

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

CRA-D-307-DBA-2002 (O&M)

Date of decision: 25.09.2019

State of Punjab

...Appellant

Versus

Satpal Singh

...Respondent

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

Present: Mr. Vikas Mohan Gupta, Addl. A.G., Punjab
for the appellant.

Mr. H.S. Bhullar, Advocate for the respondent.

H.S. MADAAN, J.

Briefly stated facts of the case, as per prosecution story, are that criminal machinery in this case was set into motion by complainant Parkash Singh son of Sarbjit Singh, resident of Athwal, Patti Bhullar, who in his statement got recorded with SI/SHO Lakhwinder Singh (hereinafter to be referred as Investigating Officer) of Police Station Kotli Surat Mallian on 17.11.1995 on bridge of a drain within jurisdiction of Village Athwal Patti Bhullar, while the police party headed by said police officer was on patrolling duty, stated that elder brother of his father and his wife Kulwant Kaur had died. Harjinder Singh deceased was son of brother of Kulwant Kaur belonging to Village Pandori Sidhwan but he used to reside with Kulwant Kaur since his childhood. Sukhpal Singh son of Kulwant Kaur was in employment posted at Chandigarh. Sharanjit Kaur

is daughter of Kulwant Kaur. Sharanjit Kaur and Harjinder Singh used to reside with Parkash Singh. Harjinder Singh was studying in 9th class in Govt. School at Dehr Fattupur, where accused Sat Pal Singh @ Satta and his sister Amarjit @ Neetu were also studying in 9th class. Accused Sat Pal @ Satta and Harjinder Singh deceased were on visiting terms with each other. Accused Sat Pal Singh suspected that Harjinder Singh was having illicit relations with his sister Neetu. On 16.11.1995 at about 5.30 PM, Sat Pal came to the house of Parkash Singh, complainant and took away Harjinder Singh. At that time, complainant-Parkash Singh and Sharanjit Kaur were present. Since Harjinder Singh did not return home, after waiting for sufficient time, Parkash Singh went to house of Sat Pal to enquire about Harjinder Singh. Smt. Balbir Kaur mother of Sat Pal told Parkash Singh that Sat Pal had left the house at 5 PM but had not returned home. Thereafter, Parkash Singh got an announcement made from public address system of the village Gurudwara, so as to know his whereabouts. Parkash Singh suspected that Harjinder Singh had been got killed by Sat Pal. Investigating Officer got recorded such statement of complainant Parkash Singh Ex. PA, signed from Parkash Singh, appended his endorsement Ex.PA/1 below such statement and sent ruqa to police station, on the basis of which, formal FIR Ex.PA/2 was registered.

In the evening of 17.11.1995, Harbans Singh father of deceased informed the police that dead body of Harjinder Singh was lying in a water channel outside the sugarcane fields of Mohinder Singh. The police party led by Investigating Officer went there and found the

dead body to be there. He carried out the inquest proceedings with regard to dead body of Harjinder Singh and prepared an injury report Ex.PD and the inquest report Ex.PE. He deputed Constable Gurnam Singh and Constable Daljit Singh to get the post mortem examination conducted on the dead body by handing over written request Ex.PC in that regard to them. The Investigating Officer had prepared rough site plan of the place of recovery of dead body as Ex.PJ.

The accused was arrested in this case by the police on 24.11.1995. He was interrogated, during the course of which, he suffered a disclosure statement that he had kept concealed kirpan along with sheath, a baniyan (vest) and a shirt besides wrist watch of the deceased in his house, about which only he knew and could get the same recovered. The said disclosure statement was reduced into writing. Thereafter, the accused while in police custody, in pursuance of the disclosure statement made by him, got the recovery effected. Those articles were taken into possession by the police vide seizure memo Ex.PN. Site plan of the place of recovery was also prepared.

During the course of investigation, Paramjit Singh of village Shakri stated that accused Satpal Singh had come to him and made an extra judicial confession to the effect that he had killed Harjinder Singh. This witness further stated that on 16.11.1995, he had seen accused Satpal Singh at about 6.30 PM with kirpan in his hand.

During the course of investigation, the IO recorded statements of various persons, took into possession several articles.

On the completion of investigation and other formalities, the challan against the accused was prepared and filed in the Court of Judicial Magistrate Ist Class (JMIC), Batala. Ld. JMIC, Batala supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C and then finding that offence under Section 302 IPC for which the accused had been booked was exclusively triable by the Court of Sessions, committed the case to the Court of Sessions Judge, Gurdaspur, from where, it was assigned to Addl. Sessions Judge, Gurdaspur.

Finding a prima facie case, charge for offence under Section 302 IPC was framed against the accused, to which, he pleaded not guilty and claimed trial.

During the course of prosecution evidence, prosecution examined PW-1 Parkash Singh, PW-2 Sharanjit Kaur, PW-3 Dr. K.K. Singh, PW-4 Paramjit Singh, PW-5 Hardip Singh, PW-6 Jaipal Singh, PW-7 Harbans Singh, PW-8 Manjinder Singh, PW-9 Kulwant Singh, PW-10 MHC Sohan Lal, PW-11 HC Sarwan Singh, PW-12 HC Jaswant Singh, PW-13 Capt. Chanan Singh, PW-14 LC Lakhwinder Singh and PW-15 SI Lakhwinder Singh.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to him but he denied the same, contending that he is innocent and has been falsely involved in this case.

During his defence evidence, accused examined Tarsem

Singh, Clerk from Govt. Senior Secondary School, Dehr Fattupur as DW-1 who had brought the summoned record and stated that Harjinder Singh was re-admitted in the school on 24.05.1995 in 9th class and he remained absent from 04.11.1995.

With that the defence evidence of accused was concluded.

After hearing arguments, learned ASJ, Gurdaspur vide judgment dated 18.07.2001, came to the conclusion that the prosecution had failed to lead cogent, convincing and reliable evidence to prove the guilt of the accused. As such, the accused was acquitted of the charge framed against him.

The prosecution was dissatisfied with the said judgment and has approached this Court, by way of filing an application for Special Leave to Appeal. Such leave to appeal was granted vide order dated 10.04.2002. Notice was issued to the accused, who put in appearance through counsel.

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

Admittedly, in this case, no person had seen the incident in which the deceased had been murdered but one thing is there that he had died an unnatural death. Several injuries on his person had been found. The natural question which arises is who had committed murder of Harjinder Singh? Though, according to the prosecution story, it was accused Satpal Singh @ Satta who had committed the murder but then nobody had seen such accused committing that crime. No eye witness of

the incident is there. The entire case of the prosecution is based upon circumstantial evidence. Learned Addl. Sessions Judge, Gurdaspur, has rightly observed in his judgment that the case of the prosecution rests upon following factors:-

- (i) Deceased was lastly seen in the company of the accused;
- (ii) Extra judicial confession made by the accused;
- (iii) Accused was seen near the place where the dead body was found at the relevant time;
- (iv) The wrist watch belonging to the deceased was recovered in pursuance of the disclosure statement made by the accused.

The trial Court has dealt with all these aspects one by one. Referring to the prosecution story in terms of which the accused had come to house of Parkash Singh and took Harjinder Singh along with him, it has been noticed that Parkash Singh-PW1 in his cross examination stated that accused had called Harjinder Singh from the street and he had come to know from his sister that it was the accused who had taken away Harjinder Singh. According to Parkash Singh, he was sitting inside the house and did not come out in the street to see the accused. Therefore, the deposition in that regard by Parkash Singh is hearsay.

Coming to the testimony of PW2 Sharanjit Kaur, that the accused had come to their house in her presence and that of Parkash Singh and took away the deceased along with him, she had nowhere stated that she had told Parkash Singh that the accused had taken away the deceased with him on 16.11.1995 at about 5.30 PM. Even if it is

taken that deceased Harjinder Singh had gone along with accused, it may be treated as a strong incriminating circumstance against the accused but it does not conclusively prove his guilt. It has to be taken note of that even as per the prosecution story, accused had been on visiting terms with the deceased, then, it is quite possible that after going to some distance, the accused and the deceased might have gone their own ways. Therefore, such circumstance in isolation does not point out that it was accused who had committed murder of the deceased.

The trial Court has referred to testimony of Harbans Singh PW7, who had stated that he had found dead body of his son on 17.11.1995 at 9.30 AM and that he had gone to the house of his sister at 10 AM, where the police was present. The post mortem examination on dead body of Harjinder Singh was conducted on 18.11.1995 at 9.30 AM. According to Dr. K.K. Singh PW-3, death was instantaneous and the time that elapsed between death and post mortem was within 48 years i.e. between 16.11.1995 at 9.30 AM to 18.11.1995 at 9.30 AM. The time of death could not be pointed out with certainty. Therefore, it could not be held that the deceased was last seen in the company of the accused.

Coming to the second factor with regard to extra judicial confession said to have been made by accused before PW-4 Paramjit Singh, stating that he had taken Harjinder Singh to the fields and given a kirpan blow to him near his left nipple as a result of which Harjinder Singh had died. PW-4 Paramjit Singh does not come out to be a leading person of the area in whom the accused could repose confidence to cause

his appearance before the police and to save him from the police torture. There is nothing to show that PW-4 Paramjit Singh carried influence with local police so as to make accused surrender before the local police and ask it not to torture the accused, rather, he comes to be a relative of complainant Parkash Singh being son of his sister having his residence in a village about 9 kms away from the village of the complainant. His conduct of not informing Parkash Singh after the accused had allegedly made extra judicial confession before him and not trying to apprehend the accused so as to get him arrested by the police, puts a big question mark over authenticity of his statement.

Next coming to the testimony of PW-8 Manjinder Singh, who had stated that he had seen the accused on 16.11.1995 with a kirpan in his hand. Again deposition of this witness does not come out to be natural, since he had not told anybody of his village Dehr Gawar and that had seen the accused with a naked kirpan. He had nowhere stated that the kirpan was blood stained. Thus, his conduct nullifies the contention that he had seen the accused on 16.11.1995 at 6.30 PM near the place of incident.

Similarly, the evidence with regard to the accused suffering a disclosure statement and getting kirpan along with sheath, vest, shirt and wrist watch recovered from his possession is not very convincing. The trial Court has dealt with all these aspects in detail, rejecting evidence produced by the prosecution in that regard.

We do not find any reason to disagree with the trial Court on

any of the points. It being a case of circumstantial evidence, chain of events must be complete before conviction of the accused can be based thereon. Many vital links in the chain are missing in the present case. The judgment passed by the trial Court does not suffer from any illegality or infirmity. The same cannot be said to be perverse. It is certainly not a case of misappraisal, misreading of evidence or wrong interpretation of law. We do not see any reason to upset the impugned judgment by way of accepting the present appeal. The appeal is found to be without any merit, and is dismissed accordingly.

(JITENDRA CHAUHAN)
JUDGE

25.09.2019
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(H.S. MADAAN)
JUDGE

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