

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CRA-D-623-DB-2003

Gurjit Singh and another

... Appellants

Versus

State of Punjab

... Respondent

2. CRA-D-923-DB-2003

Manpreet Singh

... Appellant

Versus

State of Punjab

... Respondent

Reserved on : 17.01.2019
Date of decision : 26.02.2019

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

Present: Mr.Vishal Garg, Advocate
for the appellants.

Mr.S.P.S. Tinna, Addl.A.G. Punjab.

RAJIV SHARMA, J.

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

2. These two appeals are directed against the judgment and order dated 10.06.2003 rendered by the Sessions Judge, Fatehgarh Sahib, in Sessions Case No.30-T of 02.05.2000 whereby the appellants, who were charged with and tried for offences punishable under Sections 302 read with Section 34 of the Indian Penal Code (in short “IPC”), have been convicted

and sentenced to undergo life imprisonment and to pay a fine of Rs.500/- only and in default of payment of fine to further undergo RI for four months.

3. The case of the prosecution in a nutshell is that a report was lodged by Gurmail Singh brother of the deceased to the effect that he was resident of village Bhollian. They were two brothers. They were residing separately from each other. Mehar Singh his brother was doing the business of Karyana Shop in the village. He used to purchase the goods from Khanna. On 16.01.2000 at 11.00 A.M. Mehar Singh had gone to Khanna to purchase the goods for his shop. The complainant left for the fields at about 09.00 P.M. He was coming back from his fields and when he reached near the wheat fields of Kaka Singh son of Harnam Singh resident of village Bhollian, he noticed that one man was lying on the side of the road. He closely saw him with the help of torch. It was the dead body of his brother. He noticed the injuries on his neck and one *parna* (towel) was tied around his neck. He immediately informed his nephew Manpreet Singh (accused). The statement Ex.P10 was recorded. Thereafter FIR Ex.PW21/B was recorded. The body was sent for post-mortem examination. The investigating officer recorded the statement of Som Singh Sarpanch PW-7 during the investigation. Two glasses and one empty bottle of country made liquor were recovered from the spot. The investigation was completed. The challan was put up after completing all the codal formalities.

4. The prosecution examined as many as 26 witnesses in its support. The statements of accused under Section 313 Cr.P.C. were recorded. They have denied the case of prosecution. Simarjit Kaur mother of the accused Manpreet Singh appeared as DW-1.

5. Learned counsel appearing for 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 judgment and order dated 10.06.2003.

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

8. PW-1 Dr.Jaspal Singh Rekhi has conducted post-mortem examination. He noticed the following injuries on the body of deceased Mehar Singh:-

“1. Strangulation mark in front of the neck rising laterally on both the sides 6 cm in breadth and 14 cm in length.

2. There was present Oedema and swelling below strangulation mark.

3. There were multiple abrasions below the strangulation marks.

4. Abrasion 10 cm in length on the right side of the upper abdomen.

5. There is a check scarf (Safi) tied around the neck.”

The injuries were ante mortem in nature. The weapon used was blunt. Time elapsed between injury and death was immediate and between death and post-mortem was between 24 hours. The cause of death was due to asphyxia by strangulation.

9. PW-5 Gurmail Singh testified that he had one brother Mehar Singh. He was running Karyana shop. He used to bring the goods for sale from Khanna or Amloh. On 16.01.2000 he went to take goods from Khanna for sale in his shop. He came back from his fields at about 07.30 PM / 08.00

P.M. When he reached near the field of Kaka Singh son of Harnam singh, he saw that a person was lying on the ground. He threw the torch light on him. He identified his brother Mehar Singh. He was lying dead. He noticed the injuries on his neck. A *parna* (towel) was tied around his neck. He informed his nephew Manpreet Singh. The statement was recorded by the police vide Ex.P10. In cross-examination he deposed that Mehar Singh had left the house at 11.00 A.M. for Khanna. He had seen him going to Khanna on bicycle. He was all alone.

10. PW-6 Dr.Mahesh Kumar Jindal examined Manpreet Singh. He found no external injury on the body of Manpreet Singh.

11. PW-7 Som Singh is the material witness. He was Sarpanch of village Bhollian. He knew Mehar Singh. He did not know how he was murdered and by whom. He knew Manpreet Singh accused present in Court. Manpreet Singh never made any extra judicial confession before him that he had committed murder of his father Mehar Singh along with Jarnail Singh and Gurjit Singh. He was declared hostile. He was cross-examined at length by the Public Prosecutor. He denied the suggestion that he had stated before the police that on 26.02.2000 accused Manpreet Singh came to him and Sher Singh Ex-Sarpanch was also present there and he disclosed to him that his father had disowned him from the land and due to this reason he was annoyed with him and other accused agreed to kill his father. He denied the suggestion that he had stated before the police that on 16.01.2000 accused Manpreet Singh hatched a conspiracy with other co-accused and he took his father with him at 11.00 A.M. on a cycle. He also denied the suggestion that accused Manpreet Singh had made a disclosure statement before him in the presence of police that he had kept concealed one wooden *ghotna* near his

motor under the lemon tree.

12. PW-8 Sher Singh deposed that on 16.01.2000 at about 09.30 P.M. Gurmail Singh came to him. He told him that in the fields of Kaka Singh again said on the road near the fields of Kaka Singh, dead body of Mehar Singh was lying. He noticed the injuries on his neck. He went to the spot. He and Gurmail Singh went to the Police Station for reporting the matter. Statement of Gurmail Singh was recorded. His statement was also recorded. Accused Manpreet Singh had not made any extra judicial confession before him in the presence of Som Singh that he had committed murder of his father Mehar Singh along with Jarnail Singh and Gurjit Singh co-accused. He was declared hostile and was cross-examined by the Public Prosecutor. He denied the statement made before the police on 26.01.2000.

13. PW-9 Mohinder Singh deposed that he never saw Gurjit Singh and Jarnail Singh accused purchasing liquor from any liquor vend. He had not seen the three accused together. He was declared hostile and was cross-examined by the Public Prosecutor.

14. PW-10 Gurpreet Singh is son of the deceased Mehar Singh. He deposed that his brother Manpreet Singh was disowned from the property by his father as he was to pay money of lucky draw scheme to the members and the people were harassing his father. A notice regarding disowning his brother was published in the newspaper "Punjabi Tribune" on 21.07.1999. He was annoyed with his father. On 15.01.2000 his father had demanded money from Manpreet Singh. Manpreet Singh stated that he was to take money from the contractor with whom he was working. On 16.01.2000 he told his father that the contractor was ready to make the payment. He and his father went on a bicycle at about 10.00 A.M. to bring money. Manpreet

Singh came back at 12.00 noon. He was perplexed at that time. At about 09.15 P.M. he was told by his uncle Gurmail Singh that his father was dead.

15. PW-11 Mewa Singh deposed that on 16.07.1999 he was Oath Commissioner at Amloh. On that day, Mehar Singh son of Jarnail Singh of village Bhollian came to him along with a typed affidavit. He was identified by Sohan Lal Lambardar.

16. PW-12 Bhushan Sood deposed that on 17.07.1999 Mehar Singh son of Jarnail Singh of Bhollian produced before him photocopy of affidavit Ex.P6 regarding disowning his son Manpreet Singh. He sent the news to Punjabi Tribune for publishing the same. On the basis of this information, this news was published in Punjabi Tribune dated 21.07.1999. In his cross-examination he deposed that he had not brought the photocopy of the affidavit. He did not know Mehar Singh. He did not verify the authenticity of affidavit except that Mehar Singh shown him original affidavit. He did not remember that how much amount was charged by him from Mehar Singh. He had kept a regular receipt book. He was not in possession of the receipt book from which he issued the receipt to Mehar Singh.

17. PW-13 Sohan Singh deposed that the deceased Mehar Singh was his brother-in-law. On 16.01.2000 he was going to Amloh from village Bhollian on scooter. At about 08.30 P.M. when he reached near the grazing ground of village Bhollian, three persons were seen coming on scooter which was driven by accused Gurjit Singh present in Court. Mehar Singh was sitting in between Gurjit Singh and Jarnail Singh. He stopped the scooter and enquired about Mehar Singh. He was told that Mehar Singh was unwell. He was wrapped with a cloth while face was naked. He had no conversation with Mehar Singh. Later on he came to know that Mehar

Singh had died. In his cross-examination he deposed that his village Ramgarh was at a distance of about 40/45 kilometer from village Bhollian. He had gone to village Bhollian on 16.01.2000 to enquire about the lottery business being run by Manpreet Singh. He did not meet Manpreet Singh in village Bhollian on that day. He met only his father-in-law Jarnail Singh. Jarnail Singh did not run any lottery business in the village.

18. PW-15 Hamir Singh deposed that he knew accused Jarnail Singh. He joined the interrogation of accused Jarnail Singh. He suffered disclosure statement Ex.PW15/A. Thereafter accused Jarnail Singh led the police party and him to the disclosed place. He got recovered the bicycle from underneath the rice husk. The bicycle Ex.PW15/1 was taken into possession vide memo Ex.PW15/B. Thereafter accused Gurjit Singh also made disclosure statement Ex.PW15/C. Scooter was got recovered at the instance of Gurjit Singh.

19. PW-16 Mara Singh deposed that on 16.01.2000 he was sitting near Dharamshala in his village. At about 03.00 P.M., Manpreet Singh accused was seen coming in perplexed condition. He called him but he did not respond. Thereafter he moved towards his house. He was examined by the I.O. In his cross-examination he deposed that he did not talk to anybody in village that accused Manpreet Singh was seen confused.

20. PW-17 Jarnail Singh deposed that he had two sons namely Gurmail Singh and Mehar Singh. Mehar Singh had two sons namely Manpreet Singh and Gurpreet Singh. Manpreet Singh started business of lucky draws. He continued this work for about 10/11 months. His son Mehar Singh was living separately from him. Mehar Singh had disowned Manpreet Singh by publishing advertisement in the newspaper so that he

may not damage the property of Mehar Singh. He disinherited Manpreet Singh about 5/6 months prior to his death. His son Mehar Singh was found dead on 16.01.2000. His grandson Manpreet Singh was with them at the time of cremation. On 16.01.2000 while he was coming to village Bhollian from Amloh on the bridge of village Anian at about 05/05.30 P.M. he had seen Gurjit Singh and Jarnail Singh talking to each other. However he did not see Manpreet Singh with them at that time. He did not care to hear what they were talking about. Mehar Singh had disinherited his son Manpreet Singh from the property by publishing notice in Punjabi Tribune.

21. PW-18 SI Kuldip Singh deposed that he was posted as Finger Print Expert at Fatehgarh Sahib on 26.01.2000. He was summoned by Inspector Balwant Rai. Two empty bottles of desi liquor and two glass tumblers were lying on the spot. He applied the powder on each of them and developed the prints. He proved his report Ex.PW18/A.

22. PW-19 ASI Pritam Singh deposed that he arrested accused Gurjit Singh and Jarnail Singh on 27.01.2000. Accused Jarnail Singh made disclosure statement on the basis of which bicycle was got recovered. Accused Gurjit Singh also made disclosure statement on the basis of which scooter was got recovered.

23. PW-23 DSP Balwant Rai deposed that he recorded the statement Ex.P10 of Gurmail Singh complainant. FIR Ex.PW21/B was recorded. The body was sent for post-mortem examination. Inquest report was prepared vide Ex.P4. Accused Manpreet Singh had made disclosure statement Ex.P11 on the basis of which *ghotna* was recovered. In cross-examination, he admitted that he had not made any investigation to find out whether any lottery was run by Manpreet Singh accused. He also admitted

that room (motor) from where the recovery was effected, was having an easy access.

24. The post-mortem report is Ex.PW5/A. The FSL report is Ex.P2. The fingerprints report is Ex.PX.

25. The case of the prosecution is precisely that appellant Manpreet Singh was into lottery business. He ran into losses. His father Mehar Singh demanded money on 15.01.2000. He told him that he had to take money from the contractor. On 16.01.2000 appellant Manpreet Singh went on bicycle along with his father Mehar Singh. He came back. Thereafter the dead body was noticed by PW-5 Gurmail Singh, brother of the deceased, near field of Kaka Singh. His statement was recorded vide Ex.P10. The body was sent for post-mortem examination. The accused were arrested. They made disclosure statements on the basis of which *ghotna*, bicycle and scooter were recovered. The case of the prosecution is also that appellant Manpreet Singh has made extra judicial confession before PW-7 Som Singh and PW-8 Sher Singh.

26. PW-7 Som Singh and PW-8 Sher Singh have categorically denied in the examination-in-chief that Manpreet Singh had made any extra judicial confession before them. Both of them were declared hostile. They have also denied the contents of their statements. The case of the prosecution is also that two bottles of country made liquor were recovered from the motor of Jarnail Singh. PW-9 Mohinder Singh has specifically stated that he never saw Gurjit Singh and Jarnail Singh purchasing liquor from any liquor vend.

27. The case is based on circumstantial evidence. In order to prove the case based on the circumstantial evidence, all the circumstances must

point exclusively towards the guilt of accused. The case of the prosecution is demolished by the statement of PW-7 Som Singh and PW-8 Sher Singh. They, as noticed hereinabove, categorically deposed that accused Manpreet Singh had not made any disclosure statement before them. PW-5 Gurmail Singh is brother of Mehar Singh. He had noticed the dead body of his brother near the field of Kaka Singh. In his cross-examination he admitted that he had seen his brother going to Khanna. He was all alone. PW-10 Gurpreet Singh is the son of the deceased Mehar Singh. He deposed that his brother Manpreet Singh was disowned by his father. Notice was published in the Punjabi Tribune on 21.07.1999. His brother was annoyed with his father due to this reason. His brother and father had gone on bicycle at about 10.00 A.M. to bring money. PW-12 Bhushan Sood deposed that Mehar Singh came to him and produced a photocopy of affidavit Ex.P6. He sent this affidavit to the Punjabi Tribune. In cross-examination he admitted that he did not verify the authenticity of the affidavit. He had charged for publishing the notice. He had not produced receipt book. PW-17 Jarnail Singh is father of Mehar Singh deceased. He deposed that his son Mehar Singh was living separately from him. His son Mehar Singh had disowned Manpreet Singh. He had disinherited Manpreet Singh about 5/6 months prior to his death. His son had gone with his grand son to get money. His grand son Manpreet Singh came back at 02.00/03.00 PM. In case the accused Manpreet Singh was disowned by Mehar Singh, there was no occasion for him to accompany him on cycle. The prosecution has also relied upon the statement of PW-13 Sohan Singh to prove that accused were last seen in the company of deceased Mehar Singh on 16.01.2000. According to him, he was going to Amloh from village Bhollian on scooter.

He had noticed three persons coming on scooter. It was driven by Gurjit Singh. Mehar Singh was sitting between Gurjit Singh and Jarnail Singh. He stopped the scooter. On enquiry, he was told that Mehar Singh was unwell. In cross-examination, he admitted that his village Ramgarh is at a distance of about 40/45 kilometers from village Bhollian. He has also explained that he had gone to village Bhollian to enquire about the lottery being run by Manpreet Singh. However he did not meet Manpreet Singh in village Bhollian. The statement of PW-13 Sohan Singh does not inspire confidence. He did not belong to village Bhollian. He belonged to village Ramgarh which was at a distance of 40/45 kilometers from his village Ramgarh. PW-10 Gurpreet Singh deposed that his brother Manpreet Singh had come back at 12.00 noon and he told that his father had gone to bring ration from the shop. The prosecution has relied upon the statement of PW-16 Mara Singh. He deposed that he was sitting near Dharamshala in his village and at about 03.00 P.M., Manpreet Singh accused was seen coming in a perplexed condition. There is contradiction in the statements of PW-10 Gurpreet Singh and PW-16 Mara Singh. The fingerprints were lifted from two bottles and tumbler. However, it has come on record that these were recovered from the place which was accessible to general public.

28. The prosecution has failed to prove that extra judicial confession was made before PW-7 Som Singh and PW-8 Sher Singh. The theory of last seen together based on the statement of PW-13 Sohan Singh is also demolished for the simple reason that his village was situated 40/45 kilometers from village Bhollian. The prosecution version that appellant Manpreet Singh accompanied his father Mehar Singh is not believable since he was disinherited by him from the property. It has come in the statement

of PW-10 Gurpreet Singh that his brother Manpreet Singh was annoyed with his father due to this reason. Thus the relationship between father and son was strained. Appellant Gurpreet Singh has also produced his mother Simarjit Kaur as DW-1. She has categorically stated in her cross-examination that on the day when her husband had left on the cycle, his son Manpreet Singh remained with her at their house till night. Gurmail Singh, according to her, has wrongly informed her father-in-law Jarnail Singh about the involvement of her son Manpreet Singh. She also denied the suggestion that her husband had gone with her son Manpreet Singh on 16.01.2000.

29. Thus the prosecution has failed to prove the case against the appellants beyond reasonable doubt. Accordingly the appeals are allowed. The judgment and order dated 10.06.2003 of the trial Court are set aside. The appellants are acquitted. The appellants are on bail. The bail bonds and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

February 26, 2019.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No