

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

CRA-D-547-DB-2003 (O&M)

Date of Decision: 20.11.2019

Surjit Kaur and others

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

**CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN
HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mrs. Baljeet Mann, Advocate for the appellant(s).

Mr. Bhupinder Beniwal, AAG., Punjab.

Mr. H.S. Randhawa, Amicus Curiae for the complainant.

H.S. MADAAN, J.

In nutshell, the facts of the case as per prosecution story are that complainant Surain Singh son of Phuman Singh, resident of Village Manabarpura Tihara, District Ludhiana had got his statement recorded with the police on 03.03.2001, wherein he stated that he along with his wife Bhagwan Kaur had been residing in Canada since the year 1987; he had three sons and a daughter, the eldest son being Malkiat Singh followed by Kuldeep Singh and then Hardip Singh. Hardip Singh had died in the year 1987. His daughter Gurdip Kaur was married with Rajwinder Singh son of Harbans Singh, resident of Village Sheikhan Kalan; that Malkiat Singh along with his son Gurbinder Singh had been residing in Canada, whereas, Surjit Kaur

wife of Malkiat Singh along with two other sons of the couple, namely, Balli and Raju were residing at Village Tihara (India). He and his son Malkiat Singh had come to India in November, 2000 and were residing at Village Tihara. Malkiat Singh was residing with his family Surjit Kaur etc. while the complainant was residing in the house of his younger son Kuldip Singh in the same village. On 02.03.2001 at about 9.00 am, Balli son of Malkiat Singh came to the house of complainant and stated that some persons had entered their house during night time and had given beatings to Malkiat Singh. The complainant immediately went to the house of Malkiat Singh and observed that Malkiat Singh had suffered multiple injuries on his person. On being enquired by the complainant, Malkiat Singh informed him that those injuries had been given to him by Raju, a son of his brother in-law as well as three more unidentified persons with hockey sticks. Malkiat Singh injured was taken to Lodhiwal private hospital. The doctor in-charge informed the complainant that Malkiat Singh was in serious condition, therefore, he should be taken to some good hospital at Ludhiana. Thereafter, Malkiat Singh was taken to Sutlej Hospital, Ludhiana for treatment, wherein, he died on 03.03.2001 at 9.00 am. In such statement, complainant stated that he had informed village Sarpanch Smt. Manjit Kaur about beatings given to Malkiat Singh. Going further, the complainant stated in his statement that Surjit Kaur was not on good terms with him, since, Malkiat Singh wanted to re-

marry and for that reason, Surjit Kaur in connivance with her brother's son Raju @ Balraj Singh and some other unidentified persons had given beatings to Malkiat Singh, as a result of which, he died on 03.03.2001. Such statement of complainant Surain Singh formed the basis for registration of formal FIR No.22 dated 03.03.2001 with Police Station Sidhwan Bet at 5.00 pm. The matter was investigated. Accused Surjit Kaur, Balraj Singh @ Raju and Jagjit Singh @ Babbu were found to be involved in the incident and they were accordingly arrested.

After completion of investigation and other formalities, the challan against accused was prepared and filed in the Court of Judicial Magistrate 1st Class (for short 'JMJC'), Jagraon, who supplied copies of documents relied upon in the challan to the accused free of cost as provided under Section 207 Cr.P.C and then finding that the offence under Section 302 IPC was exclusively triable by the Court of Session, vide detailed commitment order dated 17.05.2001, committed the case to the Court of Sessions Judge, Ludhiana who assigned the same to Addl. Sessions Judge, Ludhiana.

On receipt of the challan in his Court, learned Addl. Sessions Judge, Ludhiana, after finding that prima facie charge for the offences under Sections 302 and 120-B IPC was framed against the accused, to which, they pleaded not guilty and claimed trial.

During the course of prosecution evidence, prosecution

examined as many as 13 witnesses i.e. PW1 Parminder Kaur wife of Hardev Singh, PW2 Navtej Singh son of Ajit Singh, PW3 Constable Saroop Singh, PW4 Constable Sukhwinder Singh, PW5 Dr. Ashok Rashwant, PW6 Preet Harkrishan Singh, PW7 Surain Singh complainant, PW8 Gurmit Singh @ Geeta, PW9 Baljit Singh son of Bachan Singh, PW10 Inspector Ravinderpal Singh, PW11 Constable Dharminder Singh, PW12 Dr. Karamdeep Singh and PW13 ASI Karnail Singh.

After completion of prosecution evidence, statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to them but they denied the same, contending that they are innocent and have been falsely involved in this case. The accused did not lead any evidence in defence. Accused Surjit Kaur while being examined under Section 313 Cr.PC had taken up a plea that her late husband was in illegal business of sending people abroad after charging heavy money from them. He had received huge amount from several persons on the pretext of sending them abroad but he neither arranged their migration nor returned the money. Those persons were after the life of her husband and her husband had a dispute with his father, since, he was demanding his share in the property, which led to quarrels between them. Her father in-law had a suspicion that she along with Balraj Singh were instigating Malkiat Singh against him; that her late

husband had a dispute with his real maternal uncle Bhag Singh since Malkiat Singh had gone abroad on a forged passport in the name of Bhag Singh. In that way, her father in-law had get her falsely implicated in this case, that she along with her two sons had gone to her parental house in Village Purain on 01.03.2001 and remained there till 03.03.2001 when she received information about death of her husband.

After hearing arguments, learned Addl. Sessions Judge, Ludhiana, vide judgment dated 15.05.2003, came to the conclusion that accused Surjit Kaur in conspiracy with Balraj Singh @ Raju, Jagjit Singh @ Babbu and two more unidentified persons had caused injuries of serious nature to Malkiat Singh which resulted into his death. In that way, they had committed offence under Section 302 and 120-B IPC and vide order of even date, all the three accused/convicts were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- each, in default of payment of fine, to undergo further RI for two years each.

Such judgment of conviction and sentence left all the three accused/convicts aggrieved and they have approached this Court by way of filing the present appeal, notice of which was issued to the State, which has put in appearance through counsel.

We have heard learned counsel for the parties besides going through the record.

In the instant case, the crucial witness for the prosecution happened to be complainant Surain Singh, who in his statement got recorded in the Court as PW7 deposed in consonance with the case of prosecution and repeated on oath the contentions made by him in his statement to the police, on the basis of which, formal FIR had been registered. He categorically stated that on 02.03.2001 at about 9.00 am, while he was present in the house of his son Kuldeep Singh, Balli son of his other son Malkiat Singh came to him and informed that during the night, some persons had beaten his father Malkiat Singh. Then, he went to house of Malkiat Singh, where he saw him lying in his house with injuries on his person and on being asked, Malkiat Singh told him that he had been beaten with hockey sticks by Raju son of Darshan Singh, brother of his wife, resident of Village Parain and by Babbu son of Piara Singh, Majhabhi Sikh of village, whereas, his wife Surjit Kaur was standing exhorting them to beat him and that there were two other persons present at the time of giving beatings to him, who were also exhorting Raju and Babbu to beat him. Malkiat Singh had stated so before his father Surain Singh on 02.03.2001 in the morning at about 9.00 am, while he had died on the next day i.e. 03.03.2001 at 9.00 am. Therefore, such disclosure of the incident made by Malkiat Singh to his father Surain Singh is to be treated as dying declaration and such statement is admissible in evidence under Section 32 of the Indian Evidence Act, since, it relates to cause of death of Malkiat Singh. Such

statement is to be taken as dying declaration, to which, due sanctity is attached. Malkiat Singh having suffered beatings the previous night, it was but natural that on being enquired by his father, he would have disclosed the entire incident to him. Even otherwise, Surain Singh had no reason to involve the accused in this case wrongly. He having lost his son, it would have been his earnest endeavour to see that the persons responsible for the death of his son were brought to book and punished suitably, rather than, trying to shield actual culprits and involve some innocent persons in the case without any rhyme or reason. Though, in his statement made to the police, the complainant had stated that when he enquired from Malkiat Singh as to who had given him beatings, he told that Raju, son of his brother in-law Darshan Singh along with three other persons had given him beatings with hockey sticks, though, name of Surjit Kaur and other third accused Jagjit Singh @ Babbu are not there in such statement, said to have been made by Malkiat Singh before his father Surain Singh but then the fact cannot be lost sight of that FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery into motion. FIR is often lodged in a haste and hurry so as to get the action initiated in the matter. Surain Singh having lost his son would have been in a state of shock and being of the old age, might not have been able to give the entire facts in his statement to the police but while appearing in the Court, he had named all the three accused. As already

discussed, in the absence of any plausible or satisfactory reason to involve the accused in this case falsely, such deposition of complainant cannot be doubted.

Furthermore, another aspect which is to be taken into consideration is that the incident had taken place in the house, where Malkiat Singh along with his wife Surjit Kaur and other sons had been residing. The incident had occurred at night time and Surjit Kaur was supposed to know as to how it had taken place and Malkiat Singh had suffered so many injuries on his person. She was having special means of knowledge and in terms of Section 106 of the Indian Evidence Act, the burden was upon her to show as to how the incident had taken place but she is not coming up with any explanation thereby pointing out towards her involvement in the incident. Her plea of alibi that she along with her two sons had gone to her parental village at Purain on 01.03.2001 and remained there till 03.03.2001 when she come to know about death of Malkiat Singh is not proved on record.

The another strong incriminating circumstance against the accused is extra judicial confession made by Surjit Kaur accused in Lodhiwal Private Hospital, where Malkiat Singh had been taken for treatment on 02.03.2001. Such statement was made by her in the presence of PW8 Gurmit Singh when the doctor in-charge had refused to give treatment to Malkiat Singh, unless, the circumstances under which the injuries had been suffered were clearly explained and Surjit

Kaur had stated that she was fed up with the behaviour of Malkiat Singh and was not left with any other alternative then to get him beaten by her nephew Raju and their seeri Babbu, since, Malkiat Singh was planning to contract another marriage. Such extra judicial confession corroborates the prosecution story. Then another factor which corroborates the prosecution story that during the course of investigation, Balraj Singh @ Raju accused had suffered a disclosure statement and got recovered a hockey stick from his possession, which connects Balraj Singh with the incident.

Furthermore, motive also stand duly proved from the statement of PW1 Parminder Kaur also known as Gurmit Kaur, who had met Malkiat Singh through marriage bureau of Dr. Navtej Singh, since, Malkiat Singh wanted to contract another marriage and deposition of PW2 Navtej Singh in that regard, it comes out that Malkiat Singh wanted to have another marriage and Surjit Kaur might have become annoyed from the same and got him eliminated. This is precise the motive suggested by the prosecution which seems to be quite plausible and convincing.

Learned counsel for the appellants had advanced several arguments; firstly stating that since it is a case based upon circumstantial evidence, the chain of events is not complete, rather, vital links in the chain are missing, therefore, the conviction of the accused cannot be sustained. However, we find little merit in this

contention. As discussed above, from the dying declaration made by Malkiat Singh, extra judicial confession of Surjit Kaur, recovery of hockey stick from the possession of Balraj Singh @ Raju with strong motive being established, the chain of events gets completed and no doubt remains in the mind about criminal liability of the accused. Smt. Surjit Kaur being the aggrieved spouse, getting her husband Malkiat Singh mercilessly beaten from her nephew Raju and Jagjit Singh @ Babbu with whom, she was having illicit relations as per the case of prosecution and two other unidentified person, to which he succumbed.

Though PW9 Baljit Singh cited by the prosecution as an eye witness did not support its case and was declared a hostile witness, it seems that he had seen the incident but later on, denied having witnessed the incident in connivance with the accused party. However, even if he has not supported the prosecution story and turned hostile that does not affect the prosecution case much.

Learned counsel for the appellants had contended that in the statement to the police, complainant had stated that son of Malkiat Singh had told him that some unidentified persons had caused injuries to Malkiat Singh. Again that does not make much difference. Said grandson might not have been aware of identity of the assailants, therefore, his saying so, does not cause any dent to the prosecution. Though, learned counsel for the appellants has submitted that the extra judicial confession of Surjit Kaur seems to be unnatural and

improbable but seeing in context of the events and the facts of the case, we do not find it to be so.

One more argument advanced by learned counsel for the appellants was that sons of Malkiat Singh who were residing in that very house were not cited as prosecution witnesses, which omission is very damaging for the case of the prosecution, making it unworthy of reliance. As has been counted by learned State counsel, since the incident had taken place at night time, it could not be said that though they were awake or had seen the incident. Even otherwise, it could be taken as some lapse in the investigation. The investigating agency in this region is not known for very methodical and in depth investigation, however, due to any lapse or infirmity in the investigation, the accused cannot take any advantage of the same by default.

In the end, learned counsel for the appellants had submitted that even if the story of the prosecution is believed, in that case also offence of murder against the accused is not made, because if the intention of the accused was to commit murder of Malkiat Singh, then, they would have brought dangerous weapons in the form of sharp edged weapons or fire arms with them instead of hockey sticks, which cannot be termed to be dangerous weapons. However, learned State counsel had pointed out that as a result of post mortem examination conducted on the dead body of Malkiat Singh, inasmuch as 22 injuries

were found to be there. There was sub-dural haematoma on the right oxipito parietal region. Cranial cavity was having blood and as opined by PW5 Dr. Ashok Raswant, Radiologist, Civil Hospital, Ludhiana who had performed the post mortem examination on the dead body of Malkiat Singh, the cause of death was due to shock as a result of multiple injuries as a whole and head injury individually, which were sufficient to cause death in ordinary course of nature and were anti-mortem. We on our part feels that so many injuries having been inflicted, some of them being on vital parts of the body, that shows the merciless assault. The very fact that sub-dural haematoma was there on the right oxipito parietal region and cranial cavity was having blood, goes to show the force and intensity with which the blows had been given, pointing out intention of assailants to cause death of Malkiat Singh and their having knowledge that by giving such blows/injuries, they were likely to cause death of Malkiat Singh. Therefore, offence of murder is clearly disclosed against all the three accused. Accordingly, the prior meeting of mind can clearly be inferred from the facts and circumstances of the case.

The prosecution had successfully proved its charge against the accused beyond a shadow of reasonable doubt. The judgment of conviction recorded against the accused/convicts is detailed and well reasoned, does not suffer from any illegality or infirmity, rather, it is based upon proper appraisal of evidence and correct interpretation of

law. There is no reason to upset such judgment on the point of conviction or sentence. The appeal is found to be without any merit and is dismissed accordingly.

A copy of the judgment be sent to Chief Judicial Magistrate, Ludhiana, with a direction to issue non-bailable warrants against the accused so as to get them arrested and send to jail to undergo the remaining sentence.

(JITENDRA CHAUHAN)
JUDGE

(H.S. MADAAN)
JUDGE

20.11.2019

sumit.k

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