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

CRA-D-270-DB-2005
Date of Decision: 10.03.2025

SUDHA SINGH @ SIDHU

... Appellant

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. D.S. Virk, Amicus Curiae
for the appellant.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 05.02.2005 passed by the Sessions Judge, Amritsar.

2. The FIR was registered on 17.02.2003, the judgment of conviction and order of sentence passed by the Sessions Judge, Amritsar is dated 05.02.2005, the appeal was filed on 28.03.2005 and the matter is being taken up for hearing now i.e. after a period of 22 years from the date of registration of the FIR.

3. The prosecution story, in brief, is that Dilbagh Singh alias Bagha deceased had illicit relations with the daughter-in-law of the brother of the accused and on that ground, he was nourishing a grudge against him. On

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17.02.2003. he, alongwith his father Chanchal Singh, PW5 was coming back to his house in a rickshaw after loading a bag of feed from the house of Gurmit Singh Dodhi, resident of Panjwar. At that time, he was pedalling the rickshaw whereas Chanchal Singh (complainant) was sitting on the back seat thereof. When at about 8.00 am, they reached in front of the place of Baba Balmik, the accused came there from the back side holding a Ghotna (round wooden bat meant for grinding salt etc) and gave a blow with the same on the head of the deceased, as a result of which he fell down with his face downward. Thereafter the accused gave two other blows on his forehead. The complainant raised an alarm upon which the accused escaped from that place with the ghotna. In the meanwhile, on hearing the alarm Sukha Singh and Kartar Singh, PW6 also came to the spot. As a result of the injuries, the deceased died at the spot itself. After leaving Kartar Singh by the side of the dead body and accompanied by Sukha Singh, the complainant was proceeding to the police station to lodge the report, when Piara Singh, SHO (PW7) alongwith other police officials, met them on the G.T. Road near the turning of Panjwar. At that place, the complainant made his statement, Ex.PH about this occurrence before the SHO, who after making his endorsement, Ex.PH/2 upon the same, sent it to the police station on the basis of which FIR EX.PH/3 under section 302 IPC was recorded against the accused. The SHO accompanied by the complainant and others went to the spot and after inspecting the same, prepared a rough site plan, Ex. PI with correct marginal

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notes. He collected the bloodstained earth from the place which was put in a sealed plastic box. The box was converted into a parcel and was sealed by the SHO with his seal, PS. The sealed parcel was taken into possession vide memo, Ex. PJ. One blood stained parna, Ex. P2 and one bloodstained chadhar Ex.P1 were recovered from the spot. Those were converted into a parcel which was sealed by the SHO with his seal, PS and was taken into possession vide memo, Ex. PK. The rickshaw loaded with a bag of feed was also found at the spot and those were taken into possession vide memo, Ex. PL. The SHO prepared the inquest report, Ex.PB in respect of the dead body and sent the same for post mortem examination to Civil Hospital, Tarn Taran, alongwith his application, Ex.PA through Jasbir Singh, PW2 and Harbans Lal, constable. The autopsy on the dead body was performed on the same day by Dr. Dilbagh Singh, PW1, who found two ante-mortem injuries on the same and gave his opinion that the cause of death was due to those injuries which was sufficient to cause the death in the ordinary course of nature. After the post-mortem examination, the trousers Ex.P3, shirt Ex.P4 and vest Ex.P5, found on the dead body, were produced before the SHO by Jasbir Singh, LC and the same were taken into possession vide memo, Ex. PM. On coming back to the police station, the SHO deposited the case property with Kanoj Kumar, MHC, PW8.

4. On 23.02.2003, the SHO, alongwith other police officials and the complainant, was present at Bus Stand, Khekhardin. At that place, the

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accused was identified by the complainant and was arrested. He was produced before the Judicial Magistrate 1st Class who remanded him to police custody till 28.02.2003. On 26.02.2003, the SHO interrogated the accused in the presence of Arjan Singh ASI and Shamsher Singh, Constable upon which he made a disclosure statement, Ex. PN that he had kept concealed a ghotna in the quilts lying in his residential house about which he had the knowledge and could get the same recovered. In pursuance of his disclosure statement, he got recovered ghotna Ex.P6 from the said place which was converted into a parcel and was sealed by the SHO with his seal, PS. The sealed parcel was taken into possession vide memo, Ex.PO. The SHO also prepared the rough site plan. Ex.PP of the place of recovery with correct marginal notes and on coming back to the police station, deposited the sealed parcel in the same condition with the MHC. All the above-said sealed parcels were sent to Forensic Science Laboratory, Punjab, Chandigarh on 04.03.2003 through, Sukhwinder Raj, constable, PW9 and were delivered at that place with seals intact. After examination, it was reported by the Deputy Director of that laboratory, vide his report, Ex.PS, that the same were stained with human blood of group 'B'.

5. After the completion of investigation, the challan was submitted before the JMIC, Tarn Taran, who committed the same for the trial of the accused, charges came to be framed under Section 302 IPC. He pleaded not guilty and claimed Trial.



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6. To bring home the guilt of the accused, the prosecution, examined Dr. Dilbagh Singh, PW1, Jasbir Singh, LC, PW2, Swaran Singh, constable, PW3, Rishi Ram, draftsman, PW4, Chanchal Singh, complainant, PW5, Kartar Singh, PW6, Piara Singh, SI, PW7, Manoj Kumar, MHC, PW8 and Sukhwinder Raj, constable PW9 and tendered in evidence the report of the Forensic Science Laboratory, Ex. PS.

7. After the close of the prosecution evidence, the statement of the accused was recorded under section 313 Cr.PC. All the incriminating circumstances appearing against him in the prosecution evidence were put to him in order to enable him to explain the same. He denied all the evidence pleaded his innocence and claimed false implication. He was called upon to enter his defence but he did not produce any evidence in his defence.

8. Based on the evidence led, the accused/appellant came to be convicted and sentenced by the Court of Sessions Judge, Amritsar vide judgment and order of sentence dated 05.02.2005 as under:-

Offence under Section	Sentence RI/SI	Fine	RI/SI in default of payment of fine
302 IPC	Life imprisonment	Rs.5000/-	RI for 02 years

9. It is the aforementioned judgment, which is under challenge, in the present appeal.

10. The learned Amicus Curiae for the accused/appellant contends that the complainant Chanchal Singh (PW5) and Kartar Singh (PW6) are close relatives of the deceased. Their testimony cannot be accepted and relied

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upon for conviction without corroboration which is absent in the present case. The medical evidence is totally contrary to the ocular account which would go to show that the complainant/Chanchal Singh did not witness the occurrence. The motive for the occurrence has also been not established. He therefore, contends that the present appeal be allowed and the accused/appellant be acquitted of the charges framed against him.

11. On the other hand, the learned State counsel contends that mere relationship of the prosecution witnesses with the deceased cannot be a ground to disbelieve them. It does not stand to reason that they would falsely implicate the accused and exonerate the actual assailant. Even otherwise, there was sufficient corroboration of the statements of PW5-Chanchal Singh and PW6-Kartar Singh inasmuch as the recovery of a bloodstained Ghotna came to be effected at the instance of the accused and it was found that the bloodstains were of Blood Group 'B' which belongs to the deceased. The medical evidence was broadly in consonance with the ocular account and not so contrary so as to completely discount the presence of the complainant at the spot. As it was a case of eye version account, the motive had little relevance. He, thus contends that the present appeal was liable to be dismissed.

12. We have heard the learned counsel for the parties and gone through the record.



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13. Admittedly, Chanchal Singh, complainant, PW5 is the father of the deceased. The other witness examined by the prosecution namely, Kartar Singh, PW6 has stated that the complainant is his brother. Thus, both these witnesses are closely related to the deceased. But, their statements are not be discarded or doubted merely on account of that relationship. It is settled law that the evidence of eye-witnesses cannot be rejected merely because they are related. However, in such like cases a duty is cast upon the court to scrutinize the statements of related witnesses with care and caution. At the same time it cannot be last sight of that relations are highly unlikely to conceal the actual culprits and allegations against others. Thus, statements of these two witnesses can be relied upon and can be made the basis of the conviction of the accused, if on careful scrutiny those are found to be trust-worthy and reliable.

14. Dr. Dilbagh Singh (PW1) conducted the post-mortem examination on the dead body of Dilbagh Singh and found the following ante mortem injuries-

i) A lacerated wound of 5.5 x 2.5 cms was present on the right side of forehead. 1 cm above the mid point of right supra orbital region and 1.3 cm from the mid point of forehead. On dissection the bone was found fracture into two pieces and underlying duramatter and brain was lacerated.



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ii) A lacerated wound 2.5 x 1.5 cm was present on left side of forehead, 3.5 cm above the medial angle of left eye and half cms from the mid point of forehead.

On dissection-underlying bone was found fractured and dura and brain were lacerated.

He opined that the cause of death was due to injury no.1 and 2 which was sufficient to cause death in the ordinary course of nature. He testified that the correct carbon copy of the post mortem report is Ex.PD and that of the pictorial diagram regarding the receipt of the injuries is Ex.PD/1.

15. The prosecution story in the Court has been unfolded by Chanchal Singh, complainant (PW5). He deposed in detail about how the occurrence took place. He stated that on the date of occurrence at about 8.00 am his son Dilbagh Singh deceased was pulling the rickshaw and he was sitting on the seat. They were coming to their house from the house of Gurmit Singh Dodhi after loading a bag of feed from his house. When they reached near Baba Balmik Mandir, the accused came there from the back side and gave a blow with the wooden Ghotna on the backside of Dilbagh Singh which hit on his head, as a result of which he fell down on the ground. Then, the accused gave another blow on his forehead. He raised an alarm and in the meantime, Sukha Singh and Kartar Singh (PW6) came to the spot from their houses situated nearby and witnessed the occurrence. Dilbagh Singh died at the spot. After leaving Kartar Singh at the spot to guard the dead body, he

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alongwith Sukha Singh stated for the police station and the police met them in the area of Panjwar and he made statement, Ex.PH before the police Piara Singh, SI has made statement to the effect that after recording statement, Ex.PH. he made endorsement Ex.PH/2 on that on the basis of which FIR Ex.PH/3 was recorded. The reason of this witness is clear and cogent as to how the occurrence took place and in what manner the deceased was assaulted. The medical evidence is totally in consonance with the ocular account.

16. The statement of PW5-Chanchal Singh finds corroboration from the statement of Kartar Singh, PW6, who rushed to the spot after hearing cries of the complainant. He stated that he himself and Sukha Singh had seen the accused running away from the place of occurrence with the Ghotna in his hands and at that time, Dilbagh Singh was lying dead and the complainant was present at that place. The complainant told them that the accused had given a blow with the Ghotna on the person of Dilbagh Singh and had thereafter started running away from that place. The statement made by this witness is relevant under Section 6 of the Evidence Act. Though, he did not witness the occurrence but he had seen the accused running away from the spot with a Ghotna in his hand and at that very time, he was told by the complainant that the blow with Ghotna was given by the accused to his son, resulting in his death. In the context of 'res gestae' evidence, the Hon'ble



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Supreme Court in **Veerendra Versus State of Madhya Pradesh, 2022 AIR Supreme Court 2396**, has held as under:-

“10. It is the further contention on behalf of the appellant that though, PW-14 testified that the finger nail injuries were seen on the right cheek of the appellant, his MLC would indicate finger nail injuries only on the left side of the face and neck. At any rate, no reliance should have been given on that issue as the appellant was in the custody of the police even before his formal arrest, as spoken by PW-4. It was also contended that the date of birth of the victim was not proved by producing the school records. Furthermore, it was contended that the conclusion that the deceased was lastly seen in the company of the accused was arrived at relying on the oral testimonies of PW2 and PW-4 without proper appreciation of various relevant aspects. According to the appellant neither PW-2 nor PW-4 had informed about the same to the police at the first instance, i.e., at the time of lodging complaint regarding missing of the victim. The non-examination of one Rakesh who, according to the prosecution, joined PW-4 and the appellant for drinking during that night and that of Sri Ganesh, the father of the deceased, who was an attesting witness to certain mahazars for the recoveries and seizures, is fatal to the case of the prosecution. In regard to the testimony of PW-12 that he had seen the appellant coming out of the bada of Jagan Sindhi, in the night of 19.09.2014 at about 09:00 pm, it is submitted that it ought not to have been taken as a link in the chain of circumstances, as his statement under Section 161 Cr.P.C. was taken belatedly. May be as an alternative contention it is contended that PW-12 is a chance witness and his testimony is not creditworthy.

36. The evidence of PW-12 was actually taken as res gestae under section 6 of the Indian Evidence Act, 1872 by the High Court. In



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Sukhar v. State of UP [(1999) 9 SCC 507] this court explained the said provision. It was held therein that the statement sought to be admitted, as forming part of res gestae, must have been made contemporaneously with the acts. Thus, it is evident that the essence of the doctrine of res gestae is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" that it becomes relevant by itself. A conduct of the accused after the incident may become admissible under Section 6 of the Evidence Act, though not in issue, if it is so connected with the fact in issue."

(Emphasis supplied)

17. The prosecution has produced other corroborative evidence also. The same consists of the recovery of bloodstained earth from the place of occurrence and the recovery of the weapon of offence from the possession of the accused. It was stated by Piara Singh, SI, PW7 that after he went to the spot, he lifted bloodstained earth from that place which was converted into a parcel and sealed the same with his seal, PS. He took that into possession vide memo. Ex. PJ and the same was deposited by him with the MHC. He also stated that after the post mortem examination, the trousers Ex.P3, shirt Ex.P4, vest Ex.P-5 found on the dead body were produced before him by Jasbir Singh LC and he converted those into a parcel and sealed the same with his seal. That sealed parcel was taken into possession vide memo Ex.PM and was also deposited with the MHC. He also deposed that on 26.02.2003 he interrogated the accused upon which he made disclosure statement that he had kept concealed one Ghotna lying in his residential house and offered to get

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the same recovered. In pursuance of that disclosure, the accused got recovered one ghotna Ex.P6. He converted the same into a that parcel and sealed/with his seal, P.S. The sealed parcel was taken into possession vide memo PO. The parcels containing ghotna and wearing apparels of the deceased were sent to Forensic Science Laboratory, Punjab, Chandigarh. After examination, it was reported by the Deputy Director of that Laboratory that the shirt vest, trousers and ghotna were stained with human blood of group'A'. The accused got recovered the ghotna and the same was found to be stained with blood with which the wearing apparels, found on the dead body, were stained. It was the blood of the deceased which was found on the ghotna. This corroborative evidence gives further credence to the statements of Chanchal Singh, complainant (PW-5) and Kartar Singh (PW6).

18. The cumulative effect of the above discussion establishes beyond a shadow of doubt that it was the accused/appellant alone who committed the offence in question.

19. Therefore, we find no merit in the present appeal and the same stands dismissed. The accused/appellant is directed to surrender before the Trial Court forthwith.

(JASJIT SINGH BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

10.03.2025

JITESH

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