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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-670-DBA-2003
Reserved on: 23.07.2024
Date of decision: 02.08.2024

STATE OF PUNJAB ...Appellant

Versus

GURCHARAN SINGH AND ORS. ...Respondents

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

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

Mr. A.S.Cheema, Advocate
for respondents No. 1 to 3.

SURESHWAR THAKUR, J.

1. The instant appeal is directed by the State of Punjab, against the verdict drawn on 28.09.2002, upon Sessions Case No. 30-T of 17.02.2000 by the learned Additional Sessions Judge, Patiala, wherethrough in respect of charges drawn for offences punishable under Sections 302/34 IPC, he made a verdict of acquittal qua all the accused.

FACTUAL BACKGROUND

2. The genesis of prosecution case, becomes embodied in the appeal FIR, to which Exhibit PF/2 is assigned. The informant/complainant one Resham Singh (PW-5) has made narrations therein that on 19.06.1999, his son Sukhwinder Singh had gone to his tubewell in the field. His son Balkar Singh

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had also gone with him to plough his land with the tractor. Balkar Singh came back to home at about 10 p.m., while his son Sukhwinder Singh slept at the motor in the fields. On the next day, after waiting for his son Sukhwinder Singh till 9'O clock in the morning, he took breakfast for him in the fields. There, he found his son Sukhwinder Singh lying on cot soaked with blood outside the *kotha* of the motor. Injuries with a sharp edged weapon were visible on the right side of his head. A part of his right ear was also cut. He stated that his son Sukhwinder Singh died on cot due to the said injuries. Blood also soaked on his clothes and on cot. He called his nephews from the nearby motor. The complainant made a statement to the police that some unknown person or persons have killed his son Sukhwinder Singh with sharp edged weapon.

INVESTIGATION PROCEEDINGS.

3. On the basis of the said statement, FIR was registered. Accused Gurcharan Singh was arrested on 27.10.1999 and in pursuance of his disclosure statement dated 29.10.1999, a *sabal* was recovered. On 01.11.1999, accused Jarnail Singh and Baldev Singh were arrested. On the basis of disclosure statement of accused Jarnail Singh, a *kirpan* was recovered. On completion of the investigation and necessary formalities, the challan against the accused was presented before the learned Committal Court.

COMMITTAL PROCEEDINGS

4. Since the afore offences were exclusively triable by the Court of Session, therefore, the learned committal Court, committed vide order dated 03.02.2000, the case for trial, to the Court of the learned Sessions Judge, Patiala.

TRIAL COURT PROCEEDINGS.

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5. On finding a *prima facie* case, charge under Section 302 read with Section 34 of the IPC became framed, against the accused, and, to which they pleaded not guilty, and, claimed trial.

6. In support of the prosecution case, the prosecution examined thirteen witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge, Patiala drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. In their defence, the accused examined three witnesses.

7. After conclusion of the trial, as, became entered upon the FIR (supra), by the learned Additional Sessions Judge, Patiala, the latter proceeded to make the afore verdict of acquittal, upon, the accused-respondents.

SUBMISSIONS OF THE LEARNED STATE COUNSEL.

8. The learned counsel for the State, has made a vigorous submission before this Court that, the impugned verdict of acquittal suffers from a gross taint of gross mis-appreciation and non appreciation of evidence germane to the charge. Thus, he argues that the impugned verdict be quashed and set aside by this Court and the accused be held guilty of the charged offences and sentenced accordingly.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS.

9. Contrarily, the learned counsel for the respondents has argued that, the verdict challenged before this Court is well merited, and, does not warrant its becoming interfered with, by this Court.

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10. Before proceeding to delve into and also for making an adjudication in respect of the submissions (supra) addressed before this Court, it is deemed imperative to extract the relevant paragraphs, as occur in the impugned judgment of acquittal.

Circumstantial evidence based case.

37. xxxxxThe prosecution case mainly rests on the testimony of PW Sewa Singh, PW Budh Ram who had allegedly seen the accused near the place of occurrence and the testimony of PW Jit Singh, before whom two of the accused had made an extra judicial confession. PW Resham Singh complainant had found the dead-body of his son in the morning on 20.6.1999. The said witness has also attributed motive for the alleged crime. It would be appropriate to take up the testimony of each witness individually to appreciate as to whether the testimony of said witness inspire confidence or not. Further more whether the testimony of the said witness is trust worthy.

38. First of all the testimony of **P.W.9 Budh Ram** is taken up for discussion. The said witness had allegedly gone to the fields of Hans Raj at about mid-night. The witness does not belong to village Behar Jaj but belongs to village Andli. The said witness had seen four persons going towards the fields of Sukhwinder Singh. He switched on the torch and asked as to who were the four persons. At that time Baldev Singh accused said that he had not recognised him. **P.W.9 had thus only recognised accused Baldev Singh and not the three other accused.** In his cross-examination he deposed that no case had been registered against him bearing F.I.R. No. 266 dated 7.9.1987 and F.I.R. No.341 dated 17.8.1981. He denied the suggestion that he was intentionally denying the registration of the F.I.Rs against him. The witness further deposed that police had come in the village at 9 A.M. when he came to know that Sukhwinder Singh had died. **He did not disclose his meeting with**

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Baldev Singh to the police on that date. Thereafter he also did not disclose the meeting with Baldev Singh to any official of the police but was called to the Police Lines, Patiala by a Constable on 11.10.99. **Except Resham Singh he did not disclose the factum of his meeting with Baldev Singh to any person.** He did not move any application to a higher officer.

39. xxxx xxxx

40. A perusal of the testimony of **P.W. 5 Resham Singh** reveals that this witness had **no where stated that Budh Ram had disclosed to him his meeting with Baldev Singh.** P.W.-5 in his cross-examination deposed that Budh Ram who was witness in this case was present at the spot when police arrived at the spot where the dead-body was lying. It is not understandable as to why Budh Ram did not disclose his meeting with Baldev Singh to Resham Singh when the police arrived at the spot. From all this it appears that PW Budh Ram is not a trust worthy witness and can tell a lie especially when in the Court he lied about the registration of F.I.Rs against him. The behaviour of the witness is also most un-natural. In normal circumstances he would have informed Resham Singh immediately that he had seen Baldev Singh and three others near the motor of Sukhwinder Singh on the night of his murder. Rather the said witness did not say anything in this regard to the police at the spot. **As per P.W.13, statement of Budh Ram was recorded on 11.10.1999 whereas the occurrence had taken place in June, 1999 after a long delay. Resham Singh has no where stated that after 4-5 months of occurrence he had been informed by Budh Ram that he had seen Baldev Singh and others near the field of Sukhwinder Singh.** xxxx xxxxxx....

41. Now the testimony of **PW Sewa Singh** is taken up for discussion. The said witness has deposed that he had gone to collect harrow from the fields of Hans Raj. On the way to the field of Hans Raj he had seen accused Sat Pal near the fields of Sukhwinder Singh and on return he had seen all the accused going towards the

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dera of Baldev Singh. On the next day he went to Tohana at 6 A.M. and stayed there upto 11 AM. On return he came to know that Sukhwinder Singh had been murdered and narrated the incident to Resham Singh. In this regard the testimony of P.W.5 Resham Singh is again relevant. **The said witness P.W.5 has nowhere stated that he had been told by Sewa Singh that he had seen the accused near the fields of Sukhwinder Singh on the previous night.** Resham Singh in his cross-examination deposed that on coming to know about the murder of Sukhwinder Singh, he along with his brother Didar Singh and Bhajan Singh reached the place where the dead-body was lying. Sewa Singh son of Bhajan Singh also reached the place where the dead-body was lying. He along with Sewa Singh and Bhajan Singh were present at the place where the dead-body was lying. The police remained at the spot upto about 1 P.M. Sewa Singh was present there. **Had PW Sewa Singh actually seen the accused near the fields of Sukhwinder Singh deceased as alleged and had he narrated the said fact to Resham Singh, in normal circumstances the same would have been brought to the notice of the police especially when the police had arrived at the spot in the presence of Resham Singh and Sewa Singh.** In this regard the contents of the F.I.R. also assume importance. F.I.R. was registered on the basis of the testimony of PW Resham Singh. As per the F.I.R. EX.PF/2 which was recorded at 3.15 P.M., the complainant had stated that his son Sukhwinder Singh had been murdered by some unknown persons. **Had PW Sewa Singh narrated the incident of the night to PW Resham Singh, he would have mentioned in the statement, on the basis of which F.I.R. was recorded that he had a suspicion against the present accused.** However, in the F.I.R. nothing of this sort has been mentioned, Sewa Singh is not an outsider but is son of brother of complainant Resham Singh and is thus a closely related person to the complainant. Had he actually seen the accused near the place of

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occurrence, then in normal circumstances he would have immediately informed the complainant that he had seen the accused near the place of occurrence around the time when he was murdered and had a suspicion against them. **The statement of this witness was for the first time recorded by D.S.P. Gursharan Singh Bedi on 11.10.1999 after a long delay.** In view of the facts discussed above, the delay in recording the statement of PW Sewa Singh cannot be lost sight of. Thus, the statement of PW Sewa Singh cannot be said to be trust worthy and fails to inspire confidence.

42. Now the statement of **PW Jit Singh** is taken up for discussion. Before the said witness accused Gurcharan Singh and Baldev Singh had confessed that they had committed murder of Jaswinder Singh son of Resham Singh and the said accused had prayed that a compromise be effected between them alongwith co-accused Jarnail Singh and Satpal Singh with Resham Singh complainant. **This witness has not given the name of the deceased correctly in his statement. The name of the deceased is Sukhwinder Singh and not Jaswinder Singh.** From this it appears that the accused had never made any confessional statement before him nor he knew the name of the deceased. Witness Jit Singh further deposed that he had talked to Resham Singh that the accused had offered to compromise the matter but Resham Singh had said that since his son was murdered, there was no question of compromise. **He has not given any date as to when he had told Resham Singh regarding the confession made by the accused before him.** The testimony of P.W.5 Resham Singh again assumes importance because P.W.5 Resham Singh has nowhere stated in his statement that PW Jit Singh had ever come to him that the accused wanted to compromise the matter or that the accused had confessed their guilt before him. **P.W.13 deposed that he had recorded the statement of Jit Singh on 25.10.99. The occurrence had taken place in June, 1999, whereas the statement of Jit Singh was**

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recorded after a long delay. PW Jit Singh also could not tell the exact date or time when accused Baldev Singh and Gurcharan Singh had confessed their guilt before him. xxxxx xxxxx

The extra judicial confession alleged to have been made by accused Gurcharan Singh and Baldev Singh is vague because it is not clear from the testimony of PW Jit Singh as to whether both the accused had confessed before him together or separately and that what were the exact words used by each of the accused. xxxx xxxx xxxx

43. Now the testimony of the complainant is taken up for discussion. The complainant while appearing in the witness box in his examination-in- chief deposed that his son had slept at the motor in the fields on 19.6.1999. On the next day he had gone to the fields with breakfast for his son at about 9 A.M. and on reaching there he saw that dead-body of his son was lying in a pool of blood. He called Harbhajan Singh and Surinder Singh, his nephews from the nearby motor and after leaving Harbhajan Singh at the spot to guard the dead-body of Sukhwinder Singh, he alongwith Surinder Singh went to the village to narrate the incident to his brothers Ajit Singh and Gurmel Singh. Then he alongwith Ajit Singh and Gurmel Singh lodged the report with the police. **The said witness in his cross-examination deposed that Balkar Singh had reached the house at about 9-30/10 P.M. At about 9 A.M. he came to know at his house regarding the murder of his son Sukhwinder Singh and thereafter on coming to know about the said fact he alongwith Didar Singh, Bhajan Singh and Sewa Singh reached the place where the dead-body was lying.** Thus, there is a material contradiction in the testimony of P.W.5 as to how he had come to know regarding the murder of his son.

44. While appearing in the witness box P.W.5 deposed that the motive with regard to the murder was that they had repaid the mortgage money after delay to the accused. The said fact is,

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however, not mentioned in the statement of P.W.5 recorded by the police Ex. PF on 20.6.1999. It is also not mentioned in EX.PF that the accused had expressed a grouse as to why the mortgage money was being paid late and had refused to part with the possession of the land but the complainant and his son took the possession of the land as they had got the same redeemed by paying the mortgage money. **The witness was confronted with his statement Ex.PF wherein the motive regarding murder was not stated. Ex. DA is another statement of Resham Singh recorded on 20.6.1999 wherein also the motive with regard to murder is not mentioned.** The witness was confronted with his statement Ex. DA by the learned defence counsel where the fact of mortgage of land and its redemption and the grouse expressed by the accused are not mentioned. **Thus, from all this it can be inferred that the complainant while appearing in the witness box for the first time attributed motive with regard to the murder. Apparently the motive attributed by the complainant is an after thought as he had failed to mention the same when his statements were recorded by the police on 20.6.1999.** xxxx xxxx

45. xxxx xxxx

46. Thus, in the present case the prosecution has failed to prove its case against the accused beyond reasonable doubt. The witnesses who had seen the accused near the fields of the deceased are not trust worthy and their statements fail to advance the case of the prosecution. The witness before whom the accused had made an extra judicial confession also fails to inspire confidence and lead to the conclusion that the murder of Sukhwinder Singh had been committed by the accused. Merely because the recovery of weapons was made during investigation on the basis of disclosure statements suffered by the accused is not sufficient to hold that the accused had committed the alleged offence. The complainant has also made material improvements in his statement to provide motive in this case. There is unexplained delay in recording the statements of PWs

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Sewa Singh, Budh Ram and Jit Singh. The circumstances proved on record by the prosecution are not conclusive in nature and are not consistent with the hypothesis of the guilt and inconsistent with the innocence of the accused. xxxx xxxx”

Inferences of this Court.

11. The above made reasons by the learned trial Judge after making an incisive analysis of the depositions of complainant PW-5 Resham Singh, PW-8 Sewa Singh, PW-9 – Budh Ram, PW-10 Jeet Singh, thus do not suffer from any gross infirmity. Resultantly this Court finds no merit in the appeal.

12. Firstly, PW-9 Budh Ram, is evidently not a native of village Behar Jaj but belongs to village Andli, which is a village other than to which the deceased belonged. Though he became cited as a witness to the story of last seeing the accused and the deceased together. However, when in his testification, he made a categorical echoing, that on the relevant night, he had only recognized accused Baldev Singh and had not recognized the other three persons. Resultantly, even if assumingly he testified qua his, on the relevant date recognizing accused Baldev Singh, yet even the evidentiary tenacity of the said made testification becomes completely eroded, from the factum, that the FIR in respect of the incident became lodged on 20.06.1999, whereas, the statement of PW-9 Budh Ram, became recorded much belatedly therefrom, inasmuch as, after four months elapsing since the taking place of the crime event. Therefore the belated recording of the statement of PW-9 Budh Ram, is hit by the vice of delays rendering its testification to be tainted with the vices of after thought and concoctions.

13. Now, since as above stated, PW-9 excepting his recognizing accused Baldev Singh on the relevant night, has stated that he did not recognize

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the other three accused, thereby there was an imperative necessity cast upon the investigating officer concerned, to prior to PW-9 identifying the accused in Court, thus ensure that in a validly conducted test identification parade, rather PW-9 identifies the other accused. Resultantly therebys alone the said identification in the Court of the accused would acquire some vigor. Since the above did not happen, therebys PW-9 Budh Ram's testification is rendered completely in- efficacious nor his identifying the accused for the first time in the Court, without prior thereto a valid test identification parade being carried, thus has any evidentiary strength.

14. Furthermore, PW-8 Sewa Singh had deposed that when he had gone to collect harrow from the fields of Hans Raj, then on the way, he had seen accused Sat Pal near the fields of Sukhwinder Singh and on return he had seen all the accused going towards the dera of Baldev Singh. The said witness also became cited as a witness to the story of last seeing the accused. The said witness is the son of the brother of the complainant Resham Singh, therefore, he is also a member of the complainant's family, therebys he rendered an interested version qua the crime event. The deposition of the said witness cannot also be believed, thus primarily for the reason that if he had seen the accused near the fields of the deceased on the previous night and if he had any suspicion against them, then being a member of the complainant's family, thus he would have promptly narrated the said incident to the complainant Resham Singh, whereafter the said Resham Singh but was also required to promptly narrate the same to the investigating officer concerned. However, the same did not happen.

Contrarily, rather with a long delay taking place since the happening of the crime event, and the said witness making his statement to the police officer

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concerned. Therefore, the belated recording of the statement of PW-8 Sewa Singh, is hit by the vice of delays whereby his testification becomes ingrained with the vices of after thoughts and concoctions.

15. Moreover, PW-10 Jit Singh has deposed that the accused Gurcharan Singh and Baldev Singh had made extra judicial confession before him qua theirs committing the murder of the deceased and also qua theirs intending to compromise the matter with Resham Singh. The deposition of the said witness cannot also be relied upon. Emphasizingly, for the reason that the said witness in his testification, has wrongly mentioned the name of the deceased as Jaswinder Singh, instead of Sukhwinder Singh. In addition, the statement of the said witness was recorded by the investigating officer after a delay of about four months taking place since the ill fated occurrence happening at the crime site. Resultantly, the testification rendered by the said witness is also hit by the vice of delays besides with the concomitant vices of the same being doctored and engineered. Significantly also, PW-Jit Singh in his statement was unable to testify the exact date or time when accused Baldev Singh and Gurcharan Singh had confessed their guilt before him, thereupon the statement of PW-Jit is ridden with a vice of indefiniteness and vagueness and to which no credence can be assigned.

16. The further reason for negating the prosecution story, becomes sparked from the factum that complainant PW-5 Resham Singh, who is the father of the deceased, rather at the relevant time of lodging of the FIR, did not corroborate the statements of PW-Budh Ram and PW-Sewa Singh, that they have seen the accused near the fields of Sukhwinder Singh, on the night of occurrence, nor PW-5 Resham Singh stated in his statement, that PW-Jit Singh

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had ever narrated to him about the extra judicial confession made by the accused and/or that the accused wanted to compromise the matter. Therefore, for want of corroboration being lent to the testification(s) of the above witnesses, thus by PW-5 the informant-complainant hence makes the testification(s) of the above witnesses to be entirely manufactured and concocted versions in respect of the crime event.

17. Further PW-5 Resham Singh in his testification has stated that the motive of the accused murdering his son (deceased), became engendered from theirs liquidating the mortgage money to the accused after an elongated spell of time. However, the said version as made by PW-Resham Singh in his testification, never existed in his earlier statements (Ex. PF and Ex. DA) as became made before the police. Thus, the belated attribution of motive by PW-5 Resham Singh, but appears to be an afterthought and concoction, in respect of the purported motive inhering in the minds of the accused.

18. Moreover, the recovery of weapon of offence i.e. *Sabal* in pursuance to the disclosure statement made by Gurcharan Singh @ Channa, as became caused to the investigating officer concerned, is but also inconsequential. The reason being that, the relevant recovery, of a *Sabal*, rather became effectuated from the house of the accused concerned, but, yet when the said is an agricultural instrument which is easily available inside the homestead(s) of farmers. Resultantly, the mere presence thereof, in the house of the accused person, and, its recovery therefrom, but can be concluded to its becoming concocted/engineered.

19. Strengthened vigor to the above drawn inference become garnered from the factum, that the disclosure statement of the accused Gurcharan Singh

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was recorded on 29.10.1999 thus after almost four months elapsing since the taking place of the crime event. Resultantly the consequent effect thereof, is that, the even the relevant signed disclosure statement, and, also the consequent therewith recovery rather also become amenable to be concluded to be a sequel of sheer concoction or invention, at the instance of the investigating officer concerned.

FINAL ORDER OF THIS COURT.

20. In consequence, there is no merit in the appeal, and, is accordingly dismissed. The impugned verdict of acquittal, as made by the learned trial Court concerned, is maintained, and, affirmed.
22. The case property, if any, be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.
23. Since the main case itself has been decided, thus all the pending application(s), if any, are disposed of.

(SURESHWAR THAKUR)
JUDGE

02.08.2024
kavneet singh

(SUDEEPTI SHARMA)
JUDGE

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