

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

Date of decision : 05.12.2019

1. CRA-D-1606-DB-2015 (O&M)

Gurpreet Singh and others Appellants

versus

State of Punjab Respondent

2. CRR-2942-2015 (O&M)

Harpreet Singh Petitioner

versus

State of Punjab Respondent

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE VIVEK PURI**

Present : Mr. Navjeet Singh, Advocate
for the appellant (CRA-D-1606-DB-2015).

Mr. Dhirinder Chopra, Advocate
for the petitioner (CRR-2942-2015).

Mr. H.S.Sullar, DAG, Punjab.

AJAY TEWARI, J. (Oral)

1 This order shall dispose of above mentioned appeal and criminal revision. Since common questions of law and facts are involved therein, they are being decided by this common order. For the sake of convenience the facts are being taken from ***CRA-D-1606-DB-2015***.

2 ***CRA-D-1606-DB-2015*** has been filed against the order of judgment and conviction dated 29.09.2015 passed by the Additional Sessions Judge, Ludhiana whereby the appellants namely Gurpreet Singh,

Kashmira Singh and Jagdeep Singh had been convicted under Sections 302, 34 IPC in FIR No.100 dated 18.07.2012 registered at Police Station City, Jagraon. The sentence awarded to the appellants is as under:-

SN	Name of convict	U/Section	Imprisonment & fine	In case of default of fine
1	Gurpreet Singh	302 IPC	Life imprisonment and fine of Rs.1,00,000/- out of which Rs.80,000/- shall be paid by way of compensation to the family of deceased.	Further one year.
2	Kashmira Singh	302 IPC read with Section 34 IPC	Life imprisonment and fine of Rs.50,000/- out of which Rs.40,000/- shall be paid by way of compensation to the family of deceased.	Further six months.
3	Jagdeep Singh	302 IPC read with Section 34 IPC	Life imprisonment and fine of Rs.50,000/- out of which Rs.40,000/- shall be paid by way of compensation to the family of deceased.	Further six months.

3 **CRR No.2942 of 2015** has been filed by the Juvenile namely Harpreet Singh against judgment and order dated 24/25.02.2015 passed by the Juvenile Justice Board, Ludhiana as well as Judgment dated 02.07.2015 passed by the Additional Sessions Judge, Ludhiana holding him guilty of offence and awarding the period of 3 years stay at Special Home.

4 Since the gist of the testimony in both the trials was same we will not refer to them individually.

5 As per the prosecution story Gursewak Singh made a call to the Police Control Room at about 1.40 PM on 18.07.2012 in which he recorded that at about 1.30 PM he was resting in his bed room, while his wife who along with his son and younger daughter were on the first floor, told him that someone was calling for him. As he walked towards the

main drawing room to open the door he saw appellant-Gurpreet Singh (who was the divorced husband of his elder daughter-Kirandeep Kaur) along with an unidentified person. Gurpreet Singh was carrying a pistol in his hand while the other unidentified person was carrying a hockey stick in his hand. Before he could open the door Gurpreet Singh shot his wife under the ear from close range and then both of them opened the door and then he saw that two brothers of Gurpreet Singh i.e. Harpreet Singh and Joga Singh (sons of Puran Singh r/o Bhodipura) were standing there along with Innova. He shouted '*Mar Ditta Mar Ditta*' and tried to catch hold of the assailants but they crossed the main gate and sat in an Innova Car and fled away from the spot towards Kucha Malak Road. Ultimately the appellants were arrested and tried for the murder. Having been convicted, they have filed the present appeal.

6 The prosecution examined PW1-Dr.Arun Kumar, PW2 Gursewak Singh-complainant, PW3 Harmandeep Kaur, PW4 Ramandeep Singh, PW5 HC Davinder Singh, PW6 HC Sukhdev Singh, PW7 Malkit Singh, PW8 ASI Baldev Singh, PW9 Investigating Officer-SI Hari Mittar, PW10 HC Darshan Singh and PW10 HC Kuldeep Singh and defence examined only 1 witness besides this statement of accused under Section 313 Cr.P.C where they denied the charges leveled against them.

7 In the present case, the three main witnesses are PW2 Gursewak Singh-complainant (eye witness), PW3 Harmandeep Kaur (his own daughter) (eye witness) and PW9 Investigating Officer-SI Hari Mittar and other witnesses are mainly formal and therefore it would be important to consider their testimony in detail.

8 When PW2 Gursewak Singh appeared to give his testimony, he stated that he was working as a Manager in Sneh Mohan Hotel, Jagraon since the year 1996. He further testified that he used to accompany his daughter during her divorce proceedings which were conducted in the Court of Rampura Phool, District Bhatinda and that he accompanied her on about three dates and on the remaining dates his wife used to go to the Court. He further testified that the second person who had come inside the house along with Gurpreet Singh was appellant Jagdeep Singh. He further testified that the persons who were standing outside were actually appellant Kashmira Singh s/o Shamsher Singh and appellant Harpreet Singh s/o Veer Singh. He further testified that as they came out. Harpreet Singh inquired from Gurpreet Singh and Jagdeep Singh as to whether they had done the work they had come for and on their reply in the affirmative, they all got into the car and hurriedly fled away from the spot. He further testified that his normal duty hours were from about 8.00 AM to 12.00 Noon and from about 2.00 PM to about 8.00 PM but that on that day he did not go to work because his son was suffering from pain in the stomach and he had taken him to the DMC Hospital at about 8.30 AM where he was prescribed some medicines in the OPD Department and that he had returned back home by around 11.00 AM but atleast before 12.00 Noon. He further stated that he knew the other appellants because they used to always accompany Gurpreet Singh for his Court hearings. He explained that he did not remember the name of Jagdeep Singh at the time of recording the FIR because he was very perplexed and he remembered the name after about 5 hours but he further went on to state that he never disclosed to the police that he had

remembered the name of Jagdeep Singh after 5 hours. He also explained that in the FIR he had given the names of the two brothers of Gurpreet Singh because he was perplexed but went on to say that he had never disclosed the names of the assailants Kashmira Singh and Harpreet Singh S/o Veer Singh to the police. He denied the suggestion that he was not present at the spot and had no clue about who had murdered his wife and had named the appellants only because of his grudge with Gurpreet Singh. He further stated that his clothes were not blood stained because his wife was already dead. He further stated that on 23.07.2012, he along with his daughter went to police station when 7-8 persons were produced before them and they identified the appellants.

9 PW3 Harmandeep Kaur stated that she was present along with her brother and mother on the first floor of their house when she noticed that Harpreet Singh S/o Veer Singh had called out to her father from outside the house. She noticed that Gurpreet Singh and Jagdeep Singh had scaled the boundary wall and entered the house and she also saw that Gurpreet Singh shot her mother. She testified that she did not give any statement to the police on 18.07.2012 as she was not in a position to do so. She further testified that she gave her statement before the police on the first time on 23.07.2012. She further testified that actually she and her father and her mother (all 3) used to accompany her sister to her Court hearings and she also stated that she had seen the other appellants along with Gurpreet Singh during the Court hearings and other functions also. She further testified that she had been married in the year 2011 before the incident and at that time she was studying Law at Sidhwan College. She further testified that normally she would go to

attend her classes from her in-laws home in village Doraha but in the winters and in the hot season she used to attend her classes from her parents house. She further testified that on the fateful day she had not gone to college because there may have been a holiday and that on that day her parents came to pick her up from her in-laws house at about 11.45 AM after showing her brother in the hospital and they reached their home by 11.50 AM (i.e. within about five minutes). She further testified that between 18.07.2012 to 22.07.2012 she never made any statement to the police.

She further testified that on 23.07.2012 she along with her father went to police station when 7-8 persons were produced before them and they identified the appellants. It deserves to be mentioned here that both father and the daughter had clearly stated that the accused Gurpreet Singh had been suspecting that it was his mother-in-law who was responsible for his divorce and he was carrying a grudge against her and that is why he killed her.

10 PW9 Hari Mittar Investigating Officer stated that on the fateful day he had received a call from the Control Room about the wife of Gursewak Singh having been shot and he reached there along with his police party. He further testified that he recorded the statement of Gursewak Singh, his brother and his brother-in-law when he was present at the house. He further testified that he did not record the statement of his son and the daughter because at that time nobody told him that they were present in the house. He further stated that on 21.07.2012, he got secret information that the appellants Gurpreet Singh and Kashmira Singh were going on foot towards Gurdwara Nanksar Sahib. He further testified

that when he went to arrest them he did not take anybody who could identify them but admitted that he did not know Gurpreet Singh and Kashmira Singh before. He further testified that the vehicle in question Innova bearing No.DL4C 3816 was seized and the owner Karnail Singh was summoned to the police station and, infact that vehicle was still lying in the Court compound. He further stated that he arrested the remaining appellants on 23.07.2012 before the two eye witnesses came to the police station.

11 On the basis of this testimony learned counsel for the appellants has argued that the presence of the two eye witnesses is highly suspect. As per him firstly Gursewak Singh never mentioned that after showing his son to the hospital he went all the way to Doraha (which is admittedly at a distance of about 70 kms from Jagraon) to pick up his daughter. He has further argued that as per his testimony after about 5 hours he recollected the name of the previously unnamed co-assailant (Jagdeep Singh) but never informed the police about it. He further argued that Gursewak Singh also admitted that he had never named the other two appellants Harpreet Singh s/o Veer Singh and Kashmira Singh s/o Shamsheer Singh to the police at any time before giving his deposition.

12 Attacking the testimony of PW3 Harmandeep Kaur, learned counsel for the appellants has argued that it is very strange that a married girl would be attending her classes from her parental house rather than from her in-laws house despite the fact that she had been married only a few months ago. He has further argued that there is no way anybody can reach from Doraha to Jagraon in five minutes as stated by her. He has further argued that there is no record of any Test Identification Parade

(TIP) ever having been conducted in this case. It is his further case that there is a great mystery about the nomination of Jagdeep Singh, Harpreet Singh S/o Veer Singh and Kashmira Singh because as per the testimony of the eye witnesses they were never named before the police and even the Investigating Officer has not disclosed how he came to nominate them as an accused persons. It is his contention that these discrepancies, inconsistencies and unexplained circumstances go to the root of the case and severely dent the credibility both of Gursewak Singh and his daughter. He has also pointed out that it is very strange that the lady was shot in the presence of her husband and daughter and son and there was not even a blood stain on any of their clothes despite of the fact that as per Harmandeep Kaur all three of them were attending to their mother when she was shot. He has also further pointed out to the strangeness of the fact that the owner of the vehicle was identified but no information was ever elicited from him as to whether and in what circumstance the vehicle came in possession of these four persons nor he was cited as a witness. He has also drawn the attention of this Court to the fact that if the son was also a witness (whose presence in the house is more natural than sister) there is no reason given for not examining him as a witness. It is his case that actually some unknown persons had killed the wife of Gursewak Singh.

13 Learned Deputy Advocate General has sought to defend the judgment and has tried to dismiss these inconsistencies as minor contradictions which could very easily appear in the testimony after a period of time but he has no explanation as to how and in what circumstances the other appellants were nominated because he is not in a

position to deny that their names were never given to the police by the witnesses. He is also not in a position to deny that no one can reach within five minutes from Doraha to Jagraon.

14 In our considered opinion, the appeal must succeed, since the defence has been able to cast a reasonable doubt on the story of the prosecution. Normally in such a case the eye witness account is believed but in the factual matrix which has been set out above we would be straining credibility if we believe this testimony. It is very strange that having seen the deceased being shot neither her husband nor her daughter even tried to check if she was alive. Had they done so they would have definitely stained their clothes and hands with blood because as per the record a lot of blood had flown. How did they assume that she was dead without even checking her pulse? Why did they not immediately rush to the hospital where an attempt could have been made to save her? In the normal circumstances such a conduct would have been natural. Could Gursewak Singh have been so perplexed that he mistook two totally different persons for two brothers of Gurpreet Singh? How is it that he forgot to say in his deposition that he, his wife and son had gone to pick up his daughter after showing the son in the hospital. If after few hours he remembered the name of Jagdeep Singh why did he not inform the police and, as a corollary, how did the police come to know that apart from Gurpreet Singh, Kashmira Singh and Jagdeep Singh and Harpreet Singh were involved in the murder? These unanswered questions in our considered opinion do constitute a reasonable doubt and therefore giving the benefit thereof to the appellants, we acquit them.

15 The appeal and revision are allowed and the appellants/petitioner is acquitted of the charges leveled against them. If they are in jail they be released forthwith and if they are on bail their bail/surety bonds be discharged.

16 Since the main cases have been decided, the pending C.M. Applications, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

(VIVEK PURI)
JUDGE

05.12.2019
pooja sharma-I

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