

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-1001-DB-2010 (O&M)

Reserved on: 12.09.2022

Date of pronouncement: 28.09.2022

Harmail Singh alias Mela

... Appellant

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present: Mr. J.P.Sharma, Legal Aid Counsel
for the appellant.

Ms. Monika Jalota, Senior Deputy Advocate General, Punjab.

N.S.SHEKHAWAT, J.

By filing the instant appeal, the appellant has challenged the correctness and legality of the judgment dated 12.07.2010 and the order dated 13.07.2010, whereby the Court of learned Sessions Judge, Bathinda, convicted the appellant under Sections 302 and 506 of the Indian Penal Code (for short 'IPC'), and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- and in default of the payment of the same, to further undergo rigorous imprisonment for two years and prayed for his acquittal of the charges.

The criminal prosecution was set in motion with the recording of the statement of Jaswinder Singh S/o Tek Singh (Ex.PA) by ASI Mohan Singh of Police Station Raman on 12.12.2008, on the basis of which, a formal FIR Ex.PA/2 was registered against Harmail Singh S/o Jarnail Singh (appellant herein). The complainant-Jaswinder Singh stated that he was an

agriculturist and his elder sister Sukhdev Kaur was married with Jarnail Singh S/o Hari Singh Jatt resident of village Sekhu, for the last about 40 years. His sister Sukhdev Kaur had two sons and two daughters and all four were married. His brother-in-law Jarnail Singh died about 13 years ago and both his nephews i.e. elder Harmail Singh @ Mela (appellant) and younger Gurjant Singh alias Janta were residing separately. His younger nephew Gurjant Singh was residing along with his family at his farm, whereas, the elder Harmail Singh was residing in the village separately. His nephews had total 10 killas of land. His sister-Sukhdev Kaur had given four killas of land each of them as per their share and two killas of land had been kept by his sister. His sister Sukhdev Kaur had been residing with her younger son Gurjant Singh and as a consequence, Gurjant Singh was also cultivating that two killas of land, which fell to her share. His elder nephew Harmail Singh had also two children and was residing with his family. Harmail Singh was a drunkard since beginning and was demanding share of land from his mother, due to which there used to remain quarrel in the house. Few days ago, Harmail Singh (appellant) had turned out his wife from the house after beating her, who had gone to her parental house. Last night, he had come to village Sekhu to see his sister and children and Harmail Singh was in a drunken condition and was quarrelling with his sister-Sukhdev Kaur. He made him understand time and again and after taking meals, he went to a separate room for sleeping. His sister Sukhdev Kaur, her son Harmail Singh and both the children of Harmail Singh went to a separate room for sleeping. At about 10.00 p.m. in the night, he heard the shrieks of his sister Sukhdev Kaur. At the time, he woke up and went into the room. The electric light was on in the room and Harmail Singh (appellant) was holding

a bat in his hand and was beating his mother Sukhdev Kaur badly and had broken her right leg near the knee and gave blows with bat on her face, head, chest and both the arms. In his presence, he gave knife blows on the face below the right ear, towards left side and on the right elbow and was saying that she was being taught lesson for giving less land to him. The complainant raised noise to save her and Harmail Singh threatened him that in case he raised alarm and informed anyone, he would meet the similar fate. The complainant and children kept mum due to fear and in his presence, Harmail Singh sat on her chest and kept hand on her mouth and in his presence, his sister died. He could not come out of the house due to fear, in the night and after leaving his nephew, Gurjant Singh in the morning near the dead body of his sister, he went to the police station and informed the police in the morning. With these broad averments, the FIR was registered against the appellant for killing his own mother brutally and in inhumane manner.

The investigation was initially taken up by ASI Mohan Singh, who alongwith other police officials visited the place of occurrence and found the dead body in a room. He prepared the Inquest Report and also got the post-mortem examination conducted on the dead body. The blood from the floor was lifted and after keeping it in a plastic container, it was converted into a sealed parcel with the seal 'MS' and took the same into possession. On the next day, the post-mortem examination on the dead body of Sukhdev Kaur, deceased was conducted by Dr. M.S.Deol, Medical Officer, Civil Hospital, Bathinda and he found the following injuries on the person of the deceased.

- “1. Bruise 10 x 10 cm on left thigh with underlying femur fracture left.*

2. *Lacerated wound on right thigh 3 x 3 cm with femur fracture and projecting out.*
3. *Bruise on both lower legs 10 x 6 cm on right and 7 x 7 cm on left leg.*
4. *Bruise on anterior aspect of the chest 3 x 3 cm with underlying fracture sternum and ribs.*
5. *Bruise on right side of the eye 3 x 2 cm.*
6. *Lacerated wound ½ x 2 cm on left cheek.*
7. *Bruise on left eye above the left eyebrow with underlying haematoma, with intra cranial bleed.*
8. *L.W. on back side of left ear with clotted blood present.*
9. *L.W. on left great toe 1 x 1 cm with underlying fracture.*
10. *Bruise on right arm with underlying fracture humerus.”*

As per the statement of PW-5, Dr. M.S.Deol, the cause of death was due to haemorrhage and shock due to injuries sustained, which were ante-mortem in nature and were sufficient to cause death in the ordinary course of nature. Even the probable time that elapsed between the injuries and death was within few hours and between death and post-mortem was within 30 hours.

On 13.12.2008, the accused was arrested and was informed about the grounds of arrest. The accused suffered the disclosure statement on 13.12.2008, in the presence of Rajpal Singh and HC Ranjodh Singh and got recovered shirt, trousers (*pyjama*), the knife and bat (all blood stained) vide recovery memo Ex.PQ. The police also prepared the rough sketch of the blood stained knife, vide Ex.PN. Even the Investigating Officer prepared the rough site plan Ex.PR of the place of recovery with correct marginal notes.

After completion of the investigation, the final report under

Section 173 Cr.P.C. was presented in the Court and since the offences are

exclusively triable by the Court of Sessions Judge, the same was committed to the Sessions Court. After finding a *prima facie* case, the charges under Sections 302 and 506 of IPC were drawn against the appellant/accused and the trial formally commenced against the appellant. In support of the charge, the prosecution examined seven witnesses and the accused was examined under Section 313 Cr.P.C. He simply denied the incriminating circumstances appearing against him and pleaded his false implication in the case.

After hearing learned counsel for the parties and perusing the evidence, vide the impugned judgment and order, the trial Court convicted and sentenced the appellant, as mentioned above. Challenging the said verdict of conviction, the appellant has filed the instant appeal under Section 374 Cr.P.C., praying for his acquittal.

We have heard learned counsel for the parties and also perused the evidence on record carefully.

Learned counsel for the appellant vehemently contended that there is inconsistency in the ocular version as also the medical evidence in respect of injuries sustained by the deceased. The injuries No.2, 6, 8 and 9 are described as a lacerated wounds, while the others are bruises. It is the statement made by PW-5, Dr. M.S.Deol that none of the injuries was possible with the blow of a knife (Kard), Ex.P-1. Still further, it was submitted that the knife (Kard) is a sharp edged weapon and the injuries of lacerated wounds like injuries No.2, 6, 8 and 9 would not appear with the same. Still further, there was no necessity for the accused to have two weapons at the same time to commit the crime. Still further, it has been contended that the appellant had no motive to commit the crime and even it

is apparent from the evidence that his mother (deceased) was staying with him in his house and there was no enmity between both the them. Still further, the complainant PW-1 Jaswinder Singh had a motive to falsely implicate the accused as he was a regular visitor to the house of the accused. He had once tried to molest the wife of the accused and the accused had beaten him up. Due to the said grudge, he deposed falsely against the appellant. Still further, it has been contended that the occurrence had taken place in the night a little after 10.00 p.m. on 11.12.2008, but PW-1 Jawinder Singh had not informed anyone in the village at night and even got his statement recorded with PW-7, ASI Mohan Singh at about 1.15 p.m. on 12.12.2008. Still further, even the presence of PW-1 Jaswinder Singh was doubtful at the place of occurrence as he belongs to a different village and had no occasion to visit the house of the appellant. It was contended that someone committed the murder of his mother at night and he was falsely implicated by PW-1 Jaswinder Singh/complainant on the next day by coining a false version, due to previous enmity.

The said arguments have been vehemently opposed by learned State counsel, who placed having reliance on the testimony of the eye-witness PW-1, medical evidence in the shape of PW-5, Dr. M.S.Deol and PW-7, ASI Mohan Singh, Investigating Officer, primarily. Learned State counsel contended that the eye-witness, PW-1 Jaswinder Singh had given a vivid description of the entire occurrence and his testimony inspires confidence. Consequently, the impugned judgment and order are liable to be upheld by this Court.

Learned counsel for the accused submitted that there was inconsistency between the ocular version and the medical evidence in

respect of injuries sustained by the deceased, however, we find no substance in the said argument. The prosecution had examined PW-5, Dr. M.S.Deol, who conducted post-mortem examination and it was submitted that the deceased had sustained 10 injuries on her person. Injuries No.2, 6, 8 and 9 are lacerated wounds, whereas, the other injuries are found to be bruises. As per PW-5, Dr. M.S.Deol, none of the injuries were possible with Kard (knife). He stated that injuries No.1, 2, 3, 4, 7, 9 and 10 can be caused with the bat Ex.P-2 shown to him, whereas, he also stated that the injuries No.5, 6 and 8 can be caused with the handle of the Kard (knife) or with the fist blow. He also stated that the knife Ex.P-1 seemed to be blood stained. He further stated that in his opinion, the deceased had lost about 3 or 4 litters of the blood approximately due to the injuries. He also ruled out that the deceased had died because of asphyxia. We otherwise find the eye-witness account to be truthful and even as noted above, the injuries were possible with the bat and the Kard (knife). In fact, such minor discrepancies or variations in the statements of various witnesses are always liable to be ignored. The Court has to see whether these variations/discrepancies are material and affect the case of the prosecution substantially. Every variation may not be enough to adversely affect the case of the prosecution. Still further, the testimony of PW-5, Dr.M.S.Deol has substantially supported the ocular version of the complainant, PW-1 Jaswinder Singh, who stated that Sukhdev Kaur (deceased) was caused injuries in-discriminately by the present appellant.

Still further, it was earnestly contended by the learned defence counsel that the prosecution has wrongly alleged that the appellant had used two weapons of offence i.e. a bat and a Kard (knife) at the same time and

this renders the prosecution case to be a unbelievable. We agree with the findings recorded by the trial Court that when a person becomes desperate and is hell bent to take the life of other, nobody can stop him making use of any weapon whatsoever comes handy. Consequently, there was every possibility of use of a cricket bat and a Kard by the accused in committing the crime and he killed his own mother by using two weapons in the most barbaric and diabolical manner. Still further, cricket bat as also a kard (knife) are normally available in the houses and the deceased was a drunkard and he had used everything, which he could find at home.

Still further, it was vehemently contended by the learned counsel for the accused that the appellant had no motive to commit the crime and in fact, PW-1 Jaswinder Singh, his maternal uncle had falsely implicated him. He pointed out that the statement made by PW-1, Jaswinder Singh that he was a regular visitor to the house of the accused. It was argued that once he tried to molest the wife of the accused and he had beaten him up. Consequently, he has been falsely implicated in the present case. However, the said argument is liable to be rejected outrightly as the defence had led no evidence in support of the said plea. PW-1 Jaswinder Singh denied the suggestion that he tried to molest the wife of the accused and he (accused) had beaten him up and due to the said grudge, he was deposing falsely against the accused. Further, even the said matter was never reported anywhere by the complainant nor there is any evidence to that effect. Still further, we have otherwise perused the testimony of PW-1, Jaswinder Singh, whose testimony is found to be trustworthy and worthy of credence. The appellant herein was a drunkard and his mother had partitioned the land in equal shares. The appellant and his brother had taken

four killas of land, whereas, two killas of land was with Sukhdev Kaur (deceased) their mother. Since Sukhdev Kaur was staying with younger son Gurjant Singh @ Janta, so Gurjant Singh was cultivating the said land. Due to this, the appellant was annoyed and wanted that he should be given one killa more to cultivate and due to this reason, he committed the crime in question. Thus, it is established that there was motive on the part of the present appellant to commit the murder of Sukhdev Kaur.

Learned counsel for the appellant has further argued that the alleged occurrence had taken place a little after 10.00 p.m. on 11.12.2008 and the matter was reported to the police on the next day at about 1.15 p.m. In fact, the delay in reporting the matter to the police renders the case of the prosecution to be unbelievable. In fact, the said submission is not acceptable in view of the fact that Sukhdev Kaur (deceased) was killed brutally in the presence of PW-1 Jaswinder Singh and children of the accused. He was threatened that in case, he reported the matter to the police, he would meet the same fate. In the early morning, on getting a chance, the complainant rushed to the Gurjant Singh, younger brother and it has been stated by PW-1 Jaswinder Singh that the police met him at about 8.30 a.m. and recorded his statement at that time. However, the police has shown the recording of the statement of PW-1 Jaswinder Singh at 1.15 p.m. on 12.12.2008 and this is no ground to disbelieve the testimony of PW-1 Jaswinder Singh, who had no motive to falsely implicate the present appellant, who is the real nephew of the complainant and the complainant had no enmity or ill-will against the appellant. Still further, even the presence of PW-1 Jaswinder Singh was natural at the place of occurrence. There was a dispute pending between the appellant and his mother Sukhdev Kaur over the distribution of land. The

complainant PW-1 Jaswinder Singh belongs to village Panna, Police Station Sadar Dabwali. The said village is at a distance of 5/6 from village Sekhu, where the appellant was residing with his mother Sukhdev Kaur (deceased). Just a few days ago, the accused had beaten up his wife under the influence of liquor and he had two young children. Consequently, his mother Sukhdev Kaur (since deceased) had shifted to his house to take care of the young children of the appellant. Since Sukhdev Kaur, sister of the complainant/mother of the accused, was staying with the appellant, consequently, PW-1 Jaswinder Singh had also come to their house for a night stay and to make him understand. But unfortunately on the said night, the appellant committed the murder of his mother in the presence of PW-1, Jaswinder Singh. We have otherwise perused the testimony of PW-1, Jaswinder Singh and found the same to be truthful and creditworthy. He has consistently deposed with regard to the manner, in which the injuries were caused to his sister Sukhdev Kaur by the present appellant. Still further, the appellant is also real nephew of the complainant and hence, the complainant will be the last person to falsely implicate him in a murder case. Even in his statement under Section 313 Cr.P.C., the appellant has not made any substantial statement except the false defence of molestation of his life by the complainant, regarding which the appellant did not lead any evidence at all.

The FIR in the instant case was registered by PW-7, ASI Mohan Singh, who also conducted the initial investigation. The accused was arrested in the instant case on 13.12.2008 and he suffered the disclosure statement Ex.PM after his arrest. In pursuance of its disclosure statement, let the police party to be the disclosed place and got recovered one pyjama

(trousers) and a shirt stained with blood. He also got recovered one bat and a kard (knife) and as per the FSL report Ex.PT, the *Pyjama, shirt*, knife and bat were found to be stained in human blood. The defence has offered no explanation as to how the articles recovered from him were stained with human blood. The prosecution led ample evidence to prove the complicity of the present appellant in the commission of the crime and the trial Court has correctly appreciated the evidence and the impugned judgment does not suffer from any perversity, illegality or material irregularity.

As a consequence, we find no reasons to interfere with the impugned judgment dated 12.07.2010 and the order dated 13.07.2010, whereby the Court of learned Sessions Judge, Bathinda, convicted and sentenced the appellant under Sections 302 and 506 of the Indian Penal Code and the same is upheld and affirmed by this Court.

We record our appreciation for the able manner in which Mr. J.P.Sharma, legal Aid counsel assisted the court.

‘ The appeal is accordingly dismissed.

Pending application, if any, is also disposed off, accordingly.

Case property, if any, be dealt with, and destroyed after the expiry of period of limitation. The trial court record be sent back.

(SURESHWAR THAKUR)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

28.09.2022
hemlata

Whether speaking/reasoned : Yes
Whether reportable : Yes