

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

CRA-D-889-DB-2010 (O&M)
Reserved on: 19.09.2022
Date of decision:21.10.2022

Beant Singh and others

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

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

Present: Mr.P.P. Chahar, Advocate,
for the appellants/Amicus Curiae

Ms. Monika Jalota, Sr. DAG, Punjab.

N.S. SHEKHAWAT, J.

The present appeal is directed against the judgment of conviction and order of sentence dated 22.10.2009, passed by the Court of learned Additional Sessions Judge, Bathinda, whereby the appellants have been held guilty and convicted for the offences punishable under Section 302 read with Section 149 of IPC and were sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/- each and in default thereof, to further undergo rigorous imprisonment for one month each. All the appellants were further sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- each for the offence punishable under Section 120-B and in default thereof, to further undergo rigorous imprisonment for 15 days each. All the sentences were ordered to run concurrently.

In the instant case, the FIR (Ex.PW6/C) was registered on the basis of the statement made by Balbir Singh S/o Bakhtaur Singh resident of

village Khokhar Tehsil Phul, Police Station Balian Wali, District Bathinda to the effect that he and his brother Bhola Singh were married to two real sisters in the same house. The marriage of the complainant was solemnized with Swaranjit Kaur, whereas his brother Bhola Singh was married to Gurmit Kaur. His brother Bhola Singh had one daughter Jagdeep Kaur, aged 12 years and one son Param Nidhan Singh, aged 9 years. The character of Gurmit Kaur was not good and she had illicit relations with Beant Singh S/o Gurbachan Singh and many other persons. Consequently, the complainant and his brother Bhola Singh had dropped their children at village Landeka with their parents-in-law Jangir Kaur and Mohinder Singh for the studies of the children. Bhola Singh and his wife Gurmit Kaur were residing at their ancestral house in village Khokhar. In the last of the month of February or in the start of March 2006, Bhola Singh and Gurmeet Kaur visited village Landeka to meet their children, where Bhola Singh complained to his parents-in-law Jangir Kaur and Mohinder Singh about the character of Gurmeet Kaur. They objected to this and said that he was not allowing Gurmeet Kaur to live the life independently and was making false allegations and they would teach him a lesson. All the persons quarreled with Bhola Singh and inflicted injuries to him and after that, the matter was also compromised. The complainant sent his brother Bhola Singh and his wife Gurmit Kaur to village Khokhar after making them understand. On 29.03.2006, the complainant came to his village Khokhar but found that his brother was not present at his house. On asking, Gurmit Kaur told that on 21.03.2006, he along with Beant Singh and Karamjit Singh @ Kala had gone to Rajasthan to see a vehicle to purchase the same. Again on his visit,

Gurmit Kaur told near Baishakhi fair that Bhola Singh had gone to Meerut on his vehicle. His brother used to wear a silver ring having a white stone in his middle finger of the left hand, given by his mother and a copper 'Karra' (bracelet) with his name Bhola Singh Sidhu engraved on its inner side, in his right hand. Gurmit Kaur used to make different statements regarding the whereabouts of his brother, which raised suspicion and he enquired the matter from his relatives. He went to many relatives, but could not find his brother. It was alleged in the FIR that Gurmit Kaur, by conniving with accused Jangir Kaur and Mohinder Singh got his brother Bhola Singh kidnapped through accused Beant Singh and Karamjit Singh on 21.03.2006 with the sole intention to get him killed. The cause of enmity was that his brother Bhola Singh used to ask his wife to stay away from immoral activities, but his parents-in-law Jangir Kaur and Mohinder Singh were annoyed on this account. With these broad allegations, FIR No.24 dated 14.06.2006 under Section 364, 148, 149, 120-B IPC, Police Station Balian Wali, District Bathinda was registered against all the five appellants/accused.

After the registration of the case, the investigation started. The statements of various witnesses were recorded. The police recorded the statement of Mander Singh, who had stated that on 20.03.2006, accused-Gurmit Kaur contacted Beant Singh on phone and planned to eliminate Bhola Singh. On the same day, accused Beant Singh and Karamjit Singh reached at the house of Gurmit Kaur at village Khokhar on a scooter and next day i.e. on 21.03.2006 they took him away on the scooter. As per the said witness, accused Gurmit Kaur, Beant Singh and Karamjit Singh came

to his house on 15.06.2006 and confessed that they had killed Bhola Singh on 21.03.2006. Even similarly, on 25.06.2006 accused Jangir Kaur and Mohinder Singh also suffered a confessional statement in the presence of Mander Singh. The police also recorded that statement of Jagsir Singh, who had last seen Bhola Singh (since deceased) on the scooter of accused Beant Singh and Karamjit Singh. The statement of Gurmeet Singh (PW-17) was also recorded, who had seen the accused while causing injuries to his brother-in-law (Saala) Bhola Singh on 22.03.2006. Finally, the challan was presented against all the five accused/appellants under Sections 364, 148, 149, 302, 120-B IPC. Even the accused-appellants were charge-sheeted by the learned trial Court under Sections 364, 120-B, 364/149 IPC, 302/149 IPC and Sections 201/149 IPC and 120-B IPC. The accused pleaded not guilty and claimed trial. After the conclusion of the trial, the accused/appellants were convicted under Sections 302, 149, 120-B of IPC and were sentenced as mentioned above. The learned trial Court held the following circumstances to have proved against the accused-appellants and convicted them, accordingly:-

- (a) The learned trial Court placed reliance on the testimony of PW-17 Gurmeet Singh, who saw Beant Singh (appellant No.1) and Karamjit Singh (appellant No.2), causing injuries on the person of deceased and had given minute details of the occurrence in his statement.
- (b) The learned trial Court also relied upon the statement of PW-8 Jagsir Singh, who had last seen Bhola Singh (since deceased) in the company of Beant Singh (appellant No.1) and

Karamjit Singh (appellant No.2).

(c) The learned trial Court further placed reliance on the testimony of PW-7 Mander Singh, who had last seen Beant Singh (appellant No.1) and Karamjit Singh (appellant No.2), while going on a scooter with Bhola Singh (since deceased) on 21.03.2006. Apart from that, on 14-15/6/2006 (typed as 14-15.03.2006 in his testimony), Gurmit Kaur (appellant No.3), Beant Singh (appellant No.1) and Karamjit Singh (appellant No.2), suffered extra-judicial confession before PW-7 Mander Singh. Even on 25.06.2006, Jangir Kaur (appellant No.4) and Mohinder Singh (appellant No.5) also confessed their guilt in his presence.

(d) The learned trial Court held that there was a motive on the part of the appellants to commit the instant crime as Gurmit Kaur (appellant No.3) was having illicit relations with Beant Singh (appellant No.1) and they wanted to settle after the murder. Appellant No.1 Beant Singh associated his relative, i.e. appellant No.2-Karamjit Singh in the plan. Even Jangir Kaur, who is mother of Gurmit Kaur and her present husband Mohinder Singh, were also annoyed with Bhola Singh (since deceased) as he was not allowing his wife Gurmit Kaur (appellant No.3) to live independently.

(e) The learned trial further held that though the dead body was not recognizable and PW-6 Balbir Singh-complainant/brother of the deceased had turned hostile, still the

offence was proved and in a murder trial, it is not absolutely necessary or essential ingredient to establish *corpus delicti*.

(f) The learned trial Court further held that the disclosure statements were suffered by Beant Singh (appellant No.1) and Karamjit Singh (appellant No.2) in the presence of PW-6 Balbir Singh and PW-8 Jagsir Singh. Accused/appellant No.1-Beant Singh led the police to the place of occurrence and got one piece of shirt recovered. Similarly accused/appellant No.2-Karamjit Singh also suffered disclosure statement and got recovered one copper '**Karra**' (bracelet) and one silver ring and in the inner side of copper '**Karra**' (bracelet) Bhola Singh Sidhu (since deceased) was engraved.

Learned counsel for the appellants has vehemently argued that in the instant case, there was a delay in lodging the FIR as the occurrence had taken place on 21.03.2006 and the complainant-Balbir Singh (PW-6) was also aware of the fact on 29.03.2006 that his brother Bhola Singh was missing from home. Apart from that, the alleged eye witness PW-17 Gurmeet Singh, who is the brother-in-law of Bhola Singh (since deceased), had allegedly seen the occurrence on 21.03.2006 itself. Still the matter was not reported to the police. Further, prior to lodging the FIR, Gurmit Kaur wife of Bhola Singh (since deceased) made an application/complaint (Ex.DW3/A) to Human Rights Commission with regard to missing of Bhola Singh on 18.05.2006 and the copy of the order dated 24.5.2006 was sent to Senior Superintendent of Police, Moga for appropriate action as per law.

Learned counsel for the appellants has further submitted that

the post-mortem on the dead body was conducted by PW-3 Dr. Kuldip Kumar and it is apparent from his testimony that the dead body was not recognizable as the face above nose till the upper part of the head was missing. Further, PW-6 Balbir Singh (complainant) had turned hostile and he did not identify the dead body of Bhola Singh and the appellants have been wrongly convicted for the murder of Bhola Singh. He has next submitted that the prosecution had failed to prove the motive on the part of the present appellants to commit the murder. The appellants had no reason to make extra-judicial confession before PW-7 Mander Singh. Appellants namely Beant Singh, Karamjit Singh, Jangir Kaur and Mohinder Singh did not belong to the village of PW-7 Mander Singh and belonged to far off places/different districts and they had no reason to go to PW-7 Mander Singh to suffer an extra judicial confession. Learned counsel for the appellants has further submitted that it is unbelievable that PW-8 Jagsir Singh, alleged last seen witness, kept mum till 16.06.2006 about seeing the deceased in the company of appellants Beant Singh and Karamjit Singh on scooter on 21.03.2006. Moreover, even PW-17 Gurmeet Singh, brother-in-law of the deceased, had witnessed the occurrence on 21.03.2006 and did not make any efforts to inform the police till 16.06.2006 and he identified the accused for the first time in the Court. Apparently, he was a planted witness, as his wife was the sister of Bhola Singh (since deceased) and his statement was recorded only after the arrest of the accused in the instant case. Lastly, learned counsel for the appellants has prayed for acceptance of the present appeal keeping in view the fact and circumstances of the case.

The above-said submissions made by the learned counsel for

the appellants have been strongly opposed by the learned counsel for the State on the ground that since the evidence led by the prosecution was clinching and reliable and therefore, the present appeal deserves to be dismissed.

We have heard the learned counsel for the parties on the above-referred facts as well as on certain additional facts also, which were overlooked by the learned trial Court.

Eye-witness account

The learned trial Court placed heavy reliance on the testimony of PW-17 Gurmeet Singh to hold that it is a case of direct evidence and the testimony of the said witness had conclusively proved the culpability of the present appellants. PW-17 Gurmeet Singh stated that about 02 months less than 03 years ago, he had missed his bus at Jaitu and darkness had fallen. He took a bicycle from village Matta for going to his house at his village. He was 100 Karams behind of the head of the canal and he saw that one baptized sikh was inflicting sword blows on a person and one young boy was also standing with that baptized sikh. After inflicting injuries to that person, the baptized sikh and boy with him, removed the clothes of that man and they threw that person in naked condition after causing injuries to him in the canal. The said witness identified the appellant No.1 Beant Singh present in Court at that time, as that baptized Sikh, who was inflicting sword blows on that person. The witness also identified appellant No.2-Karamjit Singh to be that young boy, who was with appellant No.1-Beant Singh at that time and the witness identified Beant Singh and Karamjit Singh to be the assailants, who caused injuries to the above referred person, before

throwing him in the canal. He admitted that he knew appellant No.1-Beant Singh and appellant No.2-Karamjit Singh earlier, because he had been visiting Gurdwara Sahib at Dan Singh Wala, where Beant Singh (appellant No.1) and Karamjit Singh (appellant No.2), present in Court at that time, were staying. He came to know about the identity of that person, to whom appellants Beant Singh and Karamjit Singh, caused injuries, before throwing him in the canal. He was Bhola Singh of village Khokhar. He came to know about his identity as Bhola Singh, when a news to that effect was published in the newspaper and his statement was recorded.

In fact the falsehood of the said witness surfaced in the first line of his cross-examination by the learned defence counsel. Bhola Singh (since deceased) was the real brother of his wife and he had been often visiting Bhola Singh (since deceased). He also visited the house of Bhola Singh (since deceased) after 22.03.2006. He also admitted in his cross-examination that he was aware of the fact that Bhola Singh was untraceable and he traced him for three months and he had not disclosed the said fact to any person. It is shocking to note that on 21.03.2006, the witness, i.e. PW-17 Gurmeet Singh recognized both the assailants, who were earlier known to him, but he could not recognize his real brother-in-law, i.e. Bhola Singh (since deceased) at the spot. Still further, it is a matter of common knowledge that when such serious injuries are caused to an injured, he would definitely shout for help. The said witness was the real brother-in-law of Bhola Singh (since deceased) and he would have definitely recognized the voice of the injured/deceased, if not recognized him while he was being caused injuries. Still further, he saw two known persons causing injuries to

an injured/his relative and still did not report the matter to anyone for around three long months. Moreover, even as per him, he came to know about the identity of the deceased from a news to that effect, which was published in the newspaper. Obviously, the news might have been published on the very next day, i.e. on 22.03.2006, still for 03 months, he did not report the matter to the police. The said witness also admitted that he had visited the house of Bhola Singh (since deceased) after 22.03.2006 and he was aware of the fact that Bhola Singh was untraceable. Still, he chose not to report the matter to even his own wife, who was the real sister of Bhola Singh (since deceased).

Still further, the said witness PW-17 Gurmeet Singh had allegedly seen Beant Singh (appellant No.1) and Karamjit Singh (appellant No.2) causing injuries to Bhola Singh (since deceased) on 21.03.2006 but he made the statement under Section 161 Cr.P.C. after the arrest of the accused. This clearly shows that after the arrest of the accused in the instant case, PW-17 Gurmeet Singh was planted by the police as an eye-witness, just to ensure the false implication of the present appellants and the learned trial Court committed a grave error in relying upon the testimony of such a witness, whose testimony was apparently false.

Last seen evidence

The learned trial Court placed heavy reliance on the testimony of PW-8 Jagsir Singh, who had allegedly last seen Bhola Singh (since deceased) riding a scooter with Beant Singh (appellant No.1) and Karamjit Singh (appellant No.2) in the morning on 21.03.2006. He went to Beant Singh, Karamjit Singh and Bhola Singh (since deceased) and enquired about

their well being. They told that they were to go to Rajasthan for purchasing a truck. He knew all of them earlier and had identified them. However, when the police came on 14.06.2006, i.e. after three months, to their village, he disclosed the said fact to the police and on 16.06.2006, his statement was recorded by the police.

Apart from that, PW-7 Mander Singh went a step further in making a false statement. He stated that a plan was prepared by appellant No.3-Gurmit Kaur in collusion with her mother, i.e. Jangir Kaur (appellant No.4) and her present husband Mohinder Singh (appellant No.5) to eliminate Bhola Singh (since deceased). On 20.03.2006, Gurmit Kaur (appellant No.3) contacted Beant Singh (appellant No.1) on mobile phone and they had a talk for eliminating Bhola Singh. On the same day, Beant Singh (appellant No.1) and Karamjit Singh (appellant No.2) reached at village Khokhar at the house of Gurmit Kaur (appellant No.3) and all the three i.e. Beant Singh (appellant No.1), Karamjit Singh (appellant No.2) and Bhola Singh (since deceased) were seen going on a scooter on the next morning.

In fact again, we find that both the witnesses have been planted by the prosecution after the arrest of the accused. PW-7 Mander and PW-8 Jagsir Singh knew both the accused/appellants Beant Singh and Karamjit Singh as well as Bhola Singh (since deceased) and they had seen them together on 21.03.2006. As per the complainant, Bhola Singh was found missing since 29.03.2006 and he made efforts to trace them. Even PW-7 Mander Singh and PW-8 Jagsir Singh are neighbours of complainant- Balbir Singh (PW-6) and surprisingly for three months, they chose not to inform

the complainant. Both the witnesses made their statements after the accused were arrested in the instant case. So apparently, both the witnesses had made false statements before the police.

Even it is assumed for the sake of argument that both the witnesses namely PW-7 Mander Singh and PW-8 Jagsir Singh had seen Beant Singh (appellant No.1) and Karamjit Singh (appellant No.2) in the company of Bhola Singh (since deceased) on a scooter on 21.03.2006, still it is unsafe to base the judgment of conviction on the testimonies of the said two witnesses. In fact, even from the perusal of the impugned judgment as well as the evidence, it is apparent that the exact date of occurrence could not be established by the prosecution. However, as per the testimony of PW-17 Gurmeet Singh, alleged eye witness, the occurrence had taken place in the evening of 21.03.2006, whereas as per PW-7 Mander Singh and PW-8 Jagsir Singh, they had seen appellants Beant Singh and Karamjit Singh going with Bhola Singh (since deceased) in the early morning on 21.03.2006.

In fact we find that the evidence against the appellants on the factum of last seen together was also deficient. The last seen theory comes into play where the time gap between the point of time when the accused and deceased were last seen alive and when the deceased was found dead is so small that the possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and there exists a possibility of some other persons coming in between. In absence of any other positive evidence to conclude

that the accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. Consequently, the learned trial Court had wrongly placed reliance on the testimonies of PW-7 Mander Singh and PW-8 Jagsir Singh to invoke the theory of last seen together and even otherwise the testimonies of both the said witnesses were found to be unreliable.

Extra-judicial confession

The learned trial Court placed reliance on the testimony of PW-7 Mander Singh, who not only claimed to have last seen Bhola Singh (since deceased) in the accompany of Beant Singh (appellant No.1) and Karamjit Singh (appellant No.2), but also claimed that on the night intervening 14/15.03.2006, Gurmit Kaur (appellant No.3), Beant Singh (appellant No.1) and Karamjit Singh (appellant No.2) came to his house and confessed their crime before him. The learned trial Court held that the said date i.e. 14/15.03.2006 was prior to the date of commission of crime and consequently, it is a typographical error and the date was held to be 14/15.06.2006. Still further, PW-7 Mander Singh claimed that Jangir Kaur (appellant No.4) and Mohinder Singh (appellant No.5) came to him on 25.06.2006 and suffered an extra judicial confession before him.

First of all, we would like to refer to the cross-examination of PW-7 Mander Singh, where he admitted that he was neighbour of Bhola Singh (since deceased) and belongs to his village, whereas, Beant Singh (appellant No.1) and Karamjit Singh (appellant No.2) belong to different districts. Similarly, Jangir Kaur (appellant No.4) and her present husband Mohinder Singh (appellant No.5) also used to reside village Landeke, which

was at a distance of about 100 kms from the village of PW-7 Mander Singh. Consequently, it is apparent that four accused-appellants, who belonged to different districts, had no reason or occasion to visit PW-7 Mander Singh and make an extra judicial confession before him. Still further as discussed above, we find that the testimony of PW-7 Mander Singh does not inspire any confidence. In fact, he was aware of the fact that Beant Singh (appellant No.1) and Karamjit Singh (appellant No.2) were last seen in the accompany of Bhola Singh (since deceased) on 21.03.2006 and in his presence Gurmit Kaur (appellant No.3) conspired with Jangir Kaur (appellant No.4) and Mohinder Singh (appellant No.5) to eliminate Bhola Singh (since deceased) on 20.03.2006, still he preferred not to disclose the facts till 14.06.2006, when the police came to their village after three months for investigation. Even the complainant was also a neighbour of PW-7 Mander Singh and the said witnesses chose not to share any information with complainant-Balbir Singh (PW-6). Still further, the said witness apparently had shown keen interest in the investigation of the instant case and appeared before the police. Thus, it is unsafe to convict the appellants on the basis of the testimony of such a witness.

Motive

The learned trial Court further held that all the appellants had a motive to commit the instant crime. As per the prosecution, appellant No.3- Gurmit Kaur was having illicit relations with appellant No.1-Beant Singh and both of them wanted to settle after commission of the crime. Still further, even her mother Jangir Kaur (appellant No.4) and her present husband Mohinder Singh (appellant No.5) were annoyed with Bhola Singh

(since deceased) as he was not allowing appellant No.3-Gurmit Kaur to lead an independent life. Consequently, they all joined hands with appellant No.3-Gurmit Kaur and planned to eliminate Bhola Singh (since deceased).

However, we have carefully scrutinized the evidence led by the prosecution and there is no material to show that Gurmit Kaur (appellant No.3) was having illicit relations with Beant Singh (appellant No.1). In fact, complainant-Balbir Singh (PW-6), who is brother-in-law of Bhola Singh (deceased), was the best witness to depose in this regard, who failed to support the case of the prosecution in this regard. Still further, the evidence clearly suggested that there were temperamental differences between appellant No.3-Gurmit Kaur and her husband Bhola Singh (since deceased). Even certain proceedings were placed before the learned trial Court, which only suggested temperamental differences between both of them and there was no averment that appellant No.3-Gurmit Kaur had illicit relations with anyone. Still further, even if Gurmit Kaur was having illicit relations with appellant No.1-Beant Singh, the other three appellants, namely, Jangir Kaur, Mohinder Singh and Karamjit Singh had no reason to join hands with Beant Singh to eliminate Bhola Singh. Still further, even the testimonies of PW-7 Mander Singh and PW-8 Jangir Singh also do not inspire confidence in view of the findings recorded above and we find that the motive was not established by the prosecution in this case.

Corpus delicti

The learned trial Court held that in the instant case PW-6 Balbir Singh (complainant) had identified the dead body of Bhola Singh. However, PW-6 Balbir Singh did not support the case of the prosecution

and had turned hostile. However, even if PW-6 Balbir Singh had turned hostile, in a murder trial, it is not absolute necessity or essential ingredient to establish *corpus delicti* to prove the fact of death of the accused. The *corpus delicti* in some cases may not be possible to trace or recover, still the offence can be proved. We have carefully perused the record in this regard. As per the testimony of PW-3, Dr. Kuldip Kumar, who conducted the post mortem examination, the face above nose till the upper part of the head was missing. Consequently, the dead body was identified by PW-6 Balbir Singh, the brother of the deceased. However, during the course of trial, PW-6 Balbir Singh deposed that he did not recognize the dead body. Rather in his cross-examination by the public prosecutor, he stated that he had not made a statement to the police that he had identified the dead body of his brother Bhola Singh in the office of SSP, Faridkot and he had not identified the dead body of his brother Bhola Singh from his photographs. No doubt in few cases, the dead body is not identified, still the fact regarding the death of the deceased has to be proved. To base a conviction for the offence of murder, there must be reliable and acceptable evidence that the offence of murder, like any other factum, was committed and has to be proved by direct or circumstantial evidence, although the dead body may not be traced or may not be identified. In the instant case, there is a serious doubt with regard to the identity of the dead body and the medical evidence also does not support the ocular evidence. Consequently, the learned trial Court wrongly recorded the findings in this regard. The learned trial Court also overlooked the testimony of PW-18 Mohinder Singh, who was working as a Baildar near the place of occurrence and who had informed the police on

finding the dead body. The said witness clearly admitted that the face of the dead body was entirely decomposed and was not recognizable.

Disclosure statements by the accused and recoveries

In fact the learned trial Court held that Beant Singh (appellant No.1) and Karamjit Singh (appellant No.2) were arrested on 15.06.2006. The memos were separately prepared in this regard. Later on, accused Beant Singh suffered disclosure statement vide memo Ex.PW10/J and stated that he had kept concealed one Kirpan in an iron box in his residential house and he could get the same recovered. The said memo was witnessed by ASI Beant Singh and an independent witness Gurcharan Singh S/o Kartar Singh. Similarly, accused-Karamjit Singh @ Kala also suffered disclosure statement and the memo Ex.PW10/H was prepared on 15.06.2006 in this regard and he confessed that he had kept one copper '**Karra**' (bracelet) and one silver ring containing white stone in an iron box in his house. In pursuance of the said disclosure statement, accused Beant Singh got recovered one small kirpan and the recovery memo Ex. PW10/L was prepared in this regard, which was witnessed by Gurcharan Singh and HC Resham Singh. Similarly, the recovery was effected from Balbir Singh and a recovery memo of Ex.PW13/C was prepared in this regard, which was witnessed by Sohan Singh and HC Balwant Singh. Surprisingly, both the independent witnesses Gurcharan Singh and Sohan Singh were not examined during the course of trial. Even the two witnesses HC Resham Singh and HC Balwant Singh were not examined during the course of trial. Consequently, the recovery was not proved conclusively and the learned trial Court committed grave error in placing reliance on the same.

Additional Circumstances:

In fact after a careful perusal of the entire evidence, we find that the learned trial Court had overlooked the material evidence in this regard. There was inordinate and unexplained delay of about three months in registration of the FIR. Apparently, PW-17 Gurmeet Singh, who was married to the sister of Bhola Singh (since deceased), had allegedly seen the occurrence on 21.03.2006 itself. But surprisingly, for three long months, he did not report the matter to the police. Similarly, PW-7 Mander Singh and PW-8 Jagsir Singh claimed that they had last seen Beant Singh (appellant No.1) and Karamjit Singh (appellant No.2) in the company of Bhola Singh (since deceased) and he went missing after that. Both PW-7 Mander Singh and PW-8 Jagsir Singh were neighbours of PW-6 Balbir Singh (complainant) and for almost three months of the occurrence, they chose not to report the matter to anyone. The said evidence casts a cloud of suspicion on the entire prosecution story and the version of the prosecution is liable to be disbelieved on this ground alone.

Apart from that, it has also come on record that when Bhola Singh, husband of Gurmit Kaur (appellant No.3) went missing, she reported the matter vide Ex.DW3/A to the Human Rights Commission, Punjab, Chandigarh and requested that his husband was missing since 21.03.2006. She also submitted representations to ADGP (Crime) Punjab, S.S.P., Moga and S.S.P., Bathinda. The matter was taken up by Punjab State Human Rights Commission and the order Ex.DW3/B dated 24.05.2006 was passed by the Commission. The Human Rights Commission marked the matter to S.S.P, Moga for appropriate action under law. Had appellant No.3-Gurmit

Kaur been involved in the murder of her husband Bhola Singh, she would not have reported the matter to the police or Punjab State Human Rights Commission.

Still further in his statement under Section 313 Cr.P.C., appellant No.1-Beant Singh had set up a defence that he had been falsely implicated in the instant case in connivance with Ram Kumar Makker after concocting a false story. He was working as a Granthi of Gurdwara of village Dan Singh Wala. On 22.03.2006, he performed Shagun ceremony of Davinder Singh and on 23.03.2006, he conducted Anand Karaj of Davinder Singh in village Khemuana. He further submitted that photographs and videography regarding participation in the above ceremonies were also taken in this regard. The defence examined DW-1 Davinder Singh, who supported the case of appellant No.1-Beant Singh with regard to his presence in his Shagun ceremony and marriage ceremony. Similarly the defence examined DW-2 Iqbal Singh, who had exhibited the photographs as Ex.D-1 to Ex.D-12 and the negatives of the said photographs were exhibited DW-13 to Exhibit DW-24. In all the photographs, appellant No.1-Beant Singh was seen performing the religious ceremonies.

Still further, all the appellants were also charge-sheeted under Section 120-B IPC for having conspired together to eliminate Bhola Singh (since deceased). The learned trial Court placed reliance on the testimony of PW-7 Mander Singh, who stated that on 20.03.2006 Gurmit Kaur (appellant No.3) contacted Beant Singh (appellant No.1) on mobile phone and they had a talk for eliminating Bhola Singh (since deceased). To execute that, she even conspired with her mother Jangir Kaur (appellant

No.4) and Mohinder Singh (appellant No.5). In pursuance of the said conspiracy, Beant Singh (appellant No.1) and Karamjit Singh (appellant No.2) reached at the house of Gurmit Kaur (appellant No.3) in village Khokhar on the same evening. To prove the said factum of making call by appellant No.3-Gurmit Kaur, the prosecution examined PW-16 Munna Lal, who stated that appellant No.3-Gurmit Kaur used to take call on telephone at his shop. However, he admitted that he had not disclosed the fact of a telephonic call from a shop by appellant No.3-Gurmit Kaur to any person, before he made a statement to the police. Still further, he admitted that he did not maintain any record of calls of his telephone at a shop, but surprisingly, he remembered a particular call made by Gurmit Kaur, accused on a mobile No. 94177-30113. Apart from that, the prosecution also examined PW-1 Suresh Kumar, from whose STD booth, a phone call was made from number 01651-500772 to mobile No.94177-30113. However in cross-examination, he stated that he had no proof regarding who made the call to whom. Still further, he did not know about the numbers on which the calls were made. Still further, callers used to make call from a cabin and what was the conversation and with whom, he was not aware of the same. Still further, PW-7 Mander Singh was resident of village Khokhar, whereas PW-1 Suresh Kumar was running a S.T.D. at Rampura Bus Stand and PW-16 Munna Lal was a shopkeeper at village Dhelwan. Consequently, PW-7 Mander Singh, who was resident of village Khokhar, had no reason to hear the conversation between Gurmit Kaur and her co-accused. Consequently, the entire evidence led by the prosecution with regard to conspiracy was completely missing in the instant case. The learned trial

Court completely failed to appreciate that the offence of criminal conspiracy is the agreement to commit an offence. However, no person can be convicted for the offence of conspiracy without any reliable and clinching evidence. The offence of conspiracy has to be proved by leading cogent evidence like any other offence.

Having regard the learned counsel for the parties, it would be highly unsafe to sustain the conviction of the appellants on the basis of the evidence led by the prosecution and they are entitled to benefit of doubt. As a consequence thereof, the appeal succeeds and is hereby allowed. The judgment of conviction and order of sentence dated 22.10.2009 passed by the learned Additional Sessions Judge, Bathinda, are set aside. The bail bonds of all the appellants stand discharged and they may be released from custody, if not on bail and if not required in any other case.

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.

We record our appreciation for the able assistance rendered by Mr. P.P. Chahar, Advocate/Amicus Curiae, which really helped us in reaching the desired conclusion in the present judgment.

(SURESHWAR THAKUR)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

21.10.2022
mks

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO