order dated 06.02.2012 passed by the learned Sessions Judge, Amritsar in Sessions case No.27 of 2010, by which the appellant-Sunny @ Ghogha was convicted and sentenced, is set aside;
- (iii) Appellant-Sunny @ Ghogha is acquitted of the charge framed against him;
- (iv) Appellant-Sunny @ Ghogha be set at liberty forthwith, if not required, in any other case;
- (v) Fine, if paid, be returned to him;
- (vi) **CRA-D-885-DB of 2012** filed by the appellant-Roshan Singh @ Roshi is dismissed;
- (vii) Learned State counsel is directed to inform State Police to take immediate steps to arrest the appellant-accused-Roshan Singh @ Roshi and also file compliance report within three months.

**(A.B. CHAUDHARI)**  
**JUDGE**

**(KULDIP SINGH)**  
**JUDGE**

**September 12, 2018**  
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No