

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on: 05.09.2024
Pronounced on: 10.09.2024

1. CRA-D-1233-DB-2013

Baljinder KaurAppellant

Versus

State of PunjabRespondent

2. CRR-1860-2010

Satwinder Singh and othersAppellants

Versus

State of PunjabRespondent

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

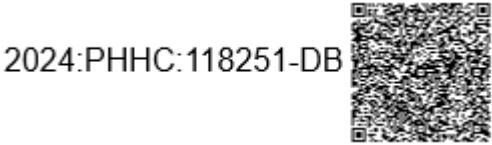
Argued by: Ms. Ramita Puri, Advocate (legal aid counsel)
for the appellant (in **CRA-D-1233-DB-2013**).

Mr. Gautam Dutt, Advocate and
Mr. Saurabh Sharma, Advocate and
Mr. Sukhsaran Sra, Advocate
for the petitioner(s) (in **CRR-1860-2010**).

Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

SURESHWAR THAKUR, J.

1. Since the criminal appeal (supra) as well as the revision
petition (supra), both involve common questions of facts and law.
Therefore, they are amenable to be decided through a common order.



2. **CRA-D-1233-DB-2013** is directed by the convict-appellant, against the verdict of conviction, as made on 17.08.2013, by the learned Additional Sessions Judge, Ludhiana, upon, Session Case No. 1 of 05.02.2010, wherethrough, in respect of charges drawn for offences punishable under Section 302 IPC, he made a finding of conviction against the accused.

3. Moreover, through a separate sentencing order drawn on 17.08.2013, the learned trial Judge concerned, proceeded to impose upon the convict (supra) both sentence(s) of imprisonment as well as of fine, but in the hereinafter extracted manner :-

Name of accused	Convicted U/s	Sentence
Baljinder Kaur	302 IPC	To undergo RI for life and to pay a fine of Rs. 5000/- in default of payment of fine further undergo RI for 5 months.

4. The convict-appellant becomes aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentences of imprisonment, and, of fine as became imposed upon him, by the learned convicting Court concerned, and hence has chosen to institute thereagainst the instant appeal before this Court.

5. **CRR-1860-2010**, has been filed by the petitioners/revisionists seeking quashing of the order dated 01.06.2010, whereby the learned trial Judge concerned had allowed the application filed by the prosecution under Section 319 Cr.P.C., seeking summoning

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05.02.2010 arising out of FIR No. 130 of 30.10.2009 registered at Police Station Dehlon, Ludhiana.

Factual background

6. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex.PA is assigned.

7. As per the prosecution version, on 30.10.2009, police party headed by ASI Jarnail Singh, Incharge, Police Post Latala were present at Majara Chowk which falls under the jurisdiction of village Latala. Satwinder Singh son of Parshotam Singh resident of Maherna Kalan accompanied by Ex Sarpanch Gurmit Singh resident of village Maherna Kalan, got recorded his statement before ASI Jarnail Singh regarding the death of his son Josh Inder Singh, on the basis of which ASI Jarnail Singh in order to proceed further under Section 174 Cr.P.C., sent HC Rajinder Singh No.73 to Police Post Latala to get recorded the rapat and he after visiting the spot on the same very day in the presence of Kulwant Singh son of Buta Singh, Sukhdev Singh son of Mohinder Singh, got the postmortem examination of Josh Inder Singh @ Josh and got prepared inquest report and further sent the dead body under the supervision of HC Ranjit Singh No.299 to Civil Hospital Dehlon.

8. On 30.10.2009 police party headed by SHO Gurmit Singh were present at Dehlon Chowk after returning from a conference at Nanaksar Kalera, Jagraon, then complainant Tejpal Singh who was accompanied by witness Master Sohan Singh resident of village Sehora got recorded his statement that he is resident of above said address and

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performed the marriage of their younger sister Harjinder Kaur in the year, 2001 with Satwinder Singh @ Chhinda son of Parshotam Singh resident of Maherna Kalan, Police Station Dehlon as per sikh rites and ceremonies, who gave birth to Josh Inder Singh @ Josh after one year of her marriage. After the marriage, father in-law Parshotam Singh, mother in-law Mohinder Kaur, husband Satwinder Singh and sister of her husband Baljit Kaur had started harassing the sister of the complainant on the pretext of insufficient dowry. After some time, the above said persons burnt his sister with fire and case was got registered against them accordingly. During that period his sister after thinking that his son will be looked after by above persons properly, had made statement in favour of above persons and in lieu of that the brother of father in law of his sister had transferred his one acre of land in favour of his sister's son Josh Inder Singh. His sister remained under treatment for 11 months but could not survive and expired. After the death of his sister, in the month of January 2009, Satwinder Singh performed his second marriage with Baljinder Kaur wife of Nirmal Singh resident of Jabbo Majra, Police Station Amargarh, District Sangrur. His relatives are living in village Maherna Kalan, through whom he used to come to know about his sister's son and some time he used to visit and meet him but Satwinder Singh, Parshotam Singh and Mohinder kaur were not allowing complainant to meet his sister's son but he came to know that son of his sister was not being looked after properly.

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9. On that day Gurmit Singh contacted from his mobile No.98157-85665 to complainant on mobile No.98551-16655 at 6.48 a.m and told that son of his sister has been expired last evening from whom complainant asked the cause of his death, but he could not give any satisfactory reply. Complainant doubt that some mis-happening has taken place. Then, he accompanied by Master Sohan Singh resident of Sehora and other relatives and respectables of the village reached village Maherna kalan and from there, he came to know that proceedings are being done by the police regarding the death of son of his sister. Then, they reached to Civil Hospital, Dehlon and the Doctor told them that after postmortem examination, they will come to know about the cause of death. They remained present at the hospital. After the post-mortem examination, doctor told him that cause of death in this case is due to asphyxia. Complainant inquired at his own level regarding the cause of death of the deceased. Mohinder Kaur was indulging in the advise of Tantriks and she also used to take Baljinder Kaur for magic etc. and due to that they all i.e. Mohinder Kaur (mother in-law of his sister), Parshotam Singh (father in-law) and husband Satwinder Singh and Baljinder Kaur on the advise of Tantriks and blind faith due to greed of land, killed his sister's son Josh Inder Singh in connivance with each other after strangulating him.

10. The above statement was sent through HC Chamkaur Singh No.439 to the Police Station, case was got registered against accused Parshotam Singh, Satwinder Singh, Mohinder Kaur and

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Baljinder Kaur resident of Maherna Kalan under Section 302/120B/34 IPC.

Investigation proceedings

11. The investigation was set into motion. Rough site plan was prepared, statements of the witnesses were recorded, dead body was taken into possession by the police. Accused Parshotam Singh, Satwinder Singh and Mohinder Kaur were found innocent during the investigation and offence under Section 120B/34 IPC was deleted.

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

Committal proceedings

13. Finding the offence punishable under Section 302 of the IPC, to be exclusively triable by the Court of Session, thus the learned committal Court vide order dated 19.01.2010, committed the case for trial to the Court of the learned Sessions Judge, Ludhiana.

Trial Court Proceedings

14. On finding a *prima facie* case, charge under Section under Section 302 IPC became framed, against the accused concerned, to which she pleaded not guilty, and, claimed trial.

15. In order to prove its case against accused Baljinder Kaur, prosecution examined complainant Tejpal Singh, as PW-1. After the statement of the complainant, the prosecution moved application under

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Section 319 Cr.P.C. against accused Parshotam Singh, Mohinder Kaur and Satwinder Singh which became allowed and thereafter the charges were reframed against all the accused under Sections 302/34 IPC vide order dated 19.08.2010.

16. Feeling dis-satisfied, accused Parshotam Singh, Mohinder Kaur and Satwinder Singh filed revision petition before this Court challenging the summoning order (supra). On the said revision petition, this Court vide interim order dated 25.08.2010, stayed the further proceedings against the accused. Resultantly, the verdict of conviction was pronounced only vis-a-vis Baljinder Kaur.

17. In support of the prosecution case, the prosecution examined five witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge Ludhiana, drew proceedings under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. The accused did not examine any witness in her defence.

18. After conclusion of the trial, as, became entered into the FIR (supra), by the learned Additional Sessions Judge, Ludhiana, the latter proceeded to make the afore verdict of conviction, and, also made the consequent therewith sentence(s) (supra), upon, the accused-appellant.

Submissions of the learned counsel for the convict-appellant.

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19. The learned counsel for the aggrieved convict-appellant herein, has vigorously argued before this Court, that the impugned verdict of conviction, and consequent therewith sentences (supra), as imposed, upon the convict-appellant, both become ridden with a gross infirmity of gross mis-appreciation, and non-appreciation of the evidence, existing on record. Therefore, he has argued that the appeal be accepted, and, the verdict, as challenged before this Court, be quashed, and set aside.

Submissions of the learned State Counsel

20. On the other hand, the learned State counsel has argued that the appreciation of evidence as made by the learned Convicting Court, is merit-worthy, and, that it does not require any interference being made by this Court.

Circumstantial evidence based case dependent on the testimony of PW-1-complainant.

21. For proving the charges (supra) drawn against the convict, the prosecution made reliance upon the deposition of the complainant, who stepped into the witness box, as PW-1. The contents of the examination-in-chief, as rendered by PW-1 are ad verbatim extracted hereinafter.

“ I am agriculturist. We are two brothers and two sisters. Harjinder Kaur was my younger sister. She was married with Satwinder Singh alias Chhinda s/o Parshotam Singh r/o village Maherna Kalan, P.S.Deholon, according to Sikh Rites in the year 2001. My sister born a son namely Josh Inder Singh alias Josh out of this marriage. Soon after the marriage, her husband Satwinder Singh,

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father-in-law Parshotam Singh, mother-in-law Mohinder Kaur used to harass & maltreat my sister Harjinder Kaur on account of bringing less dowry. Baljit Kaur sister-in-law of my sister Harjinder Kaur also used to harass & maltreat my sister Harjinder Kaur on account of bringing less dowry. On number of occasions the panchayat was convened to settle our dispute and on some occasions Harjinder Kaur was sent by us to her in-laws house. About 4-5 years back in-laws of Harjinder Kaur as stated above set her on fire. Regarding said incident case was registered with the police. In-laws of Harjinder Kaur took Harjinder Kaur burnt to Hind Hospital, Mandi Ahmedgarh from where I brought Harjinder Kaur to DMC Hospital, Ludhiana, where she remained admitted for six months. Then with the intervention of respectables we entered into compromise with in-laws of Harjinder Kaur. As per said compromise in-laws of Harjinder Kaur namely Chacha of Satwinder Singh transferred one killa of his land in the name of Josh Inder Singh s/o Harjinder Kaur. After the effecting of said compromise Harjinder Kaur died and the criminal case registered regarding setting on fire of Harjinder Singh has been disposed off being compromise. After about one year of the death of Harjinder Kaur, Satwinder Singh got re-married with Baljinder Kaur accused present in the court on 29-10-09. Baljinder Kaur killed Josh Inder Singh by throatling/choking. On 30-10-09, I received telephone call early in the morning from Gurmit Singh Sarpanch of Maherna Kalan, who informed me about the death of Josh Inder Singh. Gurmeet Singh Sarpanch at that time also informed me that the throat of Josh Inder Singh was choked by ghosts. Gurmeet Singh Sarpanch at the same time also informed me that they have already sent the dead body of Josh Inder Singh for postmortem to Civil Hospital, Dehlon. On this I alongwith 4-5 persons left for Civil Hospital, Dehlon, while other 4-5 persons left for village Maherna Kalan. On reaching Civil Hospital, Dehlon, I made request to one police official who was present there to show me the dead body of Josh Inder Singh. Then doctor concerned

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*showed me dead body of Josh Inder Singh and he also showed to me broken bone of neck of Josh Inder Singh. When I enquired as to how the neck bone was broken, the doctor told me that it would be disclosed only after postmortem of the dead body. Doctor also told us to cremate the body after its postmortem. Then the dead body of Josh Inder Singh was cremated in village Maherna Kalan by us. After cremating dead body of Josh Inder Singh we went to P.P.Latala where MHC was sitting who informed us that Incharge has gone out. Then we waited for Incharge of the police post for about one or one and half an hour. Then Incharge of P.P.Latala took us to P.S.Dehton. My statement was recorded in P.P.Latala. That on the basis of my statement, police of P.S.Dehton brought Baljinder Kaur. Then the police also asked us to go back to our house. I made my statement Ex-PA to the police which bears my signatures and also bears signatures of Sohan Singh who was accompanied me. Baljinder Kaur had killed Josh Inder Singh due to greed of one killa of land which was in the name of deceased Josh Inder Singh. I identify accused Baljinder Singh in the Court. Satwinder Singh, Parshotam Singh and Mohinder Kaur have not committed the murder of Josh Inder Singh. I have not suffered any statement against Satwinder Singh, Parshotam Singh and Mohinder Kaur. **(At this stage, Ld. Addl. P.P. For the State request that the witness is suppressing the truth from the Court, so the witness be declared hostile and he be allowed to cross-examine the witness) (heard, request allowed).***

22. PW-1 also suffered the ordeal of an exacting cross examination, and, when during course thereof, he became confronted with his previous statement made in writing to the police Ex.PA, and, to his statement made in the Court Ex.PX, therein, he made the hereinafter extracted echoings, the relevant paras whereof become extracted hereinafter.

“ It is correct that Ex.PA bears my signature. It is neither a

fact nor I stated to the police that Mohinder Kaur mother in-law of my

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sister, Parshotam Singh father in-law and Satwinder Singh committed the murder of Josh Inder Singh in connivance with each other. **The attention of witness drawn towards his statement Ex.PA portion A to A1 where it is so recorded but the witness denied having made such statement before the police.** It is correct that on 16.4.2010, I appeared in this court and suffered a statement and the said statement bears my signature and the same is Ex.PX. I do not remember if in that statement I got recorded that on 29.10.2009 Parshotam Singh, Satwinder Singh, Mohinder Kaur killed Josh Inder Singh by throatling/choking. **The attention of the witness drawn towards his statement dated 16.4.2010 Ex.PX from portion A to A1 where it is so recorded.** I do not remember Satwinder Singh, Parshotam Singh, Mohinder Kaur killed Josh Inder Singh due to greed of one killa of land which was in the name of deceased Josh Inder Singh. **The attention of witness is drawn towards his statement Ex.PX from portion B to B1.** I do not know if Satwinder Singh, Parshotam Singh and Mohinder Kaur were summoned by the court u/s 319 Cr.P.C as accused after my statement. It is wrong to suggest that due to compromise with Satwinder Singh, Parshotam Singh and Mohinder Kaur, I have resiled from my statements Ex.PA and PX. (xxxxby Sh.Rajwant Singh counsel for accused Baljinder Kaur).

I do not remember the exact date when my statement was recorded in the Court. I cannot say if it was 16.4.2010. **The murder has been committed only by one accused. May be I have given name of 100 persons.** I do not know at what's name the land exists. It is incorrect that I had stated in the Court on 16.4.2010 that four of them killed Josh Inder Singh due to greed of land. It is wrong to suggest that I had earlier compromised with these three accused in the case of my sister Harjinder Kaur who was put on fire in case No. 62 of 2006 against these accused. xxxx xxxx xxxx

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23. The above underlined improvement(s) or embellishments as made by the witness (supra), from his previously made statements in writing but begets the hereinafter inferences.

1) That even if the witness (supra) had in his previous signed statement Ex. PA, thus has assigned an incriminatory role to co-accused Satwinder Singh, Parshotam Singh and Mohinder Kaur, and, thereby though his resiling therefroms rather may be an ill resiling. Moreover, when for the reasons to be assigned hereinafter, since the step mother of the deceased, one Baljinder Kaur has been declared to be the principal in the first degree or the principal offender. Resultantly, when the effect of the hereafter conclusions, thus assigns incrimination only qua the step mother of the deceased, namely one Baljinder Kaur, thereupon, it naturally appears that the witness (supra) did most ideally and perfunctorily rather name the other co-accused as incriminatory participants in the murder of the deceased. The firmest reason for concluding so, becomes grooved in the factum, that since the instant case, is based upon circumstantial evidence, thus, thereby the complainant chose to implicate all the members of the family of the principal accused Baljinder Kaur.

2) That since in the report filed under Section 173 Cr.P.C., accused Satwinder Singh, Parshotam Singh and Mohinder Kaur became excluded from the array of the accused nor to them became assigned the incriminatory role of theirs conspiring along with the principal offender one Baljinder Kaur. Therefore, when apart from

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motive, being jointly ascribed to the above said along with the principal offender, rather by the complainant, motive whereof, for reasons made hereafter, thus became solitarily nursed by the principal offender, rather no evidence to support the inculpatory role, qua the accused (supra), vis-a-vis, theirs conspiring with principal offender, thus becomes adduced. Consequently, therebys the resiling, if any, as made by the complainant PW-1, from his previous statements Ex.PA and Ex. PX, but cannot carry any inculpatory effect in-so-far as the other co-accused are concerned.

3) In consequence, the order passed on 01.06.2010, on the application filed under Section 319 Cr.P.C., is required to be quashed and set aside. However, though the trial as became entered upon co-accused Satwinder Singh, Parshotam Singh and Mohinder Kaur, became stayed, but yet with this Court, setting aside and quashing the affirmative order passed on the application cast under Section 319 Cr.P.C., therebys, the trial against the accused Satwinder Singh, Parshotam Singh and Mohinder Kaur, thus cannot re-open or cannot re-commence.

Motive of the accused for committing the murder of the minor child.

24. The primary motive for murdering the deceased ensues from the factum that earlier the sister of the complainant, one Harjinder Kaur was married with Satwinder Singh in the year 2001, and at that time a dispute arose between Harjinder Kaur and her in-laws. However, a compromise became effected between the parties and one killa land

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was transferred by his in-laws in the name of the minor child Josh Inder Singh. It appears that the reason for the accused to commit the murder of the child was owing to greed for possessing the land, which was in the name of deceased Josh Inder Singh.

25. Though there may not be a direct evidence in respect of the said nursed motive by the principal offender one Baljinder Kaur, yet in the circumstances surrounding the instant case, since the deceased was the step son of the principal offender, therebys but obviously there appears to be some motive etching in the mind of the principal accused, thus arising from hers seeking the restoration of possession vis-a-vis land measuring one Killa, which became transferred in favour of the minor deceased child Josh Inder Singh, rather from the latter. Resultantly thereby, the said motive goaded and instigated the principal offender (supra) to commit the murder of the deceased minor child, who is her step son.

26. In sequel, therebys, she not only nursed a motive to commit the murder of the deceased but also effectuated the said motive through hers throttling the minor child as evident on a reading of the unrebutted post mortem report, as becomes carried in Exhibit PW5/B.

27. Be that as it may, there is tangible evidence existing on record, as becomes comprised in Ex. PW3/H, whereby recoveries of double bed along with bed sheets became effected from the bed room of the deceased minor child, which he jointly shared with the principal offender. Resultantly, the effect of the above joint sharing of the

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relevant bed, by the deceased with his step mother i.e. the principal offender, is that, none other than the principal offender, thus had the opportunity to commit the murder of the deceased child through hers throttling him.

Medical Evidence

28. The doctor who conducted an autopsy on the body of the deceased minor child Joshinder Singh @ Josh, stepped into the witness box as PW-5. During the course of her examination-in-chief, she proved the post mortem report, as became authored by her. She also proved the existence thereons of her valid signatures and of her co-author Dr. Gurlal Singh. The post mortem report is assigned Exhibit PW5/B. The relevant observations, as become narrated in Exhibit (supra) are extracted hereinafter.

1. *Injury on the neck and abrasion 1 cm x .5 cm below it an abrasion 2.5 cm x 5 cm brown and below it an abrasion 3 cm x .5 cm brown. These three abrasions below one another six cm from the left trigus of the ear.*

2. *On the right side an abrasion 2 cm x .5 cm brown 5.5 cm from the trigus of the right ear. There is a ligature mark in between these abrasions on front of the neck and is brown in colour.*

29. Further, the doctor concerned unrebuttedly opined that the cause of death of the deceased minor child was owing to injury No. 1 and 2 leading to asphyxia, which were sufficient to cause death in due course of time.

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30. Consequently, since the medical account but corroborates the prime incriminatory link in the chain of circumstances, thus grooved in the evident motive nursed by the accused to commit the murder of the deceased minor child, thereby the charge against the accused is concluded to be efficaciously proven.

Final Order of this Court.

31. In consequence, there is no merit in the appeal, and, the same is dismissed. The impugned verdict, and, consequent therewith sentence(s) (supra), as imposed upon the convict by the learned Convicting Court, is affirmed and maintained.

32. If the convict (supra) is on bail, thereupon, the sentences(s) as imposed upon the convict-appellant, be ensured to be forthwith executed by the learned trial Judge concerned, through his forthwith drawing committal warrants.

33. For all the reasons (supra), the connected petition bearing number CRR-1860-2010 is allowed, and, the summoning order dated 01.06.2010, as passed by the learned trial Judge concerned is quashed and set aside.

34. 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 sent down forthwith.

35. Since the main case itself has been decided, therefore all the pending application(s), if any, also stand(s) disposed of.

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36. A photocopy of this order be placed on the file of other connected case.

(SURESHWAR THAKUR)
JUDGE

10.09.2024

kavneet singh

Whether speaking/reasoned
Whether reportable

(SUDEEPTI SHARMA)
JUDGE

: Yes/No
: Yes/No