

2024:PHHC:125126-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on: 09.09.2024
Pronounced on: 20.09.2024

1. CRA-D-41-DB-2005

Manjit Singh and AnotherAppellants

Versus

State of Punjab and anotherRespondents

2. CRA-AD-235-2024

Charan SinghAppellant

Versus

Dalbir Singh and anotherRespondents

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

Argued by: Mr. P.S.Jammu, Advocate
for the applicants-appellants (in CRA-D-41-DB-2005) and
for the respondents (in CRA-AD-235-2024).

Ms. Sonia Sharma, Advocate (legal aid counsel)
for the applicants-appellants (in CRA-D-41-DB-2005).

Mr. Arav Gupta, Advocate (legal aid counsel)
for the appellant-complainant (in CRA-AD-235-2024).

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

SURESHWAR THAKUR, J.

1. Since both the criminal appeals (supra) arise from a common judgment, therefore, they are amenable for a common verdict becoming recorded thereons.

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2. **CRA-D-41-DB-2005** is directed by the convicts-appellants-Manjit Singh and Lakhwinder Singh, against the verdict of conviction, as made on 09.12.2004, by the learned Additional Sessions Judge (Adhoc), Amritsar, upon, Session Case No. 54/2004/FTC, wherethrough, in respect of charges drawn for offences punishable under Sections 302/34 IPC, he made a finding of conviction against the accused Manjit Singh and Lakhwinder Singh.

3. Moreover, through a separate sentencing order drawn on 09.12.2004, the learned trial Judge concerned, proceeded to impose upon the convicts (supra) both sentence(s) of imprisonment as well as of fine, but in the hereinafter extracted manner :-

“ I have heard Manjit Singh and Lakhwinder Singh, accused-convict and their Ld. Counsel in the matter of sentence and after taking their submissions into consideration, each of them is awarded life imprisonment and fine of Rs. 5000/- and in default, 6 months R.I. u/s 302/34 IPC.”

4. The convicts-appellants-Manjit Singh and Lakhwinder Singh become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentences of imprisonment, and, of fine as became imposed upon them, by the learned convicting Court concerned, and hence have chosen to institute thereagainst the instant criminal appeal, before this Court.

5. **CRA-AD-235-2024** is directed by the complainant one Charan Singh, against the verdict (supra), wherethrough in respect of

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charges drawn for offences punishable under Sections 302/34 IPC, he made a verdict of acquittal qua accused Dalbir Singh and Avtar Singh.

Factual background

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

7. It has been alleged that one Manjit Singh (deceased) son of Charan Singh (complainant) had an affair with Ranjit Kaur sister of the accused. Manjit Singh had also developed friendly relations with the accused and frequently used to visit their house. When Charan Singh came to know about the relations of the deceased with Ranjit Kaur, he reprimanded him but despite that he continued to visit the house of the accused. On the intervening night of 9/10.7.1997 at about 10 PM, the deceased alongwith his family members was present in his house, then accused Manjit Singh having stick and accused Lakhwinder Singh, carrying torch in his hand came there and asked Manjit Singh (deceased) to accompany them to their house in connection with some urgent work, as he was called there by their brother Dalbir Singh Sarpanch. The complainant and his son Balwinder Singh objected that the deceased may not go with them but he did not agree and accompanied them. After waiting for a sufficient time, when he did not returned, Charan Singh and his son Balwinder Singh went to the house of the accused. Rattan Singh, father of the accused and his wife Jasbir Kaur were present there. Charan Singh enquired from them about his

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Singh (accused) had fled away. Charan Singh immediately went to the house of his in-laws at a nearby village to find out whether his son had gone there but he did not find his son there. He along his brother-in-law Manmohan Singh came back and tried to find out the deceased.

8. On the next day, at about 6 AM, they found the dead body of Manjit Singh (deceased) hanging with a Kikkar tree while tied with a parna, near the field of Hazara Singh and Shangara Singh. Leaving Balwant Singh there, Charan Singh was going to the police station, when on the way the police officials met him and he narrated the entire incident to them. His statement was recorded on the basis of which FIR was registered.

Investigation proceedings

9. During investigation, one Manjit Singh (PW-3) son of Niranjana Singh resident of Ajnala stated that all the accused were seen by him, going on cycle towards Ajnala, while he was present on the canal bridge, as his field was being irrigated and then he had heard them talking to each other that boy who had caused injuries to their brother was done to death by them and that it will be a lesson in future for others not to take courage to do anything undesirable to the daughters and sisters of others. He had also flashed torchlight on the accused persons and then he inquired from them, as to where they were going. The police did not take any action against the accused. Later on, it was found that on the same night accused Manjit Singh, got his medico legal examination conducted from Guru Nanak Hospital,

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therefore, Charan Singh filed complaint u/s 302/34 IPC against the accused. Statement of Charan Singh was recorded by Illaqa Magistrate. He also relied upon the statement of Manjit Singh, Nant Kaur, Dr. Balwant Singh and Dr. Gurnamjit Rai and C. Balwant Singh in the preliminary proceedings. The Illaqa Magistrate dismissed the complaint vide order dated 10.07.98. The complainant challenged the order dated 10.07.98 by filing revision which was accepted, and order dated 10.07.98 passed by the Illaqa Magistrate was set aside and case was remanded to the Illaqa Magistrate to pass appropriate order. The complainant did not produce any other evidence.

10. On the basis of the evidence already recorded, Illaqa Magistrate summoned all the accused u/s 302/34 IPC vide orders dated 03.02.01. The accused appeared in Court. Copies of the documents were supplied to them.

Committal proceedings

11. Finding the offence punishable under Section 302 of the IPC, to be exclusively triable by the Court of Session, thus the learned committal Court, committed the case for trial to the Court of the learned Sessions Judge, Amritsar.

Trial Court Proceedings

12. On finding a *prima facie* case, charge under Sections 302/34 IPC, became framed, against the accused concerned, to which they pleaded not guilty, and, claimed trial.

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13. In support of the prosecution case, the prosecution examined five witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge (Adhoc) Amritsar, drew proceedings under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. The accused did not examine any witness in their defence. However, the accused Manjit Singh filed written statement taking plea that prior to the occurrence, the deceased had quarreled with him and they caused injuries to each other, thereafter, the deceased went away and he came back to his house, whereafter he was taken for medical examination.

14. After conclusion of the trial, as, became entered into the FIR (supra), by the learned Additional Sessions Judge (Adhoc), Amritsar, the latter proceeded to make the afore verdict of conviction, and, also made the consequent therewith sentence(s) (supra), upon, the accused-appellants-Manjit Singh and Lakhwinder Singh, whereas, he recorded the afore verdict of acquittal qua accused-Dalbir Singh and Avtar Singh giving them the benefit of doubt.

Submissions of the learned counsel for the convicts-appellants.

15. The learned counsel for the aggrieved convicts-appellants herein, has vigorously argued before this Court, that the impugned verdict of conviction, and consequent therewith sentences (supra), as imposed, upon the convicts-appellants, both become ridden with a gross infirmity of gross mis-appreciation, and non-appreciation of the

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evidence, existing on record. Therefore, he has argued that the appeal be accepted, and, the verdict, as challenged before this Court, be quashed, and set aside.

**Submissions of the learned counsel for the complainant-appellant
(in CRA-AD-235-2024).**

16. On the other hand, the learned counsel for the complainant has argued that the appreciation of evidence, as made by the learned Convicting Court, is merit-worthy, and, that it does not require any interference being made by this Court vis-a-vis the verdict of conviction made qua accused Manjit Singh and Lakhwinder Singh. Moreover, he submits that the impugned verdict of acquittal passed qua accused-Dalbir Singh and Avtar Singh 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 of acquittal passed qua accused-Dalbir Singh and Avtar Singh be quashed and set aside by this Court and the said accused be held guilty of the charged offences and sentenced accordingly.

Case dependent upon last seen evidence.

17. For proving the charges (supra) drawn against the convicts, the prosecution made reliance upon the deposition of PW-2 complainant Charan Singh, who had last seen together the accused and the deceased. The contents of the examination-in-chief, as rendered by PW-2 are ad verbatim extracted hereinafter.

“ I had four sons. The name of the eldest son was Manjit Singh. He was aged about 16 years and was a student of 10thClass. He also used to

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do the labour work to supplement the income of the family. My son Manjit Singh used to visit the house of Dalbir Singh accused frequently as he had friendship with Ranjit Kaur sister of Dalbir Singh accused. When the matter had come to my notice that some such like relations were developed in between my son Manjit Singh and Ranjit Kaur, I had reprimanded my son Manjit Singh.

About six and half years back at about 10 p.m., we were present in our house. Lakhwinder Singh and Manjit Singh accused present in court had come to my house when Lakhwinder Singh was having a torch and Manjit Singh was having a Danda. They had told my son Manjit Singh that he was being called by Dalbir Singh and Avtar Singh. My son accompanied them and he did not return till late night. Myself and my other son Balwinder Singh had then gone to the house of Dalbir Singh to know about my son Manjit Singh. Rattan Singh and Jasbir Kaur, parents of Daibir Singh were found present there and they had told us that my son Manjit Singh had fled away after inflicting injuries with the knife on their son Manjit Singh and we should go and search for my son Manjit Singh. We then returned to our house. Thereafter, during the night itself, I left for my in laws village Barlas to search my son Manjit Singh there. My wife's brother Balwant Singh was contacted there by me and I was told that Manjit Singh had not reached there. Balwant Singh then accompanied me and we started searching Manjit Singh at other places. When we reached near our village, we heard some persons talking there at about 10 a.m. next day that the dead body of some person was hanging with a kikkar tree. When we went that place, we saw it was the dead body of my son Manjit Singh which was hanging with the kikkar tree with which the rope put around the neck had been tied. After leaving Balwant Singh to guard the dead body of my son Manjit Singh, I had started for the police station. The police party had met me in the way. My statement was recorded there at my dictation and the contents therein were read over and explained to me and after admitting and understanding the

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same to be correct, I had put my thumb impression but the contents therein were not read over to me. Police had come to that place alongwith me. Inquest proceedings were conducted by the police and dead body of my son was sent for post mortem examination. The police did not conduct the inquiry properly because of the influence of Dalbir Singh accused who was Sarpanch of the village.

18. Further, PW-2, in his testification has echoed that one Manjit Singh son of Niranjana Singh, who stepped into the witness box as PW-3, had intimated him about his last seeing together all the accused. The relevant part thereof, is extracted hereinafter.

On the third day, Manjit Singh son of Niranjana Singh resident of Ajnala had come to my house and told me that he had seen Dalbir Singh, Avtar Singh, Lakhwinder Singh and Manjit Singh sons of Rattan Singh going towards Amritsar and had heard that saying they had done their work of Manjit Singh and in future nobody will dare to have relations with anybody's daughter or sister in the village. When the police did not initiate any action, the present complaint was filed by me in the court of Illaqa Magistrate.

19. PW-2 also suffered the ordeal of an exacting cross examination, and, yet during the course thereof, the defence counsel failed to elicit from him, any echoing qua the deposition(s) (supra), as, comprised in his examination-in-chief rather being engineered, false, or, contrived. Therefore, completest credence is to be assigned to the deposition of PW-2.

Corroboration lent to the statement of PW-2 by the deposition of PW-3 and analysis of the testification(s).

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20. The statement of PW-2 is fully corroborated by the deposition of PW-3. In his examination-in-chief, the witness (supra) has most emphatically spoken qua his last seeing the accused together, after the crime event taking place and also echoed therein qua his over hearing their conversation with speakings therein that ***“they had done their work of Manjit Singh and in future nobody will dare to have relations with anybody's daughter or sister in the village.”***

21. Further, he also echoed *that “he had put the torch light on them which was with him and asked the accused persons present in Court, as to where they were going and then they had told him that there was some quarrel in the village and they were going to Ajnala and thereafter the accused persons left.”*

22. PW-3 testified that he was sitting on the bridge of the minor canal in his village, as his fields were being irrigated, and then he had seen all the accused persons together and also heard their conversation (supra) amongst the accused. PW-3 further testified that he had come home at about 4 a.m. and on the next day it had come to his knowledge that the son of Charan Singh had been killed by somebody and when he reached the house of Charan Singh to condole the death of Manjit Singh, then he enquired from Charan Singh, as to how his son had died, whereupon, he was told by Charan Singh that he had been murdered by Dalbir Singh, Avtar Singh, Lakhwinder Singh and Manjit Singh.

23. PW-3 further testified that, he then told Charan Singh that

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Ajnala and also told him about his hearing the (supra) conversation which occurred amongst the accused.

24. However, during the ordeal of a rigorous cross-examination, to which he was subjected to, there occurred therein some contradiction(s) vis-a-vis his previously made statement made in writing. Therefore, prima facie, though his testification cannot be relied upon. Now for discerning whether the said contradiction(s) are dire or blatant and/or are minimal, thus this Court has carefully evaluated the said inter-se contradiction(s) occurring inter-se the speakings made by the witness (supra), in his examination-in-chief, thus with the speakings made by him in his cross examination.

25. Initially, reiteratedly the said has to be but become unveiled from a wholesome deepest reading of the examination-in-chief, as well as an incisive reading of the cross-examination of the witness (supra).

26. Though, the said witness in his examination-in-chief stated, that ***he had put the torch light on the accused and asked them where they were going and they had told that there was some quarrel in the village.*** However, in his cross examination, when he became confronted with his previously made statement in writing, yet therein the said fact did not occur, thereby, the facts (supra) spoken by him in his examination-in-chief, rather appears to be an embellishment made by the witness (supra) from his previously made statement in writing.

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27. Moreover, though the further speaking occurring in his examination-in-chief, qua the accused telling him that they had murdered the deceased, so as to instill fear in others, but when also did not occur in his previously made statement before the Judicial Magistrate concerned, therebys too, the said made speaking by the witness (supra) in his examination-in-chief, thus is an improvement or embellishment from his previously made statement in writing.

28. However, even if the said inter-se contradiction(s) or embellishments, do occur, in his examination-in-chief, over his previously made statement in writing but yet the trite fact that he had last seen the accused together, post the crime event taking place, thus yet remains unshattered vis-a-vis its evidentiary efficacy. The reason for concluding so, emanates from the factum that the above underlined speakings made by the said witness in his examination-in-chief, thus remained unrebutted by him, even during the course of his facing a scathing cross-examination. The sequel thereof, is that, therebys there emerges evidence about the witness (supra) last seeing the accused together, thus post the crime event, wherebys credit is to be assigned to the hereinabove underlined statement appertaining to his last seeing the accused together, but without the accused who earlier evidently joined their company, rather not then being seen by him.

29. Though the counsel for the appellants has argued, that since there is evidence qua PW-3 rearing an inimicality towards the accused, as arose from his becoming embroiled in a litigation with the

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accused. However, the said purported inimicality yet does not belittle his testification, wherein, he has unrebuttedly stated qua last seeing the accused together. The reason for making the said conclusion becomes sparked from the factum that the accused did not lead any effective evidence to the extent that the deposition made by the witness (supra), qua his last seeing together the accused, is unworthwhile, especially when apart from the purported inimicality of the witness (supra) towards the accused, the said spoken incriminatory link was also required to become cogently rebutted. Since the above spoken fact remains unrebutted, thereby any purported inimically reared by the witness (supra) towards the accused but becomes completely eclipsed.

30. Now, if evidentiary sanctity is meted to the factum of PW-3, proving that he had last seen together all the accused, thus post the crime event taking place, therebys when PW-2, has also unrebuttedly deposed that the accused Manjit Singh and Lakhwinder Singh, thus had visited his house, whereafter, he speaks qua the deceased alongwith the accused Manjit Singh and Lakhwinder Singh, thus all leaving together. Moreover, since after the deceased leaving his house, he rather joined the company of the accused, besides with the complainant PW-2, deposing that the said joining took place in his presence and/or thereby when he has proven that both the accused Manjit Singh and Lakhwinder Singh, and, the deceased were last seen together, but prior to the crime event taking place. Resultantly, therebys the deposition of PW-2, becomes credit worthy, especially, in the evident light qua the

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accused and the deceased thus continuously remaining together upto the discovery of the body of the deceased being made from the designated place.

31. Moreover, when the accused did not propagate the plea of alibi, therebys, they are deemed to remain as such continuously together, since they last left together from the house of the complainant. Moreover, when even post the crime event taking place thus, all the accused were seen together by PW-3, but without the deceased being in their company. In addition, when no explanation vis-a-vis the accused disappearing from their company, thus becomes assigned by the accused, therebys, for want of the said valid explanation emanating from the accused, but proves their joint incriminatory participation in the charged offences. As such, reiteratedly when the accused Manjit Singh and Lakhwinder Singh and the deceased all left together from the house of the complainant and thereafter, they were not seen together, therebys the apposite absence to which no explanation is provided, does comprise an incriminatory link against the accused.

32. An added aggravated momentum to the above, becomes borrowed from echoings occurring in the written statement filed by accused one Manjit Singh, wherein, the accused Manjit Singh admitted qua his prior to the occurrence quarrelling with the deceased, therebys, the same, is to be construed to be an admission qua prior to the occurrence his quarrelling with the deceased and in the said quarrel both causing injuries to each other, especially when the subsequent

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disappearance of the accused has not been adequately explained by him.

33. Consequently, when the said admission, becomes combined with the PW-2 (complainant), testifying qua his last seeing together the accused- Manjit Singh and Lakhwinder Singh and the deceased. Moreover, when the said spoken fact by PW-2, remains unshattered vis-a-vis its evidentiary efficacy, despite the witness (supra), becoming cross examined by the defence counsel, naturally therebys the effect thereof, is that, the accused committed the murder of the deceased, besides when the accused also had the motive to commit the murder of the deceased, as the deceased had an affair with their sister, therebys, when able proof qua the said nursed motive also surges forth, thereupon, all the incriminatory links in the chain of incriminatory circumstances become cogently proven by the prosecution.

34. In sequel, since the further effect of this Court assigning complete credit worthiness to the deposition of witness (supra), is but that, the finding of conviction in respect of the charged offences, recorded by the learned trial Judge, qua accused Manjit Singh and Lakhwinder Singh, is required to be maintained and affirmed.

35. Moreover, the finding of acquittal recorded by the learned trial Judge concerned, qua accused Dalbir Singh and Avtar Singh rather is infirm. The said reason became erected, on the fact that PW-3 has made contradictory statements, as detailed (supra). However, the said assigned reason is completely out of context with this Court assigning

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credit worthiness to the deposition of PW-3, wherein, he unrebuttedly deposed that he had last seen together all the accused, excepting the deceased, in respect of his disappearance, as stated (supra) no valid explanation has emanated from the accused.

Medical Evidence

36. The doctor who conducted an autopsy on the body of the deceased, stepped into the witness box as PW-1. During the course of his examination-in-chief, he proved the post mortem report, as became authored by him. He also proved the existence thereons of his valid signatures. The post mortem report is assigned as Exhibit PA. The relevant observations, as become narrated in Exhibits (supra) are extracted hereinafter.

1) Reddish brown abrasion 0.75 x 0.4 cm on right side of face, 2.5 cm below outer angle of eye.

2) Reddish blue bruise present on scrotal sack. On dissection, marked infiltration of blood and haematoma was present in the testis and scrotal sac respectively on both sides.

3) Lacerated wound 2.5 x 1 cm was present on back of head in the occipital region. It was scalp deep. Clotted blood was present.

4) Reddish blue bruise 7 x 3.5 cm was present on back of left shoulder obliquely placed.

5) Ligature mark : After removing parna by cutting the cloth and tying both the ends by thread, I found the mark as under :-

4.7 cm grooved ligature was present, brownish in colour above the thyroid cartilage and running obliquely along the angle of mandible upto mastoid process on right side and more marked on left side. It was less marked on back of neck. Area was spared of ligature mark. On dissection – infiltration of blood was present in the muscles and skin on right side of neck. Skin and subcutaneous tissues under the

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mark were hard parchment like. Lymph glands were found having infiltration of blood above the ligature mark.

6) Reddish blue bruise 2 x 1 cm was present on back of left shoulder, 2 cm in front of injury No. 4.

37. Further, the doctor concerned, opined that the cause of death of deceased was owing to asphyxia as a result of hanging. All the injuries were declared to be ante mortem in nature.

38. Since the medical account but corroborates the last seen evidence therebys the charge against the accused is concluded to be efficaciously proven.

39. Though the cause of death has been declared to arise from asphyxia, as a result of hanging but since other ante mortem injuries also occur on the other regions of the body of the deceased. Therefore, it appears that after the accused inflicting grievous ante mortem injuries upon the body of the deceased, theirs taking to hang the deceased, wherebys, the deceased suffered his demise on account of hanging, as declared in the opinion (supra).

Final Order of this Court.

40. In consequence, there is no merit in appeal **CRA-D-41-DB-2005** and is accordingly dismissed. The impugned verdict, and, consequent therewith sentence(s) (supra), as imposed upon the convicts-Manjit Singh and Lakhwinder Singh thus by the learned Convicting Court, is affirmed and maintained.

41. If the convicts (supra) are on bail, thereupon, the sentences(s) as imposed upon the convicts-appellants, be ensured to be

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forthwith executed by the learned trial Judge concerned, through his forthwith drawing committal warrants.

42. Furthermore, the appeal **CRA-AD-235-2024**, is allowed. Consequently after allowing the instant appeal filed by the complainant, this Court quashes the impugned verdict of acquittal, as made by the learned trial Judge concerned, wherethrough, he made a finding of acquittal qua accused Dalbir Singh and Avtar Singh and the accused Dalbir Singh and Avtar Singh are held guilty in respect of an offence punishable under Section 302/34 of the IPC.

43. The accused/respondents No. 1 and 2 (in **CRA-AD-235-2024**) are directed to be produced in custody before this Court, on 01.10.2024 for theirs being heard on the quantum of sentence.

44. The case property, if any, be dealt with in accordance with law after the expiry of period of limitation for the filing of an appeal. The records be sent down forthwith.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

20.09.2024

kavneet singh

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No