

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

CRA-D-869-DB of 2004
Reserved on : 27.01.2020
Date of decision : 31.01.2020

Dilbagh Singh

.... Appellant

Versus

State of Punjab

..... Respondent

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

Present: Mr. Veneet Sharma, Advocate, for the appellant.
Mr. H.S. Grewal, Additional Advocate General, Punjab.

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RAJIV SHARMA, J.

1. This appeal is instituted against the judgment and order dated 16.10.2004, rendered by learned Additional Sessions Judge, Amritsar, in Sessions Trial No. 45 of 28.08.2003, whereby appellant Dilbagh Singh, who was charged with and tried for the offences punishable under Sections 302 and 201 IPC, was convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of ₹ 5,000/-, and in default of payment of fine, to further undergo rigorous imprisonment for six months under Section 302 IPC. He was also convicted and sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹ 500/-, and in default of payment of fine, to further undergo rigorous imprisonment for one month under Section 201 IPC. Both the substantive sentences were ordered to run concurrently.

2. The case of the prosecution, in a nutshell, is that Gurmel Singh lodged report to the effect that on 15.04.2003 at about 6.00 AM, his brother Baldev Singh had gone on duty. He did not return in the evening. The complainant had a talk with his uncle Kashmir Singh. They were looking for Baldev Singh. On 17.04.2003 at about 7.00 PM, they were going and on the turning of village Cheema Bath, they saw some persons assembled there. In the fields of wheat, they saw dead body of Baldev Singh, which was putrefied. The body was having injuries on head and neck. The complainant was of the opinion that Baldev Singh had been killed by Dilbagh Singh, and with a view to cause dis-appearance of evidence, the dead body was thrown in the wheat fields. The motive was that about two months back, they had a dispute with each other. His statement Ex.PD was recorded, which led to registration of FIR Ex.PD/3. The dead body was sent for post-mortem examination. Statements were recorded. The investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses in support of its case. The accused was also examined under Section 313 Cr.P.C. He denied the case of the prosecution.

4. The appellant was convicted and sentenced, as noticed here-in-above. Hence, this appeal.

5. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State has supported the judgment and order of the trial court.

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

7. PW.1 Dr. Manpreet Kaul conducted post-mortem examination on the body of Baldev Singh. She noticed following injuries on the body of the deceased :-

- “(1) 8 x 4 cms lacerated wound was present on right side of face, just below malar prominence, wound was irregular shaped. Margins were found decomposed. Maggots were crawling out of the wound. Infiltration was present in underlying decomposed muscles and the underlying bone was found intact.
- (2) 7 x 2 cms lacerated wound was present on the left side of face, just below left angle of mouth, over the lower jaw. Margins showed putrefactive changes and wound was obliquely placed. Infiltration present in underlying tissues and underlying mandibles were found intact.
- (3) Multiple reddish brown abrasions were present on the dorsum of right hand, five in number, size varying from 1 x 0.9 to 0.1 x 0.1 cms.
- (4) 11 x 6 cms bluish brown wound was present on right heel. On dissection infiltration was seen in underlying tissues.
- (5) 14 x 6 cms bluish brown bruise was present on sole of left foot, 5 cms below medial malleolus.”

The cause of death was asphyxia as a result of smothering, which was sufficient to cause death in the ordinary course of nature. The time elapsed between injuries and death was within a few minutes. As per the Chemical Examiner's report, no poison was detected in the contents of exhibits 1, 2 and 3.

8. PW.2 Gurmel Singh is the complainant. According to him, on

15.04.2003, his brother Baldev Singh had gone on duty at about 6.00 AM. He did not come back. On enquiry, his uncle Kashmir Singh told that he had seen Baldev Singh with Dilbagh Singh on 15.04.2003 at about 6.00/7.00 PM on Baba Bakala Road. On 17.04.2003, his uncle Kashmir Singh came to his house at about 3.00/4.00 PM. They went towards village Cheema Bath. When they reached one Km. ahead of turn of the village, about 40/50 persons had gathered there. They saw the dead body of Baldev Singh there. It was de-composed. The deceased had injuries on his head, face, neck, left arm and on the feet. In his cross-examination, he admitted that his uncle Kashmir Singh told him of seeing Baldev Singh with Dilbagh Singh on 17.04.2003. Baldev Singh had told about a dispute with the accused two months prior to his death. However, he did not disclose the nature of the dispute. In his statement Ex.PD, he had stated that the accused and the deceased had good relations with each other.

9. PW.3 Kashmir Singh is the witness of 'last seen'. According to him, Baldev Singh was his nephew. He was working as Adda Incharge of Hundal Bus Service, Khilchian. Baldev Singh had good relations with Dilbagh Singh, since he was working as Conductor of Hundal Bus Service. On 15.04.2003 at about 6.00 AM, he along with Baldev Singh had gone to Khilchian. On the same evening at about 7.00 PM, he saw that Baldev Singh, Ravijit Singh and Dilbagh Singh accused were standing at the turn of village Cheema Bath. He stopped the vehicle. He called Baldev Singh to go to his house. However, Dilbagh Singh told him that you can go and he would send Baldev Singh later on. Three of them went to the house of Dilbagh Singh. On the next day in the morning, he again went for his duty.

He did not go to the house on that night. On 17.04.2003, he went to the house at about 4.00 PM. Relations had gathered at the house to locate Baldev Singh. He along with Gurmel Singh, brother of Baldev Singh, went to village Cheema Bath on scooter. When they went one Km. ahead from the turn of village Cheema Bath, number of persons had assembled there. The dead body of Baldev Singh was found in the wheat fields. They noticed injuries on the head, bruises on neck, scratches on right hand, injury on left hand and injuries on both the feet. When he went towards the Kothi of Dilbagh Singh, which was at a distance of 2 killas from the place where the dead body was lying, on seeing him, Dilbagh Singh went away. Dilbagh Singh and Baldev Singh had dispute about two months prior to the death of Baldev Singh. It appears that due to this, Dilbagh Singh along with Ravijit Singh had committed the murder of Baldev Singh. His statement was recorded by the police. In his cross-examination, he admitted that he was alone when he saw deceased along with accused and Ravijit Singh. He stayed during the night in his village. On 16.04.2003, he left for duty at 5.00 AM. He came back to the village on 16.04.2003 at 4.00 PM. He spent the night of 16.04.2003 at village Udhoke at the house of his sister-in-law. Gurmel Singh met him at the house on 17.04.2003. They started searching for Baldev Singh. He had no conversation with Dilbagh Singh on 17.04.2003.

10. PW.4 Dr. Pedarath Singh deposed that on 15.04.2003, he was present in his house. At about 8.30/9.00 PM, he was taking his meal. Somebody knocked his door. His son went outside and told that some body was calling him outside. His son told that some body had an attack at the

house of Dilbagh Singh. He refused to go there. After 15/20 minutes again, there was a noise. He then came out to see what happened. Some persons were standing near the house of Dilbagh Singh. However, there was no light. On enquiry, they told that some one had fallen. He advised them to take him to doctor at Rayya. He came back to his house. He did not check that person. He was declared hostile and was cross-examined by the learned Additional Public Prosecutor. In his cross-examination, he admitted that his statement was recorded by the police on 18.05.2003. He denied the contents of his statement Ex.PE. In his cross-examination by the learned defence counsel, he deposed that he did not see any person lying unconscious.

11. PW.5 Darshan Kumar identified the dead body of Baldev Singh.

12. PW.6 Raj Kumar deposed that he did not know accused Dilbagh Singh. He did not appear before him. He did not talk to him about incident of this case. He was declared hostile and was cross-examined by the learned Additional Public Prosecutor. He denied the contents of his statement Mark A, suffered by him before the police on 19.04.2003.

13. PW.9 Jasbir Kaur deposed that she was standing at Bus Stand Rayya. She met Dilbagh Singh and Baldev Singh deceased. They were not known to her earlier. They had taken her in the wheat fields near the Pipal tree. Baldev Singh took liquor there. After taking liquor, he became unconscious. She remained in the wheat field during the night. In the morning, she came back to her house. She was not taken anywhere by them. She was not taken to Dera of Dilbagh Singh. Dilbagh Singh did not offer liquor to Baldev Singh at his Dera. She was declared hostile and was cross-

examined by the learned Additional Public Prosecutor. In her cross-examination, she denied the contents of her statement Mark B, recorded on 25.05.2003. In her cross-examination by the learned defence counsel, she deposed that Baldev Singh deceased and Dilbagh Singh were not known to her before the date of occurrence. Baldev Singh alone had gone with her to the wheat fields.

14. PW.10 SI Hardial Singh deposed that the statement of Gurmel Singh was recorded by him vide Ex.PD on 17.04.2003. He along with Gurmel Singh went to village Cheema Bath. Photographs of the dead body were taken. The dead body was sent for post-mortem examination, after preparation of inquest report Ex.PH. Site plan of the place of occurrence was prepared vide Ex.PK. Statements of the witnesses were recorded. On 18.07.2003, Constable Baldev Raj handed over to him the clothes of the deceased i.e. pant, shirt, underwear and belt. These were Ex.P1 to Ex.P5. He interrogated the accused. Accused made disclosure statement Ex.PN and identified the place where the dead body of Baldev Singh was thrown. Its site plan Ex.PN/1 was prepared. Statement of PW Pedarath Nath was recorded on 18.05.2003. Statement of Jasbir Kaur was recorded on 25.05.2003.

15. The Chemical Examiner report is Ex.PB. According to this report, no poison was detected in the contents of exhibits I, II and III, i.e. stomach, piece of small intestine, piece of liver, spleen, half of each kidney and certain samples of preservative.

16. PW.2 Gurmel Singh deposed that on 15.04.2003, his brother Baldev Singh had gone on duty at about 6.00 AM. He did not come back.

On enquiry, his uncle Kashmir Singh told him that he had seen Baldev Singh with Dilbagh Singh on 15.04.2003 at about 6.00/7.00 PM on Baba Bakala Road. On 17.04.2003, his uncle Kashmir Singh came to his house at about 3.00/4.00 PM. They went towards village Cheema Bath. When they reached one Km. ahead of turn of the village, about 40/50 persons had assembled there. The dead body of Baldev Singh was noticed there. It was de-composed. In his cross-examination, he admitted that they started to search Baldev Singh on 16.04.2003. His uncle Kashmir Singh told him of seeing Baldev Singh with Dilbagh Singh on 17.04.2003. According to him, the motive was a quarrel between Baldev Singh and Dilbagh Singh, which had taken place earlier, but he did not know the cause of the quarrel. He admitted that in his statement Ex.PD, he had stated that relations between the accused and the deceased were cordial.

17. PW.3 Kashmir Singh is the material witness. Baldev Singh deceased was his nephew. According to him, on 15.04.2003 at about 7.00 PM, he had last seen the deceased in the company of accused Dilbagh Singh and Ravijit Singh. He stopped the vehicle. He asked Baldev Singh to go to his house. However, Dilbagh Singh told that he would send Baldev Singh later on. Accused Dilbagh Singh, deceased Baldev Singh and Ravijit Singh went to the house of Dilbagh Singh. Baldev Singh did not come to his house. On the next day in the morning on 16.04.2003, he again went for his duty. He did not go to the house on that night. He went to the house at about 4.00 PM on 17.04.2003. His relations had gathered at the house to search for Baldev Singh. Then he along with Gurmel Singh, brother of Baldev Singh, went on scooter towards village Cheema Bath. The dead body of

Baldev Singh was seen lying in the wheat fields. In his examination-in-chief, he also deposed that he went towards the Kothi of Dilbagh Singh. Dilbagh Singh went away on his scooter. In his cross-examination, he admitted that he had not talked to Dilbagh Singh. In case, he had seen deceased Baldev Singh in the company of accused Dilbagh Singh on 15.04.2003, he should have confronted Dilbagh Singh. Baldev Singh deceased was the nephew of PW.3 Kashmir Singh. He should have told the family members immediately when Baldev Singh had gone missing, that he had last seen him in the company of the accused. His conduct is unusual. It has not come in the statement of PW.2 Gurmel Singh made before the police vide Ex.PD that his uncle Kashmir Singh had told him that he had last seen the deceased in the company of Dilbagh Singh.

18. PW.4 Dr. Pedarath Singh has not supported the case of the prosecution. He was declared hostile, though confronted with his statement Ex.PE. PW.6 Raj Kumar, before whom the alleged extra-judicial confession was made by accused Dilbagh Singh, has also not supported the case of the prosecution. His statement was recorded by the police on 19.04.2003. Similarly, PW.9 Jasbir Kaur was also declared hostile. In her cross-examination by the learned defence counsel, she admitted that Baldev Singh deceased and Dilbagh Singh were not known to her before the date of occurrence. She denied the statement made by her before the police vide Mark B. This statement was recorded on 25.05.2003.

19. The fact of the matter is that statement of PW.3 Kashmir Singh was also recorded under Section 161 Cr.P.C. on 18.04.2003. Even PW.9 Jasbir Kaur in her statement before the police only stated that Baldev Singh

was offered liquor by Dilbagh Singh and he became drunk. Though the prosecution has attributed motive to the accused that he had picked up quarrel with the deceased about two months prior to the incident, but PW.2 Gurmel Singh has not disclosed the cause of quarrel. Rather it has come on record that the accused and deceased were having very good relations. The statement of PW.3 Kashmir Singh does not inspire confidence. If he had last seen the deceased with the accused, he should have told PW.2 Gurmel Singh about it. His statement was recorded by the police on 18.04.2003. He is uncle of the deceased. He must be aware of the dis-appearance of his nephew. The other witness, namely PW.6 Raj Kumar, before whom the alleged extra-judicial confession was made, has not supported the case of the prosecution. He was declared hostile. Similarly, PW.4 Dr. Pedarath Singh and PW.9 Jasbir Kaur were also declared hostile.

20. Thus, the prosecution has failed to prove its case against the appellant beyond reasonable doubt. Accordingly, the appeal is allowed. The judgment and order dated 16.10.2004 are set aside. Appellant Dilbagh Singh is acquitted of the charges framed against him by giving him benefit of doubt. He is already on bail. His bail bond and surety bond are discharged.

(RAJIV SHARMA)
JUDGE

January 31, 2020
ndj

(HARINDER SINGH SIDHU)
JUDGE

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