

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-650-2019 (O&M)
Reserved on: 06.12.2023
Date of decision: 20.12.2023

GORU

...Appellant

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Pradeep Prakash Chahar, Advocate (Legal Aid Counsel)
for the appellant.

Ms. Monika Jalota, Sr. DAG, Punjab

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict drawn on 17.05.2019, upon Sessions Case No.133, of 23.07.2018, by the learned Additional Sessions Judge, Sangrur, wherethrough, in respect of charges drawn for an offence punishable under Section 302 of IPC, he recorded a verdict of conviction against the convict. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, imposed, upon, the convict both sentence(s) of imprisonment as well as sentence(s) of fine, but in the hereinafter extracted manner.

Name of convict	Offence	Imprisonment	In default of payment of fine
Goru Sukhdev Mani	@ 302 IPC	Life Imprisonment with fine of Rs. 20,000/-	To further undergo RI for 2 years

2. The period spent in prison by the convict during investigation or trial was, in terms of Section 428 of Cr.P.C., ordered to be set off from the above imposed substantive sentence(s) of imprisonment, upon the convict.

3. The convict becomes aggrieved from the above drawn verdict of conviction besides also becomes aggrieved from the above drawn order of sentence, thus, he is led to institute thereagainst the instant appeal before this Court.

FACTUAL BACKGROUND

4. The genesis of the prosecution case is embodied in the appeal FIR to which Ex.PG is assigned. It is recorded therein, that on 25.03.2018, the police party headed by Inspector Nirmal Singh in connection with patrolling and checking of suspected persons was present at Bus Stand village Ladda, where Nihal Singh, Amrik Singh Ex. Panch and Naib Singh came. Nihal Singh suffered a statement before Inspector Nirmal Singh. Allegedly, Surinder Kumar @ Sinder was residing in their village Kanjala for the last more than 30-35 years and was doing the labour work. He was addicted to liquor. There are certain rooms constructed at the place known as Guttu Di Khuhi situated at Kanjhla-Ladda road in front of the fields of Amrik Singh Ex. Panch. For the last 1½ years, Surinder Kumar @ Sinder used to work during day time and sleep at night in the said rooms.

5. On 25.03.2018 at about 10.00 a.m., he along-with Amrik Singh had visited the fields. When they reached near Guttu Di Khuhi, the dead body of Surinder Kumar @ Sinder was lying in the open area outside the said rooms. There were injuries on his person and blood oozed out therefrom. The previous night, he was murdered by some unknown person by causing injuries. On the basis of above statement of the complainant, the FIR was got registered.

INVESTIGATION

6. During investigation, the Investigating Officer visited the place of occurrence. Form no. 25.35(1) Aara was prepared. The postmortem on the dead

body was got conducted. The site plan of the place of occurrence was prepared. Statements under Section 175 of Cr.P.C were recorded. Photography of the place of occurrence was done through mobile phone. Chance finger prints from a glass tumbler were taken, which was put in a wooden box, converted into a parcel, sealed with the seal bearing impression GS and taken into police possession. A half of country-made liquor make 'Mota Santra' and a shear necklace were also taken into police possession vide separate memos. After the postmortem examination, the dead body was handed over to the legal heirs of Surinder Kumar. As per the report of Doctor, the cause of death of Surinder Kumar @ Sinder was due to hemorrhage and shock as a result of head and liver injuries. Statements of witnesses under Section 161 Cr.P.C were recorded.

7. On 08.04.2018, during investigation, Kulwinder Singh suffered his statement that he was running a photography shop under the name and style of 'Deep Studio' at Village Kanjla. On 24.03.2018, he was going to his house. At about 9.00 p.m., when he reached near Guttu Di Khuhi in front of the fields of Amrik Singh, he saw in the lights of his motor-cycle that Goru @ Sukhdev Muni having Trident (Trishul) in his hands was going towards the rooms of Guttu Di Khuhi. He further disclosed that about 1½ years ago, Goru @ Sukhdev Muni used to reside there and had got constructed the rooms. He usually visited the said place. Surinder Kumar @ Sinder, who was residing in the village for the last 30-35 years, started residing in those rooms about 1½ years ago. He thought that Goru had gone there due to his usual visit. However, next day, he came to know that during the intervening night of 24/25.03.2018, Surinder Kumar @ Sinder was murdered by inflicting injuries on his person. On the basis of his statement, Goru @ Sukhdev Muni was nominated as accused in this case. The finger prints were deposited with the office of Director Finger Prints Bureau, Phillour. Kesar

Singh produced Goru before the police. He was arrested and his personal search was conducted vide separate memos. On 13.04.2018, the accused made a disclosure statement under Section 27 Evidence Act that after committing murder of Surinder Kumar @ Sinder with Trident (Trishul), he had kept concealed it under the heap of bricks near Guttu Wali Khuhi and could get the same recovered after demarcation. Thereafter, he got recovered the Trident (Trishul) used in the commission of crime from the disclosed place, which was converted into a parcel, sealed with the seal bearing impression NS and taken into police possession vide separate memo. Rough site plan of the place of recovery was prepared. With the permission of the Court, the fingerprints of accused were obtained, which were later on sent to the office of Director Fingerprints Bureau, Phillour. The other case property i.e. blood stained clothes were also sent to the office of FSL, Mohali. Thereafter, further investigation was carried out and on its completion, challan against the accused was presented in the Court of learned Illaqa Magistrate.

COMMITTAL PROCEEDINGS

8. Since the afore offence was exclusively triable by the Court of Session, thus vide committal order dated 09.07.2018 the learned Judicial Magistrate Ist Class, committed the accused to face trial before the Court of Session.

TRIAL PROCEEDINGS

9. The prosecution examined as many as 15 witnesses and, subsequently, the public prosecutor closed prosecution evidence. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, he did not choose to lead any defence evidence.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

10. The learned counsel appearing for the convict-appellant has vigorously argued before this Court, that since it is a case based upon circumstantial evidence, thus, the reliance as made by the learned trial Judge concerned, upon the disclosure statement of the convict, besides upon the consequent thereto recoveries, is, rather a misplaced reliance. To fortify the above submission, he submits that the drawing of the disclosure statement besides the drawings of the recovery memos, both are tainted besides are concocted, and, manufactured rather through a stratagem deployed by the investigating officer concerned. Thus, he argues that on the above score, also the incriminatory disclosure statement besides the incriminatory recovery memos concerned, also loose their evidentiary vigor. He further submits that the impugned judgment, is ridden, with grave vices of gross mis-appreciation and non-appreciation of evidence germane to the charge. Therefore, he contends that the impugned judgment be quashed, and, set aside.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

11. The learned State counsel has argued that the impugned verdict of conviction, and, consequent thereto sentence (supra), as became imposed upon the convict by the learned trial Judge concerned, is merit worthy, as the same does not suffer from any taint of any gross mis-appreciation or non-appreciation of any evidence germane to the charge. Therefore, he contends that the impugned verdict of conviction be maintained, and, affirmed by this Court.

CIRCUMSTANTIAL BASED EVIDENCE CASE BASED ON THEORY OF LAST SEEN PROPAGATED BY PW-3, THE SAID PROPAGATION IS THE INITIAL PRIMARY LINK IN THE CHAIN OF INCRIMINATORY CIRCUMSTANCES AS ERECTED BY THE PROSECUTION AGAINST THE ACCUSED

12. The theory of last seeing of the accused and the deceased together, is propagated by PW-3 Kulwinder Singh. PW-3 in his examination-in-chief has

echoed that on 24.03.2018, when he was going on his motorcycle from Kajla towards Ladda, then at about 09:00 p.m., when he reached in front of the field of Amrik Singh near Guttu di Khuhi wali jagah, then he saw from the lights of his motorcycle, that Sukhdev Muni alias Goru-appellant, who is present in the Court, thus along with a Trishul in his hand, was going towards the room(s) of Guttu di khuhi wali jagah, after jumping over the fallen wall. In his examination-in-chief, the above witnesses further spoke that Sukhdev Muni @ Goru-appellant had also resided there for about 1.5 years ago as he had built those rooms there. He further spoke in his examination-in-chief, that Goru-appellant usually visited the said place. Subsequently, he has echoed in his examination-in-chief, that Surinder Kumar @ Sinder Bhaiya, used to reside in those rooms, for the last 1.5 years after the accused left those rooms, and, that the period of stay of the said deceased in the village lasted 30/35 years, as he was engaged in performing the work of labour. He continues to testify that on the relevant day, he sighted the deceased, to be also standing there, and, also that on the relevant day Sukhdev Muni, thus visited the above place, as he usually visited the same. After his last seeing the deceased, and, the accused together at the crime site, he has testified that he visited Manikaran Sahib, and, when he returned from the said place, he came to know, that somebody had murdered Surinder Kumar @ Sinder, on the intervening night of 24/25.03.2018. Therefore, he attributed the incriminatory role to the present appellant.

13. The above witness was subjected to a rigorous cross-examination. However, no successful unearthings were made therein, rather by the learned defence counsel, but suggestive, that the above testification(s), as made by him, in his examination-in-chief, rather were either false, contrived or concocted. Therefore, naturally immense evidentiary credit, is to be assigned to the testification of PW-3. Resultantly, an inference is garnered, that the accused and

the deceased were last seen together by PW-3. Therefore, the cogent link (supra), in the chain of incriminatory circumstances, as become erected by the prosecution against the accused, but naturally therebys becomes cogently established by the prosecution.

DISCLOSURE STATEMENT OF THE CONVICT AND CONSEQUENT THEREWITH RECOVERIES

14. During the course of investigations being made into the FIR, the investigating officer concerned, had put the accused to police remand. During the course of the convict being put to police remand, he made a signed disclosure statement, to which Ex.PL is assigned. The contents of Ex.PL are ad verbatim extracted hereinafter.

“Disclosure statement of convict Goru

In the presence of the following witnesses, accused Sukhdev Muni alias Goru above, during interrogation suffered the disclosure statement that “I, after committing murder of Surinder Kumar alias Sinder, have concealed the iron trident (Trishul) after cleaning the same, in the heap of bricks lying near the Gattu Wali Khoohi, which was used at the time of murder, regarding which he only knew and can get the same recovered after demarcation. After reducing into writing the disclosure memo, same is being got signed from the witnesses.

LTI

Sukhdev Muni alias Goru above

Sd/-

*HC Bhupinder Singh 169/SNG
Police Station Sadar, Dhuri*

Sd/-

*Witness C. Amrinder Singh 1685
Police Station Sadar, Dhuri.*

*Sd/- Nirmal Singh SI
Police Station Sadar, Dhuri
Dated: 13.04.2018”*

15. A reading of the above extracted signed disclosure statement, as made by accused Goru, reveals, that he had therein not only confessed his guilt, but had also disclosed that he can ensure the causings of recovery of trident (Trishul) Ex.PL, to the investigating officer concerned, from the place of his hiding, and, concealing it, the same being exclusively known to him. Since in

pursuance thereof, through a recovery memo Ex.PL, he caused the recovery of trident (Trishul). Thus evidentiary vigor is to be assigned to the above memos, as he has not been able to either ably deny his signatures as occur on Ex.PK, nor has been able to prove the apposite denial. Moreover, since he has also not been able to bring forth tangible evidence to suggest that the recoveries are either contrived or invented. Thus, evidentiary sanctity is to be assigned to the above drawn memos.

16. Though, the learned counsel for the appellant, has made the above submission before this Court, relating to the evidentiary tenacity of the above drawn memos, but a closest reading of the testification of the marginal witnesses, to the above memos, and, also an incisive scrutiny of the deposition of the investigating officer concerned, rather does not disclose, that either any suggestion became meted to them, thus suggestive, that the said made recoveries were either planted, thus through a stratagem becoming deployed by the investigating officer concerned, or were engineered recoveries, nor when any affirmative answer thereto, became rendered by the above prosecution witnesses. Therefore, the argument (supra), as raised by the learned counsel for the appellant, does become completely faded or whittled down

17. In consequence, immense evidentiary vigor is to be assigned to the above drawn memos. In sequel, the memos (supra), do also comprise a successfully proven vital link in the chain of circumstances circumstances as becomes erected by the prosecution against the accused.

EXTRA JUDICIAL CONFESSION MADE BY ACCUSED BEFORE PW-2

18. The extra judicial confession made by the accused, before the PW-2 is also vital link in the chain of circumstantial evidence, as, becomes erected by the prosecution against the accused. The prosecution for proving, the extra judicial confession, as made by the accused to PW-2, thus whereby he confessed

his incriminatory participation, in the crime event, thus made PW-2, to step into the witness box. In his deposition comprised in his examination-in-chief, he testified that on 12.04.2018, while he was going from his village to Dhuri, and, on reaching the drain bridge near Kanjla, near T point Chungal, that he came across Sukhdev Muni also known as Goru Sadh. He continues to testify that he was residing in the rooms known as Guttu di Khuhi wali jagah constructed on the panchayati land. He also echoed in his examination-in-chief that the present appellant disclosed to him that after he left the above rooms, the deceased had occupied the same, and, yet he had been frequently visiting him, but since there was a verbal altercation between them, given the appellant claiming a right over the said rooms, but on a false ground, that the same were got constructed by him, thus when on the night of 24.03.2018, he visited the said place at about 09:30 p.m., then he met the deceased, and noticed that both were engaged in a verbal altercation regarding, as to which of them, is entitled to the said rooms. Since the deceased claimed his right over the said rooms, on the ground, that they were raised on the land owned by the Panchayat, thus the appellant disclosed to him, that he became annoyed, and, attacked him, through delivering trident blow, on the head of the deceased, resulting in oozing of blood from those portions of the body of the deceased, whereon(s) a blow of trident, became so inflicted. Furthermore, he continues to testify that after making an assault on the body of the deceased, thus with a trident, the appellant disclosed to him, that he fled along with the trident, from the crime site. In addition, he testifies that on account of the said assault, the deceased suffered his demise. Furthermore, he speaks in his examination-in-chief, that the appellant asked him to produce, before the police, who was searching for him, and, upon which his accompanying him to Dhuri, thereby they thus encountered the police party headed by SI Nirmal Singh and HC Bhupinder Singh, and, then at that place, he

produced the appellant before them, who arrested him through an arrest memo Ex.PD, and, also then they prepared search memo Ex.PE. The said memos have been deposed by this witness to become thumb marked by him.

19. Though, this witness became subjected to the ordeal of an exacting cross-examination, but no elicitation was made by the learned defence counsel, wherefrom any inference would become mobilized, that he has either wilted under or succumbed, to the exacting cross-examination as made upon him, nor a closest reading of his cross-examination discloses, that he denied all the above speakings, as became made by him, in his examination-in-chief. Since the investigating officer also supported, the deposition of PW-2, as relates to his producing the accused, before the police team, headed by SI Nirmal Singh and HC Bhupinder Singh. Therefore, it appears that after the present appellant making an extra judicial confession before PW-2, rather both, as asked by the present appellant, rather when were heading towards the police station concerned, that enroute both proceeding towards the police station concerned, they encountered the police team, and wherebefore whom, PW-2 produced the accused, and, which resulted in the above arrest memo and personal search memo becoming drawn. Therefore, besides conspicuously, when there is no suggestion made either to PW-2 or to the investigating officer concerned, thus revealing, that the present appellant was not on friendly terms, with PW-2 so as to disable the appellant to make the incriminatory extra judicial confession, thus to PW-2, about his participation in the crime event. Therefore, the extra judicial confession made by the present appellant to PW-2, thus can be stated to be made to a person in whom the present appellant reposed deep trust and confidence, and, thereby it acquires immense evidentiary vigor.

BEST FORENSIC INCRIMINATORY EVIDENCE COMPRISED IN THE REPORT OF THE FINGER PRINT EXPERT CARRIED IN EX.PP.

20. During the course of investigations being made into the crime event the investigating officer concerned, collected from the crime site, glass tumbler Ex.PH, whereons occurred the thumb impressions of the appellant. The said finger impressions of the appellant, on the glass tumbler were photographed, and, there along with, became also sent the glass tumbler, thus to the Director, Finger Print Bureau, Phillaur, for the latter making inter-se comparisons inter-se the photographed thumb impressions, as, occurred on the glass tumbler, thus with the impressions so made on the glass tumbler Ex.PH.

21. The result of the said examination, is carried in the report of the Finger Print Expert, to which Ex.PP is assigned. A perusal of the said report which becomes ad verbatim extracted hereinafter, reveals, that the Finger Print Expert, examined the already powdered, encircled and initiated impressions, on the article noted in the margin, which became received on dated 09.04.2018, from SSP, Sangrur vide memo No.6897/C dated 07.04.2018, sealed with seal of "GS", seals whereof, are revealed therein to be intact, and, corresponding to the specimen seal. He declares therein that the impressions found on the glass tumbler, became photographed vide two copies of photographs, which are enclosed with the report, and, further speaks therein, that the photographed finger impressions, on the glass tumbler, are a true representation, of the original impressions on the glass tumbler. After making the relevant comparisons, he echoes, that he had sealed the parcel, after enclosing therein, the glass tumbler, and, returned the same through, the same messenger who brought it, to the Finger Print Bureau, Phillaur.

"I have compared the impressions on the documents noted in the margin received on dtd. 03.05.2018 from the Sr. Supdt. of Police Sangrur vide his memo No.8643/C dtd. 02.05.2018 in case FIR

No.44 dtd. 25.03.2018 U/s 302 IPC PS Sadar Dhuri Distt. Sangrur through HC Bhajan Lal No.2317/SGR and am of the opinion that the photographed impressions marked A on the photograph No.1 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 Right Index impression of Goru marked A/A on his sample paper 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 on the photograph No.II is sufficiently smudged and do not permit of comparison in their sufficient number of dependable ridge characteristic details. Hence no opinion can therefore be given on it.

The documents noted in the margin are returned herewith in continuation to this office opinion No.999/8 dtd. 09.04.2018.

*Sd/- Director
Finger Print Bureau,
Phillaur.*

Important Note:- This opinion is admissible in evidence in the Court u/s 293 Cr.P.C. ”

22. The result of the examinations of the apposite photographed finger impressions, with the sample impressions bearing 10 digits of Goru, son of Jora Singh (appellant), as became collected, and, as became sent, for their comparison, being made with photographed impressions, existing on the glass tumbler, became echoed by him in Ex.PP, to unravel, that the sample finger impressions being identical with the photographed impressions, as became taken of the finger impressions, as were carried on the glass tumbler.

23. Since the results of the relevant inter-se comparisons, do comprise best scientific evidence, besides also comprise, the ultra efficacious incriminatory evidence against the present appellant. Therefore, when there is no evidence adduced by the defence, thus revealing, that either the collection of the glass tumbler, whereons finger impressions of the accused occurred, rather was vitiated, on account of the glass tumbler becoming planted there, nor when any evidence becomes revealed in the cross-examination of the PWs concerned, relating to the impressions of the accused, as carried thereon, were compelled to be made thereons by the present appellant nor when any evidence exists, thus displaying that the sealed parcels, wherein, became enclosed the glass tumbler rather became tampered nor also when any further evidence becomes adduced, rather suggestive, that the sample finger impressions of the deceased, but were manipulated. Consequently, in the face of wants of evidence (supra), thus becoming adduced by the defence, for thus thereby, belying the results of the examination, as made by the Finger Print Expert, thus concomitantly coaxes this Court to conclude, that the result (supra), of the apposite examinations, do invincibly and forth rightly establish the guilt of the accused in the crime event.

MEDICAL EVIDENCE (POST MORTEM REPORT)

24. The autopsy upon the body of deceased Surinder Kumar was conducted on 25.03.2018 by PW-9. PW-9 has proven *qua* his, authoring Ex.PW9/C, as relates to the autopsy as made upon the body of deceased.

25. Moreover, he has proven that the cause of death of deceased Surinder Kumar, was owing to hemorrhage and shock as a result of head injury and liver injury, as described in the post mortem. All the injuries were declared to be ante mortem. The relevant ante mortem injuries as noticed by PW-9 on the body of deceased are extracted hereinafter.

“1. A large lacerated wound on forehead underlying bone found fracture, pieces of bone are found in frontal area of brain and lacerating it. A hemotoma present in frontal area.

2. A bluish contusion present on right lower chest o/d underlying bone found fracture.

3. A lacerated wound on lower and upper lip old NAD

4. A lacerated wound on left clavicular area o/d NAD

5. Multiple abrasions on left arm.”

26. Even though, the incriminatory weapon of offence was not shown to PW-9, during the course of his making testification(s), before the learned trial Judge concerned. However, yet the said factum does not in the least detract from the efficacy of the proven memos (supra), nor does in the least eclipse the inculpatory effect of the well rendered account qua the crime event, hence by PW-2, and, PW-3. Consequently, the above medical evidence also corroborates all the earlier alluded incriminatory links in the chain of incriminatory circumstances, as become erected by the prosecution against the accused. Resultantly, all the apposite links in the chain of incriminatory circumstances, do thereby become invincibly proven.

FSL REPORT

27. Ex.PU became sent to the FSL concerned, through L/Ct. Manpreet Kaur, No.1632. After examinations being made at the FSL concerned, *qua* the contents of the sealed parcels, thus the expert concerned, drew the hereinafter extracted conclusions.

Xxx

Article Received: *One sealed parcel which was marked A in the laboratory sealed with one seal of ‘SP’. The seal was found intact and tallied with the specimen seal impression.”*

Parcel ‘A’ contained: *The following exhibits alleged to be stained with Blood:-*

1. Kurta marked A-1 in the laboratory.

2. Pyjama marked A-2 in the laboratory.

3. *Banian marked A-3 in the laboratory.*
4. *Kachha marked A-4 in the laboratory.*
5. *Parna marked A-5 in the laboratory.*
6. *T-shirt marked A-6 in the laboratory.”*

FINAL ORDER

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

29. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

20.12.2023

Ithlesh

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No