

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CRA-D-1002-DB-2017 (O & M)
Reserved on: 20.07.2023
Pronounced on: 25.07.2023

HAKAM SINGH AND ANR.Appellants

Versus

STATE OF PUNJABRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. Gurmeet Singh Saini, Advocate
for Mr. Balraj Singh Sidhu, Advocate (legal aid counsel)
for the appellants.

Ms. Monika Jalota, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. The learned Additional Sessions Judge, Mansa through a verdict drawn on 28.07.2017, upon case SC No. 5 of 08.08.2014 proceeded to, in respect of charges drawn against, both the accused, for offences punishable under Sections 302/201/34 IPC, hence made a verdict of conviction, upon, the convicts. Moreover, through a separate sentencing order drawn on 28.07.2017, the learned trial Judge concerned, proceeded to make the hereinafter extracted sentence(s) upon the convicts.

Name of the convict	Section	Sentence	Fine	In default
Hakam Singh	302 IPC	Rigorous Imprisonment for life	Rs.10,000/-	Two months Rigorous Imprisonment

Hakam Singh	201 IPC	Rigorous Imprisonment for seven years.	Rs.5,000/-	One month Rigorous Imprisonment
Bawa Singh	302 IPC	Rigorous Imprisonment for life	Rs.10,000/-	Two months Rigorous Imprisonment
Bawa Singh	201 IPC	Rigorous Imprisonment for seven years.	Rs.5,000/-	One month Rigorous Imprisonment

2. The convicts become aggrieved from the verdict of conviction (supra), and, also become aggrieved from the consequential thereto sentence(s) (supra), as became imposed upon them by the learned Convicting Court, and, have chosen to assail them, through theirs' constituting the instant appeal before this Court.

FACTUAL BACKGROUND

3. The genesis of the prosecution case becomes encapsulated in the appeal FIR to which Exhibit PW-15/B is assigned. Therein, it is narrated that on 11.06.2014, SI/SHO Gurvir Singh alongwith SI Sukhjinder Singh, SI Rajinder Singh, HC Jagtar Singh, HC Hakam Singh, HC Mukhinder Singh and HC Gurtej Singh were present in connection with patrolling duty and checking of suspected persons on Govt. vehicle No.PB-31-H- 3617 which was being driven by HC Harmander Singh and were going towards Mirpur Kalan, Adamke, Chotian etc. When the police party reached at bus stand village Mirpur Kalan, he received a secret information that Hakam Singh, Harnek Singh alias Kuku (deceased), Bawa Singh, Kala Singh and Golo Kaur daughter/sons of Hardam Singh, who are residents of village Adamke, whereins, Golo Kaur is married at village Bhunder, Kala Singh, who is a saint is residing outside the village, Harnek Singh has sown vegetables in his fields and is residing in the room constructed there.

Two other brothers are residing with their mother in the village. All the brothers are unmarried and are possessing five and half kanals land each. About 20 days ago, Harnek Singh alias Kuku mortgaged his five and half kanals land with his uncle Nazar Singh. Hakam Singh and Bawa Singh were under the fear that Harnek Singh would sell the said five and half kanals land. Due to this reason, yesterday on 10.06.2014 at about 2:30/3:00 O'clock, they both have murdered Harnek Singh by inflicting injuries to him in the room constructed in the fields and set his body ablaze by sprinkling petrol. On the basis of aforesaid information, case under Sections 302/201/34 IPC was registered.

INVESTIGATION PROCEEDINGS

4. Requests were sent for sending the Executive Magistrate and team of FSL at the spot. SI/SHO Gurvir Singh alongwith other police officials reached at the spot. Facts were disclosed to the FSL team. Form No.25.35(a) was prepared. The dead body was sent for postmortem examination through HC Gurtej Singh and HC Hakam Singh. Rough site plan of the place of occurrence was prepared on the demarcation of eye witness Bhola Singh. One scaled site plan was got prepared from the Halqa Patwari who was present at the spot alongwith Tehsildar Sh. Gurmail Singh. The fingerprints appearing on the empty bottle lying at the spot were got developed. The bottle was made into a parcel. The parcels were sealed with seal 'GS'. Sample seal was separately prepared. Same was taken into possession vide separate memo. The fingerprints appearing on the iron gate were got developed, but they could not be lifted, so request for sending photographer at the spot was made to Fingerprints Bureau, Phillaur. Plain earth and blood

stained earth were lifted at the spot and made into parcels. The parcels were sealed with seal bearing impression 'GS'. Sample seal was separately prepared and seal after use was handed over to SI Sukhjinder Singh. The legs and one arm of the cot which were half burnt were taken into possession vide separate memo. Statements of the witnesses were recorded. The photographs of the iron gate were taken. The post mortem report alongwith three sample parcels were taken into possession. The doctors opined the cause of death in this case as per their opinion is due to hemorrhage and shock due to injury on vital organs (brain) which are ante mortem in nature and sufficient to cause death in the ordinary course of nature. Statement of Sarpanch Teja Singh of village Adamke was recorded under section 161 Cr.P.C. The photographs were taken into possession vide separate memo. The accused were arrested on 18.06.2014. The weapons used in the commission of the crime were recovered as per the statements of the accused recorded under section 27 of Evidence Act. Rough site plan of the place of recovery was prepared. Statements of the witnesses were recorded. Arrest memos were prepared. Sketch of weapon of offence was prepared. Reports of the laboratories were obtained.

5. 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, against both the accused.

COMMITTAL PROCEEDINGS

6. Finding the offence under Section 302 IPC to be exclusively triable by the Court of Session, the learned committing

Court vide order dated 08.08.2014, committed the case to the Court of the learned Sessions Judge, Mansa.

TRIAL COURT PROCEEDINGS

7. On finding a prima facie case, charges under Sections 302/201 IPC became framed, against both the accused, to which they pleaded not guilty, and, claimed trial.

8. 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 concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence.

9. In their defence, the accused examined Hakam Singh as DW-1, Sajjan Singh as DW-2 and closed the defence evidence.

10. After conclusion of the trial, as, entered upon the FIR (supra), by the learned Additional Sessions Judge, Mansa, the latter proceeded to make the afore verdict of conviction, and, also made the consequent thereto sentences (supra), upon, the present appellants.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANTS.

11. The learned counsel for the aggrieved convict-appellants herein, has vigorously argued before this Court, that the impugned verdict of conviction, and consequent thereto sentence(s) (supra), as imposed, upon the convicts-appellants, thus are ridden with a gross infirmity of gross misappreciation, and non-appreciation of the evidence, existing on record. Therefore, he has argued that the appeal

quashed, and set aside.

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.

CASE DEPENDENT UPON THE TESTIMONY OF EYE WITNESS PW-1-BHOLA SINGH.

13. For proving the charges (supra) drawn against the convicts, the prosecution made reliance upon the deposition of an ocular witness to the occurrence, who stepped into the witness box, as PW-1-Bhola Singh. In his examination-in-chief, he has made echoings, that on 10.06.2014, when he was present in his fields and was removing the extra grass in the cotton field, then at about 2.30/3.00 p.m., when he was preparing tea, in the kotha constructed in the fields, he heard noise from the kotha of Kukku alias Harnek Singh, and when he reached there, he speaks that Hakam Singh and Bawa Singh were beating Kukku alias Harnek Singh, besides echoes that Hakam Singh was armed with a spade, and, Bawa Singh was armed with an iron pipe. PW-1 also then proceeded to identify both the accused, who were present in the Court.

14. He further testifies in his examination-in-chief, that Kukku alias Harnek Singh fell down and he raised lalkara, about the reasons for theirs assaulting him, whereupon, he speaks that the accused came towards him and rounded him. Moreover, he also speaks that they threatened him that in case he disclosed the occurrence to anyone, then they would eliminate him.

15. PW-1 also testifies in his examination-in-chief, that the

accused stated to him that they would set ablaze Kukku alias Harnek Singh. PW-1, furthermore has also spoken that on the next day, in the morning, at about 9/10.00 A.M., a large number of people gathered in the fields of Kukku alias Harnek Singh, and that police also reached the spot. He testifies that then they found that the burnt dead body of Kukku alias Harnek Singh, thus was lying there. On assurance of the police officials for providing protection, he made statement before the SHO concerned, that Hakam Singh and Bawa Singh murdered Kukku @ Harnek Singh and thereafter had set his dead body on fire.

16. In his examination-in-chief, he has proven his previously recorded statement in writing. PW-1 also suffered the ordeal of an exacting cross examination, but yet during course thereof, the defence counsel rather failed to elicit from him, thus any echoing qua the deposition (supra), as, comprised in his examination-in-chief, thus being engineered, false, or, contrived. Therefore, credence is to be assigned to the deposition of PW-1.

MEDICAL EVIDENCE

17. Though primacy is to be assigned to credible ocular account rendered by a credible eye witness vis-a-vis medical evidence, but yet as an abundant safeguard corroboration thereto is also required to be meted by medical evidence.

18. The doctor who conducted an autopsy on the body of the deceased Harnek Singh stepped into the witness box as PW-6. During the course of her examination-in-chief, she proved the post mortem report, as became authored by her and by Dr. Puneet Garg. She also proved the existence thereons of the valid signatures of Dr. Puneet

Garg. The post mortem report is assigned Exhibit PI and Exhibit PJ.

19. Moreover, she has proven that the cause of death of deceased Harnek Singh (Exhibit PH), was owing to hemorrhage and shock caused by the injuries to vital organs (brain), which are stated to be ante mortem in nature, and which are stated to be sufficient to cause death in the ordinary course of nature. The relevant ante mortem injuries as noticed by PW-6, on the body of deceased are extracted hereinafter.

1. A lacerated wound of 8X2 cm present on left Fronto-temporal region with brain matter coming out from the wound. On dissection s/c infiltration of blood was present. On further dissection blood clots are present over frontotemporal area of brain in skull cavity.

2. 4X1 cm lacerated wound present adjacent to injury No.1 and is 2 cm below. On dissection s/c infiltration of blood was present. On further dissection, blood clots were present on left frontotemporal area of brain in skull cavity.

20. Therefore, the above extracted injuries, as became proven to occur on the body of the deceased, do unflinchingly not only prove the ocular version, but also candidly prove the user thereons of the incriminatory weapons of offence, thus by the convicts.

DISCLOSURE STATEMENT(S) OF ACCUSED AND CONSEQUENT THERETO RECOVEREIES

Signatured disclosure statement of accused Hakam Singh.

21. During the course of investigations, being made into the appeal FIR, convict Hakam Singh made a signatured disclosure statement, to which Ex. PS is assigned. The signatured disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“xxx

Disclosure memo U/s 27 EV Act

Before the below noted witnesses, accused Hakam Singh above said, in police custody admitted before me during interrogation that “On 10.06.2014, the spade with which, I, in connivance with my brother Bawa Singh had murdered our brother Harnek Singh, by inflicting injuries on his head, the same blood-stained spade has been kept concealed by me in the creeper vegetables sown in the middle of our field, after the murder. Only I know about it and can get it recovered on demarcation.”

Accused: LTI Hakam Singh, above said

Witness : Sd/- ASI Sukhjinder Singh, PS Sardulgarh.

Witness: Sd/- ASI Rajinder Singh, PS Sardulgarh

22. Pursuant to the above signed disclosure statement, convict Hakam Singh, got recovered the weapon of offence i.e. blood stained spade, which was taken into police possession, through recovery memo Ex. PV.

Signed disclosure statement of accused Bawa Singh.

23. During the course of investigations, being made into the appeal FIR, convict Bawa Singh made a signed disclosure statement, to which Ex. PT is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“xxx

Disclosure memo U/s 27 EV Act

Before the below noted witnesses, accused Bawa Singh above said, in police custody admitted before me during interrogation that “On 10.06.2014, the iron pipe with which, I, had murdered my brother Harnek Singh alias Kukku, by inflicting injuries on his head, the same is stained with blood, has been kept concealed by me in the creeper vegetables sown in our field, in the southern side corner, after murdering my brother Kukku. Only I know

about it and can get it recovered on demarcation.”

Accused: LTI Bawa Singh, above said

Witness : Sd/- ASI Sukhjinder Singh, PS Sardulgarh.

Witness: Sd/- ASI Rajinder Singh, PS Sardulgarh

24. Pursuant to the above signed disclosure statement, convict Bawa Singh, got recovered the weapon of offence i.e. iron pipe, which was taken into police possession, through recovery memo Ex. PY.

INFERENCES DRAWN FROM THE DISCLOSURE STATEMENT(S) AND RECOVERY MEMO(S).

25. A reading of the respectively made disclosure statements, does reveal, that not only both the accused confessed their participation, in the crime event, but also reveal qua theirs' evincing their readiness to cause recoveries of the relevant incriminatory items, to the investigating officer concerned, thus from their respective place(s) of their hiding and keeping by them, and which place(s) were but known exclusively to them, and whereafter, also they through recovery memo(s) respectively comprised in Exhibit PV, and, in Exhibit PY, also respectively did cause the relevant recoveries, to the investigating officer concerned. The above drawn disclosure statements when become signed by each of the co-convicts, and, also when they led to the making of the apposite recoveries at their respective instances, to the investigating officer concerned. In consequence, sanctity is to be meted to the above drawn memo(s). Though the assigning of sanctity thereto would become waned only, when they had ably denied, the existence of their respective signatures thereon, and or, had efficaciously proven that the relevant recoveries, were engineered, or,

contrived thus through a clever strategem being deployed by the investigating officer concerned, but yet a reading of the deposition of PWs concerned, does not reveal, that the above possible exculpatory pleas, hence for negating the evidentiary worth of the above drawn memo(s), rather becoming either raised or becoming efficaciously proven.

26. In sequel, both the above drawn memo(s) acquire tenacious evidently worth. Resultantly they also corroborate the above credible ocular account, as, rendered qua the prosecution case, and, also corroborate the medical account rendered in respect thereof.

FINGER PRINTS EXAMINER REPORT

27. The best forensic evidence, is comprised in the report of the finger prints expert, to which Exhibit PW14/C becomes assigned. The photographs of the finger impressions, as were found on the iron door in the room, were testified by PW-15 Inspector Gurvir Singh, to have been clicked, and to which Ex.P1 to P6 have been assigned. Moreover, it becomes echoed by PW-15 in his examination-in-chief, that on 26.06.2014, the finger impressions of accused Bawa Singh and Hakam Singh, thus were obtained in the presence of Gurmail Singh Tehsildar (Executive Magistrate) Sardulgarh, and, to the above made finger impressions of the convicts, hence respectively Exhibit PK and Exhibit PL becomes assigned. Subsequently, as revealed by the report of the finger print expert to which Ex.PW14/C is assigned, hence after the apposite inter-se matchings being made, thus inter-se the two photographs bearing the relevant photographed finger impressions, with the two search slips bearing ten digit impressions respectively of

convict Bawa Singh and convict Hakam Singh, thus the finger print expert concerned, opined that there is sufficient similarity inter-se both.

The relevant report of the finger print expert is extracted hereinafter.

“...I have compared the impressions on the documents noted in the margin received on dtd. 25.06.2014 from the Sr. Supdt. of Police, Mansa vide his memo No. 669/AC-3 dtd. 25.06.2014 in case FIR No.61 dated 11.06.2014 u/s 302/201/34 IPC, P.S Sardulgarh Distt Mansa through Ct. Nirmal Singh No. 1070/Mansa and am of the opinion that the photographed impression marked 'A' on the photograph No I is partly smudged, but otherwise it is comparable and there exists sufficient (not less than 8) points of similarity i.e. matching ridge characteristic details in their identical sequence without any discordances between its comparable portion and the corresponding portion of the Left Thumb impression of Hakam Singh marked A/A on his Search slip vide the reasons given in the enclosed photographic enlargements marked as (A/A & A/A/I) respectively. 8 points of similarity in their same form and position have been graphically shown on them. The nature, direction and sequence of each point has been indicated in its relevant circle. So many points of similarity cannot be found to occur in the impression of different thumbs and fingers. These are therefore identical or are of one and the same person.

The photographed impression marked B on the photograph No.II is partly smudged, but otherwise it is comparable and there exists sufficient (not less than 8) points of similarity i.e. matching ridge characteristic details in their identical sequence without any discordances between its comparable portion and the corresponding portion of the Left Middle finger impression of Hakam Singh marked B/B on his search slip vide the reasons given in the enclosed photographic enlargements marked as (B/B & B/B/II) respectively. 8 points of similarity in their same form and position have been graphically shown on them. The nature, direction and sequence of each point has been indicated in its relevant circle. So many points of similarity cannot be found to occur in the impression of

different thumbs and fingers. These are therefore identical or are of one and the same person.

Sd/- Balbir Singh, Finger print Expert

Sd/-Chander Partap, Finger Print Expert

Sd/-

*Director,
Finger Print Bureau,
Phillaur....”*

28. The above report (supra), as made by the finger print expert after makings of apposite inter-se comparisons inter-se two photographs bearing photographed impressions, thus with two search slips bearing ten digit impressions respectively of convict Bawa Singh and convict Hakam Singh, but obviously comprises the best forensic evidence, thus, for proving the guilt of the accused in the charged offences. Predominantly, evidentiary vigor is to be assigned thereto, as no evidence becomes adduced rather by the convicts-appellants, but suggestive that the collections (supra) were tainted, engineered, or, contrived, through a clever strategem being deployed by the investigating officer concerned. Contrarily, when the above made apposite collections remained un-challenged or un-rebutted, thereby also their affirmative inter-se comparisons, as were made by the finger print expert, thus resulting in an inculpatory opinion being drawn against the convicts, thereby acquire(s) conclusivity.

29. Consequently, the prosecution thereby has proved to the hilt the charges against both the appellants-convicts.

FINAL ORDER

30. In consequence, there is no merit in the appeal, and, it is dismissed. The impugned verdict, and, consequent thereto sentence(s)

(supra) are affirmed and maintained.

31. If the appellants-convicts (supra) are on bail, thereupon, the sentences(s) as imposed upon the convicts-appellants, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

25.07.2023

kavneet singh

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