

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

CRA-D-98-DB-2003 (O&M)
Date of Decision: 04.03.2020.

Guranditta Singh and another

.....Appellants

VS.

State of Punjab

.....Respondent

(2) CRA-D-117-DB-2003 (O&M)

Baljinder Singh @ Pamma

.....Appellant

VS.

State of Punjab

.....Respondent

(3) CRA-D-126-DB-2003 (O&M)

Sanjiv Kumar and another

.....Appellants

VS.

State of Punjab

.....Respondent

(4) CRA-D-135-DB-2003 (O&M)

Shashi Kant

.....Appellant

VS.

State of Punjab

.....Respondent

(5) CRR No. 202 of 2003 (O&M)

Jang Singh (deceased through LRs)

.....Petitioner

VS.

Gurdas Singh and others

.....Respondents

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

Present : Mr. APS Deol, Sr. Advocate, Advocate with
Mr. V.R. Lamba, Advocate,
for the appellant(s) in CRA-D-98-DB-2003.

Mr. B.S. Sodhi, Advocate,
for the appellant in CRA-D-117-DB-2003.

Mr. Vinod Ghai, Sr. Advocate, Advocate with
Ms. Kanika Ahuja, Advocate,
for the appellant(s) in CRA-D-126-DB-2003.

Mr. R.S. Cheema, Sr. Advocate, Advocate with
Mr. Ishan Khetarpal, Advocate,
for the appellant(s) in CRA-D-135-DB-2003.

Mr. Mohit Rathee, Advocate for
Mr. Aman Pal, Advocate,
for the petitioner(s) in CRR-202-2003.

Mr. A.A. Pathak, Addl. AG Punjab.

JITENDRA CHAUHAN.J.

This judgment shall dispose of afore-mentioned four appeals filed by the accused and one revision petition filed by the complainant against the common judgment dated 18.12.2002 and order dated 19.12.2002 passed by Additional Sessions Judge, Bathinda. The accused/appellants, Guranditta Singh, Nidhan Singh, Baljinder Singh, Sanjeev Kumar, Malkit Singh and Shashi Kant were convicted and sentenced as under:-

Offence	Sentence	Fine	In default
148 IPC	RI for 1 year	--	--
364 IPC	RI for 10 years	Rs.2500/-	RI for 6 months

Accused/appellants, Guranditta Singh, Baljinder Singh @ Pamma, Nidhan Singh and Shashi Kant were further convicted and sentenced as under:-

Offence	Sentence	Fine	In default
302/149 IPC	Imprisonment for life	Rs.5000/-	RI for 1 year
404 IPC	RI for 2 years	Rs.500/-	RI for 1 month

All the substantive sentences were ordered to run concurrently.

However, accused Gurdas Singh, Balbir Singh, Balwinder Singh and Parshotam Kumar were acquitted of the charges framed against them. Co-accused Gurjant Singh died during the pendency of the case before the learned trial Court.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph Nos. 2 and 3 are reproduced as under:-

“2. In nutshell, the case of the prosecution as unfolded by PW Jang Singh is that on 23.07.1997, he along with his son Gurdeep Singh and Mithu Singh @ Bedo son of Vir Singh resident of village Sainewala was going to Bathinda in order to attend the case in the Court, on his tractor HMT 3511 bearing registration No. PAW-3603 from his village Gurusar Sainiwala. When they reached near culvert ahead of village Jodhpur Romana, at about 7.20 AM two jeeps were lying parked near the damaged culvert. One of the jeeps which was bearing No.PB-47-1504 was being driven by Guranditta Singh. The said jeep was stopped in front of his tractor as a result of which the passage stood blocked. The occupants of both the jeeps

alighted while raising lalkara. At that time, Guranditta Singh accused was armed with iron rod, Nidhan Singh with kirch, Sanjiv Kumar with kirch and Malkiat Singh was armed with iron rod. Other accused were not known to him but he can identify if they are produced before him. The other persons were also armed with iron rods, kirch and hockey. The accused picked up the quarrel with Gurdeep Singh and he was forcibly dragged from the tractor. Accused Guranditta Singh gave an iron rod blow which landed on the head of Gurdeep Singh. Other accused namely Malkiat Singh, Sanjiv Kumar and Nidhan Singh also started giving injuries to Gurdeep Singh with their respective weapons. Gurdeep Singh fell down and thereafter he was taken away by the accused with an intention to commit his murder in the jeep towards Dabwali. Gurdeep Singh was wearing gold ring and wrist watch at that time. The motive behind the occurrence as narrated by the complainant was that during Panchayat Elections they did not support the accused Guranditta Singh as a result of which, he was nourishing grudge against them. When the complainant was going to report the matter to the police S.I. Devinder Singh met him in the way . He got recorded his statement Ex.PD which was sent to Police Station Sadar Bathinda after making endorsement Ex.PD/1 on the basis of which formal FIR, Ex.PD/2 was put into black and white and the investigation was put into motion. S.I. Devinder Singh in the company of Jang Singh complainant visited the place of occurrence, prepared the visual site plan, Ex.PL with correct marginal notes.

3. When S.I. Devinder Singh, S.H.O., Police Station Sadar Bathinda was present at bus stop Gurusar Sainewala,

Sadhu Singh son of Arjan Singh PW-3 met him and he got recorded his statement to the effect that on 23.07.1997 he was going on foot from village Mehta to Gehri Buttar via kacha passage and when he reached about 2 kilometres ahead of Mehta Chowk towards village Gehri at about 8.30 a.m. he noticed two jeeps coming from the front side parked about 15 yards ahead of him. At that time accused Guranditta Singh was armed with iron rod and Nidhan Singh armed with kirch, Balwinder Singh armed with iron rod, Balbir Singh unarmed and Gurdas Singh armed with iron rod alighted from the jeep which was being driven by Guranditta Singh accused. Similarly accused Baljinder Singh armed with kirch, Shashi Kant armed with Hockey alighted from the front seat of the jeep whereas accused Parshotam Kumar, Janta Singh and one other person was who being addressed as AMLI alighted from the rear portion of the jeep. Gurdeep Singh was dragged out of the jeep and the accused started causing injuries on his person. The person addressed as AMLI caught hold of Gurdeep Singh from his legs whereas Gurdas Singh and Parshotam Kumar caught hold of him from his arms and the other accused were causing injuries and in his view, Gurdeep Singh was murdered by the accused. When alarm was raised by him (Sadhu Singh), all the accused ran away from the spot along with their respective weapons towards village Mehta.”

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 exclusively triable by Court of Session, the case was committed to the said Court.

Charges under Sections 120-B, 148, 364, 302 and 404 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 Dr. Niranjan Lal Garg, PW-2 Jang Singh, PW-3 Sadhu Singh, PW-4 Mohan Lal, Clerk, PW-5 Krishan Kumar, PW-6 Girdwari Lal, PW-7 Hardial Singh, PW-8 S.I. Devinder Singh, PW-9 SI Mohan Lal, PW-10 Des Raj, Jr. Assistant, PW-11 H.C. Partap Singh, PW-12 Constable Harvinder Singh, PW-13 SI Dinesh Kumar, PW-14 ASI Jagdish Kumar, PW-15 ASI Paramjit Singh, PW-16 Anil Kumar Garg, PW-17 ASI Chhota Ram and closed the evidence.

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

In defence evidence, the accused had examined DW-1 Shish Ram, DW-2 Bikkar Singh, DW-3 Bagicha Singh, DW-4 Bikkar Singh, DW-5 Raj Bhupinder Singh Sidhu, DW-6 Bhushan Kumar Jindal, DW-7 Mukand Singh, DW-8 Rajinder Singh and DW-9 Avtar Singh.

After appraisal of evidence, the learned trial court vide impugned judgment dated 18.12.2002 and order dated 19.12.2002, convicted and sentenced the accused as narrated in the first paragraph of the judgment.

Feeling dissatisfied with the impugned judgment, CRA-D-98-DB-2003, CRA-D-117-DB-2003, CRA-D-126-DB-2003 and CRA-D-135-DB-2003 have been filed by the accused/appellants whereas, CRR No.202 of 2003 has been filed by the complainant assailing acquittal of Gurdas Singh, Balbir Singh, Balwinder Singh and Parshotam Kumar and also seeking conviction of Malkiat Singh and Sanjiv Kumar under Sections 302 and 404 read with Section 149 IPC as well.

It is contended by Senior Advocate, Mr. R.S. Cheema that PW-2 Jang Singh and PW-3 Sadhu Singh are not reliable witnesses. Their testimonies are full of infirmities. It is further contended that it is the case of the prosecution that Gurdeep, the victim was caused several injuries on the spot of abduction. Some of the injuries were caused by using sharp weapons like *kirch*. Had the story been true, the presence of blood stained earth on the spot would have corroborated the version given by Jang Singh. The investigating officer, PW-8 S.I. Devinder Singh admitted that he did not find any blood on the alleged spot of abduction nor did he find any signs of struggle there. The conduct of Jang Singh is so grossly unnatural that his testimony needs to be rejected outrightly. When his son was allegedly abducted, he was present there. They had a tractor and Mithu Singh knew how to drive the tractor. In such a situation, the natural conduct of a father would be to chase the assailants using the tractor or in the alternative to drive the tractor to Police Station Bathinda to ask for the intervention of the

Police by issuing wireless messages and intercepting the roads in a bid to save the abducted person. It is grossly improbable that a father faced with the imminent prospects of his son's murder would adopt a course taken by PW-2 Jang Singh and walk several kilometres to give an opportunity to killers to achieve their object.

It is further contended that the conduct of PW-8 SI Devinder Singh is not only highly unnatural but the same deserves to be strongly condemned. As per his version, when the statement of Jang Singh was recorded by him, the police party went to the spot of abduction where they spent two hours in completing the meaningless formalities. He admitted that he did not send anything forthwith to trace the accused and the victim.

It is further contended that all the circumstances need to be viewed in the background of a very important fact which remains undisputed. The complainant as also most of the accused belong to village Gurusar Sainewala. The dead body of the victim was found on a katcha path joining village Mehta with village Gehri Buttar and even the spot where the dead body was found, falls in the area of Police Station Sangat. However, the case was got registered within the jurisdiction of Police Station Sadar, Bathinda on the basis of alleged story of abduction. It can be safely inferred on the basis of strong circumstantial evidence that emerged on the record that no occurrence took place at the alleged spot of abduction and a false story of abduction was concocted to confer jurisdiction to Police Station Sadar,

Bathinda. Furthermore, Jang Singh named four persons stating that the names of others were not known to him. The police subsequently challaned as many as 11 persons. Three of those unnamed persons belong to Jang Singh's own village and resided in his own neighbourhood, besides belonging to his own Dhillon sub-caste. This raises a serious doubt on the veracity of the entire story and strongly suggests that Jang Singh was set up as a complainant after the discovery of dead body of Gurdeep Singh.

It is further contended that testimony of PW-3 Sadhu Singh is also not reliable. The initial FIR was registered on the allegations of abduction. Special report was received by ACJM, Bathinda at 3.40 pm. After the alleged recovery of the dead body offence under Section 302 IPC was added and supplementary special report was sent to the Area Magistrate. The prosecution has dishonestly withheld this special report. The same is however part of the trial Court record. The contents of this report reveal that after recording FIR under Sections 364 and 148 read with Section 149 IPC the police party was on their way on the *katcha* path from village Mehta to Gehri Buttar and after travelling two kilometres, they found the blood smeared dead body of Gurdeep Singh. Hence, the story of eye witness having seen the murder and reporting the same to the Police at village Gurusar Sainewala is a sheer concoction. The inquest report also fully corroborate the above mentioned factual position.

It is further contended by the learned senior counsel that in

order to prove his presence on the spot, Sadhu Singh claimed that he had travelled on foot from his village to village Mehta. The two villages are connected by a pacca road and the distance is four kilometers. Sadhu Singh stated that he had gone to village Mehta to purchase buffaloes. It is strange that having met someone and seen buffalo he did not return to his own village by short path which he had taken initially and he had chosen a katcha circuitous (11 km) to reach his village via Gehri Butter.

It is contended by Mr. Vinod Ghai, learned Sr. counsel that the motive alleged by the prosecution is that the complainant party had not supported Guranditta in the election of Sarpanch but they have not been able to produce any evidence to corroborate the same. The motive seems to be stale as the elections had allegedly taken place more than one year earlier to the present occurrence.

It is further contended that case of the prosecution is that PW-2 Jang Singh and Mithu Singh were present on the spot of kidnapping and when PW-2 Jang Singh left to inform the Police on foot Mithu Singh was left to guard the spot. If this would have been the case, then the natural conduct of both the witnesses would have been either to chase the assailants, go for search of deceased or go to the village to inform or would have raised hue and cry so as to attract the people. Even after the complainant had left to inform the police, Mithu Singh kept sitting at the spot and did neither of these. He could have gone on the tractor itself either to chase or inform.

It is further contended that no drag marks were found on the body of the deceased. As per the case of the prosecution, iron rod injuries were given on the head but as per medical evidence, injury with rod was not found on the head.

It is further contended that appellant Sanjeev Kumar has been convicted under Section 364 IPC but it has been admitted by PW-13 SI Dinesh Kumar that Sanjeev Kumar was not found to be one of the assailants as he was not present on the spot.

On the other hand, it is contended by the learned State counsel that the judgment of conviction and order of sentence have been rightly passed by the learned trial Court. There is no scope for interference in the same. The ocular evidence given by PW-2 Jang Singh and PW-3 Sadhu Singh do not suffer from any infirmity. They have proved the case of the prosecution.

It is contended by the learned counsel appearing for the complainant that there is sufficient evidence to convict all the accused. The prosecution has examined PW-2 Jang Singh, father of deceased Gurdeep Singh, who is an eye witness to the occurrence. He has duly corroborated the version given by him to the Police vide statement Ex.PD. PW-3 Sadhu Singh is an eye witness of the commission of murder of Gurdeep Singh by the accused/appellants. The prompt lodging of the FIR after the occurrence of kidnapping of Gurdeep Singh is itself sufficient to hold that the allegations and the role attributed to the accused by the complainant Jang Singh are correct and

in such circumstances, the FIR can be relied upon and is not required to be discredited. It is further contended that as per medical opinion, all the injuries were ante-mortem in nature and the cause of death is opined to be due to shock and haemorrhage and injury to brain which were sufficient to cause death in an ordinary course of nature.

It is further contended by the learned counsel for the complainant that recovery of different articles connecting the accused with the crime is also suggestive of the fact that all the accused participated in the commission of the offence in furtherance of their common object. The testimony of Jang Singh and Sadhu Singh cannot be rejected merely on the ground of relationship. Similarly, non mentioning of names of some of the accused by Jang Singh while recording his statement or slight variation with regard to role attributed to different accused would not result in failure of the prosecution especially when there are a large number of accused involved in the commission of offence. All the accused have been attributed separate role. So, all the accused are liable to be convicted for the offence under which they have been charged.

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

The instant case was registered on the statement of PW-2 Jang Singh who had stated that he along with his son Gurdeep Singh (deceased) was travelling on a tractor from village Gurusar Sainewala to Bathinda on the Dubwali-Bathinda road. His son was to attend a

hearing in the Court and one Mithu Singh @ Bedo was also on the tractor with them. When they reached the damaged culvert in the area of village Jodhipur Romana on the Dubwali-Bathinda road, two jeeps were standing near the culvert; one jeep was driven by Guranditta Singh, Ex-Sarpanch of the village who blocked the tractor by bringing his jeep in front of his tractor. The version of Jang Singh is that four persons namely, Guranditta Singh, Malkit Singh, Nidhan Singh and Sanjiv Kumar armed with various weapons who were accompanied by many other persons whose names were not known to Jang Singh, pounced upon his son Gurdeep Singh, dragged Gurdeep Singh from the tractor; thereafter Guranditta Singh, Malkit Singh, Nidhan Singh, Sanjiv Kumar and other persons started causing injuries to Gurdeep Singh who fell down. Thereafter, the victim was taken away in the jeep and the assailants rushed towards Dubwali side. It is the case of the prosecution that Jang Singh left the tractor and Mithu Singh on the spot and went on foot towards Police Station Bathinda to lodge a report. The police officials met him at I.T.I, Chowk, Bathinda and he made a statement. The second part of the occurrence took place at a considerable distance from the first spot of abduction on a katcha path joining village Mehta with village Gehri Buttar. This part of the occurrence was witnessed by PW-3 Sadhu Singh, co-villager of Jang Singh. However, the learned trial Court while noticing a number of infirmities found that the FIR was delayed and both PW-2 and PW-3 were not wholly reliable witnesses. It was specifically noticed that

some of the acquitted accused belong to village of Jang Singh and lived in his neighbourhood. The fact that PW-2 Jang Singh did not name them in the FIR created a serious doubt about their involvement. It is the case of the prosecution that the victim was caused several injuries on the spot of abduction. Some of the injuries were caused by using sharp weapons like kirch. Had the story been true, the presence of blood stained earth on the spot would corroborate the version given by Jang Singh. The Investigating Officer, PW-8 SI Devinder Singh admitted that he did not find any blood at the alleged spot of abduction nor did he find any signs of struggle there. The conduct of Jang Singh is so grossly unnatural that his testimony has to be rejected outrightly. When his son was abducted he was personally present. They had a tractor and Mithu Singh knew how to drive the tractor. In such a situation, the natural conduct of a father would be to rush behind the assailants in the tractor or in the alternative to drive the tractor to Police Station to ask for the intervention of the Police. It is improbable that a father faced with the imminent possibility of his son's murder would adopt a course taken by PW-2 Jang Singh and walk several kilometres to given an opportunity to killers to achieve their object. PW-8 SI Devinder Singh had admitted that the police party went to the spot of abduction where they spent two hours in completing the formalities but he did not send anybody to trace the accused and victim. The complainant and also most of the accused are residents of village Gurusar Sainewala. The dead body of the victim was found on

a katcha path joining village Mehta with village Gehri Buttar and even the spot where the dead body was found, falls in the area of Police Station Sangat. However, the case was got registered within the jurisdiction of Police Station Sadar, Bathinda on the basis of story of abduction. Jang Singh named four persons stating that the names of others were not known to him. The police subsequently challaned as many as 11 persons. Three of those unnamed persons are residents of village Gurusar Sainewala and resided in the neighbourhood of Jang Singh. This raises a serious doubt on the veracity of the entire story and suggests that Jang Singh was set up as a complainant after the discovery of dead body of Gurdeep Singh. Further, the initial FIR was registered on the allegations of abduction. Special report was received by ACJM, Bathinda at 3.40 pm. After the alleged recovery of the dead body offence under Section 302 IPC was added and supplementary special report was sent to the Area Magistrate. The prosecution has dishonestly withheld this special report. The same is however part of the trial Court record. The contents of this report reveal that after recording FIR under Sections 364 and 148 read with Section 149 IPC the police party was on their way on the *katcha* path from village Mehta to Gehri Buttar and after travelling two kilometres, they found the blood smeared dead body of Gurdeep Singh. Hence, the story of eye witness having seen the murder and reporting the same to the Police at village Gurusar Sainewala appears to be a concoction. The inquest report also fully corroborate the above mentioned factual

position. PW-3 Sadhu Singh stated that he had gone to village Mehta to purchase buffaloes. It is strange that having met someone and seen the buffalo, he did not return to his own village by short path which he had taken initially and he had chose a kacha circuitous of 11 kilometers to reach his village via Gehri Butter.

In view of above, the presence of both the alleged eye witnesses, namely PW-2 Jang Singh and PW-3 Sadhu Singh on the spot, becomes doubtful. It creates a serious dent in the case of the prosecution. That apart, there is no other evidence to connect the accused with the commission of crime. The prosecution has miserably failed to prove its case against any of the accused.

Thus, in view of the above, the appeals succeed. The impugned judgment and order are hereby set aside. The accused are acquitted of the charges framed against him. The bail bonds and surety bonds stand discharged.

As regards the criminal revision filed by the complainant against the acquittal of Gurdas Singh, Balbir Singh, Balwinder Singh and Parshotam Kumar and further seeking conviction of Malkiat Singh and Sanjiv Kumar under Sections 302 and 404 read with Section 149 IPC, this Court has already raised doubt with regard to the presence of both the alleged eye witnesses, namely PW-2 Jang Singh and PW-3 Sadhu Singh on the spot. The case of the prosecution fails with regard to guilt of all the accused. Consequently, the revision petition filed by the complainant is hereby dismissed.

Photocopy of this judgment be placed on the file(s) of other connected case(s).

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

04.03.2020.
SN

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No