

2026.PHHC:057006-DB



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

CRA-D-935-DB-2004(O&M)**Reserved on: 24.02.2026.****Pronounced on: 16.04.2026.**

Malkiat Singh and another

...Appellants

VS.

State of Punjab

...Respondent

Coram : **Hon'ble Mr. Justice N.S.Shekhawat**
 Hon'ble Mr. Justice H.S.Grewal

Present : Mr. J.S. Bhatia, Advocate
 for the appellants.

Mr. M.S.Bajwa, DAG, Punjab.

N.S.Shekhawat J.

1. The appellants have filed the present appeal against the impugned judgment of conviction and order of sentence dated 02.07.2004 passed by the Court of Additional Sessions Judge, Faridkot, whereby, the appellants were convicted for commission of the offence punishable under Sections 302/34 of IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/-each alongwith default stipulation.

2. The FIR (Ex.PE/2) in the present case was registered on the basis of the statement (Ex.PE) made by Gurcharan Singh son of Jagir Singh and the same has been reproduced below:-

“It is stated that I am resident of village Patto Hira Singh and am serving in Electricity Board, at Patto Hira Singh. My brother

Harbhajan Singh, who was a pensioner of defence services and had also been working in Police Station Nihal Singh Wala as a Home Guard volunteer. At present in the village, he was maintaining himself with his pension and his house was at a distance place from my house. Gurmit Singh son of Dalip Singh, Jat of our village, had gone to Hong-Kong for a sufficient long time and his family had also gone with him, Sher Singh, the elder brother of Gurmeet Singh is living in our village. There had been a dispute between Gurmeet Singh and Sher Singh over the family partition, About 4/5 months ago, the wife of Gurmeet Singh, who is called with her half name as Dasai, had come to our village. They had three killas of land in Patti Dhillon. The wife of Gurmeet Singh had brought her brother Buta Singh r/o Daudhar with her and had got her due share of 1 ½ killa of land separated. None of our villager had taken their land on lease on share basis. But they prevailed upon my brother Harbhajan Singh and got the land cultivated by him on lease. The sons of Sher Singh, namely, Malkiat singh etc. took ill of it. Today at about 10 or 11 a.m. we came to know from the village people that a dead body is lying in a pit, situated at the beginning of the land, which my brother Harbhajan Singh had taken on Lease, on the bank of the seepage drain which leads from our village to village Khai. I accompanied by the other people of the village went there and saw that it was the dead body of my brother Harbhajan Singh, whose right leg was broken from near the knee joint and clothes were torn and his hands were smeared with earth and maggots were present on the dead body at the spot. Gurmail Singh son of Gurnam Singh, Jat, resident of my village, whose house adjoins the house of my brother Harbhajan Singh told me that on the night of 3.6.2002 at about 11/12 p.m. he was lying asleep in the courtyard of his house and on hearing noise, he woke up and went out side and found that Malkiat Singh son of Sher Singh and his maternal uncle Bikkar Singh son of Jora Bingham, r/o V. Keer Singh Wala, who resides in

our village itself, were grappling with Harbhajan Singh. When Gurmail Singh tried to separate them, then Malkiat Singh and Bikkar Singh said that he (Harbhajan Singh) had taken their Land on lease by playing mischief with them and as such they were to deal with him on that score and he should go home and on making of their threat he went to the courtyard of his house. They had been quarreling for some time and then the emission of noise stopped. Thereafter, there had been noise of scooter but the noise of quarreling stopped. The wrist watch of my brother Mark x Swiss-Quartz, pension book and the amount of pension drawn, and other important papers were not found available with the dead body. I am quite sure that my brother Harbhajan Singh has been killed by Malkiat Singh and Bikkar Singh, on the intervening night of 3-4/6/2002, by inflicting injuries to him, and they have taken away all the other things which were available with him. After Leaving Gurmail Singh son of Gurnam Singh near the dead body. I was going to lodge the report, when you have met me. Action be taken. I have got recorded my statement. Heard the same and admitted the same to be correct.

Sd/- Gurcharan Singh abovesaid.

Attested

Sd/-Sukhmander Singh ASI

P.S.Nihal Singh Wala

Dated 5.6.02

Police Proceedings:- I, the ASI alongwith Partap Singh, HC Santokh Singh No. 693, H.C.Gamdoor Singh No. 695,, C. Lachhman Singh, No.952, C. Ajaib Singh No. 387 was present in Chowk Jawahar Singh Wala, in connection with patrol duty, on a pvt. Jeep. Gurcharan Singh son of Jagir Singh, Jat, r/o V. Patto Hira Singh, came to me and got recorded his above statement. After recording the abovesaid statement it was then read over to him who after hearing and admitting the same to be correct put his signature under his statement, which I attested. From the above

statement, prime facie case u/s 302/404/34 IPC is made out. After recording the statement, it is being sent to the Police station for getting the case registered, through C. Ajaib Singh No. 387. After registration of the case, the case no. be intimated. Special reports be sent to the higher Officers and Control Room be intimated through Wireless Message, While taking along with me the accompanying officials and the complainant, I am leaving for the spot.

*Sd/- Sukhmander Singh, ASI
P.S.Nihal Singh Wala.
Dated 5.6.2002.*

*In the area of Chowk
Jawahar Wala at 4.30 P.M.*

*Case No. 44 dated 05.06.2002 under Sections 302/404/34 of IPC
has been registered in P.S. Nihal Singh Wala.*

*Sd/- (in Punjabi)
Gurpreet Singh, SHO
P.S. Nihal Singh Wala,
Dated: 05.06.2002”*

3. After registration of the FIR, ASI Sukhmander Singh, Investigating Officer accompanied by the complainant went to the place where the dead body was lying. After reaching at the spot, he recorded the statements of the witnesses, took into all the incriminating evidence from the spot and prepared a rough site plan. He also prepared the inquest report and sent the dead body for postmortem examination. Finally, the postmortem examination was conducted by the doctors at G.G.S. Medical College and Hospital, Faridkot. After finding sufficient incriminating evidence against the appellants, they were arrested by the police on 18.06.2002. On 19.06.2002, Malkiat Singh, appellant No.1 suffered a disclosure statement in the presence of the witnesses and got

recovered one *kirch* (knife) and a wrist watch from the disclosed place. Similarly, Bikkar Singh, appellant No.2 also suffered a disclosure statement on 16.06.2002 and got recovered a bank passbook along with Rs.2,000/- from a pit in the tubewell room of Malkiat Singh. Even a *Kahi* was recovered from Bikkar Singh.

4. After necessary investigation, the challan was presented against both the appellants before the Court of Area Magistrate. After committal, the trial Court considered the challan and the accompanying documents and found that a *prime facie* case under Section 302/34 of IPC was made out against the appellants and they were ordered to be charge-sheeted, accordingly. However, both the appellants stated that they have been falsely involved and claimed to be tried by the trial Court.

5. During the course of trial, the prosecution examined PW-1, Dr. Surinder Satia, who received a police request (Ex.PA) for postmortem examination. However, he sent the dead body for postmortem examination to G.G.S. Medical College, Faridkot as the dead body was in highly decomposed state and he was unable to carry on the postmortem examination. The prosecution further examined PW-2, HC Santokh Singh, who was part of the investigation initially. He and C. Lachhman Singh took the dead body to G.G.S. Medical College and Hospital, Faridkot, where the postmortem examination was conducted and after PMR, the dead body was handed over to the family members. The prosecution further examined PW-3, C. Bakhshi Ram, whose testimony was formal in nature. Gurcharan Singh, complainant was examined as PW4 and he reiterated his statement, as mentioned in the complaint (Ex.PE), on the basis of which the FIR was ordered to be registered in the present case.

In his cross-examination, he stated that he had met his brother last time at about 5.00 p.m. on 3rd in the evening. The prosecution further examined PW-5 Gurmail Singh, who stated that on the night intervening, 3rd /4th June 2002, he heard the noise of fighting at about 10/11.00 p.m. in the house of Harbhajan Singh, deceased. He found that the deceased was fighting with both the appellants and they had asked them not to do so. However, they threatened him and he came back to his house and stood inside the door of his house. He saw both the appellants taking away Harbhajan Singh on a scooter, who was made to sit in between the two accused. At that time, electric light was on. The appellants at the time were abusing Harbhajan Singh and were saying that why he had taken the land on Theka. Thereafter, he became busy in the work and 3rd day, he came to know that there was a news regarding a dead body, which was lying near the drain. At the spot, he met Gurcharan Singh, brother of the deceased and disclosed to him as to what he had earlier seen at the house of Harbhajan Singh, deceased. The prosecution had also examined PW-6, Dr. S.S. Sandhu, who had conducted the postmortem examination on the dead body of Harbhajan Singh on 08.06.2002. The dead body was identified by Mehar Singh, son of Chand Singh and Ajit Singh son of Bakhtaur Singh, which was recovered from the path near the drain in the village Patto Hira Singh. He found the following injuries on his person:-

“1. Incised wound measuring 12 x 3.5 cms was present on right lateral side of neck. 4 cms below the right ear. Clotted blood was present. On dissection injury was superficial in nature.

2. Incised wound measuring 10 x 2.5 cms was present on right leg on its antero medial and lateral side, 9cms below the right knee joint wound was obliquely placed. Clotted blood was present. On

dissection underlying bones were fractured, vessels nerves and other tissue were completely cut off and join the rest of the body by the tag of skin on the posterior aspect.

3. Stab wound measuring 3 x 1.5 cms was present on the right side of anterior side of chest. 2 cms above the lateral to fight nipple at 11 O' clock. Clotted was present on dissection underlying pleura and lung were lacerated. Right pleura contains about 200 CC of clotted and fluid blood.

Stomach was contained about 100 CC of semi-digested food. Small intestines contained chyme. Large intestine contained facel matter. Liver, spleen and kidneys were early stage of putrefaction. Bladder was empty.

All the injuries were ante mortem in nature. The cause of death in this case in his opinion was due to laceration of right lung and pleura (vital organ) as the result of injury No. 3 and with injuries Nos.1 and 2 (also contributed) which were sufficient to cause death in ordinary course of nature.”

6. The statement of PW-7, HC Rachhpal was formal in nature. The trial Court recorded the statement of PW-8 Gursewak Singh, who visited the village on 08.07.2002 and had prepared the scaled site plan (Ex.PH). Inspector Mal Singh was examined as PW-9, who had arrested both the appellants on 18.06.2002. Even Malkiat Singh, appellant No.1 got recovered one *Kirch* and a wrist watch in pursuance of his disclosure statement, whereas, Bikkar Singh, appellant No.2 got recovered a spade, one passbook and Rs.2,000/- currency notes, in pursuance of his disclosure statement. Even both the weapons were sent to the FSL and as per the FSL report, *Kirch* as well as *Kahi* (spade) were found to be stained with human blood. The prosecution further examined PW-10, HC Gurpreet Singh, whose statement was formal in nature.

ASI Sukhmander Singh appeared as PW-11, who had initially conducted the investigation in the present case and had recorded the statement (Ex.PE). He recovered various incriminating circumstantial evidences from the place of occurrence.

7. After recording the statements of all the prosecution witnesses, the statement of the appellants was recorded under Section 313 Cr.P.C. and they pleaded their false implication. After the statement under Section 313 Cr.P.C, no defence witness was examined by the appellants.

8. Learned counsel for the appellants has vehemently argued that there was a delay in registration of the FIR. In fact, the incident had occurred on the night intervening 3rd/4th June, 2002, whereas the FIR was got registered on 05.06.2002, after a long and unexplained delay. Even, the alleged land dispute was the motive for causing injuries in the present case, however, the prosecution could not lead any documentary evidence to show that any land dispute existed between the parties. Even there was no agreement regarding lease, no revenue record, no evidence of any prior complaint was placed on the file by the prosecution in the present case. Still, the appellants have been wrongly convicted by the Court. Still further, the entire prosecution case was based on the testimonies of interested witnesses and the official witnesses. Even there was no independent corroboration of the prosecution evidence. Still further, to prove the “last seen theory”, the prosecution had examined PW-5 Gurmail Singh. However, his conduct was highly unnatural and unbelievable. He claimed that he had witnessed the fight and had seen that the deceased was taken away by the appellants. However, he neither reported the matter to the police or the family members of the deceased, nor made any effort to save him.

Apart from that, the medical evidence did not corroborate the prosecution evidence. Even, it was not possible to cause injuries from the *kahi* (spade), which was recovered from Bikkar Singh in the present case. Rather, it was a case of blind murder. The deceased was a retired Army man and living alone. Even though, he was married twice and both the wives had left him. Even there was no forensic link in the present case, still he has been wrongly convicted by the trial Court.

9. On the other hand, learned State counsel has opposed the submissions made by learned counsel for the appellants on the ground that in the present case, the offence stood proved beyond the shadow of reasonable doubt against the appellants and the impugned judgment passed by the trial Court is liable to be upheld by this Court.

10. We have heard learned counsel for the parties and perused the record carefully.

11. In the present case, the learned counsel for the appellants has assailed the case of the prosecution on the ground that the identity of the dead body could not be proved in the present case. In fact, the dead body was at the advanced stage of putrefaction and was beyond recognition. Consequently, the identification of the dead body could not be proved and the evidence in this regard was liable to be rejected by the trial Court. However, we find no force in the submissions made by learned counsel for the appellants, in this regard.

12. No doubt, the dead body of Harbhajan Singh had putrefied, but there is no evidence to show that it was an advanced stage of putrefaction. Rather, PW-6, Dr. S.S. Sandhu, who conducted the postmortem examination in the present case, had clearly stated in his cross-examination that it was an

early stage of putrefaction and a clear inference can be drawn that it was not a dead body with highly decomposed stage. Rather, the complainant-Gurcharan Singh, PW-4 as well as PW-5 Gurmail Singh had categorically stated that they had identified the dead body of Harbhajan Singh. Even there was no dispute with regard to the identification of the dead body and the prosecution witnesses were not cross-examined on that account also. Still further, learned counsel for the appellants had stated that the alleged occurrence had taken place on the night intervening 3rd/4th June, 2002 and this delay was fatal to the case of the prosecution. However, we find no substance in the arguments raised by learned counsel for the appellants in this regard. In fact, PW-5 Gurmail Singh had categorically stated that the incident of fighting between the deceased and the appellants and the abduction of the deceased by the appellants was known to him on the night intervening 3rd/4th June, 2002. However, he was a labourer and was not able to report the matter to the family members of the deceased. However, on 05.06.2002, when the dead body was recovered, he also went at the spot and immediately disclosed the entire occurrence to the brother of the deceased. Thus, immediately after the recovery of the dead body by the complainant, the case was reported to the police and it can never be said that there was any delay in reporting the matter to the police or the time was utilized in concocting a false story.

13. Another circumstance, which establishes the involvement of both the appellants in the present case, is the recovery effected from both the appellants in pursuance of their disclosure statements. Inspector Mal Singh, PW-9 had arrested both the appellants on 18.06.2002. In his custody, the appellant No.1 Malkiat Singh suffered a disclosure statement and stated that he

had kept hidden one *kirch* and one wrist watch in the fields and got recovered the same. Similarly, Bikkar Singh, appellant No.2 got recovered a bank passbook, Rs.2,000/- and one *kahi* (Spade). Both the weapons of offence i.e. *Kirch* and *Kahi* were sent to the FSL and as per the report of the Forensic Science Laboratory (Ex.PU), it was opined that both the objects were stained with human blood. Thus, the appellants could not explain as to how *Kirch* and *Kahi* (Spade) recovered by them were found to be stained with blood in the present case.

14. Apart from that, it is also apparent that the dead body was at an early stage of decomposition. To prove the injuries and condition of the dead body, the prosecution had examined PW-6, Dr.S.S.Sandhu, who found the following injuries on the person of the deceased:-

“1. Incised wound measuring 12 x 3.5 cms was present on right lateral side of neck. 4 cms below the right ear. Clotted blood was present. On dissection injury was superficial in nature.

2. Incised wound measuring 10 x 2.5 cms was present on right leg on its antero medial and lateral side, 9cms below the right knee joint wound was obliquely placed. Clotted blood was present. On dissection underlying bones were fractured, vessels nerves and other tissue were completely cut off and join the rest of the body by the tag of skin on the posterior aspect

3. Stab wound measuring 3 x 1.5 cms was present on the right side of anterior side of chest. 2 cms above the lateral to right nipple at 11° clock. Clotted was present on dissection underlying pleura and lung were lacerated. Right pleura contains about 200 CC of clotted and fluid blood.”

15. He stated that the cause of death, in his opinion, was as a result of injuries No. 1 to 3, which was sufficient to cause death in ordinary course of nature. Even as per him, the time gap between death and postmortem was about 48 to 72 hours. Even the postmortem was conducted on 06.06.2002, which clearly shows that the deceased might have died on the night intervening 3rd/4th June, 2002. Apart from that, it is also apparent that the dead body was at early stage of putrefaction and even though, some physical features were unidentifiable, still the dead body could be recognized by brother of the deceased i.e. PW4 Gurcharan Singh, by the clothes worn by him. Even immediately before the occurrence, he was last seen in the company of both the appellants, as stated by PW-5 Gurmail Singh. Apart from that, in the present case, the investigation was also conducted by Inspector Mal Singh, PW-9, who had interrogated both the appellants and found that there was sufficient evidence during investigation to prove the charge against them. He also proved the recoveries from the present appellants and *Kahi* and *Kirch* used by the appellants were found to be blood stained. The testimony of PW-9, Inspector Mal Singh was duly corroborated by the statement of PW-11, ASI Sukhmandar Singh. Both the official witnesses were cross-examined at length, however, nothing material could be elicited during the cross-examination, which could shake the testimony of these two witnesses. Even otherwise, we have gone through the findings recorded by the trial Court in the light of the evidence and the settled law. Learned trial Court has recorded valid reasons for convicting the present appellants and the findings recorded by the learned trial Court do not suffer from any material irregularity or illegality and do not warrant any interference by this Court.

16. As a consequence, the impugned judgment of conviction and order of sentence dated 02.07.2004 passed by the Court of Additional Sessions Judge, Faridkot, are upheld and the appeal is accordingly, ordered to be dismissed.
17. All pending applications, if any, are also disposed off, accordingly.
18. Case property, if any, be dealt with and destroyed after the expiry of period of limitation for filing the appeal, in accordance with law. The trial court record be sent back.

(N.S.SHEKHAWAT)
JUDGE

(H.S.GREWAL)
JUDGE

16.04.2026
hemlata

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