

2024:PHHC:148432-DB



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRA-434-DB-2010(O&M)

Date of Decision:-13.11.2024

Rajiv.

.....Appellant.

Vs.

State of U.T., Chandigarh.

.....Respondent.

**CORAM:- HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. A.P. Kaushal, Advocate for the Appellant.

Mr. Anil Kumar Lamdharia, Additional PP U.T., Chandigarh.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence both dated 02.03.2010 passed by the Sessions Judge, Chandigarh.

2. As per record, the FIR came to be registered on 14.05.2007. The judgement of conviction was recorded on 02.03.2010. The appeal was filed in 2010. This case has come up for hearing today after nearly 17 years of the registration of the FIR.

3. The Counsel for the respondent-U.T., Chandigarh at the very outset pointed out that the appellant was granted interim bail pending his application seeking premature release vide order dated 08.08.2024.

Thereafter his prayer for premature release was rejected vide order dated

21.08.2024. However, the appellant has till date not surrendered to serve out his remaining sentence. Be that as it may, the appeal against his conviction is being taken up for final hearing today.

4. The facts, in brief, are that on 14.05.2007 Inspector Ishwar Singh of Police Station Sector 36, Chandigarh, reached village Kajheri, U.T., Chandigarh, on receipt of information regarding the murder where Gurdeep Singh met him and made a statement (Ex. PM).

5. Gurdeep Singh stated that he was a resident of Village Attawa and ran a milk dairy in Village Maloya. The son of the sister of his father, named, Sucha Singh resided with his wife in Village Kajheri and had kept buffaloes and sold milk. His children resided abroad. He had employed Rajiv, Chhotu @ Sant Ram and one rickshaw puller Soni. He received information on the morning of 14.05.2007 that no response was received from the house of Sucha Singh. He reached there and found the dead bodies of Sucha Singh and Chhotu in a room and of Balbir Kaur on the first floor. The household articles were lying scattered. Cash was also missing. He further stated that Rajiv had an altercation with Sucha Singh for settling the accounts.

6. Inspector Ishwar Singh made his endorsement Ex.PM/1 and sent the statement to the Police Station and a case was registered vide FIR Ex.PM/2. He prepared the rough site plan Ex.PS. The mattresses, towel, 'khes' and a shirt stained with blood lying near the dead body of Sant Ram @ Chhotu were reduced into a parcel. Blood was removed from the face of Sant Ram with cotton and was reduced into a parcel. Two blood stained bricks, parna and tangli stained with blood were lying in a room, which were reduced into a separate parcel. Blood was also lifted from near the dead bodies of Sucha Singh and Balbir Kaur which was reduced into a separate

parcel. All the articles were taken into possession vide memo Ex.PN.

7. Inspector Ishwar Singh also prepared inquest report Ex.PL of Sucha Singh, Ex.PC of Sant Ram, and Ex.PH of Balbir Kaur and sent the dead bodies for post mortem examination.

8. During investigation, statements of Gurdeep Singh, Balwinder Singh and Anant Singh were recorded.

9. Balwinder Singh stated that he saw accused Rajiv along with Santosh @ Soni and Amit @ Kunkun entering the house of Sucha Singh at about 11.00 p.m on 13.05.2007.

10. Anant Singh made a statement that he saw the said persons coming out of the house of Sucha Singh on 14.05.2007 at 3.15 a.m.

11. ASI Ghansham Dass arrested accused Rajiv on 06.08.2007 from Railway Station Bhagalpur (Bihar) and recovered a gold ring bearing inscription 'SS' and the same was identified by Balwinder Singh to be of Sucha Singh before H.R.Nagra, Executive Magistrate.

12. Accused Rajiv was again taken to Bhagalpur on 11.08.2007 and on the next day, his house was searched which led to the recovery of a lease deed and a shirt. The shirt was found to be of Sucha Singh by Joginder Singh-PW.

13. On completion of the investigation, accused Rajiv was challaned whereas his co-accused Santosh @ Soni and Amit @ Kunkun were declared proclaimed offenders. Pursuant thereto charges came to be framed against the appellant under Section 459, 394 read with Section 397 IPC; 302 read with Section 34 IPC. He pleaded not guilty and claimed trial.

14. In support of its case, the prosecution examined the following witnesses: -

PW.1 Dr. Naresh Sharma;

PW.2 Mrs. Tithi Dey;
PW.3 Dr. Deepak Sharma;
PW.4 Gurdeep Singh;
PW.5 Balwinder Singh;
PW.6 Anant Singh;
PW.7 Joginder Singh;
PW.8 Constable Ajay Kumar;
PW.9 Constable Rajesh Kumar;
PW.10 Head Constable Jaspal Singh;
PW.11 Constable Yash Pal;
PW.12 H.R. Nagra, Executive Magistrate;
PW.13 Sub Inspector Baldev Kumar;
PW.14 Sub Inspector Ghansham;
PW.15 Inspector Bhupinder Singh;
PW.16 Head Constable Brij Raj Singh; &
PW.17 Inspector Ishwar Singh.

13. The brief testimony of the relevant PWs is as under:-

Gurdeep Singh (PW.4) is the person on whose statement the case was registered. He reiterated the prosecution case and the broad features of his testimony, have already been stated above. He further stated that gold ornaments and a gold chain which Balbir Kaur was wearing and two gold rings of Sucha Singh having inscription 'SS', 19 dollars and a sum of Rs. 1,37,000/- were found stolen.

Dr. Naresh Sharma (PW.1) conducted the post mortem examination of Sant Ram and opined that the deceased had suffered multiple injuries and the cause of death was asphyxia due to ligature strangulation.

Dr. Deepak Sharma, (PW-3) conducted the post mortem examination of Balbir Kaur and opined that the cause of death was asphyxia due to ligature strangulation. As regards deceased Sucha Singh he opined that the cause of death was strangulation.

Balwinder Singh (PW-5) stated that Sucha Singh was his maternal uncle and used to run a milk diary. He had kept Sant Ram @ Chhotu and Rajiv accused present in the Court as his servants. Soni rickshaw puller also used to work with him. He went to the house of Sucha Singh on the evening of 13.05.2007 for the check up of the blood pressure of his wife. Sucha Singh told him that accused Rajiv asked to make him free and was annoyed. On the same day at about 11.00 p.m. he was strolling in the street and saw accused Rajiv present in the Court along with Santosh @ Soni and Amit kunkun entering the house of Sucha Singh and on the next morning, he came to know about the murder of Sucha Singh, Balbir Kaur and Chhotu.

He further stated that Sucha Singh used to wear gold rings. He was summoned to the office of Executive Magistrate on 18.10.2007 and he identified the gold ring (Ex.P15) having inscription 'SS' belonging to Sucha Singh out of 5 rings lying on the table.

Anant Singh (PW.6) stated that he was the Sarpanch of Village Kajheri and knew Sucha Singh. On 14.05.2007 he went to his outer house to ease himself and when reached the house of Sucha Singh at about 3.15 a.m., he saw accused Rajiv along with Santosh and Amit coming out of the house of Sucha Singh.

H.R. Nagra (PW.12) was posted as Tehsildar and stated that an application (Ex.PP) was marked to him by the S.D.M. He asked ASI Ghansham to bring Balwinder Singh. He opened the parcel and arranged

similar gold rings. ASI Ghansham returned to his office along with Balwinder Singh and Balwinder Singh identified the ring (Ex. P15) belonging to Sucha Singh deceased.

He prepared the report Ex.PP/1. He further stated that on 29.10.2007 Sub Inspector Baldev Kumar came to his office along with sealed parcel containing a shirt. He asked St Baldev Kumar to come at 3.30 p.m. along with Joginder Singh He arranged similar shirts and one of the shirts was identified by Joginder Singh to be of Sucha Singh. He prepared the report Ex.PP/2.

Sub Inspector Ghansham (PW.14) stated that on 04.08.2007 he went to Bhagalpur (Bihar) along with other police officials where he reached on 06.08.2007. He conducted the search of accused Rajiv who was arrested from Railway Station Bhagalpur. From his search Rs.120/- and gold ring bearing inscription 'SS' were recovered. A parcel of the ring was prepared and taken into police possession vide memo Ex.PQ.

He again accompanied Inspector Bhupinder Singh to Bhagalpur (Bihar) where the house of accused in Village Marwaha, District Bhagalpur was searched on 12.08.2007 and therefrom a lease deed (Ex.P53) and a shirt (Ex.P16) were recovered which were reduced into parcel and taken into police possession vide memo Ex.PR. He also got conducted the identification of the ring from H.R.Nagra, Executive Magistrate by moving an application Ex.PP.

Head Constable Brij Raj Singh (PW.16) stated that he went to Bhagalpur (Bihar) on 04.08.2007 where the accused was arrested from Railway Station Bhagalpur on 06.08.2007 and from his search a gold ring was recovered and the recovery memo Ex.PQ was attested by him.

Inspector Bhupinder Singh (PW-15) stated that he went to

Bhagalpur (Bihar) on 11.08.2007 and on the next day they went to Village Marwaha where Baldev Singh met them and was joined in the investigation. The house of accused was searched from where a shirt and lease deed were recovered.

14. After closure of the prosecution evidence, statement of the accused as required under Section 313 Cr.PC was recorded and the circumstances appearing in evidence against him were put to him. He controverted the allegations and pleaded that a false case was planted upon him. He was working at his village on the day of incident.

15. The accused was called upon to enter upon his defence and he examined Amar Chaudhary (DW-1) who stated that he along with Rajiv and others was taking meal at about 8.00 pm when police came and arrested accused Rajiv. Nothing was recovered from the house of the accused. Accused Rajiv used to work with the head of the village.

16. Based on the evidence led as described above the accused was convicted by the court of Sessions Judge, Chandigarh vide judgment dated 02.03.2010.

17. It is the aforementioned judgment which is under challenge in this appeal.

18. The Counsel for the appellant contends that the case is based on circumstantial evidence and the prosecution has not proved its case beyond reasonable doubt. PW-4 & PW-5 have been erroneously believed despite the fact that they were interested prosecution witnesses being relatives of the deceased Sucha Singh. They had substantially improved their statements while deposing in the Court. The recoveries of gold ring, lease deed and Shirt had been planted upon the appellant. Material prosecution witnesses including one Baldev Singh a witness of the recovery of a ring had not been

examined. He, therefore, contends that the judgment of conviction was liable to be set aside and the appellant ought to be acquitted of the charges framed against him.

19. The learned counsel for the State on the other hand contends that the case is of a triple murder. The prosecution witnesses were consistent in their testimonies. They could not be disbelieved only on the basis of minor inconsistencies in their statements or because some of them were related to the deceased. The defence could not shatter their versions during the course of their cross examination. The recovery of gold ring, lease deed and shirt stood established on the basis of the evidence led. He, therefore, contends that the present appeal was liable to be dismissed.

20. We have heard the counsels for the parties and gone through the record.

21. There is no eye-witness in the present case and the prosecution case rests upon the following circumstantial evidence:-

- i) *Accused Rajiv along with others was seen entering into the house of Sucha Singh on 13.07.2007 at about 11.00 p.m.*
- ii) *He was again seen coming out of the house on the next early morning at 3.15 a.m.*
- iii) *A gold ring, shirt and lease deed belonging to Sucha Singh were recovered from his possession.*

22. It is settled law that when the prosecution case rests upon circumstantial evidence, such evidence must satisfy the following tests:-

- (1) *the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;*
- (2) *those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;*

- (3) *the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and*
- (4) *the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.*

23. Gurdeep Singh (PW.4) stated that accused Rajiv along with others was working as a servant with Sucha Singh who told him that accused Rajiv asked him to make him free.

24. Balwinder Singh (PW.5) and Anant Singh (PW.6) also deposed that accused Rajiv was working with Sucha Singh. There is no ground to dis-believe their statements and to hold that accused Rajiv was not working with Sucha Singh deceased on 13/14.05.2007 when the incident took place.

25. Accused has taken a definite stand that he was not present in Village Kajheri where the occurrence took place and he was working in his village at Marwaha, District Bhagalpur (Bihar) and also examined Amar Chaudhary (DW.1) who stated that the accused was working with the Head of the village when he was arrested by the police. But he did not disclose the name of the person who was the Head of the village. He did not agitate the matter anywhere except appearing in the witness box that the accused was taken by the police from the village. The type of evidence he has given is not hard to procure and he cannot be relied upon. To the contrary reliance is to be placed on prosecution witnesses to hold that accused Rajiv was actually working with Sucha Singh and was present in Village Kajheri when the incident took place.

26. Balwinder Singh (PW.5) stated that he went to the house of Sucha Singh in the evening of 13.05.2007 where Sucha Singh told him that

accused Rajiv was annoyed. On the same day at about 11.00 p.m when he was strolling in the street, he saw accused Rajiv along with Santosh and Amit entering the house of Sucha Singh. His house was at a distance of 200 feet from the house of Sucha Singh and therefore, his presence near the house of Sucha Singh is probable. He was cross-examined at length but his version could not be shattered. Thus, it stood established that the accused was seen entering the house of Sucha Singh on the night of 13.05.2007.

27. Anant Singh (PW.6) stated that he saw accused Rajiv along with others coming out of the house of Sucha Singh on 14.05.2007 at about 3.15 am and his outer house was 100 meters from the house of Sucha Singh. He further stated during cross-examination that he daily got up at about 3.30 a.m or 4.00 a.m. Therefore, his presence can not be doubted. He is not related to Sucha Singh and has no reason to depose falsely.

28. The statements of Balwinder Singh (PW.5) and Anant Singh (PW.6) are believable and clearly point out that accused Rajiv entered the house of Sucha Singh on the night of 13.05.2007 and left along with others early next morning at about 3.15 a.m., as stated above. The defence taken by him that he was not present in the village is not believable. He did not give any explanation as to why he had entered the house of Sucha Singh and why he left the house in the early morning of 14.05.2007. Therefore, apparently it was during this period that Sucha Singh, his wife Balbir Kaur and their servant Sant Ram @ Chhotu were murdered. The statements of the witnesses clearly establish the presence of the accused in the house at the relevant time and his denial that he was not present in the house cannot be accepted.

29. Inspector Bhupinder Singh (PW.15) proved the recovery of a shirt (Ex.P16) and lease deed (Ex.P53) by stating that they had searched the

house of the accused on 12.08.2007 and the said articles were found in a box lying in a room, but it cannot be said that the said articles were in the exclusive possession of the accused as the same were not recovered in pursuance of the disclosure statement made by him and the house was not exclusive owned by him. Therefore, the recovery of shirt (Ex.P16) and lease deed (Ex.P53) do not inculcate the accused in the crime. Even otherwise there was no need for the accused to retain a lease deed or short in his possession after committing the offence.

30. However, there are clear statements of SI Ghansham (PW.14) and HC Brij Raj Singh (PW.16) that the accused was arrested from the Railway Station Bhagalpur on 06.08.2007 and from his search a gold ring bearing inscription SS was recovered which was reduced into parcel and taken into police possession vide memo Ex.PQ. This ring was identified to be of Sucha Singh by Balwinder Singh (PW.5) before H.R.Nagra, Executive Magistrate (PW.12).

31. The Recovery was effected by SI Ghansham (PW.14) in the presence of HC Brij Raj Singh (PW.16) and Baldev Singh. The prosecution examined two of the witnesses, namely, St Ghansham (PW.14) and HC Brij Raj Singh (PW.16) and if Baldev Singh was given up as un-necessary, no adverse inference is to be drawn against the prosecution.

32. A perusal of the cross-examination of St Ghansham (PW.14) and HC Brij Raj Singh (PW. 16) does not show that they gave any contradictory statements regarding the recovery. Quite to the contrary they were unanimous that the gold ring was recovered from the accused which was later on found to be of Sucha Singh as deposed to by Balwinder Singh (PW.5).

33. The evidence on the file establishes that the accused along with

others entered the house of Sucha Singh on the night of 13.05.2007 and left the same in the early hours next morning and the gold ring belonging to Sucha Singh was recovered from his possession. The circumstances proved on the file unerringly point that he participated in the commission of crime whereby Sucha Singh, his wife Balbir Kaur and their servant Sant Ram were murdered. The witnesses had stated that accused Rajiv had some altercation with Sucha Singh but none of them were present when such thing had happened. However, mere absence of a motive is of little consequence once the offence otherwise stands established from the evidence on record.

34. The contention that the prosecution case rests upon the testimonies of the relatives is also without any force as Gurdeep Singh (PW.4) who is relative to Sucha Singh has simply lodged the report. Though Balwinder Singh (PW.5) who saw the accused entering the house of Sucha Singh and also identified gold ring to be of Sucha Singh is his nephew, but no ground is made out to discard his statement simply on the ground that he is related to the deceased.

35. In view of the aforementioned discussion, we find no merit in the present appeal and the same stands dismissed.

36. A copy of this judgment be sent to the Sessions Court, Chandigarh as well as to the office of SSP, Chandigarh for necessary compliance regarding serving of sentence in terms of the judgment dated 02.03.2010 passed by Sessions Judge, Chandigarh.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

November 13, 2024
Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No