IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CRA-D-713-DB of 2003

Kala Singh @ Gurnam Singh

.... APPELLANT

Versus

State of Punjab

..... RESPONDENT

(2) CRA-D-915-DB of 2006

Kehar Singh

.... APPELLANT

Versus

State of Punjab

..... RESPONDENT

(3) CRR-1797 of 2003

Malkiat Kaur

.... PETITIONER

Versus

State of Punjab and others

..... RESPONDENTS

Reserved on : 31.01.2019
Date of decision : 08.02.2019

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Vishal Garg, Advocate, (Legal Aid Counsel),
for the appellants
in CRA-D-713-DB of 2003 and CRA-D-915-DB of 2006, and
for respondents No.2 and 3 in CRR-1797 of 2003.

None for the petitioner in CRR-1797-2003.

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

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in both these appeals as well as the criminal revision , mentioned above, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals and criminal revision are instituted against judgment and order dated 24.07.2003, rendered by learned Additional Sessions Judge, Faridkot, in Sessions Case No. 99 dated 23.10.1998/RT No. 66 of 31.01.2002, whereby the appellants, who were charged with and tried for the offences punishable under Sections 302/34/201 IPC, were convicted and sentenced as under :-

Name of convict	***Offence***	***Imprisonment***	***Fine***	***In default of payment of fine***
Kehar Singh	U/s 302 IPC U/s 201 IPC	Imprisonment for life RI 03 years	₹ 2,000/- ₹ 500/-	RI for 01 year RI for 02 months
Kala Singh @ Gurnam Singh	U/s 302/34 IPC U/s 201 IPC	Imprisonment for life RI 03 years	₹ 2,000/- ₹ 500/-	RI for 01 year RI for 02 months

3. The case of the prosecution, in a nutshell, is that the FIR was lodged on the basis of the statement made by Malkiat Kaur widow of Sukhdev Singh to the effect that on 20.06.1998, one day prior to the Panchayat elections, at about 7.00 PM, while she was at her home at village Rori Kapura along with her son Shamber Singh, aged 16 years, her neighbour Kehar Singh son of Karnail Singh came. He asked Shamber Singh to accompany him to the house of Hardev Singh Arora, who was contesting Panchayat elections. He told him that it was the last day before the elections. He persuaded Shamber Singh to go to the house of Hardev

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Singh Arora to enjoy drinks. The complainant dissuaded her son not to go. However, Shamber Singh went with Kehar Singh. He did not come back. The complainant kept waiting for her son during the night. In the morning, she asked Jeeto alias Faujan, mother of Kehar Singh, if her son too had not come back. Jeeto told that her son had come back at about 4.00 AM in the morning. The complainant told her that Shamber Singh had not come back. On the next day, i.e. on 21.06.1998, accused Kehar Singh came to the house of the complainant and spoke harshly to her as to why the complainant had gone to his mother. Thereafter, the complainant came to know that one dead body had been seen entangled in the mesh in Doda Rajbaha near Gurhi Sanghar. The dead body was identified to be of Shamber Singh. The police was informed. Inquest report was prepared. Body was sent for post-mortem examination. The investigation was completed and challan was put up after completing all the codal formalities.

4. The prosecution has examined a number of witnesses. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. They were convicted and sentenced, as noticed above. Hence, separate appeals have been filed by both the appellants against the judgment and order of the learned trial Court. Complainant Malkiat Kaur filed the criminal revision seeking enhancement of sentence and grant of compensation.

5. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below. However, none appeared on behalf of the

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complainant in the revision petition.

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

7. PW.1 Malkiat Kaur testified that she had two sons, namely Bohar Singh and Shamber Singh. About one year four months back, in the evening time, she was present in her house. Kehar Singh accused came to her house. He asked her son Shamber Singh, who was also present in the house, to accompany him to the house of Hardev Singh for drinks. Hardev Singh was contesting Panchayat elections. She tried to dissuade her son not to accompany Kehar Singh. However, Kehar Singh said that only on that day, liquor was to be provided and after the elections, they will not get liquor. Her son Shamber Singh accompanied Kehar Singh. Her son did not come back to his house during night. In the next morning, she started searching for her son. He was not found. Jeeto alias Faujan, the mother of Kehar Singh, told her that her son had come back. She told Jeeto that her son had not come back.A dead body was found entangled in canal. The dead body was identified by her. Her statement Ex.PA was recorded. She suspected the role of accused Kehar Singh. In her cross-examination, she stated that before the police, she had told that Jarnail Singh, Lambardar of village Mallan, come to her house. He told that Kehar Singh accused was not alone, who had murdered her son, but Kala was also with him. She was confronted with statement Ex.PA where it is not so stated. She also admitted that there was Panchayat and Lambardar in village Rodi Kapura. She also admitted in cross-examination that Kehar Singh and her son were on visiting terms and they had no enmity with each other. She further admitted that neither they had enmity with Kala Singh nor Kala Singh had enmity

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2019.02.15 10:14
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with her son.

8. PW.2 Jarnail Singh testified that he was Lambardar of village Mallan. Three years back, he was present, in the evening time, in his house. Kehar Singh came to his residence. Kehar Singh told him that on 20.06.1998, he had gone to village Rori Kapura in connection with elections of village Sarpanch in favour of Hardev Singh Arora. He and Kala Singh brought Shamber Singh from his house and went to the house of Hardev Singh Arora. He further told that in the night time, they took one bottle of liquor with them. They went to bridge of Doda Minor through Harike passage. They consumed liquor. They also smoked. Kala Singh and Shamber Singh quarreled with each other as Shamber Singh had stolen the pigeon of Kala Singh. Kehar Singh further told him that he had a rod with him. He gave a rod blow in the right side head of Shamber Singh. He fell down. They waited for about half an hour. When Shamber Singh did not respond, they threw his body in the minor canal. On the next day, he went to the house of Shamber Singh for condolence. He told Malkiat Kaur and other villagers that in the previous night, Kehar Singh had come to him and told that he and Kala had committed the murder of Shamber Singh. Thereafter, he left for the village. PW.2 Jarnail Singh, in his cross-examination, admitted that his village was at a distance of 4 Kms. from village Rodi Kapura. There was Panchayat in village Rodi Kapura. He did not know the name of Sarpanch of the village.

9. PW.3 Jhirmal Singh testified that about three years back, he had gone to Dingiwala Kothe in connection with canvassing in favour of Hardev Singh. He went at 9.00 PM. He was coming back on a bicycle via passage leading to village Harike Kalan. When he reached on the Dodawala

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2019.02.15 10:14
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minor bridge at 11.00 PM, accused Kala Singh and Kehar Singh were sitting on the bank of minor canal. Shamber Singh was lying on the ground. He asked the accused what were they doing. They threatened him. He came to his house on cycle. In his cross-examination, he admitted that he did not tell any body that he had met the accused on the way while coming from village Kothe Dingiwala.

10. PW.6 Hakam Singh deposed that his sister Malkiat Kaur was married to Sukhdev Singh. Father of Shamber Singh died 2 ½ years prior to the death of Shamber Singh. About 3 years and 9 months back, accused Kehar Singh came to his sister's house and asked Shamber Singh to accompany him to the house of Hardev Singh Arora to take liquor. Hardev Singh was contesting the elections of Sarpanch. Kehar Singh, Shamber Singh and Kala Singh alias Gurnam Singh then went away. Thereafter, Shamber Singh did not come back. He was residing in the house of his sister Malkiat Kaur after the death of her husband. On the fourth day, they heard that a dead body was found in the canal. They identified the dead body to be that of Shamber Singh. The police prepared the inquest report. Three days thereafter, Jarnail Singh of village Mallan came to condole the death. He told Malkiat Kaur in his presence that Kehar Singh accused had come to his house. He told her that Kehar Singh along with Shamber Singh had gone to the house of Hardev Singh Arora. They had consumed liquor. Thereafter, they had gone to the bridge of Doda Rajbaha. They smoked. They also consumed liquor. Thereafter, an altercation took place amongst them. Kehar Singh gave rod blow on the head of Shamber Singh. Consequently, Shamber Singh became unconscious. Thereafter, Malkiat Kaur narrated the version as given by Jarnail Singh to the police. The police recorded her statement.

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Accused Kehar Singh was taken out from the lock up. He disclosed that he had kept concealed the rod in his house under the *petti* (box). He could get it recovered. Kehar Singh also got recovered one purse. He also got recovered iron rod from the box. Accused Kala Singh also got recovered one golden ring from a trunk in his house.

11. PW.9 Darshan Singh deposed that on 26.06.1998, Malkiat Kaur came to the police station. She got her statement recorded. He went to the spot. He recorded statements of the witnesses and inspected the spot. Dead body was recovered, which was sent for post-mortem examination. Jarnail Singh produced Kehar Singh and Kala Singh before him on 30.06.1998. Disclosure statements Ex.PG and Ex.PF were recorded, on the basis of which recoveries were effected.

12. PW.4 Dr. Sarabjit Singh had conducted the post-mortem examination. According to him, the cause of death was due to sub dural and subarachnodid haemorrhage (compression of brain due to head injury) which was sufficient to cause death in ordinary course of nature. He proved the post mortem report Ex.PC and supplementary report Ex.PD.

13. According to the chemical examiner report Ex.PBB, alcohol was detected in the contents of exhibits No.I and II. No poison was detected in exhibit No. III.

14. What emerges from the discussion of the evidence is that accused Kehar Singh had come to the house of deceased Shamber Singh. He asked the deceased to accompany him to the house of Hardev Singh Arora to consume liquor. Shamber Singh went with him. He did not come back. His mother went to the house of Kehar Singh. She enquired about the whereabouts of her son. Mother of accused Kehar Singh told her that her

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2019.02.15 10:14
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son had come back in the early morning. Thereafter, they searched for Shamber Singh. His body was found in the canal. PW.2 Jarnail Singh deposed that accused Kehar Singh had made extra judicial confession before him narrating the manner Shamber Singh was killed by him along with accused Kala Singh. PW.3 Jhirmal Singh deposed that he was coming back to his village after canvassing in favour of Hardev Singh. On the way, he saw both the accused siting near the bridge. Deceased Shamber Singh was lying on the spot, but he had also stated that he had not told this incident to any one. PW.6 Hakam Singh also deposed that Jarnail Singh had told his sister about the extra judicial confession made before him by accused Kehar Singh. The accused were arrested. Recoveries of iron rod, ring and purse were effected at their instance.

15. The motive attributed to the accused is that the deceased had stolen pigeon of accused Kala Singh. Scuffle took place between Shamber Singh and accused Kala Singh. Accused Kehar Singh gave one rod blow on the head of deceased Shamber Singh. When there was no response from Shamber Singh, they threw the body in the canal. The scuffle had taken place on the spur of moment and the sudden fight had taken place in the heat of passion upon a sudden quarrel. It was not a pre-meditated act. Only one blow was given on the head by accused Kehar Singh. The cause of death has been opined to be the injury caused to the deceased. This case will not fall within the ambit of Section 302 IPC. However, fact of the matter is that Shamber Singh was killed, when Kehar Singh inflicted rod blow on his head. It has also come in the chemical examiner report that the deceased had also consumed liquor. The relations between the deceased Shamber Singh and accused Kehar Singh were cordial as per PW.1 Malkiat Kaur, mother of

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the deceased.

16. In view of the above discussion, both the appeals filed by Kala Singh alias Gurnam Singh and Kehar Singh are partly allowed. Their conviction under Section 302 IPC is converted to Section 304 Part-I IPC. The State is directed to produce them in Court on 28.02.2019 to be heard on quantum of sentence under Section 304 Part-I IPC.

17. The prayer of the petitioner in Criminal Revision No. 1797 of 2003 with regard to enhancement of sentence does not survive. Accordingly, the revision petition stands dismissed.

(RAJIV SHARMA)
JUDGE

February 08, 2019
ndj

(KULDIP SINGH)
JUDGE

Whether speaking/reasoned Yes
Whether Reportable Yes

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