

CRA-D-69-DB-2005

2025:PHHC:015289-DB



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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(317)

CRA-D-69-DB-2005 (O & M)

Reserved on: 29.01.2025

Date of Pronouncement: 03.02.2025

Hira Singh and anr.

.... Appellants

V/s

State of Punjab

...Respondent

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

Present: Mr. Gurinder Singh, Amicus Curiae, for the appellants.

Mr. Harkanwar Jeet Singh, AAG, Punjab.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of conviction and order of sentence dated 27.11.2004 passed by the Additional Sessions Judge (Adhoc), Amritsar.

2. The instant FIR came to be registered on 27.03.2004. The accused-appellants came to be convicted vide judgment of conviction and order of sentence dated 27.11.2004. The present appeal against the conviction was filed on 27.01.2005. The matter has come up for final hearing now after more than 20 years of the registration of the FIR.

3. Briefly, the allegations of the prosecution are that on 26.03.2004 at about 11.30 P.M., Karnail Singh-complainant and his other brother

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Harbans Singh were coming back from the field to their house and on the way when they reached near the house of Gehal Singh-deceased, their other brother, they heard a noise which was being raised by Phuman Singh son of Gehal Singh, that his father was being killed. They hurriedly entered the house. In the light of a bulb, they saw that Gehal Singh was lying on the cot and Jasbir Kaur his wife had caught hold of his legs and Hira Singh, accused was giving him blows on his neck with a spade. When they raised a hue and cry, both the accused managed to run away. Gehal Singh succumbed to the injuries. The motive was that Jasbir Kaur was having illicit relations with Hira Singh and when her husband-Gehal Singh objected, they committed his murder. The next morning leaving Harbans Singh at the spot, Karnail Singh was going to the Police Station when near the turn of Jyoti Shah, SI Pal Singh who had held a Naka met him. His statement Ex. PG was recorded which was thumb marked by him and same with endorsement Ex PG was sent to the Police Station where the FIR was registered. The SI accompanied Karnail Singh to the place of the occurrence where he conducted inquest proceedings on the dead body of Gehal Singh and prepared the inquest report Ex.PH. He also recovered from there blood stained earth which was sealed in a box and was seized vide memo Ex.PJ. Blood stained bed i.e. pillow, quilt, and chaddar were taken into possession and the same was sealed in parcel with seal of PS. Rough site plan Ex.PL. of the place of the occurrence was also prepared. The dead body was sent to Civil Hospital, Patti for the post mortem through HC Dilbagh Singh and C.



Gurcharan Singh. Statements of Harbans Singh, Phuman Singh and other witnesses were recorded. Both the accused appeared before Inspector Gurnam Singh, who was posted SHO, Patti, on 27.03.2004 and on interrogation, Hira Singh suffered his disclosure statement in the presence of HC Satnam Singh and ASI Harjinder Singh that he had kept concealed the spade used in the occurrence in the paddy straw at his house and he offered to get that recovered. His statement Ex.PN was recorded which was signed by him. Thereafter, he got recovered the spade Ex.P6 sketch of which is Ex.PP. It was taken into possession vide Memo PO. Clothes of the deceased produced by HC Dilbagh Singh were taken into possession by him. After the completion of the investigation, the challan was presented in the court of the Illaqa Magistrate after which it was committed to the court of Sessions.

4. Both the accused were charge-sheeted under Sections 302/34 IPC. They pleaded not guilty.

5. To prove its allegations, the prosecution examined Dr. Jatinder Nath Mehta, PW-1 MHC Ajmer Singh/PW-2, Surjit Kumar Ct. PW-3, Rishi Ram PW-4, Karnail Singh PW-5, Harbans Singh PW-6, Phuman Singh PW-7, Gurmukh Singh PW-8, Jagroop Singh PW-9, SI Pal Singh PW-10, Inspector Gurnam Singh PW-11, Gurbachan Singh PW-12 and HC Dilbagh Singh PW-13.

6. Dr. Jatinder Nath Mehta (PW-1) stated that the post-mortem on the dead body of Gehal Singh was conducted by him on 27.03.2004 at 12.30

Noon and as many as three injuries of sharp edged weapon which were ante-



mortem in nature were found suffered on the right side of the neck. In his opinion, the cause of death was shock and hemorrhage due to injury No.1 which was sufficient to cause death in the ordinary course of nature. MHC Ajmer Singh (PW-2) and Ct. Surjit Singh (PW-3) tendered into evidence their affidavit Ex.PB and PC respectively. According to Rishi Ram draftsman (PW-4), scaled site plan Ex.PD was got prepared from him by Karnail Singh (PW-5). Karnail Singh appeared as PW-5, and unfolded the detailed version of the murder as was given by him in the F.I.R. He further stated that his statement Ex. PG was correctly recorded by the police. Harbans Singh (PW-6) is the other brother of Gehal Singh, who also witnessed the occurrence. He supported the prosecution case. Phuman Singh (PW-7) son of the deceased, being of the age of about 10 years was examined without oath. He stated that in his presence, the murder of his father was committed by both the accused. Gurmukh Singh PW-8 a resident of the village of the accused stated that Gehal Singh deceased was known to him and about 20/22 days before the occurrence, he had requested him to advise his wife Jasbir Kaur not to maintain illicit relations with Hira Singh. He stated that he did talk to Jasbir Kaur, accused to sever her relations with her co-accused. Jagroop Singh (PW-9), photographer stated that he was called to the place of the occurrence which was got photographed from him. Photos Ex.P1 to 4 were handed over to the police. SI Pal Singh (PW-10) and Inspector Gurnam Singh (PW-5) made statements about the investigation conducted by them. Gurbachan Singh (PW-12) Sub-Station operator of



Power House, Sabrah, stated that on the night of 26/27.03.2004, there was no power-cut in Village Sabrah and Ex. PS was the copy of the entry made in the relevant register maintained at the sub-station. HC Dilbagh Singh (PW-13) stated that the dead body of Gehal Singh was entrusted to him by Gurnam Singh Inspector (PW-11), for the purpose of the post mortem, which they took to Civil Hospital, Patti. He stated that after the post mortem, clothes of the deceased were handed over by them to Inspector Gurnam Singh.

7. The statement of the accused were recorded under Section 313 Cr.P.C. who denied the allegations and stated that they had been falsely implicated. Jasbir Kaur accused after making request in writing and obtaining permission of the court appeared in the Court as DW-1, as her own witness. She stated that on 26.07.2004, she and her son, Phuman had gone to the Bazar to make purchases of house-hold goods and when she came back, she saw that her husband had been murdered there. They went to the house of Harbans Singh and Karnail Singh, brothers of the deceased who came along with them. She suggested to them to report the matter to the police. On the next day, they brought the police and got her arrested. She further stated that Karnail Singh and Harbans Singh had a dispute with the deceased over her land. She had no connection whatsoever with Hira Singh, accused. She had no dispute with her deceased husband. Hira Singh did not lead any evidence in his defence.



8. Based on the evidence led, the accused-appellants came to be convicted and sentenced by the Court of the Additional Sessions Judge (Adhoc), Amritsar vide judgment dated 27.11.2004 as under:-

Name of the accused	Offence U/S	Sentence RI/SI	Fine	RI/SI in default of payment of fine
Hira Singh	302 IPC	Life Imprisonment	Rs.2,000/-	RI 01 month
Jasbir Kaur	302/34 IPC	Life Imprisonment	Rs.2,000/-	RI 01 month

9. The aforementioned judgment of conviction dated 27.11.2004 passed by the Additional Sessions Judge (Adhoc), Amritsar is under challenge before this Court.

10. During the pendency of this appeal, the sentences of both the accused-appellants were suspended vide orders dated 16.11.2009 and 08.10.2009 respectively passed by this Court.

10. The learned Amicus Curiae for the accused-appellants has pointed out discrepancies in the statements of Karnail Singh (PW-5) and Harbans Singh (PW-6) and also certain improbabilities in the prosecution case. He contends that there is no explanation for the delay of 7-8 hours in reporting the matter to the police and all the witnesses are interested witnesses Phuman Singh (PW-7) being a child witness, reliance should not be placed on his testimony, particularly, as he has admitted that he had been tortured. He further contends that the prosecution witnesses could not have seen the occurrence and if they did, at least, Jasbir Kaur could not have fled away in the presence of two adult males. He, therefore, contends that the



appeal ought to be accepted and the accused-appellants be acquitted of the charges framed against them.

11. The learned counsel for the State, on the other hand, contends that Karnail Singh PW-5, Harbans Singh PW-6 and Phuman Singh PW-7 are eye-witnesses of the occurrence. Their depositions are consistent with their initial statements recorded during the course of investigation. The presence of Phuman Singh (PW-7) son of the victim and accused-Jasbir Kaur cannot be doubted at the spot because the occurrence took place in his house. The motive was clear and cogent. The medical evidence was totally in consonance with the ocular account. He, therefore, contends that as the offence stands established beyond reasonable doubt, therefore, the present appeal is liable to be dismissed.

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

13. Though, there are minor variations in the depositions of PW-5/Karnail Singh and PW-6/Harbans Singh as to when they saw the occurrence after they had come back from watering their fields, the said variations do not affect the prosecution case. The occurrence is alleged to have been taken place, inside the room of the house of the deceased. Ex. P2. Ex.PD is the scaled site plan and a careful scrutiny of the same would show that the house of the deceased-Gehal Singh and accused-Jasbir Kaur abuts the street and on the western side is also another street. Just in front of the outer door of the house is room where occurrence is said to have taken place.



The door of the room opens in the courtyard and was just opposite the outer door opening in the street. All the witnesses have stated that there was an electric light in the house. The prosecution has established that there was no power-cut to the village of the deceased. Karnail Singh (PW-5) and Harbans Singh (PW-6) were passing near the house of the deceased to go on to their own house when they heard Phuman Singh (PW-7) raising a noise. They entered the house immediately and it was possible for them to see the accused committing the offence. Karnail Singh (PW-5) was of the age of 75 years and Harbans Singh (PW-6) was 55 years old. Therefore, keeping in mind their age and the shock factor on seeing the occurrence, their not attempting to apprehend any of the accused does not falsify their evidence.

14. Phuman Singh (PW-7) is the son of the victim and accused-appellant No.2/Jasbir Kaur. He disclosed his age as 10 years and a student of 5th class. He has supported the allegations of the prosecution, by stating that the legs of his father were caught by his mother and injuries with a spade were caused by Hira Singh accused-appellant No.1. Thereafter, PW-5/Karnail Singh and PW-6/Harbans Singh came to the spot who saw the occurrence. In his cross-examination, he stated that on that day, i.e. when he appeared as witness in the Court, he was brought by the elder brother of his father. Thereafter, he stated in his cross-examination in the vernacular as under:-

“Mainu mere taaya lai ke aaye hann. Mainu uhna guahi layi samjhaya si. Waakya ton pehle Hira Singh saada rishtedaar si. Hira Singh mere naal pyaar karda si. Kadi vi



nahin kuttya. Hira Singh da mere taaya naal koi jhagda nahin si. Kaafi mahine mere pita de murder nu ho gye hann. Eh galat hai ki mainu nahin pta ki katal kis tran hoye. Eh vi galat hai ki as tutored main guahi de riha han”.

When translated the cross-examination reads as under:-

“I am brought today to the court by elder brother of my father. I was explained by them as regards my testimony. Hira Singh before the occurrence was our relative. Hira Singh used to love me. I was never beaten by him. Hira Singh had no dispute with the elder brother of my father. So many months have passed since the murder of my father. It is incorrect that I do not know how the murder took place. It is incorrect that I am deposing as tutored”.

He was further cross-examined. He stated that even before the occurrence, Hira Singh before occurrence used to come to their house frequently and used to love him and he was never beaten by him. He also stated that Hira Singh had no dispute with elder brothers of his father. He denied that he did not know anything about the murder and that he made a statement as tutored by Karnail Singh (PW-5).

His presence at the time of the occurrence is natural and probable. He being a son of the deceased and accused-Jasbir Kaur would not have deposed against his mother in case the occurrence had not taken place as is alleged, he being her only son.



15. As to the evidentiary value of a child witness, in '***Ratansinh Dalsukhbhai Nayak versus State of Gujarat, 2003(4) RCR (Criminal) 970***', the Hon'ble Supreme Court held as under:-

"6. Pivotal submission of the appellant is regarding acceptability of PW-11's evidence. Age of the witness during examination was taken to be about 10 years. Indian Evidence Act, 1872 (in short the 'Evidence Act') does not prescribe by particular age as determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions, because of tender years, extreme old age, disease whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he had intellectual capacity to understand questions and given rational answers thereto. This position was concisely stated by Brewer J. in Wheeler v. United States, (159 U.S. 523). The evidence of a child witness is not required to be reject per se; but the Court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. (See Surya Narayan v. State of Karnataka (2001(1) Supreme 1:2001(1) RCR (Criminal) 602 (SC)).

7. In Dattu Ramrao Sakhare v. State of Maharashtra, (1997(5) SCC 341: 1997(3) RCR (Criminal) 227 (SC), it was held as follows :

"A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such



witness is able to understand the answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored."

The decision on the question whether the child witness has sufficient intelligence primarily rest with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher Court if from what is preserved in the records, it is clear his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make beliefs. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but in is also an accepted norm that if after careful scrutiny of their evidence the Court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.

8. The learned trial Judge has elaborately analysed the evidence of eyewitness. There is no reason as to why she would falsely implicate the accused. Nothing has been brought on record to show that she or her father had any animosity so far as the accused is concerned. The prosecution has been able to bring home its accusations beyond shadow of doubt. Further, the trial court on careful examination was satisfied about



child's capacity to understand and to give rational answers. That being the position, it cannot be said that the witness (PW11) had no maturity to understand the import of the questions put or to give rational answers. This witness was cross-examined at length and in spite thereof she had described in detail the scenario implicating the accused to be author of the crime. The answers given by the child witness would go to show that it was only repeating what somebody else asked her to say. The mere fact that the child was asked to say about the occurrence and as to what she saw, is no reason to jump to a conclusion that it amounted to tutoring and that she was deposing only as per tutoring what was not otherwise what she actually saw. The learned counsel for the accused-appellant has taken pains to point out certain discrepancies which are of verity minor and trifle nature and in no way affect the credibility of the prosecution version.

9. Evidence of PW-11, the child witness has credibility which reveals a truthful approach and her evidence to put it mildly has ring of truth in it. There are no exaggerations and she has stuck to her statement made during investigating in all material particulars. That being so, the trial court and the High Court were justified in placing implicit reliance on her testimony. In addition, the evidence to recovery and the report of the Forensic Science Laboratory provide additional support to the prosecution version.

The Hon'ble Supreme Court in '**P. Ramesh versus State Rep. By**

Inspector of Police 2019 AIR Supreme Court 3559', held as under:-



*“15. In order to determine the competency of a child witness, the judge has to form her or his opinion. The judge is at the liberty to test the capacity of a child witness and no precise rule can be laid down regarding the degree of intelligence and knowledge which will render the child a competent witness. The competency of a child witness can be ascertained by questioning her/him to find out the capability to understand the occurrence witnessed and to speak the truth before the court. In criminal proceedings, a person of any age is competent to give evidence if she/he is able to (i) understand questions put as a witness; and (ii) give such answers to the questions that can be understood. A child of tender age can be allowed to testify if she/he has the intellectual capacity to understand questions and give rational answers thereto. **Dalsukhbhai Nayak v. State of Gujarat (2004) 1 SCC 64** A child becomes incompetent only in case the court considers that the child was unable to understand the questions and answer them in a coherent and comprehensible manner.^[4] If the child understands the questions put to her/him and gives rational answers to those questions, it can be taken that she/he is a competent witness to be examined.*

[4] Sarkar, "Law of Evidence" 19th Edition, Volume 2, Lexis Nexis, p. 2678 citing DPP v. M (1977) 2 All ER 749 (QBD)

The Hon'ble Supreme Court in '**Pradeep versus The State of Haryana 2023(3) RCR(Criminal) 494**', held as under:-

“8. It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to



reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care and caution.

16. A perusal of the aforementioned judgments would show that it is not a rule but a measure of prudence and caution that the evidence of a child witness be corroborated as such prosecution witness is susceptible to tutoring. However, the testimony of a child witness cannot be discarded straight away and it is for the Court to carefully evaluate his evidence.

17. Coming back to the facts of the instant case, as has already been mentioned above, PW-7/Phuman Singh is a most natural witness at the spot being a son of the deceased-Gehal Singh and accused-appellant No.2/Jasbir Kaur. Therefore, his presence at his home at 11.30 p.m. at night cannot be doubted. His statement during interrogation was recorded under Section 161 Cr.P.C. promptly on 27.03.2004. While deposing as PW-7, he stated in cross-examination that his uncle had 'explained' things to him and has specifically denied the suggestion of tutoring. Therefore, his evidence is completely reliable, cogent and believable.

18. As regards the delay in the registration of the FIR, the Hon'ble Supreme Court in '***Sekaran versus The State of Tamil Nadu, 2024 AIR Supreme Court 397***', held as under:-



“11. We start with the FIR, to which exception has been taken by the appellant urging that there has been no satisfactory explanation for its belated registration. It is trite that merely because there is some delay in lodging an FIR, the same by itself and without anything more ought not to weigh in the mind of the courts in all cases as fatal for the prosecution. A realistic and pragmatic approach has to be adopted, keeping in mind the peculiarities of each particular case, to assess whether the unexplained delay in lodging the FIR is an afterthought to give a coloured version of the incident, which is sufficient to corrode the credibility of the prosecution version. In cases where delay occurs, it has to be tested on the anvil of other attending circumstances. If on an overall consideration of all relevant circumstances it appears to the court that the delay in lodging the FIR has been explained, mere delay cannot be sufficient to disbelieve the prosecution case; however, if the delay is not satisfactorily explained and it appears to the court that cause for the delay had been necessitated to frame anyone as an accused, there is no reason as to why the delay should not be considered as fatal forming part of several factors to vitiate the conviction.

19. In the instant case, the occurrence took place at about 11.30 pm on 26.03.2004 and the statement leading to the registration of the FIR was given to SI Pal Singh on 27.03.2004 at about 7.30 a.m. Though, there is some delay, it must be borne in mind that PW-5/Karnail Singh and PW-6/Harbans Singh were of the of 75 years and 55 years respectively. PW-7/Phuman Singh was of the age of about 10 years. Therefore, keeping in



view the shock of the occurrence and their respective age, it was natural for them to wait till the morning to approach the police by way of a complaint.

20. The motive of the offence is the illicit relation between both the accused which emanates not only from the FIR and the statements of PW-5/Karnail Singh but also from the statement of PW-8/Gurmukh Singh who has stated that the deceased had told him 20/22 days prior to the occurrence to ask Jasbir Kaur to sever the relations with Hira Singh. He had asked her but she did not relent.

21. Keeping in view the aforementioned facts and circumstances, the offence stands established beyond reasonable doubt. Therefore, we find no merit in the instant appeal and the same stands dismissed.

22. Both the accused-appellants, namely, Hira Singh and Jasbir Kaur are directed to surrender before the Jail Authorities concerned forthwith and to serve out their remaining sentence.

(GURVINDER SINGH GILL)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

03.02.2025
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No