

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-316-DB-2003 (O&M)

Date of decision: 06.11.2019

Raghbir Singh and another

...Petitioner

Versus

State of Punjab

...Respondent

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

Present: Mr. Jasraj Singh, Advocate,
for the appellant.

Mr. A.A. Pathak, Addl.A.G., Punjab.

Jitendra Chauhan, J.

The instant appeal is directed against the judgment of conviction and order of sentence dated 05.02.2003 (hereinafter referred to as the impugned judgment'), passed by learned Addl. Sessions Judge (Ad hoc), Fast Track Court, Hoshiarpur (for short, 'the trial Court'), thereby, convicting the appellants under Section 302 of the Indian Penal Code and sentencing them to life imprisonment and to pay fine of Rupees two thousand with default stipulation.

Brief facts of the case, as noticed by learned trial Court, in the opening paragraph of the impugned judgment, read thus:-

“Accused Hardev Singh, Daulat Singh, Raghbir Singh, Kuldeep Singh, Majhail Singh and Onkar Singh have been sent up to this Court for trial by SHO, PS,

Mahilpur. Briefly stated the prosecution case is that this case was registered on the statement of Mohinder Singh who has alleged that Joginder Singh deceased his brother, used to reside with him and they used to do agricultural work alongwith Satnam Singh. On the night of 7.10.2000 Joginder Singh had gone to the house of Satnam Singh but did not return to the house till 9.00 P.M. Complainant went towards the house of Satnam Singh with torch and when he reached near the house of Satnam Singh he found 8-9 persons manhandling one person on the circular road and it was moonlit night and the complainant also used torch to identify those persons and then he saw Raghbir Singh, Majhail Singh, Hardev Singh sons of Sansar Singh, Onkar Singh s/o Sarwan Singh, Daulat Singh s/o Punna Singh, Kuldeep Singh s/o Daulat Singh manhandling his brother Joginder Singh and on hearing the noise of Joginder Singh, Satnam Singh, Nazar Singh, Jaswinder Singh alias Binda and Manjit Singh came to the spot and witnessed the occurrence. Within their sight Raghbir Singh accused gave a fist blow on the right eye of Joginder Singh and Majhail Singh gave fist blow on the left cheek of Joginder Singh and Kuldeep Singh accused inserted some sharp edged weapon in the mouth of Joginder Singh as a result of which blood started oozing out of the mouth of Joginder Singh who fell down on the ground and when he was lying on the ground accused continued manhandling him and Daulat Singh, Onkar Singh and Hardev Singh continued raising lalkaras saying that he should not be left alive. They continued inflicting injuries to him when he was lying on the ground. When the witnesses went ahead accused threatened them that in case they tried to intervene or tried to give information to anybody, they would also be killed and

then complainant and witnesses receded back to their house and in the morning complainant went to the place of occurrence and found his brother dead with blood oozing out of his mouth. He left Satnam Singh at the spot to guard dead body and was going to police station to lodge report when the police met him in Bus Adda Barian Kalan where his statement was recorded by Sital Singh, SI. Motive behind the occurrence is stated to be that about 1 ½ years prior to the occurrence, complainant had taken 4 acres of land of Santokh Singh on mortgage as Santokh Singh used to reside at Ludhiana and earlier to that the said land was being cultivated by accused. In the month of March prior to the occurrence the accused had assaulted brother of the complainant but the matter was got compromised by the panchayat. So it is alleged that due to this grudge the accused committed murder of said Joginder Singh.....”

Charges under Section 302 IPC were framed against all the accused to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Mohinder Singh as PW-1, Satnam Singh as PW-2; Nazar Singh as PW-3; Bakhshish Singh as PW-4; Dr. M.L. Bansal as PW-5; and SI Sital Singh as PW-6.

When examined under Section 313 Cr.P.C., the accused denied all the allegations and pleaded false implication. In defence, they examined Nachhattar Kaur, Sarpanch as DW-1.

After hearing learned counsel for the parties and appreciating the material produced on record, learned trial Court, while holding that the participation of accused Hardev Singh, Majhail Singh, Onkar Singh and

Daulat Singh in the commission of crime is doubtful, acquitted them of the

charges; whereas, the accused-appellants were convicted and sentenced as noticed at the outset of this judgment.

Hence, the instant appeal.

Learned counsel for the appellants contends that there is an unexplained delay in reporting the matter to the police. The alleged occurrence took place on 07.10.2000 at 9.00 p.m., whereas, the formal FIR came to be registered on 08.10.2000 at 10.45 a.m. Further submits that the presence of the alleged witnesses at the spot is highly improbable which is evident from the fact that the complainant after seeing the occurrence, came back to his house and again went to the spot on the next morning. In fact, there is no eyewitness to the alleged occurrence. The real story has been put forth by DW-1, Nachhatar Kaur, Sarpanch of the Village, who was informed by the village chowkidar that a dead body was lying at the *phirni*. Thereafter, she along with one Satya Devi went to the place and identified the deceased as also informed the police. However, her truthful version has been ignored by learned trial Court. Lastly contends that appellant No.2 has been attributed knife injury in the mouth (tongue) of the deceased. However, the cause of death in the present case is due to asphyxia. Moreover, there is no corresponding cut on the face of the deceased.

On the other hand, learned State counsel submits that the appellant has been named in the FIR and a specific role has also been assigned to him. The appellant inflicted injuries in the mouth of the deceased with a sharp-edged weapon, which fact finds corroboration from the medical evidence.

During the course of arguments, it has been informed by

learned counsel for the parties that appellant No.1, Raghbir Singh, has since died during the pendency of the instant appeal. Accordingly, the present appeal abates qua appellant No.1.

Heard.

There is delay of about fourteen hours in lodging the FIR, which as per learned counsel for the appellant, is material and has doubt created a dent in the prosecution version. At the same time, delay alone is not sufficient to discard the entire prosecution version, rather, it creates a circumstance for the courts to appreciate the evidence with much more caution. Even otherwise, the delay in the instant case has been satisfactorily explained. The complainant, in his testimony, has unequivocally stated that the accused had threatened him and other witnesses to recede and not to inform the matter to the police. The gruesome manner in which the accused have committed the crime, it is probable that the complainant and other witnesses could succumb to the threats exerted by the accused. It has also come in evidence that there was no telephone facility at the house of the complainant. Therefore, the delay in lodging the FIR cannot be said to be fatal to the prosecution case.

The defence version in this case is that the crime was first reported in the morning of 08.10.2000 by the Chowkidar of the village to the then Sarpanch, Nachhattar Kaur. In her statement, Nachhattar Kaur, while appearing as DW-1, has stated that the Chowkidar came to her in the morning and told her that a man was lying dead at the *phirni* of the village. Thereafter, she along with one Satya Devi, went to the place of occurrence, identified the deceased and informed the police. However, her version is

falsified on this point by PW-6, SI Sital Singh, the Investigating Officer, who has deposed that Nachhattar Kaur never informed him about the occurrence or the dead body lying at the *phirni*. To the contrary, for the reasons best known, the accused, neither they have examined the Chowkidar, nor Satya Devi, in defence to corroborate the version of DW-1, Nachhattar Kaur.

It has been contended on behalf of the appellants that the prosecution has failed to prove the motive in the instant case. There is no material on record to prove that the disputed land was mortgaged with the complainant by Santokh Singh or that it was being cultivated by the complainant and his brother Joginder Singh, deceased. The prosecution has also not examined Santokh Singh, owner of the land. In this regard, PW-1, Mohinder Singh, has categorically stated that Santokh Singh had mortgaged his four acres of land with him and earlier this land was being cultivated by Hardev Singh, Raghbir Singh, Majhail Singh and Onkar Singh. He has also stated that about six months prior to the occurrence, Raghbir Singh had attacked Joginder Singh and tried to kill him by running over a tractor. This fact finds corroboration from the testimony of DW-1, Nachhattar Kaur, Sarpanch, who had admitted that accused used to cultivate the land of Santokh Singh. He also admitted that Mohinder Singh, brother of Joginder Singh, had complained against Raghbir Singh for trying to run over his tractor with an intention to kill Joginder Singh. The matter was taken to the Panchayat and a compromise was effected between the parties.

Though, there is a lapse on the part of the investigating agency which was supposed to collect the material with regard to possession and

cultivation of the land in question, etc., however, no advantage thereof, can be accorded to the accused in the face of other material evidence.

As regards the medical evidence, the prosecution has examined PW-5 Dr. M.L. Bansal, who conducted post-mortem examination. This witness has categorically stated that the cause of death in this case is due to asphyxia, as a result of choking, which was sufficient to cause death in the ordinary course of nature. He has also stated that in case, a blow is given with sharp edged weapon then longitudinal cut can be caused on the tongue and there should have been corresponding cut on the part of the face, touching the injury on the tongue. However, he has admitted that if the tongue is taken out and then the injury is inflicted, then there is possibility of no such corresponding injury, as asserted by learned counsel for the appellants. Meaning thereby, even if there is no injury on the lips of the deceased, even then the injury on the tongue could be caused by inserting sharp pointed weapon in the mouth of the deceased.

It has also come in the evidence that the accused gave kick blows on the chest of the deceased. It is also clear from the report of the doctor that 4th and 5th rib on the left side of the chest were fractured and the bone had pierced into left lung resulting into its collapse. There was also fracture of the mandible of the skull. Thus, the blood must have collected in the mouth of the deceased after he fell unconscious, air passage might have been blocked by the clotting of the blood in the mouth and air from the lungs leaked due to fractured bone puncturing the left lung. The nature and seat of injuries leaves no doubt in the mind of the Court that the deceased was brutally assaulted by the accused-appellants resulting into his death.

From the above discussion, this Court finds that learned trial Court has rightly recorded the judgment of conviction against the accused-appellant No.2 (appellant No.1 already died), which is hereby affirmed. Consequently, the instant appeal qua appellant No.2 is dismissed. He is stated to be on bail. He be taken into custody forthwith to suffer the remainder of sentence. His bail bonds shall stand forfeited.

(JITENDRA CHAUHAN)
JUDGE

(H.S. MADAAN)
JUDGE

06.11.2019

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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No