

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

CRA-S-792-SB-2014(O&M)

Date of Decision : **18.11.2022**

Randhir Singh

.....Appellant

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Dr. Anmol Rattan Sidhu, Sr. Advocate assisted by
Mr. Gursher Singh Badal, Advocate
for the appellant.

Mr. Anmol Malik, DAG, Haryana.

KULDEEP TIWARI. J.

The instant appeal is directed against the judgment of conviction dated 3.2.2014 and order of sentence dated 5.2.2014 passed by the Court of learned Additional Sessions Judge, Sirsa, whereby, the appellant has been convicted for the commission of offences punishable under Section 468 read with Section 120-B IPC and sentenced to undergo rigorous imprisonment for 7 years and also to pay fine of Rs.1 lac and in default of payment of fine, he was ordered to undergo rigorous imprisonment for a period of one year.

The present case relates to a very unfortunate incident where four persons were murdered in their house courtyard and for that three persons, namely, Surjeet Singh, Uggar Singh son of Surjeet Singh and Jaskaran Singh son of Uggar Singh faced the trial for the commission of

offences punishable under Section 302 read with Section 120-B IPC whereas Randhir Singh (present appellant) and one Balwinder Singh (since deceased) faced the trial for the commission of offences punishable under Section 468 read with Section 120-B IPC. One of the accused, namely, Amarjit Singh could not be arrested despite issuance of ordinary process as well as proclamation under Section 82 Cr.P.C. Resultantly, he was declared proclaimed offender by the learned trial Court. Accused, namely, Balwinder Singh expired during trial and proceedings qua him were abated by the learned trial Court vide order dated 11.3.2013. The learned trial Court finally acquitted Surjeet Singh, Uggar Singh and Jaskaran Singh from the charges framed against them under Section 302 read with Section 120-B IPC. Whereas, the present appellant Randhir Singh was held guilty for the commission of offences punishable under Section 468 read with Section 120-B IPC and sentenced, as mentioned above.

FACTUAL BACKGROUND

In the present case, the investigation was set into motion on the statement of Surjeet Singh @ Sheet Singh son of Ajmer Singh (who was later on transposed as one of the accused). The statement of Surjeet Singh @ Sheet Singh reads as under:-

“I am resident of above said address and is an agriculturist by occupation. We are three brothers. Eldest is Malkiat Singh, then I and eldest to mine was Saudagar Singh. We alongwith our respective families are residing separately. My younger brother Saudagar Singh has already died about ten years ago. My brother is having three sons.

Eldest son was Yashpal Singh alias Raju, then Darshan Singh and eldest to him was Hardeep Singh alias Nikka. Two daughters are namely, Chhinder Kaur and Veerpal Kaur. Both are married. Eldest son Yashpal Singh alias Raju was married to Sunita Rani d/o Surjeet Singh, Caste Rajput Sodhi, resident of Amarpura Basti, Bathinda about eight months ago. This matrimonial ties was got solemnized by Boota Singh son of Sukhdev Singh, Caste Pandit, resident of Pipli. About four months ago, relation of Sunita became strained with her husband Yashpal Singh alias Raju and due to this, she went to her parental house at Bathinda. All the three sons of my brother Saudagar Singh and their mother Hardev Kaur were residing jointly. As usual, yesterday on 30.09.2010 in the night, they all after taking meal slept on their cots in courtyard of the house. Today, morning when I woke up and went there and saw that all the four were lying on their respective cots. On my alarm, none of them awoke, then I checked all the four persons for awaking them, I found them in dead condition. On seeing this scene then I raised alarm and on this several men and women from the neighbourhood came at the spot. We at our own level, checked them and found that there was no mark of injury on their bodies. Nor there was any sign of scuffle and mark of injuries and scratch. On the neck of all the four persons there was slight mark of bluish colour. It appears that some intoxicant have been served to them or they have consumed themselves. In this respect, neither I nor any members of my family have no suspicion on any person. Nor there is any suspicion on any of the villager. There is no damage of any article in the house. The articles which are lying there, are in order. After leaving my son Uggar Singh near the dead bodies of the deceased,

I and Sukhminder Kumar Sarpanch are coming to Police Station for giving information, and you met us at Bus Stand of village Pipli. I have recorded my statement which is correct. Sd/- Sheet Singh.”

Thereafter the investigating agency proceeded to conduct inquest report. Initially, a DDR was lodged. Thereafter the post-mortem was got conducted on all the four deceased persons. The doctors opined the cause of death as asphyxia as a result of throttling, which was declared ante-mortem in nature. However, the doctors further observed that the final opinion will be given on receipt of report of Chemical Examiner. On the basis of the opinion of the doctors and the medical report, the police registered present FIR under Section 302 IPC and further proceeded with the investigation.

On 6.10.2010 supplementary statements of Surjeet Singh @ Sheet Singh and Malkiat Singh son of Ajmer Singh were recorded wherein, they stated that they have come to know that Randhir Singh (present appellant), who was working as Patwari in village Pipli, District Sirsa alongwith Balwinder Singh (since deceased) had obtained thumb impressions of deceased Jaspal Singh and Hardev Kaur on blank papers while their bodies were lying in the mortuary with the motive to grab their property. Upon these allegations, the appellant Randhir Singh and Balwinder Singh (since deceased) were arrested on 7.10.2010. During investigation, the appellant suffered a disclosure statement and in pursuance of that four blank papers having thumb impressions were recovered from his possession, out of four, two papers were having inscripted words “LTI Jaspal Singh” and two papers were having

inscribed words “RTI Hardev Kaur”, apart from thumb impressions alleged to be of deceased persons. Balwinder Singh during custody also suffered a disclosure statement which led to recovery of one ink pad. During investigation, with prior permission of the Court, the handwriting of accused Randhir Singh was obtained so as to compare with the words “LTI Jaspal Singh” and “RTI Hardev Kaur” inscribed on recovered blank papers and sent to FSL, Madhuban for comparison. It is apt to note here that during investigation, the appellant refused to undergo lie detecting test. After completion of investigation, final report under Section 173 Cr.P.C. was filed by the SHO against the appellant and one Balwinder Singh (since deceased) under Sections 420, 468, 34 IPC before the Court of learned Sub Divisional Judicial Magistrate, Dabwali.

During the course of investigation, on 20.7.2011 one Gian Singh son of Inder Singh got recorded his statement under Section 161 Cr.P.C. and levelled allegations against Surjeet Singh, Uggar Singh and Jaskaran Singh for commission of murder of aforesaid four persons. The investigating agency after completion of investigation, filed challan against the above three persons under Sections 302/449/420/468/34 IPC and under Sections 420, 468, 34 IPC against the present appellant and Balwinder Singh. The appellant and Balwinder Singh were tried before the learned Sub Divisional Judicial Magistrate, Dabwali and as many as 12 witnesses were examined by the learned trial Court. However, thereafter, the learned Sub Divisional Judicial Magistrate, Dabwali committed that case to the Court of Sessions with the observation that the case against the appellant and Balwinder Singh is an off-shoot case of the

main murder case titled as “**State Vs. Surjeet Singh etc.**” Therefore, the said case is required to be tried with that case. Thereafter, the learned Additional Sessions Judge, Sirsa amalgamated both the cases vide order dated 24.2.2012. As already mentioned above, all three accused, namely, Surjeet Singh, Uggar Singh and Jaskaran Singh were finally acquitted from the charges framed against them under Section 302 read with Section 120-B IPC whereas, the present appellant was convicted and sentenced for the commission of offence punishable under Section 468 read with Section 120-B IPC vide impugned judgment of conviction dated 3.2.2014 and order of sentence dated 5.2.2014.

SUBMISSIONS BY COUNSEL FOR THE APPELLANT

This Court heard the learned counsel for the appellant as well as the learned State counsel at length and also perused the lower Court record.

Learned Sr. counsel for the appellant vehemently argued that the learned trial Court has not appreciated the facts in its right perspective whereas, there is no material evidence to connect the present appellant with the alleged crime. It is argued that the learned trial Court completely ignored the fact that the important material witnesses i.e. PW1 Sunil Kumar and PW2 Malkiat Singh did not support the case of prosecution and were declared hostile. It is argued that the Investigating Officer did put any efforts to obtain the admitted thumb impressions of the deceased so as to compare the same with the thumb impressions found on recovered blank papers, therefore, caused serious dent into the case of the prosecution. It is further submitted that the prosecution failed to prove

that the alleged recovered blank papers bear thumb impressions of deceased persons. It is further contended by the learned counsel for the appellant that the learned trial Court has not taken into consideration the statement of PW22 Mahabir Singh, IO who specifically admitted in his cross-examination that he did not take the admitted thumb impressions of the deceased for the purpose of comparison with the alleged forged blank papers. Learned counsel for the appellant also relied upon the cross-examination of PW16 HC Mahender Singh, who categorically admitted during cross-examination that on 14.6.2011, he stated before the learned Sub Divisional Judicial Magistrate, Dabwali that “RTI of Hardev Kaur” and “LTI of Jaspal Singh” on the blank papers Ex.PW16/1 to 4 were got written by Mahabir Singh IO from the present appellant in the police custody.

SUBMISSIONS BY THE LEARNED STATE COUNSEL

On the other hand, the learned State counsel laid much emphasizes upon the FSL report to establish that the handwriting on the blank papers i.e. “LTI Jaspal Singh and “RTI Hardev Kaur”, matches with the handwriting of the present appellant. Apart from that, he further submits that during the course of investigation, the appellant refused to undergo lie detecting test for which an adverse inference can be drawn against the appellant. He further submits that the trial Court has rightly convicted the appellant and the judgment of conviction and order of sentence does not suffer from any illegality and, therefore, requires no interference.

REASONS

This Court is not examining the issue relates to the murder of four persons as that issue stands settled. All the three persons mentioned above were acquitted by the learned trial Court. Against the verdict of acquittal, one of the victim, namely, Chhinder Pal Kaur preferred an appeal before this Court vide Crl. Appeal D-1066-DB-2014 titled as **“Chhinder Pal Kaur Vs. State of Haryana and others”**. The Division Bench of this Court dismissed the appeal vide judgment dated 26.3.2015.

This Court is only examining the present case with regard to appellant who was tried for the commission of offences punishable under Section 468 read with Section 120-B IPC and convicted accordingly. The appellant was arrayed as an accused by the prosecution agency on the supplementary statement of one Surjit Singh and Malkiat Singh. In their statements under Section 161 Cr.P.C., it was alleged that the appellant alongwith Balwinder Singh had obtained thumb impressions of deceased Jaspal Singh and Hardev Kaur on blank papers while their dead bodies were lying in the mortuary. As already recorded above, Surjeet Singh was lateron transposed as an accused by the investigating agency whereas, Malkiat Singh was examined as PW2. Malkiat Singh stepped into the witness box and did not support the case of prosecution and as such, he was declared hostile. He was put to lengthy cross-examination by the learned Public Prosecutor, however, nothing material could be extracted during his cross-examination. Another witness which was cited by the prosecution and examined during trial was PW1 Sunil Kumar. The prosecution cited Sunil Kumar as witness to prove that the blank papers which were recovered from the appellant were purchased by the appellant

and Balwinder Singh from him. Moreover, when he stepped into the witness box, he also did not support the prosecution case and was accordingly declared hostile. On the other hand, PW22 Mahabir Singh categorically admitted during cross-examination that he did not take admitted thumb impressions of deceased for the purpose of comparison. The relevant extract of statement of PW22 Mahabir Singh reads as under:-

“I had gone through the investigation conducted prior to my taking over the same. There is no record with me to the effect that the thumb marks of the deceased were smudged in ink. **I did not take the admitted thumb impressions of the deceased for the purpose of comparison with the thumb impression on Ex.PW16/1 to 4.** The disclosure statements and other recovery memos and demarcation memos are in the hands of HC Mahender Singh.”

The prosecution also examined HC Mahender Singh as PW16, who in cross-examination, infact, demolished the prosecution case. In his statement, he admitted that on 14.6.2011, he made a statement before the learned Sub Divisional Judicial Magistrate, Dabwali that “RTI of Hardev Kaur” and “LTI of Jaspal Singh” on blank papers Ex.PW16/1 to 4 were got written by Mahabir Singh IO from Randhir Singh (present appellant) in the Police Station. The relevant extract of the statement of PW16 Mahender Singh reads as under:-

“My statement was recorded before SDJM Dabwali on 14.6.2011. It is correct that I have stated in the court of SDJM Dabwali on 14.6.2011 that RTI Hardev Kaur and LTI Jaspal Singh on Ex.PW16/1 to 4

were got written by Mahabir IO from Randhir Singh in the Police Station. It is incorrect that today I am intentionally making different statement from the one made by me before SDJM Dabwali on 14.6.2011, which is on judicial file.”

So far as the report of FSL is concerned, it only establishes that the words “LTI Jaspal Singh” and “RTI Hardev Kaur” were written by the appellant. However, it did not prove that the alleged thumb impressions on blank papers belong to the deceased persons.

The learned trial Court has unnecessarily swayed by the statement of the appellant refusing to undergo lie-detecting test and drawn adverse inference of this fact and recorded finding of conviction. It is, infact, well established law that the Court may draw an adverse inference on refusal against an accused to undergo lie detecting test. However, the same cannot be the sole basis of conviction.

In State of U.P. Vs. Sunil, Criminal Appeal Nos.1432-1434 of 2011, the Hon'ble Supreme Court has categorically held that non-compliance of Court directions to undergo lie detecting test may lead to adverse inference. However, the same cannot be entertained as the sole basis of conviction. The relevant part of the judgment reads as under:-

“Thus, we have noticed that albeit any person can be directed to give his foot-prints for corroboration of evidence but the same cannot be considered as violation of the protection guaranteed under [Article 20 \(3\)](#) of the Constitution of India. It may, however, be noted that non-compliance of such direction of the Court may lead to adverse inference, nevertheless, the same cannot be entertained as the sole basis of conviction.”

The learned Sr. counsel for the appellant relied upon **Smt. Selvi & Ors. Vs. State of Karnataka, Criminal Appeal No. 1267 of 2004**, wherein the Hon'ble Supreme Court has categorically held that the result obtained from the test such as Polygraph examination etc. shall be treated as “personal testimony” and involuntary administration of every such tests come within the scope “testimony compulsion” thereby attracting the protective shield of Article 20(3). The relevant observation of the the Hon'ble Supreme Court reads as under:-

“In light of the preceding discussion, we are of the view that the results obtained from tests such as polygraph examination and the BEAP test should also be treated as `personal testimony', since they are a means for `imparting personal knowledge about relevant facts'. Hence, our conclusion is that the results obtained through the involuntary administration of either of the impugned tests (i.e. the narcoanalysis technique, polygraph examination and the BEAP test) come within the scope of `testimonial compulsion', thereby attracting the protective shield of [Article 20 \(3\)](#)”.

The Hon'ble Supreme Court in the case of **Sharad Birdhi Chand Sarda Vs. State of Maharashtra, 1984 AIR 1622** has laid five conditions which must be fulfilled before a case against an accused can be said to be fully established in the case of circumstantial evidence. The relevant portion reads as under:-

“A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully

established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in [Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra](#)(¹) where the following observations were made:

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based

on circumstantial evidence.”

Thus, its clear that the prosecution has to prove all circumstances beyond reasonable doubt from which conclusion of guilt is to be drawn. Existence of those circumstances cannot be presumed by the Court. The prosecution has to have discharged its onus by proving all circumstances upon which it relies in order to connect the accused with the crime. In the present case, the prosecution has miserably failed to complete the chain of circumstances so as to establish the guilt of the accused.

After giving my thoughtful consideration to the rival contentions raised by the learned counsel for the parties and the legal proposition discussed above, in my considered opinion, the appeal is accepted.

Accordingly, the present appeal is allowed. The judgment of conviction dated 3.2.2014 and order of sentence dated 5.2.2014 passed by the learned Additional Sessions Judge, Sirsa are, hereby, set-aside. The bail bonds of the appellant stand discharged.

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

(KULDEEP TIWARI)
JUDGE

18.11.2022
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No