

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

CRA-D-568-DB-2010
Reserved on: 19.09.2022
Date of decision: 23.09.2022

PREM SINGH AND ANOTHER ...Appellants

Versus

STATE OF PUNJAB ...Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present: Mr. P.S. Hundal, Senior Advocate with
Mr. Vikramjeet Singh, Advocate
for appellant No.1 – Prem Singh.

Ms. Deepanshu Gupta, Advocate for
Mr. Puneet Sharma, Advocate (Amicus Curiae)
for appellant No.2 – Amritpal Kaur @ Jyoti.

Ms. Monika Jalota, Sr. DAG, Punjab

Mr. A.D.S. Sukhija, Advocate
for the complainant.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict recorded on 17.04.2010, upon Sessions Case No.34 of 2008, by the learned Sessions Judge, Jalandhar, wherethrough in respect of charges drawn for offences punishable under Sections 302, and, 201/34 of IPC, he made a verdict of conviction only qua a charge drawn under Section 302 read with Section 34 of the IPC. Moreover through a sentencing order drawn on 17.04.2010, he proceeded to sentence both the convicts, to undergo life imprisonment besides imposed upon each of the convicts sentence of fine comprised in a sum of Rs.5,000/-, and, in

default of payment of fine, he sentenced the convicts to undergo rigorous imprisonment for one year.

2. The convicts are obviously aggrieved from the above made verdict of conviction, and, consequent therewith sentence(s) (supra), as became imposed upon them, thus they are led to constitute thereagainst the instant appeal before this Court.

FACTUAL BACKGROUND

3. The genesis of the prosecution case is embodied in the FIR to which Ex.PK is assigned, therein, it is narrated that the F.I.R. in this case was registered on the statement, Mark X of Joga Singh SPO, PW7, complainant that he was doing the duty as SPO in Police Station Phillaur. On the previous night of 6.11.2007, he was on duty in Police Station Phillaur as a Sentry. He was coming from his village on his Scooter to Police Station Phillaur. When at about 1.00 a.m. in the night, he was coming at a distance of 200 yards from Police Colony, Phillaur in the forest area, he found one Indica Car of white colour parked on the right side of the road and its parking lights were on. Three persons were standing outside the car. On seeing them, he slowed down his Scooter but without stopping over there, he reached the Police Station. When at about 8.00 a.m. after getting himself freed from the Police Station, he was going to his village Tehang, he saw dead body of a young Sikh person, aged about 35 years lying on the left side of the road at the place, where he had seen the car on the previous night and there were some injuries on the dead body. He had the firm belief that the persons, who were standing near the Indica Car on the previous night had committed the murder of that person and had thrown his dead body over there. He can identify the said persons if they come before him. SI Iqbal Singh recorded the statement of the complainant and after making his

endorsement, sent the same to the police station and on the basis of which formal FIR was recorded. SI Inspected the spot and prepared the inquest report in respect of that dead body and got conducted its post mortem examination. SI prepared the rough site plan of the place of occurrence. The accused were arrested. Statements of the witnesses were also recorded. On completion of the investigation, challan against the accused was presented in the Court of the Ilqa Magistrate.

COMMITTAL PROCEEDINGS

4. Since the afore offences were exclusively triable by the Court of Session, thus vide committal order dated 08.04.2008, the learned Sub Divisional Judicial Magistrate, Phillaur, committed the accused to face trial before the Court of Session.

TRIAL PROCEEDINGS

5. The prosecution examined as many as 14 witnesses and, subsequently, the public prosecutor closed prosecution evidence. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. In defence, the learned defence counsel examined one defence witness.

SUBMISSIONS OF LEARNED COUNSEL FOR APPELLANTS

6. The learned Senior Advocate has contended, that no reliance can be placed upon the theory of the deceased being last seen in the company of the accused. He submits that the above theory has been propounded by PW-7 one Joga Singh. However, since in his previously recorded statement in writing, he did not detail the identifiable physical attributes of the accused, thus, the

identification of the accused either in the police station or subsequently in the Court is a tainted, and, coloured identification of the accused by PW-7.

7. Contrarily, the learned State counsel has argued that, the verdict challenged before this Court is well merited, and, does not warrant its becoming interfered with, by this Court.

MEDICAL EVIDENCE (POST MORTEM REPORT)

8. The post mortem report is carried in Ex.PC. The autopsy on the body of the person of the deceased was conducted on 06.11.2007. However, in Ex.PC there occurs no recital about the name of the deceased. However, the body of the deceased Gurdeep Singh became identified by PW-8 from the clicked photographs of the deceased. The above identification occurred on 08.11.2007, therefore, though the body of the person concerned, became put to autopsy on 06.11.2007, whereas, the identification of its persona becoming hence related to one, Gurdeep Singh, rather ensued from the deceased persons' brother inasmuch as PW-8, from the clicked photographs of the deceased identifying him on 08.11.2007. Moreover, since there is also no evidence existing on record, that Gurdeep Singh is still alive nor when evidence has been adduced that the autopsy, as made on 06.11.2007 of an unknown person, did not relate to the body of one, Gurdeep Singh, who rather became identified by PW-8, from the photographs of his dead body on 08.11.2007, by his real brother PW-8. Consequently, the body of an unknown person as became put to autopsy on 06.11.2007, is to be firmly concluded to relate to the persona of one Gurdeep Singh. The post mortem report has been proven by PW-3. PW-3 on his stepping into the witness box has detailed therein, that on his making an autopsy on the person of the deceased concerned, his observing thereons the hereinafter extracted injuries.

- “1. Abrasion of 4 cm x 2 cm below left eye-brow.*
- 2. A contusion of 5 cm x 3 cm above the left eye-brow. Redness was present.*
- 3. Multiple abrasions of different size and shapes in the middle of forehead.*
- 4. Multiple abrasions of different size and shapes of both knees.”*

Furthermore, he has also testified that haematoma was present between membranes and brain. However, PW-3 did not make any opinion about the cause of demise of the deceased concerned, but awaited for the report of the Chemical Examiner concerned. Nonetheless, since eight months had elapsed since the relevant items being sent to the Chemical Examiner concerned, but yet the Analyst concerned, not making his opinion thereons. Thus, the learned trial Judge disallowed the request of the Public Prosecutor concerned, that the report of the Chemical Examiner concerned, revealing therein, the cause of demise of the deceased, be yet permitted to be adduced in evidence. Even otherwise, the relevance of the report of the Chemical Examiner would arise only, if the prosecution had claimed that the demise of the deceased was sparked by poisoning. However, since PW-3 in his cross-examination, has admitted a suggestion, that if the cause of the demise of the deceased did arise from poisoning, then the lung, spleen, liver and kidney were required to be congested. But he has admitted that the lung, spleen, liver and kidney of the deceased were not found to be congested, as such he states that he did not mention the above in his report. Moreover, he has also to Court question No.2 which becomes extracted hereinafter, had meted an answer that even in the absence of the report of the Chemical Examiner, as made on the viscera as sent for examination, he would yet opine that the cause of the

demise of the deceased was on account of head injury, which he stated to arise from his noticing presence of a haematoma between scalp layers, and, skull bone.

“C.Q. What will be your opinion regarding the cause of death if the report of the Chemical examiner is that no poison was detected in the viscera?”

Ans: In that case my opinion is that the cause of death was head injury.”

9. In consequence, it is to be concluded that even in the absence of the report of the Chemical Examiner concerned, as made on the viscera of the deceased, as became sent to him, rather the cause of demise of the deceased was on account of the head injury suffered by him.

STATEMENTS AND RECOVERIES LINKING THE CONVICTS IN THE CHARGED OFFENCE

DISCLOSURE STATEMENT OF CONVICT AMRITPAL KAUR @ JYOTI EX. PW27/I

10. During the course of convict Amritpal Kaur @ Jyoti being put to custodial interrogation, she made a signed disclosure statement, to which Ex.PW27/I, is assigned in Criminal Appeal No.1150-DB-2011, and, relevant paragraph whereof becomes extracted hereinafter.

“xxx

Disclosure Statement of Amritpal Kaur @ Jyoti

In the presence of the following witnesses, Mst. Amritpal Kaur @ Jyoti D/o Balwinder Kumar, r/o H.No.282, 282 CRP Colony, Urban Estate, Phagwara disclosed, “I alongwith Preme Singh son of Hardit Singh, Caste Jat, resident Khazana Kot, District Batala, at present tenant in Mohalla Adarsh Nagar, Phagwara called a man from Ropar on the telephone of Prem Singh whose name lateron came to be known as Gurdip Singh son of Joginder Singh, r/o Lohat, P.S.

Balachaur, aged about 30 years and his uncle whose name was lateron came to be known as Piara Singh r/o village Lohat, P.S. Balachaur took them from Bus Adda Phagwara in a Santro Car bearing registration No. PB-09 H-3404 to the Kothi taken on rent by Prem Singh in Mohalla Adarsh Nagra, Phagwara who were called for making bargain of a tractor and just on reaching the Kothi were administered sleeping pills in the juice and were made unconscious and were kept unconscious by giving morphine injection and administering sleeping pills and on 5.11.07 Gurdip Singh aforesaid died and I alongwith Prem Singh took him in the aforesaid Santro Car from Police Colony, Phillaur on the road leading to Saifabad and threw him on the left side of the road near Cremica Factory about 70 yards ahead the police colony.”

DISCLOSURE STATEMENT OF CONVICT PREM SINGH EX.PW-27-L

11. During the course of convict Prem Singh being put to custodial interrogation , he made a signed disclosure statement, to which Ex.PW27/L, is assigned in Criminal Appeal No.1150-DB-2011, and, relevant paragraph whereof becomes extracted hereinafter.

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Disclosure Statement of Prem Singh

In the presence of the following witnesses, accused Prem Singh son of Hardit Singh, Caste Jat, resident of Khazana Kot, P.S. Fatehgarh Churian, District Batala, at present tenant Mohalla Adarsh Nagar, Phagwara disclosed, “I alongwith Amritpal Kaur Jyoti d/o Balwinder Kumar, Caste Beragi, resident of House No.281, 282 C.R.P Colony, Urban Estate, Phagwara called a man from Ropar on telephone whose name was lateron came to be known as Gurdip Singh son of Joginder Singh, r/o Lohat, P.S. Balachaur, aged about 30 years and his uncle whose name lateron was known to be Piara Singh r/o Lohat, P.S. Balachaur, were taken from Bus Adda Phagwara in a Santro Car bearing registration No. PB

09-H-3404 which was being driven by Jyoti to my Kothi taken on rent in Mohalla Adarsh Nagar, Phagwara, were called for making a bargain for the sale of a tractor just on reaching the Kothi were administered sleeping pills in the juice and were made unconscious and were kept unconscious by giving morphine injection and administering sleeping pills and on 5.11.07 Gurdip Singh aforesaid died and I alongwith Jyoti took him in the aforesaid Santro Car from Police Colony, Phillaur on the road leading to Saifabad and threw him on the left side of the road near Cremica Factory about 70 yards ahead the police colony.”

12. The above disclosure statements as made during the respective police custody of both the declarants also carry thereons their respective signatures. Thus, when they did not ably deny the existence of their signatures thereons nor when they ably proved the apposite denial, therefore, utmost sanctity is to be meted thereto.

13. Moreover, though in the impugned judgment, as made upon Sessions case No.34 of 2008, the recovery of the Santro car became not effected, but rather when became effected through Ex.PW29-H, in pursuance to their signed disclosure statements (supra), during the course of the police custody of the convicts in FIR bearing No.61 of 01.12.2007, registered at Police Station Mehtiana, District Hoshiarpur,. Thus, the confession of guilt, as made by the declarants (supra), in their respectively signed disclosure statements, is not, a simpliciter bald confession of guilt by them to the police officer, during the course of their facing police custody nor is hit by Section 25 of the Indian Evidence Act. The reason being that, in consequence to their respectively recorded signed disclosure statement(s), the declarants in FIR bearing No.61 of 01.12.2007, registered at Police Station Mehtiana, District Hoshiarpur, rather causing through Ex.PW29-H, the effectuation of recovery of the crime Santro

car bearing Registration No.PB-09H-3404, to the investigating officer concerned. Therefore, utmost evidentiary solemnity becomes assigned to the above drawn memos. But as a natural corollary the above proven memos besides the consequent therewith (supra), recovery of crime Santro car, as made through memo Ex.PW29/H does comprise a proven vital incriminatory link for ably connecting the convicts in the commission of the charged offence.

REPORT OF FSL EX.PR

14. During the course of investigations through recovery memo Ex.PL, the investigating officer concerned, collected from the crime site broken sun glass screen of the crime Santro car. Subsequently through memo comprised in Ex.PD, three sun screens became collected from windowpanes of the Santro car bearing Registration No.PB-09H-3404, as was then parked in the police station concerned. Subsequently, the aforesaid three sun screens hence were inserted into a cloth parcel, and, became sealed with seal bearing impression 'JS'. The items (supra), as became collected through memo Ex.PL from the crime site, besides the broken screen in Ex.PD, were thereafter through memo Ex.PD, became sealed in a cloth parcel. Subsequently, all above items became sent to the FSL concerned. Upon their respective *inter-se* comparisons, and, matchings, the Examiner concerned, opined that the collection, as made of the sun screen, through memo Ex.PL, rather completely matching with the three black coloured sun screens, as became recovered from the crime vehicle (supra). Thus, the presence of the crime vehicle at the crime site at the relevant time, becomes formidably proven, and, an aura of grave evidentiary vigor, does envelope, the report of the FSL, to which Ex.PR is assigned. Moreover, since Head Constable Kulwinder Singh who made his signatures on Ex.PL, as a witness thereto, has during the course of his examination-in-chief tendered his affidavit Ex.PO,

whereins, he testified to the correctness of the recitals carried in Ex.PL. Though he was put to cross-examination, but no possible exculpatory suggestion became meted to him, to deny that the relevant collections, as made from the crime site through Ex.PL rather were not made from the crime site, but were made from some other place than the crime site. In the absence of the above possible exculpatory suggestions becoming meted to Head Constable Kulwinder Singh, does coax this Court, to make a conclusion that the crime car was available at the crime site at the relevant time. Thus, the incriminatory signed disclosure statement as made by both the convicts, do therethrough(s) also acquire a grave evidentiary vigor.

ANALYSIS OF THE STATEMENT OF PW-7

15. Though Joga Singh had last seen the accused, and, the deceased together at the crime site, and but had also subsequently identified the accused in the police station, whereafter he also identified them in Court, necessarily as persons last seen in the company of the accused at the crime site. However, even though he does not reveal therein, the identifiable physical features of the accused, thus may be his above identifications though may not carry immense evidentiary vigor. Nonetheless, the fact of any shaky identification being made of the convicts by PW-7 Joga Singh, yet does not constrain this Court, to negate either the evidentiary value of the signed disclosure statement nor the evidentiary value of consequent therewith recovery of the crime car, besides also this Court does not yet become constrained to negate the evidentiary value of the report of the FSL, to which Ex.PR is assigned. Significantly since in Ex.PR rather, on the relevant items sent for their comparisons, an un rebutted opinion became formed by the Expert concerned, that the recovery of sun glass screens from the crime site being related to the three sun screens, as became collected

from the crime car, when the same was at the police station concerned. Significantly, also when no evidence has been adduced that the collection of the sun screen from the crime car was not made when it was stationed in the police station concerned, but was rather was made from some other Santo car. Thus too, grave evidentiary vigor is to be assigned to Ex.PR.

FINAL ORDER

16. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon each of the convicts by the learned trial Judge concerned, does not suffer from any gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the appeal, and, the same is dismissed. If the accused are on bail, thereupon the sentence, as imposed upon each of them be ensured to be executed by the learned trial Judge concerned, through his forthwith drawing committal warrants qua them. Case property, if any, be dealt with in accordance with law, but only after expiry of the period of limitation for the filing of an appeal.

17. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

23.09.2022

Ithlesh

(N.S. SHEKHAWAT)
JUDGE

Whether speaking/reasoned:-	Yes/No
<i>Whether reportable:</i>	<i>Yes/No</i>