



**In the High Court for the States of Punjab and Haryana
At Chandigarh**

(I) CRA-D-811-DB-2003 (O&M)

Harbhajan Singh ... Appellant

Versus

State of Haryana ... Respondent

(II) CRA-D-874-DB-2003 (O&M)

Surjit Singh ... Appellant

Versus

State of Haryana ... Respondent

Date of Decision:-27.5.2024

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present:- Mr. Shivam Sharma, Advocate for
Mr. H.S. Jaswal, Advocate for the appellant(s).

Ms. Sheenu Sura, DAG, Haryana.

GURVINDER SINGH GILL, J.

1. This judgment shall dispose of the above-mentioned two appeals, which are directed against the same very judgment i.e. judgment dated 27.8.2003 and order of sentence dated 29.8.2003 passed by learned Additional Sessions



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Judge, Karnal in a matter arising out of FIR No.76, dated 9.4.2002 registered at Police Station Butana, under Sections 302/34 of Indian Penal Code, vide which the appellants have been held guilty of having committed offence punishable under Section 302 read with Section 34 of Indian Penal Code and have been sentenced to undergo life imprisonment apart from fine of Rs.2,500/- each.

2. The FIR was lodged at the instance of Kulwant Singh, who stated that they are four brothers and Ajaib Singh (deceased) was the youngest. It is alleged that on 8.4.2002, Ajaib Singh went to Nilokheri Town from their village as his buffalo was not yielding milk. Since Ajaib Singh did not return back, the complainant went to Nilokheri to look for his brother, where he met his uncle Ajit Singh, who disclosed that he had seen Ajaib Singh with Surjit Singh, Harbhajan Singh and Kasturi Lal at about 09:00 P.M. going upstairs to the 'chaubara' of Kashmira Singh, where Harbhajan Singh used to reside as a tenant. The complainant Kulwant Singh and Ajit Singh proceeded to the said 'chaubara' of Kashmira Singh, where they found Ajaib Singh lying dead with injuries on his forehead, eyes, lips, arms and legs and was smeared in blood. A broken wooden stool and an iron pipe stained with blood were also lying at the spot. The complainant left his uncle at the spot and went to his village Nissing to call his father as his father had gone to the said village to meet complainant's sister. After returning back from the said village, the complainant reported the matter to the police, where ASI Jagan Nath, Incharge, Police Post, Nilokheri recorded his statement Ex.PJ, on the basis of which FIR (Ex.PJ/1) was lodged. The matter was investigated by the police.



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Inquest proceedings were conducted. The dead-body was got subjected to post-mortem examination. The police visited the spot and prepared a rough site plan and also collected blood stained soil. Upon conclusion of investigation, challan was presented against the accused before the Court of learned Judicial Magistrate 1st Class, Karnal, who committed the matter to the Court of Sessions vide commitment order dated 27.5.2002. Learned Additional Sessions Judge, Karnal, to whom the case was entrusted, framed charges against the accused for offence under Section 302 IPC.

3. The prosecution, in order to establish its case, examined as many as 15 PWs, who broadly stated to the following effect:-

PW-1 - Dr. Deepak Parkash, Surgeon, G.H., Karnal stated that he had conducted post-mortem examination on the dead-body of Ajaib Singh and proved the post-mortem report as 'Ex.PA'. He opined that the cause of death was due to extensive haemorrhage and shock as a result of multiple injuries on the head and face (fractures).

PW-2 - Constable Prem Kumar is a formal witness and stated that he had prepared the site plan and proved the same as 'Ex.PD'.

PW-3 - Anil Kumar Bhandari, Photographer stated that he had taken five photographs Ex.P1 to Ex.P5.

PW-4 - EHC Ram Phal; **PW-5** - Constable Mewa Singh; **PW-6** - MHC Bhag Singh and **PW-7** - Head Constable Jagdish Chander are all formal official



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witnesses and tendered their affidavits in evidence. None of the said witnesses was subjected to cross-examination.

PW-8 - ASI Jagpal Singh stated that on 9.4.2002, upon receipt of '*ruqa*', he had lodged formal FIR Ex.PJ/1 and had sent special reports through Constable Mewa Singh.

PW-9 - Head Constable Bahadur Singh stated that on 9.4.2002, after post-mortem examination of Ajaib Singh, the doctor handed over clothes of deceased and one nip containing blood of deceased in sealed condition to him and he further handed over the same to the Investigating Officer. He further stated that the accused were arrested on 10.4.2002 and that his blood smeared pant was also taken into possession.

PW-10 - ASI Om Parkash, who had briefly remained associated with the investigation, stated about the statements recorded by him during the course of investigation.

PW-11 - Mohinder Singh, father of the deceased, stated that he knows the accused Surjit Singh, Harbhajan Singh and Kasturi Lal and that Surjit Singh is son of his real maternal uncle and all three of them are gamblers and indulge in criminal activities and some cases are pending against them in various courts. He stated that Surjit Singh had taken a loan of Rs.22,000/- from his son Ajaib Singh about two years back, when Surjit Singh was constructing his house and had not returned the same despite the fact that even *panchayats* were convened and there had been exchange of hot words



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also between Ajaib Singh and Surjit Singh. He further stated that on 8.4.2002, when he had gone to Nissing to meet his daughter, then his son Kulwant alongwith nephew came on a motorcycle and informed him that Surjit had come to his house and taken Ajaib Singh with him. He further stated that later when Kulwant Singh went to the house of Harbhajan Singh and noticed that dead-body of Ajaib Singh, he came to village Nissing to inform him.

PW-12 - Kulwant Singh is the complainant and stated in tune with the version got recorded by him in the FIR.

PW-13 - SI/SHO P.S. Taraori Baljinder Singh, who had conducted investigation in the matter and had prepared report under Section 173 Cr.P.C. stated with respect to the proceedings conducted by him.

PW-14 - Ajit Singh deposed that on 8.4.2002 at about 08:00 P.M., when he was present at Karsa Bus Stand, he noticed all the three accused alongwith Ajaib Singh, who passed by near him. He stated that although he had requested Ajaib Singh to accompany him as he was to consult a doctor, but Surjit Singh told him that they have some business to attend to. He further stated that he noticed that all the three accused went upstairs in the 'chaubara' of Kashmira Singh alongwith Ajaib Singh.

PW-15 - Jagan Nath, SI/SHO Police Station Madhuban, who had recorded statement of the complainant 'Ex.PJ' on the basis of which FIR (Ex.PJ/1) came to be lodged, stated about the same and also with regard to the investigation conducted by him in the matter.



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4. Upon conclusion of evidence of prosecution, statements of accused in terms of provisions of Section 313 Cr.P.C. were recorded, wherein they denied the prosecution case in *toto* and pleaded false implication. Accused Harbhajan Singh stated that he had never taken the '*chaubara*' on rent from Kashmira Singh and resides in a different area i.e. in Ward No.7, Station Area Nilokheri with his family. Accused Surjit Singh stated that the complainant party was inimical towards him since the last about 2 years and had designed his false implication to ensure that he is not able to participate in the marriage of his own daughter, which was to be solemnized on 20.4.2002. However, the accused did not lead any evidence in their defence.
5. Learned Trial Court, upon appreciating the evidence on record, found that the evidence led by prosecution was sufficient to establish the charges framed against the accused and accordingly held them guilty for having committed offence punishable under Section 302 IPC vide impugned judgment, which is being assailed before this Court by way of filing the present appeals.
6. Learned counsel for the appellants/accused, while assailing the impugned judgment, broadly made the following submissions:
 - (i) that the instant case is a case of blind murder, which is sought to be established by the prosecution on the basis of circumstantial evidence mainly in the shape of recovery of dead-body and "last seen" evidence and that although the police claimed that the place, from where the dead-body was recovered, had been taken on rent by Harbhajan Singh, but there is no evidence in this regard to prove the same and that neither any rent deed had



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been produced nor the owner of premises in question had been examined;

- (ii) that the motive attributed in the instant case is that the deceased had lent an amount of Rs.22,000/- to Harbhajan Singh, which was not being returned despite repeated demands by Ajaib Singh and on account of which said Harbhajan Singh alongwith co-accused had eliminated Ajaib Singh, but there is no convincing evidence to substantiate the same;
- (iii) that even if for the sake of arguments it is accepted that dead-body was recovered from the tenanted premises of Harbhajan Singh the appellant Surjit Singh cannot be connected with the alleged murder in any manner and that a bald statement made that all the accused were gamblers who used to stick together without there being any evidence was not sufficient to hold Surjit Singh liable for the alleged murder.
- (iv) that there are large number of discrepancies in the statements of prosecution witnesses, which would show that they have falsely deposed in the present case;
- (v) that no specific opinion from the doctor was obtained as to whether the injuries found on the person of deceased could have been caused with the recovered weapons.

7. Opposing the appeals, learned State counsel submitted that it is a case where the evidence led by prosecution in the shape of circumstantial evidence is sufficient to nail the guilt of the accused and that apart from the “last seen” evidence in the shape of statement of PW-14 Ajit Singh, the factum of recovery of dead-body from the ‘*chaubara*’ of accused Harbahajan Singh is a



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circumstance, which the accused have not been able to explain. Learned State counsel submitted that the impugned judgment is a well reasoned judgment having been passed after thoroughly marshalling the evidence on record and deserves no interference.

8. This Court has considered rival submissions addressed before this Court.
9. It is apposite to, first of all, refer to the medical evidence so as to find out as to whether it is a case of homicidal death or not. PW-1 Deepak Parkash, Surgeon, G.H., Karnal, who had conducted post-mortem examination on the dead body of Ajaib Singh, recorded the following injuries stated to have been found on the dead-body:

- “1. There were lacerated wounds six in number measuring from 2 cm x .5 cm upto 6 cm x .5 cm on the forehead. All were vertically placed. Clotted blood was present over it and all were bone deep.
2. There was a lacerated wound measuring six cm x one cm x bone deep on the left side of face around the eye.
3. There was a lacerated wound measuring 4 cm x .5 cm x bone deep on the left side of face.
4. There was a contusion present on the nose alongwith the lacerated wound on the right ala of the nose with mark of bleeding.
5. There were lacerated wound two in number on the lower lip alongwith the underline tooth injury and injury to the gum margin.



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6. There were lacerated wounds three in number measuring from 6 cm x 1 cm upto 7 cm x 1 cm present on the right temporal region of the scalp with clotted blood.
 7. There were abrasions and contusions present on the left forearm at its medial aspect.
 8. There were abrasions and contusions present on the right forearm.
 9. There were contusions and abrasions of different size and shape four in number present on the left leg.
 10. There were contusions and abrasions of different size and shapes three in number present on the right leg.”
10. A perusal of the aforesaid injuries would indicate that a large number of injuries mainly in the nature of lacerated wounds, abrasions and contusions had been inflicted on the person of Ajaib Singh, which were bleeding and some were even bone deep. Several fractures were also noticed. Six injuries out of 10 injuries are on head or face. The cause of injuries has been opined to be a result of multiple injuries on head and face (fracture). Though it is correct that the doctor has not specified as regards the weapons used for commission of offence, but having regard to the nature of injuries, which are all in the nature of lacerations, abrasions and contusions and there is no incised wound, it can safely be said that the same were caused with blunt edged weapon as is the case of prosecution that a broken stool and blood smeared iron rod were found at the spot. It is thus a clear case of homicidal death.



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11. As per the case of prosecution, the dead-body of Ajaib Singh was found from the house of Harbhajan Singh i.e. a '*chaubara*' taken on rent by him from the house owner Kashmira Singh. Though, learned counsel for the appellant(s) has assailed the said factum on the ground that neither any rent deed has been produced nor the owner of the premises in question has been examined, but it is a fact, which is categorically stated by PW-14 Ajit Singh. Though the said fact is shorn of any documentary evidence in the shape of rent deed etc., but it is the collective effect of all the evidence, which has to be taken into account. In the instant case, there is evidence in the shape of the accused having been seen in the company of the deceased shortly before recovery of his dead-body and subsequently the recovery of blood stained pants of Harbhajan Singh at his instance which point towards guilt of accused.
12. The prosecution has also led some evidence as regards the motive of accused. PW-11 Mohinder Singh, father of the deceased, stated categorically regarding the factum of Surjit Singh having taken a loan of Rs.22,000/- from his son, which he had not been returning. As a matter of fact, the complainant, while in the witness-box, also stated to this effect. Though the statement of complainant in this regard is sought to be assailed on the ground that he had not stated with regard to the loan in the FIR, but it is well settled that the FIR is not supposed to be encyclopedic and is in the nature of immediate information furnished to the police regarding commission of offence. Still further, when the dead-body was recovered, the complainant may not have been able to co-relate the said facts regarding the motive, but subsequently he



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stated the said fact while in the witness-box. It is not every improvement, which is required to be discarded.

13. It appears that the weapon of offence was not shown to the doctor, who had conducted the post-mortem examination and had given opinion regarding cause of death. However, as already stated above, the nature of injuries found on the person of deceased, which are in the nature of lacerations, contusions and abrasions are injuries which could have possibly been caused with blunt edged weapon and not with an incised weapon. It is the blunt edged weapon, which was found at the spot i.e. an iron rod and a broken stool and which were found to be smeared with blood. As such, the medical evidence is fully consistent with the case of prosecution.
14. Though, during the course of arguments, learned counsel for the appellants also pointed various discrepancies particularly in the statements of PW-11 Mohinder Singh and PW-12 Kulwant Singh inasmuch as while PW-12 Kulwant Singh had stated that after finding the dead-body of Ajaib Singh, he went to Village Nissing to inform his father, but his father i.e. PW-11 Mohinder Singh stated that he had never gone to Village Nissing. It was also pointed out that while the case of prosecution is that the complainant went to police station to lodge the FIR and that Kulwant Singh had met ASI Jagan Nath at T-point GT Road, where his statement was recorded, but PW-12 Kulwant Singh stated that ASI Jagan Nath met him outside the police post, but it is well settled that such like discrepancies, which do not relate to



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material aspects of the case would not affect the case of prosecution in any manner.

15. In this context, a reference may be made to a judgment of Hon'ble the Apex Court rendered in Rajesh Yadav vs. State of UP 2022(12) SCC 200, wherein it has been held as follows:-

“85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses.”

16. The case of prosecution mainly hinges on the recovery of dead-body body of Ajaib Singh from the house of Harbhajan Singh and on the “last seen” evidence led by prosecution inasmuch as PW-14 Ajit Singh had seen the accused in the company of deceased shortly before the recovery of dead-body of Ajaib Singh, which is found to be trustworthy.
17. As regards the contention of the appellants regarding there being no evidence to show that all the three accused moved together or were gamblers, this Court does find that there is no evidence regarding gambling on the part of



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the accused, but it is a case where all the three accused had been seen together by PW-14 Ajit Singh shortly before recovery of dead-body and all three of them were also arrested together from railway station by PW-13 Baljinder Singh, SI/SHO P.S. Taraori. The arrest was effected on 10.4.2002 i.e. just after two days of the occurrence and which certainly shows that all the three accused used to move together. Still further, while the dead-body was recovered from the house of Harbhajan Singh, it is Surjit Singh to whom the motive is attributed inasmuch as it is Surjit Singh who owed an amount of Rs.22,000/- to the deceased.

18. The witnesses were cross-examined at length, but nothing substantial could be elicited so as to doubt their credibility. The difference in time when PW-14 Ajit Singh had seen the deceased in the company of accused the point of time when the complainant came across the dead-body in the house of Harbhajan Singh, is barely 15 minutes. As such, there is much to be explained on the part of the accused. Still further, the dead-body having been recovered from the house of Harbhajan Singh, Section 106 of the Indian Evidence Act, 1872 would also come into play. In this context, reference may be made to provisions of section 106 of Indian Evidence Act 1872, which is in the nature of an exception to general rule enshrined in section 101 of Indian Evidence Act, which mandates that the burden of proof lies on the person who asserts existence of such fact. Section 106 in The Indian Evidence Act, 1872 is reproduced below for the sake of ready reference:

“106. Burden of proving fact especially within knowledge.-

When any fact is especially within the knowledge of any person,



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the burden of proving that fact is upon him.”

19. In a judgment reported as (2012) 1 SCC 10 Prithipal Singh v. State of Punjab, the Hon'ble Apex Court has held that if a fact is especially in the knowledge of any person, then burden of proving that fact is upon him and that it would be impossible for the prosecution to prove certain facts particularly within the knowledge of the accused. It was further held therein that Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, offers some explanation which might drive the court to draw a different inference. Thus it was held that section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. To similar effect is ratio of judgment reported as (2016) 12 SCC 665 Harijan Bhala Teja vs. State of Gujarat.
20. The Hon'ble Apex Court, in a case reported as (2016) 12 SCC 665 Harijan Bhala Teja v. State of Gujarat in somewhat identical circumstances where the dead-body had been found in the house of the accused affirmed the judgment of the High Court reversing acquittal of accused. The relevant extract from cited judgment is reproduced below for the sake of ready reference:

“36. The accused having failed to explain the circumstances under



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which the dead body of deceased was found in his house though a burden lay on him in terms of provisions of Section 106 of Evidence Act is a fact, which points towards complicity of the accused.”

21. This Court finds that though the present case is based on circumstantial evidence, but the evidence led by the prosecution established all the vital links in the chain of evidence and there is a very short gap between the time when the accused were seen in the company of deceased and the time when the dead-body was recovered. The dead-body was recovered from the house of Harbhajan Singh. There is evidence to show that accused Surjit Singh had taken loan from the deceased and had not been returning the same. All the three accused used to move together and had been seen together by PW-14 Ajit Singh and were even arrested together while they were present at the railway station. Under these circumstances, this Court finds that there is no missing link in the chain of circumstantial evidence. The Trial Court, as such, has not committed any error in reaching at a conclusion that the accused were guilty of having committed murder of Ajaib Singh.
22. In view of the discussion made above, we do not find any infirmity in the findings of guilt as recorded by the Trial Court and the same are hereby affirmed. Finding no merit in the appeals and the same are hereby dismissed.
23. Since the substantive sentence of imprisonment as imposed upon the appellant(s) had been suspended during pendency of the appeals, they be arrested immediately to undergo their remaining part of the sentence. Intimation be sent to the quarters concerned.



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24. A copy of this order be placed on the file of connected case.

(GURVINDER SINGH GILL)
JUDGE

27.5.2024
Pankaj

(N. S. SHEKHAWAT)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No