

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

Neutral Citation No. 2024:PHHC:012629-DB

(1)

CRA-D-1698-DB-2014

Balwinder Singh & another

....Appellant(s)

Versus

State of Punjab

.... Respondent(s)

(2)

MRC-4-2014

State of Punjab

....Appellant(s)

Versus

Balwinder Singh & another

.... Respondent(s)

Decided on: 19.01.2024

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE LAPITA BANERJI**

Present: Mr.Brijesh Nandan, Advocate
for the appellants in CRA-D-1698-DB-2014
and for the respondents in MRC-4-2014.

Mr.V.G.Jauhar, Addl.A.G., Punjab
for the appellant in MRC-4-2014
and for the respondent in CRA-D-1698-DB-2014.

G.S. Sandhawalia, J. :-

1. The present judgment shall dispose of CRA-D-1698-2014 filed by the appellants who are brothers whereas MRC-4-2014 has been sent to this Court for confirmation of the death sentence by the Addl.Sessions Judge, Amritsar.

2. The Trial Court vide judgment dated 14.10.2014 came to the conclusion that the appellants had killed the deceased, Rupinder Kaur for false prestige as Balwinder Singh, appellant No.1 is the father whereas appellant No.2, Baldev Singh is the uncle. It is on account of the finding arrived at, that it was a case of honour killing and the prosecution has been able to prove its case against the two accused and they were held guilty

and convicted for the same under Section 302 read with Section 34 IPC. The sentence was pronounced 2 days later on 16.10.2014 by coming to the conclusion that the outcome of the death was on account of the murder of Rupinder Kaur due to feudal mindset and the extreme punishment by way of death had been awarded on account of the fact that the complainant and the deceased belong to different communities (sic. castes), as the complainant is a Jat boy whereas the deceased was a Mazbi Sikh girl. The Trial Court therefore declined to grant any leniency while directing that the proceedings be submitted to this Court for confirmation of the sentence of death.

Reasoning for conviction :

3. The reasoning given to come to the said conclusion was that the prosecution has proved its case as photographs had been brought on record by the complainant with the deceased which showed that they were in a romantic relationship. The evidence of the phone calls which had been made between the two on 11.09.2012 till the morning of 12.09.2012 confirmed that there was a regular contact between the two and there was enough evidence that the phone calls were going on since 17.08.2012. The statement of the complainant, PW-2, Sukhdev Singh that the deceased had told that if she was not taken away from the house, her father and uncle would kill her and that there was a missed call from the phone of the deceased at 3 AM on 12.09.2012 prevailed with the Ld. Trial Court. The accused having not informed the police about the death of the deceased till such time the complainant-Sukhdev Singh informed the Inspector, Arun Sharma at 4:30 PM on 12.09.2012 was the reason that the onus was shifted upon the appellants by applying the principles of Section 106 of the Indian

Evidence Act, 1872. The argument that the deceased might have committed suicide was also met with the reasoning that there was no reason for the family members to keep mum for 12 hours after the death of Rupinder Kaur and the appellants were only apprehended on 13.09.2012. The postmortem report showing that the time when death had taken place was within 24-36 hours and therefore, the deceased had died between 1.30 AM to 1.30 PM of 12.09.2012 and thus, the complainant had come to know that death had taken place in the early morning when the missed call had allegedly been received at 3 AM on 12.09.2012.

4. The defence's argument that the deceased had committed suicide out of humiliation due to the brawl which had taken place at the house of the appellants and a compromise (Ext.DW1/A) dated 30.03.2012 was rejected on the ground that it was 6 months prior to the occurrence and there was no evidence that the complainant was trying to blackmail the deceased in any manner and that she had never made a complaint to the authorities. The incident was stated to have occurred wherein the complainant and others hurled some abuses at the accused. The defence that the complainant was a drug addict and FIR No.135 dated 29.05.2014 which had been produced was rejected on the ground that even if he was one, it did not show that the deceased had ended the affair with him and therefore, it did not give the appellants a right to kill the deceased. The lacuna in the investigation regarding the cause of the death was explained that since the deceased had died an unnatural death and she was living with her parents at the time of death, the benefit of faulty investigation could not be given to the appellants once the prosecution had shown that there was a motive to commit the crime and they were not ready to accept

the affair between the complainant and the deceased and they should have come out with the real facts as to what had happened on the night of 11/12.09.2012.

5. It is pertinent to notice that the appeal had earlier been part-heard way-back in the year 2015 by a Co-ordinate Bench and an application was also filed for additional evidence by the State under Section 391 which was allowed on 27.11.2015. The reason for the prosecution to move the application was that the phone number which the deceased was stated to be maintaining/using was in the name of one Sarbjit Singh who was never produced as a witness at that point of time and was not associated with the investigation. Similarly, one of the phone numbers which the complainant was using was also not in his name but in the name of his brother and therefore, the evidence of the said witnesses were also essential. Resultantly, directions had been issued that the owners of the phones/subscribers apart from the Nodal Officers of the telephone companies should be examined/re-examined to arrive at the truth. Relevant part of the order reads as under:

“After hearing learned counsel for the parties and going through the impugned judgment, this Court finds that aforementioned Sarabjit Singh, Ramdeep Singh, Nodal Officers of Idea and Videocon and the two Investigating Officers, namely, Inspector Arun Sharma and Inspector Hardeep Singh are required to be examined/re-examined so as to arrive at a truth in the present case. The necessity is felt as the Investigating Officers had not investigated the case qua the presence of insecticide being detected in the viscera of the deceased and also regarding the exchange of calls between deceased-Rupinder Kaur and Sukhdev Singh and so also the tower locations of the caller and the recipient.

Resultantly, the application is allowed and the prosecution is permitted to examine/re-examine the aforementioned additional evidence.

Learned trial Court is directed to examine/re-examine the aforementioned witnesses at the instance of the State and also by giving an opportunity to both the accused to cross-examine these witnesses. Further, once the additional evidence is brought on record and it is found that the same is incriminating, the trial Court shall examine the accused under Section 313 Cr.P.C. qua the same. Subsequently, in case the defence intends to produce any witness so as to counter the additional evidence, the trial Court shall permit them to do so. The papers be, thereafter, sent to this Court for further proceedings.

It is, however, made clear that all the proceedings shall be conducted in the Court and in the presence of the two accused.”

6. In pursuance of the said order, necessary re-examination of the witnesses had been done and also the defence evidence which was led wherein specific plea was taken by the accused that Sukhdev Singh was a drug addict and the deceased had tried to evade him and requested him personally to desist from meeting her. However he did not desist and shame had been brought to the family on account of the brawl which had taken place outside the house which had compelled her to consume poison and the story propounded by the police was ex-facie creation of the police. Even after the death, the complainant had produced photographs of the deceased in public and also in Court. The defence evidence of the neighbours was laid out to show that earlier a fight had taken place on account of the complainant driving the motorcycle at high speed and using its silencer to make loud noise like bursting of crackers outside the house of the appellants. The fact that the police had picked up the appellants at

was to take place at 3 PM was highlighted to bring forth the case that they were falsely implicated.

Our opinion :

7. After hearing the arguments of learned counsel for the appellants, we are of the considered opinion that a great travesty of justice has occurred in recording the conviction of the appellants by the Trial Court which had failed to consider the fact that the medical evidence on record was completely contrary to what the case of the prosecution was. The over-eagerness and over-zealousness on the part of the Investigating Officer namely Arun Sharma, Inspector & SHO, PW-4 was not kept in mind who even failed to send the pillow to the forensic science laboratory which was allegedly used for smothering the deceased to death by the appellants as per the own case of the investigating agency at the behest of the complainant. The phone's ownership also inter se could not be linked with the deceased and it was in such circumstances the Co-ordinate Bench had directed re-examination of the witnesses which has further exposed the hollowness of the claim of prosecution which has been wrongly accepted by the Trial Court.

8. The challan had been prepared on 06.12.2012 and presented on 11.12.2012 much before the report of the FSL dated 16.02.2013 (Ex.PW-3/F) exposed the case of the investigating agency which was apparently at the behest of the complainant who belongs to a upper caste community and prevailed upon the police authorities to involve the appellants on account of the tragic death of their daughter and niece. It was apparently, on account of the fact that he himself would have been apprehended/implicated in the case which was apparently of suicide by the

deceased since, it is his own case that he was involved with the deceased. However, the investigating agency has not bothered to associate any independent witness with the recoveries on the basis of which the conviction has been recorded which further cements the case of the defence. The Trial Court got swayed by the issue of honour killing without taking into consideration the fact that appellant No.1 had lost his daughter but went on to hold him guilty of the offence of murder under Section 302 read with Section 34 IPC along with his brother even in the absence of any conclusive material on record and it is a case of circumstantial evidence. The travesty has further been compounded by the fact that the appellants have undergone 11 years, 4 months and 6 days of actual custody period as per their custody certificate dated 18.01.2024 before this Court could effectively direct for their release.

The factual matrix :

9. The reasonings given for conviction are that the FIR was lodged on the statement of Sukhdev Singh son of Atma Singh who was +2 pass out and claimed to be in love with the deceased, Rupinder Kaur, daughter of appellant No.1 and resident of Village Janian, PS Jandiala Guru for the last one year. The deceased was a student of B.A. 1st Year and as per his statement (Ex.PA) which was recorded on 12.09.2012 by Inspector Arun Sharma, SHO of the said Police Station of PS Jandiala, the family members of the deceased were not agreeing to their marriage and she had herself intimated that her father-Balwinder Singh and uncle-Baldev Singh used to tell her firmly to leave him or else they would kill her. The complainant had thus, assured that he would send his relatives to her house to convince her father and other family members and then they

would conduct the marriage. It is his categorical case that on 11.09.2012 at 5 PM, he had got a telephone call from the deceased wherein she had asked him to take her away to his house failing which the appellants would kill her and he could hear the noise of dispute from her side in the background. He had got a missed call from her at 3 AM on 12.09.2012 on his mobile No.9914291417 from the deceased's mobile no.7355976721. He had tried to call back but his call was declined from her side and thereafter, the phone was switched off. Thereafter, he went towards her house and came to know that she had expired last night and therefore, he was confident that she had been murdered by her father and uncle because she had resisted them and they were against their love affair. The said statement was recorded at Balmiki Chowk, Jandiala by the Inspector at 4.30 PM (Ex.P8) who had then proceeded to the spot. The FIR had accordingly been registered at 4:45 PM. It is pertinent to mention that in the said statement there was no reference to the another telephone number being used by the complainant.

10. The Inspector had thereafter proceeded to the spot where he had found the dead body of Rupinder Kaur in the house and there the brother of appellant No.1 also named Sukhdev Singh was present along with Gurmit Singh son of Makhan Singh who is son-in-law of appellant No.2 both had identified the dead body and their statements were recorded under Section 175 Cr.P.C. on 12.09.2012. On receipt of the FIR which was on the sole statement of the complainant which had been produced before him by Head Constable, Parminder Singh who had come back from the Police Station and Inspector Arun Sharma came to the conclusion that the appellants had murdered the deceased but the cause of death was yet to

be known and therefore, the postmortem was to be conducted. In the inquest proceedings (Ex.PW3/E/4/D) the name of brother of appellants and son-in-law of appellant No.2 had been mentioned and at column no.12, there is no remark whether there was any mark of injury or violence on the body of the deceased. Apparently, the body was lying in the lobby of the house of Balwinder Singh as per the site-plan which was part of the inquest report. The necessary request was immediately made to the Professor and Head of the Forensic Science Laboratory, Government Department, Amritsar to conduct the postmortem to identify the cause of death vide application moved on the same day (Ex.PW3/D/4/F). PW-3, Dr.Manpreet Kaur who conducted the postmortem (Ex.PW3/A) observed that there was no external or internal injury mark available while noticing that the hymen was ruptured and the vagina admitted 2 fingers with ease and came to the conclusion that the cause of death would be declared after receipt of the chemical examiner and the report of viscera along with the histopathology report.

11. The appellants were arrested on the next day i.e. on 13.09.2012 (Ex.PW4/G and Ex.PW4/J) by the Inspector in the presence of the official witnesses and their relatives were duly informed that they would be produced before the Court on the next day i.e. on 14.09.2012. A confession was taken from them on 14.09.2012 (Exs.PW4/M & PW4/N) in the presence of police officials namely ASI Harpal Singh and Head Constable Kamalbir Singh wherein they stated to have murdered Rupinder Kaur by smothering a hard pillow on her face and suffocating her to death. The mobile phone with which she used to talk with her lover had been kept allegedly concealed in the back-enclosure of the double-bed of the

residential house which was recovered due to the disclosure made by the father. The recovery was thereafter done on the same day of the Nokia phone 1209 Model Black colour which was stated to have active mobile SIM card no.7355976721 (Ex.PW4/O) again in the presence of the said official witnesses who were also present at the time of arrest as mentioned above. Similarly, the pillow was recovered from under the iron box due to the confessional statement of Baldev Singh/accused, from his house. The recovery memo of pillow was also got done on the same day which were accordingly sealed and the recovery were marked and sealed 'AS' (Ex.PW4/P). The rough site-plans dated 14.09.2012 prepared of the above-said recoveries were exhibited as Exs.PW4/Q and PW4/R.

12. The interesting aspect also is that the house of Baldev Singh, appellant No.2 has been shown on opposite sides on the said 2 plans: in the first site-plan (Ex.PW-4/Q), on the eastern side whereas in Ex.PW4/R it has been shown to be situated on the western side. The site-plan prepared by the Draftsman which has been brought on record as PW4/A would go on to show that the house of Baldev Singh was situated on the eastern side. Apparently the SHO-Arun Sharma was transferred on 06.10.2012 from the said Police Station but before his transfer, he recorded the supplementary statement of Sukhdev Singh on 05.10.2012 (Ex. PB) of the complainant and he introduced a telephone having no.8528889703 which was also used to communicate with the deceased which had not been mentioned in the earlier statement and the FIR. The padding was thereafter done by the said police official to the extent that he got recovered 6 photographs from the said complainant-Sukhdev Singh showing him along with the deceased. The recoveries of the said

photographs was done again in the presence of said police officials, ASI-Harpal Singh and Head Constable-Kamalbir Singh.

13. After his transfer, the challan was presented by PW-7, Inspector Hardip Singh, which would be clear from his statement who had taken over the investigation on 10.12.2012 and had produced the call details (PW-6/A & PW-6/B) from the In-charge (Computer). A perusal of Ex.PW6/C would go on to show that actually the recovery memo from ASI Parveen Kumar, PW-6, Incharge Cyber and Computer Cell, District Amritsar (Rural) had been got done by Inspector Arun Sharma on 10.12.2012 even though he had been transferred on 06.10.2012 as per his own deposition by way of re-examination on 12.02.2016. In the cross-examination of Inspector Hardip Singh done initially, it came forth that he had not personally verified the location of the tower from which the calls were made. In his re-examination on 12.02.2016, he admitted that the report of the Chemical Examiner was received on 16.02.2013 and he had neither conducted any investigation regarding the report nor had verified about the location of caller and receiver of the two phones which were used by Sukhdev Singh and by the deceased. He admitted in the cross-examination that no cause of death was given by the Doctor till preparation of the challan and he had voluntarily stated that the deceased had died of smothering and later admitted that but for the statement of Sukhdev Singh there was no other evidence to come to the said conclusion. He also admitted that he had not verified whether the calls were made from mobile no.9914291417 to no.7355976721 and whether the deceased used to call from her no.7355976721 to no.8528889703. He admitted that column no.12 of the inquest report had been kept blank

whereupon the cause regarding the mode of death in the inquest was silent. He denied the suggestion that he presented the challan in connivance with the complainant for extraneous consideration.

14. The report of chemical examiner dated 31.01.2013 (Ex.PW3/B) showed the presence of chloro-compound group of insecticides in the sealed jar containing stomach and its contents, parts of small and large intestines, liver, spleen, kidney and blood. On the basis of the same, Dr.Manpreet Kaur had given her opinion on 16.02.2013 (Ex.PW-3/F) that the cause of death was on account of poisoning by chloro-compound group of insecticides which was sufficient to cause death in the ordinary course of nature.

15. A perusal of the statement of PW-3, Dr.Manpreet Kaur would go on to show that the dead body had been identified by Sukhdev Singh son of Gopal Singh who is the brother of appellant No.1 and Gurmeet Singh son of Makhan Singh who is the son-in-law of appellant No.2 and the said persons were also present at the time of the inquest proceedings which were done a day earlier. It was noticed that the body was cold and clothes were also wet and had been preserved in ice and the face was livid and rigor mortis was present in lower limbs, fingers and toes, the tongue was between teeth and there were no internal or external mark of injury in the face, neck and lips. There was a pungent smell which was present on the dissection of the abdomen and the large intestine contained fecal matter. The cause of death was kept pending till the chemical examiner's report and the probable time that elapsed between the injury and death was pending and between death and postmortem was between 24-36 hours.

On receipt of the chemical examiner's report and histopathology report,

the cause of death in the opinion was declared as chloro-compound group of insecticides poisoning which was sufficient to cause death in the ordinary course of nature. In her cross-examination, it has come forth that the said poison had an unpleasant taste and pungent smell and 5-6 grams of it was a fatal dose which cannot dissolve in water but can be mixed with alcohol or sweets or other eatables. She stated that the stomach contained 40 cc reddish brown fluid and mucosa was congested with multiple petechial haemorrhages and pungent smell was present. Fatal period was half an hour to a few hours. It was admitted that if the consumer tastes the poison directly without mixing it with any article of food or otherwise, then she could have recognized the same. It was opinion of the Doctor that the stomach did not contain any alcohol or any other food article.

16. The statement of Rishi Ram- PW1, Draftsman would go on to show that he had prepared the scale site-plan (Ex.PW1/A) after visiting the spot at the instance of Sukhdev Singh, which also goes on to show that the house of accused No.2-Baldev Singh was on the eastern side which fact finds mention in the site-plan drawn up on 30.11.2012 which would further go on to show that complainant-Sukhdev Singh was playing an active role in the investigation even two months after the incident had happened. In his statement recorded, he specifically stated the factum of getting a missed call on his no.9914291417 from mobile no.7355976721 of Rupinder Kaur at about 3 AM on 12.09.2012 and that he had tried to call her back but the call had not been received from the other side. It was his categorical statement that in the morning he came to know that she had died and her father and uncle had killed her due to their love affair. He gave reference of his mobile no.8528889703 and whenever she used to

talk to him she called on the said number. In cross-examination it has come forth that he has a bank account in the State Bank of India but it did not have any balance and the last time he used his ATM was 2-3 months back. He denied the factum of the application-compromise deed (Ex.DW1/A and Mark-D) shown by the defence counsel and the factum of the signature of Ramjit Singh and Gurmeet Singh (DW3) of his village. He also denied the fact that an application had been given by appellant No.1 stating that he was teasing the deceased and he had been requested not to call her as his calls disturbed her. He also denied the fact that she had committed suicide due to his teasing which had given her a bad name in the society and that she had removed the SIM from her phone bearing no. 7355976721. He denied the suggestion that she had died due to his bad activities and due to his teasing her.

17. PW-4, Inspector Arun Sharma narrated the sequence of events as to how the applicant appended his signatures on Ex.PA/1 which had been attested by him and that after recording of police proceedings, ruqa was sent to the Police Station, on the basis of which the FIR was lodged and that he prepared the inquest report (Ex.PW4/D) and that the statement of witnesses were recorded. On the basis of the secret information, he had arrested the accused on the next day and during the course of interrogation, disclosure statements had been made stating that they had concealed the mobile phone and the pillow which were later recovered. He admitted that the Police Station was 2.5-3 kms from Village Janian and denied that the information about death of Rupinder Kaur had been received by him much before sunrise and it is his own case that 3-4 persons were present in the house at 5 PM. He recorded the

statement of Sukhdev Singh and Gurmit Singh and the place of occurrence was surrounded by houses and he had not recorded the statement of any neighbour to know the time of death of Rupinder Kaur. Neither he had recorded any statement regarding the presence of the accused on the previous night at the place of occurrence nor he had recorded the number of members (male or female) who were present when he went there and he failed to remember the number of children and other occupants in the family. No statement were recorded of the people who were present at the place of occurrence. In cross-examination, he stated that the accused disclosed about the death but they refused to tell the mode of death and he could not say whether the cause of death was Asphyxia as there was no sign of vomiting on the pillow recovered. He denied that the houses of Balwinder Singh and Baldev Singh are separate and he denied the fact that if he had gone deep into the matter, it would have come to his knowledge that complainant-Sukhdev Singh was the real culprit. The Court had put specific query to him regarding the fact whether the clothes or any other articles were examined by the Finger Print Expert or whether the Expert was called and he admitted that he conducted the investigation only till 05.10.2012 which is the date when the supplementary statements were recorded and the photographs were handed-over.

18. PW-5, G.Srinivasan produced the original call details supplied by him to the police (PW5/A) regarding the telephones maintained by the deceased. He admitted in his cross-examination that telephone was owned by one Sarabjit Singh of Village Chabba District Amritsar and there were details of calls from phone no.735976721 allegedly in possession of the deceased to no.8528889703. The calls were

made at 9:54 and 10 AM and thereafter at 3 PM and 4 PM and the last call was made at 4:51 PM between phone no.735976721 to no.8528889703. The witness was, at that point of time, unable to tell the location of the tower and his cross-examination was deferred. Thereafter, he deposed that phone no.8528889703 was used at 3:11, 3:28 & 4:51 PM and was not used between the night of 11-12.09.2012. Similarly, his deposition regarding the usage of mobile No.9914291417 to call no.7355976721 was that there was no call from 07.09.2012 to 12.09.2012. He also specified that tower no.6044 was of Kanju Market near Bus Stand Jandiala Guru, Amritsar Cantt. which was the tower in use regarding the said phone calls referred above.

19. PW-6. ASI Parveen Kumar, Incharge Cyber & Computer Cell, District Rural proved the call details of no.7355976721 and no.9914291417 which was in the name of Ramdeep Singh son of Atma Singh, resident of Janian and no.7355976721 had been used to ring up the said number at 9:30 and 9:35 AM on 03.09.2012 twice and again at 17:26 hours and various calls had been repeated on the same day. There was no inter se calls on 11.09.2012 to 12.09.2012. He did not know Ramdeep Singh and regarding no. 7355976721 he stated that subscriber was Sarbjit Singh and there were no calls made inter se on 11.09.2012 to 12.09.2012.

20. PW-8, ASI Harpal Singh is the witness regarding the disclosure statements of the recoveries of the phones and pillow and the arrest. In his cross-examination, he stated that the appellants never told the cause of death and they were denying the same and they never disclosed the affair with any boy. He admitted that the house of Baldev Singh was separate being the uncle of the deceased and the wife of Baldev

Singh was in the house at the time of recovery. He admitted that signature of the said lady was not obtained on the recovery memo and they had tried to join the neighbours of the accused but they expressed their helplessness. Suggestion was put that the investigating officer had manufactured the story of death by pressing pillow to which he denied.

21. PW-10, Head Constable Raminder Singh proved the photographs of the dead body (Exs.PW10/1 & PW10/2) which were taken on 12.09.2012. He stated that it was at 6.30-7 AM of 12.09.2012 when he clicked the photos but he could not get recorded the time of arrival at the spot as he had been called by the Station House Officer. Thus, this aspect clearly exposed the falsity of the case which was over-looked by the Trial Court.

22. The initial statement of the appellants under Section 313 Cr.P.C. was that they were falsely implicated. DW1 Sukhdev Singh who was a Government employee and a neighbour was then examined who admitted his signatures on the compromise deed (Ex.DW1/A/Mark-D) since it was objected to. He further deposed that Balwinder Singh (father) and Sukhdev Singh (complainant) had also signed in his presence. He denied the suggestion that it was a manipulated document and the fact that it did not contain the signatures of the police officials. He stated that Sukhdev Singh used to tease the deceased and denied the fact that being the neighbour he was deposing falsely. PW-2/complainant admitted that the subsequent FIR No.135 dated 29.05.2014 under Section 21/22 of the NDPS Act registered against him.

The subsequent evidence recorded :

23. As discussed above, after the order was passed by this Court on 27.05.2015, the re-examination took place of Inspector Arun Sharma, Station House Officer which we have also discussed above. Same would go on to show that he was transferred on 06.10.2012 and stated the fact that the complainant and the deceased were in contact through phone. He had admitted that he had not taken any formal training regarding decoding of tower location codes but from his experience he had decoded the tower locations. He had registered the FIR on the statement made by Sukhdev Singh and the cause of death was not mentioned in the postmortem report. He stated that he had made inquiry from the persons residing in the nearby houses regarding the occurrence about which reference had been made in the case diary but no statement under Section 161 Cr.P.C. of any such person was recorded. He had verbally recorded the total number of persons of the house but he failed to remember the number of children of both the accused, however, he was aware of some family members and ladies who were present there. He admitted that the statements of Sukhdev Singh and Gurmit Singh were recorded under Section 175 Cr.P.C. but separate statements under Section 161 Cr.P.C. were not recorded on 12.09.2012. He admitted that there were 30-35 persons who had gathered at the spot and the village of complainant Sukhdev Singh was at a distance of 2-2 ½ kms from the house of the accused. Complainant Sukhdev Singh had met him at a distance of 1 km from the Jandiala Police Station when his statement was recorded.

24. He could not clarify as to how the complainant came to know regarding the death of Rupinder Kaur and he had blindly accepted

whatever was recorded. The Court question was put that whether he inquired from the persons who were present at the spot to which he replied that he made verbal inquiries and whatever was stated by them the same was recorded by him in the case diary and that he had also inquired from the ladies but they denied to have their names recorded in the case diary. He admitted that he had inquired from the wives of the accused but they had not disclosed their identity to him and no evidence was available to him when he had arrested the accused. He admitted that even a missed call is reflected in the call details record. He had gone through the call details log according to which the deceased had received a missed call but he had not recorded it in any document. He admitted that the deceased was well built and if she was administered poison forcibly, she might have retaliated and would have received scratches on her legs and arms and other parts of her body and if smothered with a pillow, there must have been stains of saliva on the pillow which was never sent for chemical analysis.

25. Similarly, PW-7, Inspector Hardip Singh who appeared for further examination on 12.02.2016 confirmed the factum of the matter that the investigation was done in a sketchy manner whereby he had deposed that he has not done any other investigation in this case but the challan was prepared by him as already stated on 06.12.2012 and which had been presented on 11.12.2012. The report of the Chemical Examiner was received on 12.02.2013 and he had not conducted any investigation concerning the report of the Chemical Examiner which had found chloro-compound group of insecticide in the viscera. He had neither verified the location of the calls nor the receiver of the mobile calls made from no.9914291417 to no.7355976721. In cross-examination, he stated that in

the postmortem report, no cause of death was given till the preparation of the challan and thus, volunteered that the deceased had died due to smothering and except for the statement of the complainant, there was no other evidence which had come up during the investigation regarding this fact. Thus, it is crystal clear that apart from the statement of the complainant, who was not even an eye-witness to the death of the deceased (which itself had taken place within the confines of the house) and except the alleged confessional statements of the accused, there is no other concrete evidence to complete the chain of events. The prosecution's case is that the deceased had been murdered by the accused by smothering her with a pillow so as to bring it within the scope of a conviction which could be recorded solely on the basis of circumstantial evidence since the State has put forth the motive that it was a case of honour killing.

26. PW-12, Sarabjit Singh who was examined for the first time and is registered owner of mobile no.7355976721, on record denied that the said mobile number was issued to him and feigned ignorance about the deceased, Rupinder Kaur. He deposed that the application for connection bore his photographs but did not bear his signatures since he was illiterate and had not appended the signatures and he did not know about how to read and sign and he only thumb marked. He thus, denied his signatures on the application form (DW5/A) in the cross-examination of PW-5. He admitted that the photocopy of the voters identity list bore his signatures (Ex.PW12/A). He stated that he was using the service provider 'IDEA' and had the said telephone number which was got issued by him at that point of time and the application which he had given to the said company

also did not contain his signatures. The copy of the same voters identity card had also been given while getting the mobile no.984249411. He belonged to the same caste as the deceased but stated that he was not related to the accused and had no knowledge about Rupinder Kaur and he had never known about the said fact till he had received summons and he never joined investigation. In cross-examination, he stated that the number which he was using for the last 8 years and had never used mobile no.7355976721. A perusal of the said application form would go on to show that it was applied in 2011 and therefore, there is nothing on record to show that actually it was available and used by the deceased and therefore, the correlation which the Trial Court has placed upon the said number of the deceased which has been done does not link the said phone number with the deceased.

27. PW-13 Ramdeep Singh, who is the elder brother of the complainant, was also examined for the first time and vouched that the mobile No.9914291417 had been issued against his identity proof by his brother. It was his case that his brother/complainant was using the said phone since the issuance of the said number and in cross-examination it has come out that he was living in a joint family and that his brother continued to call from the said mobile number even after the death of Rupinder Kaur. He denied the factum of any dispute between his brother and the accused prior to the death of Rupinder Kaur and also the settlement of the same by convening of the panchayat. He showed total ignorance regarding any information about the deceased-Rupinder Kaur or the love affair of his brother Sukhdev Singh with the deceased and also he denied the suggestion that he was intentionally concealing the said fact.

The factum of the said mobile number and in whose name it was registered has already been considered on an earlier occasion and thus the re-examination further goes on to show the hollowness of the claim of the prosecution which would further be compounded by the record which they have produced through G.Srinivasan, Sr.Manager, Videocon Telecom (PW5) who was re-examined on 18.03.2016. A perusal of his statement would go on to show that he confirmed the fact that the said phone number was issued in the name of Sarabjit Singh and brought the application form along with copy of voter identity card. He also brought the call record details from 11.09.2012 to 12.09.2012 which contained 12 call records and the certified call details exhibited as Ex.PW14/C and the tower location as Ex.PW14/D. He stated that location of the said calls was Sant Singh Commercial Complex, Jandiala Guru, Jandiala. The said certificates were to be treated as electronic record and were stated to be admissible under Section 65-B of the Evidence Act as the same had been signed by him as Ex.PW14/E. In cross-examination it has come out that out of the 12 calls made, 2 were of some other number. He admitted that one particular tower covers an area of 2 kms and thus, apparently it would also cover the area where the complainant was staying which was stated to be 2-2 ½ kms as stated by the Investigating Officer himself. It further confirms the doubt raised whether earlier mobile no.7355976721 was actually in the possession of the deceased which was absolutely a necessary requirement as one of the circumstances which can be held out to bring home the case of the prosecution as alleged by the complainant.

28. The defence witness-DW-3, Gurmeet Singh also confirmed the factum that a fight had taken place prior to the occurrence and that the

parties had gone to the police post along with 2-3 persons at the asking of Sukhdev Singh. The said witness was also resident of Village Jania, who was stated that a complaint had been made by Balwinder Singh against Sukhdev Singh regarding his driving of motorcycle in a fast and rash manner in front of the house of Balwinder Singh and using of the silencer to make noise like bursting of crackers. He had been asked not to repeat his acts by the Assistant Sub-Inspector and so a compromise had been effected and he admitted his signatures on the said document (Ex.DW1/A) and the fact that the deceased had died after 6-7 months after the said incident. In cross-examination, he denied the fact that there was a love affair with the complainant and that the police had been visiting the village of the accused for the investigation of the murder case. The said witness was also Jatt by caste and belongs to the said village and denied the fact that he knew about the love affair of the deceased and Sukhdev Singh and he categorically denied the love affair and therefore, he was an independent witness and not related to the accused.

29. DW-4, Surinder Kaur is a member of the Municipal Council Jandiala Guru and stated that on account of the death of Rupinder Kaur, Balwinder Singh had come to her house and requested her to come to his house and see the situation. She along with her husband went to the house of the accused at 8.30 AM and many people had already collected at the spot and the accused along with family members were also present at the spot. Police had arrived at the spot and at 9:30 AM taken the accused with the assurance that they would be sent back after enquiry since the cremation was to take place at 3 PM. Later on police came and took away the dead body. She was duly cross-examined by the Public Prosecutor and

she denied that she was deposing falsely on account of the fact that she was residing in proximity.

30. A perusal of Ex.PW-6/C as already been noticed would show that it was handed over to Inspector Arun Sharma on 10.12.2012 though he had already been transferred and therefore, had no occasion to get the recovery done of the CDRs from ASI, Praveen Kumar which goes on to show that he is a interested person knowing that he had falsely implicated the appellants and wanted to bring on record evidence to justify the same. The site-plans also whereby the recoveries were made also go on to show that recoveries were specifically made separately from both the houses of the appellants, which are adjoining each other to implicate Baldev Singh also and he widened the net since it was a case of suffocation being set up. The first recovery of the telephone was made from the house of the deceased whereas the second recovery was made of the pillow from the house of Baldev Singh/appellant No.2 vide Ex.PW4/R which is highly unlikely that a pillow was taken from the house of Balwinder Singh and concealed in the other house which only goes on to show that the net was widened, as such. The brother being neighbour has also been roped in for no fault of his. The doubt has further been highlighted on the issue whether the police were aware of the incident and were duly informed in the morning would be clear from the statement of PW-10, the Photographer which shatters the case of the prosecution further. The said witness has categorically stated that he was called by the SHO and when he took the photographs of the deceased, the time was around 6:30-7 AM on 12.09.2012. It is thus, apparent that the police had already reached the spot early in the morning on being informed of the death of the deceased

having taken place in the late hours of 11.09.2012 which had been discovered by the family early in the morning. The Police Station is only 2 kms away and the police took no time to reach at the spot and the photographs had been taken early in the morning. The FIR was only lodged at 4:30 PM and as noticed by the defence witness, the Municipal Councilor (DW4) has stated that at 9:30 AM, the police was also present in the house. This aspect has been used against the appellants by the Ld.Sessions Judge on the ground that there was silence on the part of the appellants and they did not inform the police. It is apparent that situation was totally different than what has been brought out by the prosecution. It has already come in the examination of the Inspector Arun Sharma that there were 30-35 persons present at the spot but he had not recorded the statement of any person to verify the facts of the case of death which go on to show that the investigation was biased, as such, right from the start.

The reasoning for acquittal and not accepting the case of the prosecution:

31. The case of the prosecution, as noticed above, is based on circumstantial evidence and the law which has been set into motion by Sukhdev Singh, the complainant. There is no eye-witness to vouch for the same and the deceased had died in her own house. We have already noticed that the complainant being connected with the deceased was claiming to be her lover could have faced prosecution on the fact that the deceased had committed suicide since it is the specific case of the defence that he was harassing the deceased and a incident had also taken place outside the house which has also been proved in evidence by the defence.

The credibility of the complainant itself is to be examined and whether the prosecution has been able to prove its case beyond reasonable doubt. The

motive further which has been sought to be put-forth by the Trial Court is a two-edged sword which can cut both ways and the motive thus can also be attributed to the complainant for having falsely implicated the appellants and therefore, has to be examined from that angle also.

32. The over-zealousness and the keenness on the part of the Investigating Officer has also been noticed and the slipshod manner in which he has investigated the case by projecting that the deceased died due to suffocation and got recovered a pillow from the house of the uncle of the deceased which is adjoining to the house of deceased. There is nothing to show that either there was any saliva stains on the pillow nor was the pillow sent to the Forensic Laboratory to find out whether there were any such stains. The absence of any injury on the person of the deceased would go on to show that it would not be possible that the girl would not retaliate if she was being smothered and would have necessarily received bruises which would have come out in the postmortem. Apparently, the cause of death is on account of the poisoning which was never investigated into at any point of time and the challan was filed blindfoldedly by Hardip Singh, Inspector since the earlier Investigating Officer had already been transferred. Neither any permission was taken from the Trial Court at that point of time for re-investigating the matter once the report had come to show that the cause of death was on a different account. The fact that the Inspector got a pillow recovered from the adjoining house of Baldev Singh would also go on to show that the net was cast wide to ensure that not only the father but even the uncle would be implicated in order to avoid prosecution of the complainant and to put-forth the case which they had projected that she had died on account of

suffocation and more than one person had to be implicated. It is also noticed that the Investigating Officer failed to record statement of any of the persons present at the spot when the dead body was lying in the house while admitting that there were more than 30-35 people. The statements of the neighbours were also not recorded to find out whether there was a dispute and the investigation was thus biased right from the start till the end.

33. The bringing into play of Section 106 of the Evidence Act solely on the ground that the death had taken place in the house of appellant No.1 and that he was under an obligation to explain how the death had taken place since it was within their knowledge and was under a burden to explain the circumstances and that the conduct of the appellants has been adversely held by the Trial Court against them. The recovery memo of the phone (Ex.P4/O), the pillow (Ex.P4/P) and the arrest memo of the appellants (Ex.PW4/G) all do not go on to show that the recoveries were actually done as depicted from the site as no independent witnesses were joined but only police officials had been associated namely PW8-ASI Harpal Singh and HC Kamalbir Singh. The factum that there is a discrepancy in the site-plan has also been noticed above where the houses of the appellants have been shown on the wrong side which goes on to show that the site-plan was not drawn at the spot but was prepared at the Police Station wherein the apparent mistake had taken place which is contrary to the actual site-plan drawn by the Draftsman.

34. A three Judge Bench of the Apex Court in **Darshan Singh Vs. State of Punjab 2024 (1) Scale 167** examined a similar proposition wherein the wife had died after having consumed aluminium phosphide.

The case of the prosecution was that the marital relationship was strained as the appellant had developed an illicit relationship with the co-accused. The Trial Court had sentenced the husband and the alleged lover on the ground that the burden lay to the husband as to how his wife turned into corpse even though there were no injuries on the body of the deceased. The acquittal had taken place of the lover by the High Court and resultantly, the Apex Court noticed that the case rested on the circumstantial evidence and the motive, the presence of appellant at the scene of crime and the Doctor's opinion on cause of death by poisoning, the conduct and explanation given in the Section 313 statement were to be carefully analyzed. Resultantly, it was held that forceful administration of the substance was put forth but there were no injuries mark which suggested any scuffle and the deceased having committed suicide could not be ruled out and was sufficient to create a doubt in the minds which was also the defence taken under Section 311 and resultantly accepted the appeal by holding out that there could not be a gap in the chain of circumstances.

35. One of the circumstances which prevailed upon the Trial Court was that the deceased was in regular touch with the complainant which went on to show that the relationship was good. Resultantly, he placed reliance upon the fact that on 11.09.2012, a few hours before the death, the deceased had talked with the complainant on his mobile phone no.8528889703 and therefore she had talked to the complainant 9 times on the said date. A perusal of the chart which has been reproduced below would also show that there was a missed call received from the phone of the deceased at 3 AM and thereafter the phone was switched off. A

perusal of the evidence would firstly go on to show that there was nothing to show that the phone no.7355976721 belonged to and was in possession of the deceased. The said discrepancy was noticed on an earlier occasion and eventually PW-12, Sarabjit Singh was examined by the Trial Court on application for additional evidence being allowed. He was the registered owner of mobile no.7355976721. It was the bounden duty of the prosecution to prove that the said mobile number was in possession of the deceased to take the case to its logical end and it is not the case of the complainant that he had provided phone no.7355976721 to the deceased under somebody else's name so that he could remain in touch with her.

36. The police not having investigated the call details is also a factor, the benefit of which must flow to the accused. A perusal of the said call details would also go on to show that the alleged missed call at 3 AM cannot be connected to the number of the complainant, no.8528889703 and there is only one no.9112 to which no specific explanation was given by the expert who had appeared from the Service Provider of Videocon Telecom. The calls made on 11/12.09.2012 are as under:

Calling Number	Called Number	Call Date	Call Time	Call Duration (seconds)	First Call ID of A	Last Call ID of A
917355976721	9112	12/9/2012	3:05:40 AM	7	6042	
917355976721	918528889703	11/9/2012	10:09:36 AM	18	6044	
917355976721	918528889703	11/9/2012	3:11:12 PM	75	6044	
914850236256 4530	917355976721	11/9/2012	3:06:31 PM		6044	
917355976721	918528889703	11/9/2012	3:28:07 PM	404	6042	6044
917355976721	918528889703	11/9/2012	4:51:58 PM	266	6044	
914850236256 4530	917355976721	11/9/2012	3:25:48 PM		6042	
917355976721	918528889703	11/9/2012	3:08:36 PM	128	6044	
917355976721	918528889703	11/9/2012	4:00:28 PM	14	6044	
917355976721	918528889703	11/9/2012	10:12:01AM	66	6044	
917355976721	918528889703	11/9/2012	3:38:22 PM	496	6044	
917355976721	918528889703	11/9/2012	9:54:55 AM	213	6044	

37. A perusal of the said calls would go on to show that on 11.09.2012, calls were made between 9 AM to 4.51 PM and there was one short call made on the 12th at 3.05 AM for 7 seconds from tower locations of 2 different towers of no.6044 and no.6042. As per the statement of G.Srinivasan, the said details did not depict any call to the deceased from no.85288-89703. The statement would go on to show that it was the case of the complainant that he had got a call at 5 PM on 11.09.2012 and as per the record there is a call at 4:51 PM for 266 seconds and prior to that there were several calls made to which there is no reference. It is not his case that she was repeatedly calling him on the 11th since morning as the table above would suggest that the calls were made from 9 to 3 to no.8528889703. It is thus a matter of serious doubt as to whether the said phone was in possession of the deceased as now sought to be made out. The recovery of the phone with the SIM as noticed was made in the presence of the police officials and no independent witness had been associated with the recovery of the phone which was also done 2 days later.

38. A perusal of the call details from telephone no. 9914291417 pertaining to the relevant dates i.e. 11.09.2012 and 12.09.2012 (Ex.P-6/A) would go on to show that there were no calls received on the said phone from phone no.7355976721 and it is apparently on that account, to make the case fool-proof, another telephone no.8528889703 was introduced which was not registered in the name of the complainant but in the name of his brother and apparently calls had taken place in between that no.8528889703. The prosecution thus has failed to complete the chain that the phone no. 7355976721 was readily available with the deceased

and she had made any calls to the complainant on either of the two numbers, on or around the date of her death as projected.

39. Thus, the chain of circumstances and the specific case that the deceased was insisting that the complainant takes her away and that she could be killed by the appellants also cannot be confirmed. A perusal of the details would also go on to show that most of the talks took place in the morning and thereafter, there were some calls still at 4:51 in the evening and thereafter there was no interaction. The death is stated to have taken place at night as per the postmortem report and discovered in the morning which was the case of the prosecution also. It is categorical case of the defence witness that the police were at the spot in the morning. The photographer of the police himself has stated that when he took the photographs, it was 6:37 in the morning of 12.09.2012. The Police Station being 2 kms away, it is apparent that the police was already at the spot but the FIR had been lodged with due deliberation at a later point of time i.e. at 4:30 PM. We have also noticed the fact that the complainant belongs to an upper caste family and the deceased belong to lower caste family and therefore the bias against the lower caste is apparent as the appellants were prosecuted by the over-zealous Inspector and in-spite of being transferred on 06.12.2012 and took the call details from PW-6, ASI Parveen Kumar, Incharge, Cyber and Computer Cell on 10.12.2012 (Ex.PW6/C). He had also taken down the supplementary statement (Ex.PB) on 05.10.2012 to bring on record the fact that the complainant was having a telephone no.8528889703 which was only to fill up the gap and the telephone which had to be connected with the deceased on account of Sukhdev Singh stating that he was using the said phone and calls were being made

between the two numbers. The said phone belongs to the brother of the complainant which would be clear from the statement of Ramdeep Singh, PW13.

40. The medical evidence being contrary to what had been initially projected, goes on to shatter the prosecution case and snaps the link and the fact that the challan being presented long before the FSL report was submitted further betrays the case of the prosecution. Thus, the deceased having committed suicide on account of the stormy relationship between the complainant and her cannot thus be ruled out and the benefit of doubt thus has to go to the appellants. The opposition in normal circumstances would have been from the boy's family who belonged to an upper caste there would have been no such opposition from the lower caste family if the girl was going to be married in a higher caste which has been lost sight of by the Trial Court. The girl committing suicide on account of being harassed or wanting to bring an end to the relationship could be another aspect and thus, for that, the benefit has to go to the appellants rather than putting a reverse onus on them under Section 106 of the Evidence Act. It is also strange that the brother of the complainant expressed no knowledge of the love affair and rather when he appeared in the Court, he never stated that the family of the deceased was objecting to the relationship and his brother was wanting to marry the deceased and rather feigned ignorance about the said affair. It is also highly unlikely that the complainant and the deceased were that much in love as held out by the Trial Court and as per the case of the prosecution. Again the fact that the brother was unaware of the love affair and if the complainant was seriously contemplating marriage but his brother who is witness, would

not know about the said fact. It is thus apparent that his brother was covering up for the complainant also. The defence witness who signed on Ex.DW1/A also belongs to the same caste and village as the complainant and has verified that there was an incident which was denied by his brother and it is not acceptable that if one of the family member has signed on the compromise deed, the brother would not know about the love affair or the incident which related to the complaint filed by the accused.

41. The photographs produced by the complainant showed that the deceased had been moving around with the complainant which could have been also reason for the deceased to have committed suicide on account of the complainant misusing his position by giving publicity to the said photographs which has not been examined by the Trial Court in its proper perspective also. The Apex Court in **State of Rajasthan Vs. Asharam @ Ashumal, 2023 AIR (SC) 2228**, considered the issue of application filed under Section 391 Cr.P.C. and in juxtaposition with Section 311 Cr.P.C. and the discretion that the Appellate Court would have while dealing with the appeal after the Trial Court had come to the conclusion that the Appellate Court could take further evidence or direct it to be taken. The directions thus given by the Co-ordinate Bench was to prevent injustice and failure of justice and the discretion was exercised for good and valid reasons which has exposed the case of the prosecution and the benefit thus has to be granted to the appellants.

42. Keeping in view the cumulative discussions above, we find that counsel for the appellants has been able to make out a good case to earn acquittal and resultantly, we allow CRA-D-1698-DB-2014 and set aside the order of conviction. Accordingly, MRC-4-2014 is declined and

the appellants are acquitted of the charge under Section 304 read with Section 34 IPC and be set free if there is no other case registered against them.

(G.S. SANDHAWALIA)
JUDGE

January 19th, 2024
Sailesh

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	