

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

**CRA-D-952-DB of 2003 (O&M)
Date of Decision: 10.12.2019**

Bohar Singh and another

.....Appellants

VS.

State of Punjab

.....Respondent

**CORAM : Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mrs. Justice Archana Puri.**

Present : Mr. S.P.S. Sidhu, Advocate
for the appellants.

Mr. A.A. Pathak, Additional AG Punjab.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment and order dated 13.10.2003 passed by Additional Sessions Judge, Ferozepur vide which the accused/appellants were convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.3000/- and in default of payment of fine to further undergo RI for two years and were further convicted under Section 201 IPC and sentenced to undergo RI for three years and to pay payment of fine of Rs. 1,000/-. In default of payment they were sentenced to undergo further imprisonment for six months.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No. 2 are reproduced as under:-

“The prosecution story, in brief, is that Sadhu Singh Complainant PW 1 alongwith his elder son Gursahib Singh (PW2) and younger son Amrik Singh deceased, had been

residing in village Bahav Wala and they had been doing the work of agriculture. During the night both his sons used to sleep in the cattle house which was at some distance from their residential house. The house of Bohar Singh accused was situated near that house and they were on visiting term with each other. On 15.12.2001 after taking their meals he himself and both his sons were sitting in the cattle house and were talking to each other. At about 9.00 p.m. Bohar Singh came to that place and took the deceased with him to his house on the plea that he had some work with him. When the deceased did not return till morning the complainant went to the house of Bohar Singh where that accused and his wife Charanjit Kaur accused met him. When he enquired from them about the deceased they told that he had gone back to his house during the night itself. He kept on searching for his son but he did not get any clue. On the morning of 20.12.2001 he again went to the house of Bohar Singh accused where that accused alongwith Charanjit Kaur, Gurmel Singh, Lakha Singh and Sewak Singh accused was present, who were already known to him as they had been visiting the house of Bohar Singh accused on previous occasions also. They were talking to each other, but when they saw him they stopped talking. He enquired from them about the deceased but they could not give any satisfactory reply. When he came back to the cattle house he disclosed to his son Gursahib Singh that the accused had not been able to give any satisfactory reply about the deceased. Only there after Gursahib Singh disclosed to the complainant that the deceased had illicit relations with Charanjit Kaur accused. He became annoyed with him on the ground that as to why that fact was not disclosed by him on the previous occasions. There after the complainant became sure that the deceased had been killed by the accused or they had kidnapped him with the intention to kill him on account of their grudge against the accused as a result of the above said illicit relations. The complainant was going to the police station to lodge a report when Nagaur Singh Inspector, SHO

(PW7) alongwith other police officials, met him in front of the police post Bahav Wala where that police Party was present in connection with Nakabandi and checking of vehicles. About the abovesaid facts he made statement Ex.PA before the Inspector, who after making his endorsement Ex.PA/1 sent the same to the police station on the basis of which formal FIR Ex.PA/2 was recorded against all the accused under Section 364/149 and 148 IPC.”

After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court. As the offence under Section 302 IPC is triable by Court of Session, the case was committed to the said Court.

Charges under Sections 302, 201 and 147 read with Section 149 IPC were framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution had examined PW-1 Sadhu Singh, PW-2 Gursahib Singh, PW-3 Dr. Surinder Mohan Gupta, PW-4 HC Avtar Singh, PW-5 ASI Surinder Singh, PW-6 Harbans Singh, PW-7 Retd. DSP Nagaur Singh, PW-8 Balraj Singh, PW-9 MHC Nishan Singh, PW-10 Clerk Sunil Goswami and closed the evidence.

The statements of the accused under Section 313 Cr.P.C were recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to them to which they denied and pleaded false implication.

In defence, the accused had examined DW-1 Clerk Sunita.

After appraisal of evidence, the learned trial court vide

impugned judgment and order, convicted the accused/appellants under Section 302 and 201 IPC and sentenced them to undergo imprisonment as narrated in the first paragraph of the judgment. However, accused Gurmail Singh, Lakha Singh and Gursewak Singh were acquitted of the charges.

Thus, the present appeal has been filed by accused/appellants Bohar Singh and Charanjit Kaur.

It is contended by the learned counsel for the accused/appellants that no explanation has been offered by the prosecution regarding the delay in lodging the FIR. As per the case of the prosecution, the deceased was taken from his house by Bohar Singh accused on 15.12.2001 but the Police was not informed about the occurrence till 20.12.2001. It is further contended that motive to kill the deceased has not been proved. The prosecution witnesses are not worthy of reliance. All the witnesses examined in the Court are close relations of the complainant and from their statements it stands proved that they are made up witnesses. PW-6 Harbans Singh has been introduced into the story subsequently. The witnesses examined by the prosecution are not certain about the place from where the dead body was recovered. The evidence of recovery of belongings of the deceased does not inspire any confidence. The same were never got identified during the investigation and the identification of those articles in the Court for the first time is meaningless.

On the other hand, on behalf of the State, it is contended

the learned trial Court has rightly convicted and sentenced the accused/appellants. There is sufficient evidence on record to connect the accused appellants with the murder of Amrik Singh.

We have heard the learned counsel for the parties and have gone through the case file.

It emerges from the record that Amrik Singh son of Sadhu Singh disappeared from his house on 15.12.2001. It has come in the statement of PW-1 Sadhu Singh and PW-2 Gursahib Singh that the deceased was last seen in the company of accused Bohar Singh as accused Bohar Singh came to their house and took Amrik Singh along with him on the pretext of some urgent work. The next evidence cited by the prosecution is that of recovery of slippers (chappal) of the deceased in pursuance to disclosure statement Ex. PF made by accused Charanjit Kaur and recovery of clothes of the deceased in pursuance of disclosure statement Ex. PH made by accused Gurmail Singh. Further, PW-6 Harbans Singh has supported the case of the prosecution by deposing that he overheard the accused stating that they had eliminated Amrik Singh. The motive has been supplied by PW-2 Gursahib Singh, who had deposed that Charanjit Kaur wife of Bohar Singh and Amrik Singh (deceased) had an affair. In this background, five accused faced trial, out of whom three accused, namely, Gurmail Singh, Lakha Singh and Gursewak Singh were acquitted by the trial Court as disclosure statement Ex. PH made by accused Gurmail Singh was disbelieved by the learned trial Court. The recovery from appellant Charanjit Kaur is

slipper (Chappal) of the deceased from the Kotha meant for keeping chaff. The said recovery was effected in pursuance of disclosure statement Ex. PF made by Charanjit Kaur. As per the case of the prosecution, Charanjit Kaur/appellant had illicit relations with deceased Amrik Singh. This fact qua Charanjit Kaur neither fits in the story put forth by the prosecution nor appears to be probable so far as the motive on the part of appellant Charanjit Kaur is concerned. If we believe the version of the prosecution to the extent of having illicit relations with the deceased in that case the question emerges as to why she would nurture any grudge against Amrik Singh, rather in normal course, she would go to any extent to save the deceased. Moreover, there is no compelling reason with her to preserve the slippers of the deceased, rather on the very first given opportunity she would have thrown them to some unknown place as there was ample time and opportunity with her to do that. Except the recovery of the slippers, her name is neither in the last seen evidence nor any motive has been attributed to her to eliminate Amrik Singh, therefore, in the given set of circumstances, we feel that recovery of slippers of the deceased alone is not sufficient to connect her with the death in question particularly when Gurmail Singh from whom the clothes of the deceased had been recovered and Lakha Singh and Gursewak Singh stand acquitted by the trial Court. Accordingly, accused/appellant Charanjit Kaur is acquitted of the charges framed against her.

So far as accused/appellant Bohar Singh is concerned, the

deceased, as per the case of the prosecution, had illicit relations with co-accused Charanjit Kaur, therefore, he had a strong motive to eliminate the deceased. The testimony of father and brother of the deceased, namely, PW-1 Sadhu Singh and PW-2 Gursahib Singh also corroborates the version of last seen evidence. There is sufficient evidence against accused/appellant Bohar Singh. So far as delay in lodging the FIR is concerned, it has been stated by the complainant that between 15.12.2001 and 20.12.2001 he had been searching for the deceased by making enquiries from his relatives. He had no knowledge about the illicit relations of the deceased with Charanjit Kaur and he came to learn about the relationship only from his son Gursahib Singh PW-2. Thus, the complainant was justified in waiting for the return of his son instead of approaching the Police immediately. Thus, the argument of delay in lodging the FIR is rejected.

In view of the above, the appeal filed by accused/appellant Bohar Singh is dismissed. He is stated to be on bail. He be taken into custody to serve the remaining part of the sentence.

The appeal filed by accused/appellant Charanjit Kaur is allowed. She is acquitted of the charges framed against her.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

10.12.2019

SN

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No