

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CRA-D-1038-DB-2018

Surmukh Singh @ Soni

... Appellant

Versus

State of Punjab

... Respondent

2. CRA-S-4377-SB-2018

Sukhwinder Singh

... Appellant

Versus

State of Punjab

... Respondent

3. CRA-S-4456-SB-2018

Bunti

... Appellant

Versus

State of Punjab

... Respondent

Reserved on : 15.12.2018
Date of decision : 20.12.2018

CORAM: *HON'BLE MR. JUSTICE RAJIV SHARMA*
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.Nandan Jindal, Advocate for the appellant
in CRA-D-1038-DB-2018 & in CRA-S-4377-SB-2018.

Ms.Loveleen Dhaliwal, Advocate
for the appellant in CRA-S-4456-SB-2018.

Mr.Rajesh Bhardwaj, Sr.DAG, Punjab.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the aforesaid three appeals, therefore, these are taken up together and disposed of by a common judgment.

2. These appeals are directed against the judgment and order dated 28.09.2018 rendered by the Additional Sessions Judge, Patiala, in Sessions Case No.16 dated 08.08.2016 whereby the appellant Surmukh Singh was charged with and tried for offences punishable under Sections 302, 382, 201 read with Section 120-B of the Indian Penal Code (in short 'IPC') and appellants Sukhwinder Singh and Bunti were charged with and tried for offence punishable under Section 201 read with Section 120-B IPC. The appellants were convicted and sentenced as under:-

Name of convict	Offence U/s	Period of sentence (RI)	Fine imposed	Period of sentence in default of payment of fine. (SI)
Surmukh Singh	302 IPC	Life imprisonment	Rs.50,000/-	Two years
	382 IPC	Five years	Rs.50,000/-	One year
	201 read with Section 120-B IPC	Five years	Rs.50,000/-	One year
Sukhwinder Singh	201 read with Section 120-B IPC	Five years	Rs.50,000/-	One year
Bunti	201 read with Section 120-B IPC	Five years	Rs.50,000/-	One year

All the sentences awarded to appellant Surmukh Singh were ordered to run concurrently.

3. The case of the prosecution in a nutshell is that a complaint was lodged by PW-2 Bir Singh @ Bir Bhan to the effect that his son Sukhdev

Singh was a labourer. On 23.12.2015 at 11.00 A.M. he had gone with his family to the house of his sister-in-law on a motorcycle bearing registration no.PB-11-Z-5806. He came back to his village in the evening. He dropped his family and thereafter left the house. He appeared to have consumed alcohol. Sukhdev Singh did not come back in the intervening night of 23rd and 24th December, 2015. His mobile phone was switched off. In the morning hours at about 08.30 A.M. of that day, the complainant came to know about the dead body of Sukhdev Singh lying near a sign board. He along with his son PW-3 Subhash Chand went to the spot. The dead body was identified by them. The matter remained under investigation. The accused were arrested on 04.03.2016. The weapon of offence, i.e. axe (*kulhari*) was recovered. The mobile phone and motor cycle were also recovered. The investigation was completed and challan was put up after completing all the codal formalities.

4. The prosecution had examined a number of witnesses. Statements of accused were recorded under Section 313 Cr.P.C. They denied the case of prosecution. The appellants were convicted and sentenced, as noticed hereinabove. Hence these appeals.

5. Learned counsel appearing on behalf of the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

6. Learned counsel appearing on behalf of the State has supported the prosecution case.

7. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

8. PW-1 Amrik Singh had taken the photographs of the spot on

24.12.2015.

9. PW-2 Bir Singh is the complainant. According to him, his son Sukhdev Singh had gone on 23.12.2015 to his sister-in-law's house at village Nadiali. He came back in the evening. He again left his house on motorcycle in the intervening night of 23/24.12.2015. He did not come back. They tried to contact him on his mobile phone but it was switched off. In the morning, they came to know about the dead body of his son Sukhdev Singh lying near the bridge of SYL canal. He along with his son Subhash Chand went to the spot. He made a complaint to the police vide Ex.PA. In his cross-examination he admitted that he did not have any bill of mobile phone of his son. The mobile phone of his son was recovered from Kurukshetra. He also admitted that one of the number plate was not readable. He also admitted that in other number plate, some numbers were erased.

10. Statement of PW-2 Bir Singh was corroborated by PW-3 Subhash Chand. In his cross-examination he also admitted that he did not have mobile phone bill of his brother. His brother had purchased the mobile phone on the same day. He had lost the wrapper. The police had told him that motor cycle was recovered from Kurukshetra.

11. PW-4 Dr.Naresh Bansal conducted the post-mortem examination of body of Sukhdev Singh. He had noticed the following injuries on the body:-

1. *Incised wound 6.5 x 3 cm bone deep underlying bone exposed in right frontal area of skull.*
2. *Incised wound 5 cm x 2.5 cm with underlying bone fractures in right fronto temporal area with clotted blood present all around.*
3. *Incised wound 11 cm x 3 cm with underlying bone*

crushed with multiple bone pieces present in wound with clotted blood present in right temporal area. Underlying brain also crushed.

4. *Incised wound 6 cm x 2 cm with underlying crushed and bone pieces with clotted blood in right parieto occipital area with underlying brain matter crushed.*

5. *Incised wound 7.5 cm x 3 cm with underlying bone crushed and bone pieces present in wound with clotted blood in right parieto occipital area of skull.*

6. *Incised wound 5 cm x 2.5 cm with underlying bone crushed and brain matter also exposed with clotted blood present in right occipital area of skull.*

7. *Left hand thumb cut from base only skin tag present with blood present cut area of thumb.”*

According to him, the cause of death was assault with sharp edged weapon on head in its ordinary course of nature. The probable time between injury and death was immediate and probable time between death and post-mortem examination was within 48 hours. The deceased had consumed alcohol before being assaulted with sharp edged heavy weapon like axe. In his cross-examination he had admitted that axe was not shown to him during the investigation of the case.

12. PW-5 Surjit Singh deposed that he had sold the motorcycle to Sukhdev Singh in the year 2013. He proved the copy of affidavit Ex.PW5/A. In his cross-examination he admitted that he had not mentioned in the affidavit that possession of the motorcycle was handed over to Sukhdev Singh.

13. PW-8 ASI Haripal Singh has proved call detail records of the mobile phone no.98555-93965 vide Ex.PW8/B. The mobile was switched off on 23.12.2015.

PW-12 Rajinder Singh deposed that he was member of

Panchayat of village Bhattiras. He along with Panch Jagdeep Singh was present near SYL canal bridge where SHO P.S. Banur along with police party came in a government vehicle. He told him about the commission of murder of Sukhdev Singh. When they were going to village Faridpur, he and Rajinder Singh Panch identified accused Sukhwinder Singh and Bunti who were going to village Faridpur on foot. The personal search of accused Sukhwinder Singh was carried out along with Bunti. SHO interrogated the accused Sukhwinder Singh and Bunti. Sukhwinder Singh disclosed that after committing the murder of Sukhdev Singh, his brother Surmukh Singh @ Sona had handed over the number plate of motorcycle of deceased for erasing the registration number. He had kept concealed the said number plate near the SYL bridge. He could get it recovered. Similarly Bunti had confessed that he had concealed mobile on Banur Tipla road. On 05.03.2016 Surmukh Singh disclosed in their presence that on the intervening night of 23/24.12.2015 after committing the murder of Sukhdev Singh @ Sukha, he had committed the theft of motorcycle. He had removed the number plate of motor cycle. He handed over the same to his brother Sukhwinder Singh for destroying the same. He had concealed the motor cycle in the branches near the land of Naginder Singh. His statement was recorded by the SHO vide Ex.PW12/G. On 05.03.2016 Sukhwinder Singh got recovered number plate of motorcycle as per his disclosure statement made on 04.03.2016. Surmukh Singh also got the motorcycle recovered vide memo Ex.PW12/I. Bunti also got mobile recovered vide memo Ex.PW12/J.

15. PW-13 Pardeep Kumar Kataria testified that on 04.03.2016 accused Surmukh Singh came to him. He had made extra judicial confession before him on 04.03.2016. He confessed that he went to SYL canal village

Faridpur for cutting the wood with axe. He found one person in drunken condition lying near the bridge of SYL canal. The motor cycle was also lying near him. He tried to commit theft of motor cycle. The drunken man got up and scuffle took place. He gave *kulhari* blow on the drunken man. He knew the name of that person, i.e. Sukhdev Singh son of Bir Bhan. He gave further 4/5 blows on the head of Sukhdev Singh with his *kulhari*. He committed theft of motorcycle and mobile phone. Surmukh Singh requested him to produce him before the police. In his cross-examination, he admitted that his house was at a distance of about 5/6 kilometers from SYL canal. He admitted that accused had never made any disclosure statement before the police in his presence.

16. PW-14 Inspector Rajpal Singh Gill had disclosed that Bir Singh had made statement before him vide Ex.PA. On the basis of which, FIR Ex.PW10/A was registered. He inspected the site and prepared site plan. He put the blood stained earth, blood taken from the signboard and blood stained hair of the deceased in three different plastic boxes. He got the post-mortem conducted.

17. PW-15 Inspector Bhagwant Singh deposed that he was on patrol duty. On 04.03.2016 accused was produced before him by Pardeep Kumar in the presence of Nardev Singh. He arrested Surmukh Singh. He interrogated Surmukh Singh. Surmukh Singh disclosed that he had committed the murder of Sukhdev Singh with axe. He had kept concealed the axe on the back side of bathroom in his residential house. He could get the same recovered. Accused got recovered the axe from his residence. On 04.03.2016 Rajinder Singh Panch and Jagdeep Singh Panch met them. They joined the investigation. When they reached in the area of Faridpur-

Bhattiras road, Sukhwinder Singh and Bunti were seen. They were arrested by them. They made disclosure statements. Sukhwinder Singh admitted that his brother Surmukh Singh had handed over the number plate of the motorcycle of the deceased to him in order to destroy the same. He interrogated Surmukh Singh. The motorcycle, mobile and axe were got recovered. In his cross-examination he admitted that fingerprints of the accused were not lifted from the case property recovered from the accused persons. When the disclosure statements were made, they were in custody. The recoveries were made from the accused after 2 ½ months from the incident. He also admitted that initially FIR was registered against unknown person. He did not know Pardeep Kataria and Nardev Singh. It was mentioned in the PMR that the deceased Sukhdev Singh was under the influence of liquor. Bunti was resident of Kurukshetra.

18. The case is based on circumstantial evidence. In order to prove the case of circumstantial evidence, the chain must be complete. In the instant case, the incident had happened in the intervening night of 23/24.12.2015. According to PW-2 Bir Singh, his son Sukhdev Singh had gone to the house of his sister-in-law in the morning. He came back in the evening. He left his house. He was under the influence of liquor. He did not come back. His dead body was found near SYL canal. The accused were arrested on 04.03.2016. The cause of death as per statement of PW-4 Dr.Naresh Bansal was assault with sharp edged weapon on head. The probable time between injury and death was immediate and probable time between death and postmortem was within 48 hours. As per FSL report Ex.PX, soil, bandage, hair were stained with human blood. Pant marked D-1, underwear marked D-2, Banyan marked D-3, Warmer marked D-4, shirt

marked D-5 and *koti* marked D-6 were stained with human blood. The viscera was preserved. It was sent for chemical examination. According to report Ex.PW4/E, Ethyl alcohol was detected in the contents of exhibit I, II & III. Blood alcohol concentration was estimated to be 195.5 mg. per 100 ml. The prosecution has placed reliance on the statement of PW-13 Pardeep Kumar Kataria. According to him, accused Surmukh Singh had made extra judicial confession before him on 04.03.2016 which is not believable. Why Surmukh Singh made disclosure statement before an unknown person after about 3 months? His house was situated at a distance of 5/6 kilometers from SYL canal, village Faridpur. The case of the prosecution is also that on the same day, i.e. 04.03.2016 appellants Sukhwinder Singh and Bunti were arrested. The number plate, mobile phone were got recovered by them. PW-5 Surjit Singh has though proved the affidavit but it has not been stated in the affidavit that he had handed over the possession of motor cycle to Sukhdev Singh. The mobile phone was recovered vide memo Ex.PW12/J. The IMEI of recovered mobile number was 352943077151701 and of the phone whose call details were produced, was 404149325736477. Thus the call details report Ex.PW8/B are not from the phone which was recovered at the instance of Bunti. The weapon of offence, i.e. axe was never sent for FSL examination. The explanation given by the learned Senior Deputy Advocate General is that since the recovery was belated, the blood stained must have disappeared. The contention is rejected. Even the recovery was made belatedly and since the blood stains were found present on axe, it should have been sent for FSL examination. The weapon of offence, i.e. axe was also not shown to Dr.Naresh Bansal during the course of investigation.

The extra judicial confession is a weak piece of evidence. It should be made

at the earliest. The prosecution has failed to prove the case against the appellants. Accordingly the appeal is allowed. The judgment and order dated 28.09.2018 are set aside. The appellants are in jail. Registry is directed to prepare the release warrant of the appellants.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

December 20, 2018.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No