

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CRA-D-1502-DB-2013
Reserved on: 14.09.2022
Pronounced on: 19.09.2022

KAMALJIT @ JUGNUAppellant

Versus

STATE OF PUNJABRespondent

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

Argued by: Mr. Sandeep Verma, Advocate
for the appellant.

Ms. Monika Jalota, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. The learned Sessions Judge, Patiala through a verdict drawn on 23.08.2013, upon SC No.28RT of 07.09.2011/13.08.2012, proceeded to, hence convict the accused, in respect of a charge drawn against the accused for an offence punishable under Section 302 of the IPC.
2. Moreover, through a separate sentencing order drawn on 23.08.2013, the learned trial Judge concerned, proceeded to make the hereinafter extracted sentence(s) upon the convict.

Offence	Sentence	Fine	In default
302 IPC	To undergo imprisonment for life.	Rs. 10,000/- (in words rupees ten thousands)	In default of payment of fine to further undergo rigorous imprisonment for three months.

3. The convict becomes aggrieved from the verdict of conviction (supra), and, also becomes aggrieved from the consequent therewith sentence(s) (supra), as became imposed upon him by the learned Convicting Court, resultantly he becomes led to institute thereagainst the instant appeal before this Court.

INTRODUCTORY FACTS

4. Deceased Gurjant Singh @ Goldy @ Bunty, aged 19 years, was working as a welder with Verma Welding Works, Partap Nagar, Patiala. He had friendly relations with accused Kamaljit Singh @ Jugnu. On 06.05.2011, deceased Gurjant Singh @ Goldy @ Bunty had come to his house at noon to take lunch, and, again went to the work place but in the evening he did not return home. His father Darshan Singh tried to contact him on mobile phone but his phone was lying switched off. Therefore, his father searched for him. When he could not locate the deceased, he lodged DDR No. 10 dated 06.05.2011 at about 1.00 P.M. with PP Model Town, Patiala, which is Exhibit PB, with regard to missing of his son. On 12.05.2011, said Darshan Singh suffered statement Exhibit PA before the police, and, he suspected that both accused Jugnu and the deceased were not seen since 05.05.2011; both were friends, and, their mobile phones were kept switched off, and, he came to know that his son had been murdered by Kamaljit Singh @ Jugnu who had concealed his dead body somewhere. On the basis of his statement Exhibit PA, formal FIR Exhibit PW14/B was registered between 11.05 A.M. to 12.05 P.M., its copy was sent to Area Magistrate, who received it at 05.30 P.M., and, police swung into action. Accused Kamaljit Singh was arrested on 12.05.2011.

INVESTIGATION PROCEEDINGS

5. During interrogation, accused Kamaljit Singh @ Jugnu disclosed that he had committed murder of Gurjant Singh @ Goldy @ Bunty on 05.05.2011 in a room which is constructed in the plot in the area of village Ablowal, and, he had buried the dead body in the plot adjoining to the room, and, he has specific knowledge of the said place. In pursuance thereof, he led the police party as well as Executive Magistrate Gurinder Singh Walia, and, pointed out the place where dead body was concealed by him. At this instance, land was dug out, and, dead body was excavated, and, the same was taken into possession by the police. It was identified by father of the deceased. Inquest report Exhibit PG was prepared, and, the dead body was sent for post mortem examination, and, the same was conducted by the Board of doctors. On 12.05.2011, accused pointed out the room where he had murdered the deceased Gurjant Singh @ Goldy @ Bunty. The spot was having blood stains. The soil stained with blood was lifted from the spot, which was put into parcel, and, sealed with the seal of the Investigating Officer, and, was taken into possession vide memo Exhibit PR. Rough site plan of the place of occurrence Exhibit PS was prepared. The wearing clothes of the deceased were taken into possession vide memo Exhibit PT. During investigation, PW-13 Lakhvir Singh had disclosed that on 05.05.2011, he had lastly seen accused and deceased together at about 2.00 P.M. in Gali No. 5, Gurdeep Colony, Patiala. On 14.05.2011, accused suffered another disclosure statement Exhibit PC to the effect that he had kept concealed the dagger vide which he had committed murder of Gurjant Singh @ Goldy @ Bunty in street no. 5. In pursuance of his disclosure statement Exhibit PC, dagger was recovered

from the disclosed place vide memo Exhibit PE and rough sketch Exhibit PD of the dagger was prepared. Rough site plan Exhibit PU of the place of recovery of dagger was prepared. During the investigation, the dagger, the clothes of deceased and sample of blood stained soil were sent to Forensic Science Laboratory. On analysis it was reported that all the above said articles were stained with blood.

6. After completion of investigations by the investigating officer concerned, into the FIR (supra), he instituted an affirmative report under Section 173 Cr.P.C., before the learned Committal Judge concerned.

COMMITTAL COURT PROCEEDINGS

7. As the offence under Section 302 IPC was exclusively triable by the Court of Session, therefore, the learned committal Court vide order dated 24.08.2011, committed the case for trial, to the Court of the learned Sessions Judge, Patiala.

TRIAL COURT PROCEEDINGS

8. On finding a prima facie case, charge under Section 302 of the IPC became framed, against the accused, and, to which he pleaded not guilty, and, claimed trial.

9. In support of the prosecution case, the prosecution examined sixteen witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge, Patiala drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. However, no evidence in defence was adduced by the accused.

10. After conclusion of the trial, as, became entered upon FIR

(supra), by the learned Sessions Judge, Patiala, the latter proceeded to make the afore verdict of conviction, and, also made the consequent therewith sentence(s) (supra), upon, the present appellant.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE CONVICT APPELLANT

11. The learned counsel appearing for the convict-appellant has contended with vigor before this Court, that the verdict challenged before this Court deserves to be quashed and set aside as it is based upon gross misappreciation of evidence on record.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

12. On the other hand, the learned State counsel has argued before this Court, that the judgment, as challenged before this Court, is well merited, and does not warrant any interference.

CIRCUMSTANTIAL BASED EVIDENCE CASE.

Evidence of last seen (Deposition of PW-13)

13. PW-13 in his examination-in-chief has echoed that on 05.05.2011, at about 1.30 to 2.00 P.M., when he had gone to Gurdeep Colony, Gali No. 5 for alighting the school children from the bus, that then in front of one plot, he saw both the deceased Gurjant Singh @ Goldy and Jugnu. He identified the accused, who was then present in Court. He has continued to depose that he shook hands with both of them, and, thereafter went towards the back side of the Gurudwara for leaving the children at their respective places. Gurjant Singh @ Goldy is echoed by him to be working as a welder in Partap Nagar, and, since he had been getting the repair work done from him, thus he deposed that the deceased was known to him. Moreover, he has also deposed that he met Jugnu at the shop of Gurjant Singh @ Goldy, and, was

known to him even prior to 05.05.2011. After a week elapsing, since his last seeing both the accused, and, deceased together, he was informed that the deceased was killed by accused Jugnu. He has been very emphatic in the last portion of his examination-in-chief that since he has last seen the accused, and, deceased together, thus, he had a belief that the deceased had been murdered by the accused. Though, in his examination-in-chief, he has emphatically deposed qua his last seeing the deceased, and, accused together on 05.05.2011. Further, though he has also made a candid echoing therein, that both the accused, and, deceased were previously known to him, but yet despite an exacting cross examination being made, upon him, to tear the efficacy of the above deposition, but PW-13 remained unscathed in the above ordeal. Thus, in respect of the above fact, his testimony is to be assigned credibility.

14. Moreover, though there was a further rigorous cross examination made upon him, to bely his testimony that rather at the relevant date and time, he was not available at the relevant site, but even the said suggestions became completely denied by him. Thus, his presence at the relevant time, when he saw both the accused, and, deceased together rather does acquire an aura of truth. Even though, he has minimally digressed from his previous statement recorded in writing, inasmuch as, despite his not recording therein that he had shaken hands at the relevant place with both the accused and the deceased, yet his making the above echoing in his examination-in-chief. However, the above is not a gross or blatant improvement upon his previously recorded statement in writing, rather is minimal. Moreover when otherwise the factum, as deposed in his examination-in-chief

about his availability at the relevant place, at the relevant stage when/where he both saw the accused, and, the deceased together when rather does remain unshattered. Thus, also the above minimal improvement made by PW-13 in his examination-in-chief, over his previously recorded statement in writing, obviously does not have any significance.

15. In consequence, through PW-13, the prosecution has been able to prove that a week prior to the occurrence, both the accused, and, the deceased were seen together in the vicinity of the site, wherefrom at the instance of the accused, the body of the deceased was recovered.

INFERENCES DRAWN FROM THE DISCLOSURE STATEMENT OF THE ACCUSED.

16. During the course of the convict suffering police custody, he made a signed disclosure statement to which Exhibit PC is assigned. The contents of the disclosure statement are extracted hereinafter.

“.....That with which Chhurra he has murdered the deceased Gurjant Singh alias Bunt had kept concealed that Chhurra after cleaning it, he had wrapped it in a polythene paper and thereafter kept it concealed under the grass in a water reservoir near the gate of street No. 5 and about which he has exclusive knowledge and can get the same recovered at his instance...”

17. A close reading of the above extracted signed disclosure statement, as made by the convict to the police officer reveals that he had confessed his murdering the deceased with a *Chhurra*, besides has echoed therein, that he is ready to ensure its recovery from the place of his hiding it, as the relevant place of its hiding was exclusively known to him. The above signed disclosure statement is not a bald simpliciter confession of crime by the convict to

the police officer who recorded it, as, it also resulted in the recovery of *Chhurra* being made through recovery memo Exhibit PE. Thus, solemn evidentiary worth is to be assigned to the signed disclosure statement of the convict to which Exhibit PC, is assigned. The reason being that, he has neither ably denied the existence of his signatures thereon, nor, has proven the apt denial. Moreover, since as stated (supra), that Exhibit PC is not a bald confession, nor, obviously when is not hit by Section 25 of the Indian Evidence Act, 1872, especially when stated (supra), it also led to the recovery of the *Chhurra* being made at his instance, to the police officer, through recovery memo Exhibit PE. Significantly, when the recovery of *Chhurra* was made through recovery memo, to which Exhibit PE is assigned, besides when the recovery of a *Chhurra* through memo Exhibit PE, has not been proven to be a planted or an engineered recovery. Therefore, the cumulative effect of the above discussion, is that, the valid recovery of the crime weapon at the instance of the convict to the investigating officer, obviously connects him in the commission of the charged offence. Moreover, therethrough corroboration is also meted to the theory of last seen, as becomes ably propagated by the prosecution through PW-13.

RECOVERY OF BODY OF THE DECEASED THROUGH EXHIBIT PW-14/F AND EXHIBIT PP.

18. Further, vide memo Exhibit PW-14/F, the accused made a signed disclosure statement under Section 27 of the Evidence Act, contents whereof are extracted hereinafter.

“ In the presence of below noted witnesses, disclosure statement was made by accused Kamaljit alias Jugnu during investigation, on 05.05.2011, Gurjant Singh alias Goldy alias Bunty son of Darshan Singh resident of Kalar Colony, Patiala was murdered by me in a room constructed

in a plot at Ablowal and dead body of said Gurjant Singh was buried by me by digging the earth on the vacant land in the same plot, about which I have the exclusive knowledge and can get the same recovered at my demarcation.”

19. After the accused making the above signed disclosure statement under Section 27 of the Indian Evidence Act, before the police officer, with unfoldings therein qua the declarant having the exclusive knowledge of the relevant place where he had buried the dead body of the deceased. Resultantly, the investigating officer concerned, made a request letter to the Sub Divisional Magistrate, Patiala, to which Exhibit PW 14/G is assigned, for the granting permission to exhume the dead body of the deceased. In consequence, the Sub Divisional Magistrate, Patiala, deputed Gurinder Singh Walia, Naib Tehsildar to visit the site for the relevant purpose. The dead body of the deceased was exhumed in the presence of Gurinder Singh Walia, Naib Tehsildar, Patiala, and, was taken into possession vide recovery memo Exhibit PP. The above validly drawn memo(s), do also firmly connect the accused in the commission of the charged offence. Strengthened vigor to the above inference becomes galvanised from the factum that neither the convict has ably denied his signatures, as occur in Exhibit PW-14/F, nor has ably proven the said denials besides when he has not proven that the discovery of the relevant fact rather was engineered or planted. Resultantly, the discovered fact (supra) is to be concluded to connect him with the crime event.

INFERENCES DRAWN FROM THE MEMO OF RECOVERY OF THE BODY OF THE DECEASED.

20. The accused, as revealed by PW-14/C, was arrested on 12.05.2011. Further, as revealed by memo Exhibit PP, as became drawn

on 12.05.2011, contents whereof are extracted hereinafter, he led the

police officer to site where he had buried the body of the deceased Gurjant Singh @ Goldy. Subsequently, from the apposite burial site, as identified by the accused, the body of deceased Gurjant Singh @ Goldy was exhumed from the relevant burial place. The above was done in the presence of Gurinder Singh Walia, Naib Tehsildar, Patiala. The very factum of the body of the deceased being buried, is but obviously reflective of the burial site being exclusively known to the convict. Therefore, if he led the police officer to the burial site, whereafter he caused its exhumation, does spark an inference, that he had after committing the murder of deceased had taken it to bury it, at the place from where it became exhumed. Thus, the discovered fact (supra), became caused at the instance of the accused. Since Exhibit PP is a signed document by the Naib Tehsildar, Patiala, and, who while stepping into the witness box as PW-16, has proven the contents of Exhibit PP. Thus, the discovery/exhumation of the body of the deceased from the site where it was buried, and, which was but for reason (supra), hence exclusively within the knowledge of the convict, results in an inference, that the above discovered fact, at the instance of the convict also corroborating the above memo(s), besides lending corroboration to the deposition of PW-13.

“ In the presence of below noted witnesses, accused Kamaljit alia Jugnu above said while in police custody, in accordance with his disclosure statement, led the police party to Gurdeep Colony Street No. 5 Ablowal Patiala, in the presence of Shri Gurinder Singh Naib Tehsildar, and pointed out the place lying vacant in front of the constructed room where dead body of deceased Gurjant Singh alias Goldy was concealed by him after his murder and at the instance of accused, land was dug out and dead body was excavated, and incised wound on both of the side of neck and on the chest, committed with sharp edge weapon was found. Dead body was taken into police possession vide memo as a piece of evidence.”

NO RELEVANCE OF EITHER NO ATTRIBUTION OF MOTIVE OR PROOF THEREOF

21. Though, it is vehemently argued before this Court by the learned counsel for the convict, that since the motive for the crime, has neither emerged, nor, has been proven thus, the above links in the chain of circumstantial evidence do not also acquire any evidentiary worth. However, the above argument is extremely feeble, and, is rejected. The reason becomes comprised in the factum, that the motive in a prosecution case rested upon circumstantial evidence, though does comprise a valid link in the chain of incriminatory circumstances, but it may not become relevant, if the other incriminatory links, in the chain of incriminatory circumstances rather are completely suggestive of the incriminatory participation of the convict in the charged offence. Since this Court for sustaining the challenged verdict of conviction, as made upon the convict by the learned trial Judge, has rested the said conclusion, upon, able proof emanating with respect to both the accused, and, the deceased being last seen together, and that too in almost immediate proximity to the body of the deceased being recovered. Moreover, also when the drawings of memo (supra), is also proven to be valid, besides their respective preparation(s) is taint free. Thus, non attribution of motive if any, by the prosecution to the convict, nor any non emanation of any proof in respect thereof, rather does not leverage, the counsel for the convict, to argue that a verdict of acquittal, be pronounced in respect of the charged offence.

MEDICAL EVIDENCE/POST MORTEM REPORT

22. The post-mortem report is comprised in Exhibit P1, and, and is jointly authored by Dr. S.S.Oberoi, Additional Professor,

Department of Forensic Science, Government Medical College, Patiala, and by Dr. D.S.Walia. Dr. S.S.Oberoi upon stepping into the witness box, as PW-7 has proven his authoring the same, and, has also proven the existence thereons of the signatures of the co-author one Dr. D.S.Walia.

23. PW-7 in his examination-in-chief, has testified that on his making an autopsy on the body of the deceased, Gurjant Singh @ Goldy, his observing thereons the hereinafter extracted appearances.

1. Incised wound size 3 x 1 cm, muscle deep, obliquely placed was present in uppermost part of the neck on front and was spindle shaped.
2. Incised wound size 2.5 x 1 cm spindle shaped, horizontally placed on the front of neck in its upper most part 0.2 cm to the left of injury no. (1). It was muscle deep.
3. Incised wound 3 x 1 cm spindle shaped and muscle deep was present on the left side of front of neck 0.4 cm lateral to injury No. 2.
4. Stab wound with sharp margins size 7 x 2.5 cm was present on left side of back of chest in its lower part starting from midline and going upwards and laterally. It was placed obliquely.
5. Stab wound with sharp margins size 4.5 x 1.5 cm was present on right side of back of chest in its lower part – 5.0 cm to the right of middle and was placed obliquely.
6. Stab wound with sharp margins size 6 x 3 cm was present below the right axilla was obliquely placed. On exploration of injury No. 4, 5 and 6 they were found making corresponding cuts in the respective ribs and entering the chest cavity. On examination of lungs, cuts corresponding to the injuries described above were present with presence of about 200 ml of blood in each pleural cavity. Both the lungs were partially collapsed.
7. Incised wound, spindle shaped measuring 1'2 x 5 cm muscle deep was present on the flexoral surface of right upper arm.

24. He has also pronounced therein, that the cause of demise of the deceased was hemorrhage, and, shock as a result of the above extracted ante mortem injuries, which become testified by him to be

he has also testified that the probable duration of time that elapsed between the injuries and death was immediate, and, that the duration of time between death, and, postmortem was about a week. Therefore, with PW-13 last seeing the deceased, and, accused together on 05.05.2011, thus, the deposition of PW-7 speaking about the probable duration of time inter-se death, and, postmortem being also a week, does also suggest that PW-13, has spoken the truth about his last seeing both the accused, and, the deceased together on 05.05.2011, a date which is but obviously a week prior to an autopsy being made on the body of the deceased. Resultantly, the deposition of PW-13 acquires corroboration from the deposition of PW-7. Moreover, the above ante mortem injuries are reflective of theirs' becoming caused through users' of a sharp edged weapon, on the relevant portions of the body of the deceased. Thus, when the relevant incriminatory weapon is a sharp edged weapon, and, when valid recovery thereof became caused through recovery memo Exhibit PE. Therefore, when the cause of demise of the deceased as ascribed by PW-7, is to incised ante mortem injuries and are but causable through a sharp edged weapon, hence also relates the validly recovered sharp edged *Chhurra*, to its user on the person of the deceased. In sequel, corroboration therethrough is acquired by memo Exhibit PE wherethrough *Chhurra* became recovered besides also corroboration is acquired by the theory of last seen, as becomes ably propagated by PW-13.

FSL REPORT

25. Though the collected blood stain incriminatory items besides the blood stained incriminatory weapon of offence, became transmitted through Reference No.19755/C3 dated 03.06.2011, to the

FSL concerned. However, as revealed by the report of FSL to which Exhibit PX is assigned, rather on their respective examinations, resulted in the hereinafter extracted opinion.

“FORENSIC SCIENCE LABORATORY PUNJAB SAS NAGAR

Report No. 432/2011/FSL/Pb/Bio/Exam, dated 09.06.2011

Case Reference FIR No. 100, dated 12/5/2011,
 U/S 302 IPC, P.S., Civil Lines, Patiala.

Parcel 'A' contained- Chhurra alleged to be stained with blood.

Parcel 'B' contained- Soil alleged to be stained with blood.

Parcel 'C' contained- The following exhibits alleged to be stained
 with blood:-

i) T-Shirt marked C-1 in the laboratory.

ii) Pant marked C-2 in the laboratory.

iii) Underwear marked C-3 in the laboratory.

RESULT OF EXAMINATION

“ The exhibits contained in the parcels A, B and C are stained with human blood.”

26. Though, in the wake of the prosecution cogently establishing, the charge drawn against the convict, through the stepping into the witness box of a credible witness PW-13, who had evidently last seen the convict and deceased together immediately before the occurrence or in the almost immediate proximity to the occurrence. Moreover, also though the prosecution has been able to prove the charge through validly drawn memos (supra), besides from the medical evidence (supra). However, the result of the examinations, as made on the blood stained items sent to the FSL concerned, may have also lent further fortifying corroboration to the evidence (supra), as became adduced by the prosecution. However, the above extracted results, as made upon the blood stained items as sent to the Serologist concerned, rather are inapt for establishing that the blood stains carried on the

relevant items hence belonging to the blood group of the deceased concerned. Thus, there is no conclusivity of opinion by the Serologist about the human blood carried on the relevant items belonging to the blood group of the deceased concerned. The above inconclusivity of opinion may have been overcome only if the investigating officer concerned, had been more apt through his ensuring the collection, of the relevant FTM cards, from the family members of the deceased concerned, so that they could have been sent along with the relevant blood stained items, to the Serologist concerned, for his making the ablest best apposite comparisons thereof. It is only in the wake of the above ineptitude of investigations that the above event occurs, that too despite the above investigational infirmity becoming earlier also highlighted by this Court.

27. Be that as it may, it is also apparent on a reading of the reports of the FSLs concerned that in some cases, some of the items as sent to the FSL, for their respective examinations there, they become opined to be not amenable for any able analysis thereon, nor an able opinion is thus made, rather only for the reason that the relevant items/materials becoming disintegrated or deteriorated. The above is a result of either delays in the despatches of the relevant sample cloth parcels to the FSL concerned, or is a result of tardiness of examinations being made upon them at the FSLs concerned.

28. The FSLs provide the best forensic evidence to the Courts of law. Therefore, if there is any delay on the part of the laboratories concerned, to make an analysis on the items sent there for examinations, it is for the Director(s) of the FSLs concerned, to assign responsibility to the Serologist concerned or to the other experts

concerned.

29. For ensuring that the investigating officers concerned hereafter, do not omit to collect the relevant FTM cards from the family members of the deceased or of the injured concerned, besides they do not omit to forthwith send the said FTM cards hence along with the blood stained relevant recoveries, to the FSLs concerned. Thus, it is deemed fit to direct the Director General of Police, Punjab to draw batch wise training sessions for the investigating officers in the State of Punjab. The trainings be imparted, in the above regard, and, also with regard to all the relevant despatches being made promptly to the FSLs concerned. Consequently, the Registry of this Court is directed to forthwith circulate a copy of this verdict to the Director General of Police, Punjab. Compliance qua the above directions be ensured to be communicated to the Registry of this Court, on a bimonthly basis by the Director General of Police, Punjab.

30. In addition, all the Directors of the FSLs Punjab, are also directed to ensure that there is the promptest examinations made on the materials despatched to the FSLs concerned, by the Experts working there, so that never hereafter any report is made that there is any disintegration or deterioration of the materials/items sent to the FSL. A copy of this verdict be also sent to them.

CONCLUSION

31. In aftermath, no conclusion other than the one, as became drawn earlier by the learned convicting Court, rather is to be also drawn by this Court.

32. The result of the above discussion, is that, this Court does not find any merit in the appeal, and, is constrained to dismiss it.

FINAL ORDER BY THIS COURT

33. Consequently, the appeal is dismissed. The impugned verdict of conviction, and, the consequent therewith sentence(s) (supra), as become imposed upon the convict-appellant, by the learned convicting Court, are affirmed and maintained.

34. The case property, if any, be dealt with in accordance with law, but after the expiry of period of limitation for the filing of an appeal. The records be forthwith sent down.

(SURESHWAR THAKUR)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

19.09.2022

kavneet singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No