

(2022) 07 SC CK 0001

Supreme Court Of India

Case No: Criminal Appeal No. 914 Of 2022

Harpal Singh

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision: July 5, 2022**Acts Referred:**

- Indian Penal Code, 1860 - Section 34, 120B, 302, 342, 460
- Code Of Criminal Procedure, 1973 - Section 207, 313

Citation: (2022) 7 JT 27 : (2022) 9 Scale 786**Hon'ble Judges:** Indira Banerjee, J; J.K. Maheshwari, J**Bench:** Division Bench**Advocate:** Md. Farman, Ranjeeta Rohatgi**Final Decision:** Dismissed

Judgement

J. K. Maheshwari, J

1. Leave granted.

2. The instant appeal is preferred by the accused against final judgment dated 17.10.2019 passed by High Court of Punjab and Haryana at Chandigarh

in CRA 257 DB 2003 (O&M), whereby the Division Bench of High Court declined to interfere with the judgment of the Sessions Court dated

04.02.2003 by which the appellant was convicted for the charge under Section 302/120B of Indian Penal Code (â€˜IPCâ€™) and directed to

undergo imprisonment for life and pay fine of Rs.1000/â‚, in default further rigorous imprisonment for six months. The appellant was also convicted

under Section 342/120B of IPC and was sentenced to rigorous imprisonment for six months with an order to run both the sentences concurrently.

3. The prosecution story in brief is that on 03.04.2000 while a police party headed by inspector Atma Singh (hereinafter referred to as 'the Investigating Officer/IO'™) of Police Station, Kotwali Amritsar was on patrol duty at Chowk Katra Jaimal Singh, received information regarding murder of deceased Banarasi Dass. The police party went to the house of deceased, where complainant Leela Wati, wife of deceased made the complaint and her statement was also recorded by IO. It is stated that she was residing with the deceased in a house at Katra Jaimal Singh, Amritsar on first floor. The deceased used to work in the shop with his son Vinod Kumar, which was in the name and style of Sunder Shoes. On the intervening midnight of 2/3.04.2000 they were sleeping in their house, when she woke up suddenly saw that a Sikh youth wearing a white kurta payjama and patka of the same colour on his head, aged about 35/36 years along with a clean shaved person, aged about 30/32 years have entered in the house. Sikh youth was armed with a dagger/chhura, who first strangulated her husband Banarasi Dass thereafter, gave dagger blows above the stomach while lying on the bed. The Sikh youth demanded keys of Godrej almirah from the complainant, which out of fear she handed over. She was locked in a bathroom by them. Both the intruders looted gold ornaments, cash and other articles and went back. The chowkidar rang the call bell but because she was confined in the bathroom so could not open the door. In the morning, the chowkidar with the help of other persons opened the door of house and also of bathroom, then, she came out. On initial search, she found that the intruders had taken away six gold bangles, Rs.7000/- in cash and other articles of gold including cash from the wooden almirah also. The IO after making some endorsement below the statement of complainant sent ruqa to the police station, on the basis of which, formal FIR No.51 dated 03.04.2000, was registered of the offences under Sections 460, 342, 120B and 34 of IPC at Police Station Kotwali, Amritsar.

4. The IO carried out the inquest proceedings with regard to unnatural death of deceased Banarasi Dass. He drew rough sketch to the place of occurrence and blood-stained bed sheet was kept into sealed parcel. Dead body was sent for post mortem examination. After such examination,

Head Constable Nirmal Singh produced the clothes of the deceased before the IO, which was converted into a sealed parcel and taken into

possession. The IO recorded the statements of other witnesses also. On 19.04.2000, the IO went to the shop of the deceased and collected license to

run the shop and purchase bills. On 03.05.2000, accused Gulzar Singh, Bikramjit Singh and Ashwani Kumar were arrested in this case. During the

course of interrogation, they made disclosure statement to which recoveries were effected. From accused Ashwani Kumar police recovered three

gold biscuits and a wrist watch, whereas, from accused Bikramjit Singh police recovered five gold biscuits of 10 tolas, 20 gold biscuits of 5 tolas each,

one gold necklace, two gold bangles, two ear rings, one wrist watch and cash amount of Rs.2,36,000/-. From accused Gulzar Singh police recovered

10 gold biscuits weighing 10 tolas each, 10 gold biscuits weighing 5 tolas each, cash amount of Rs.1,20,000/- along with a pair of ear rings, two gold

bangles, one necklace and a dagger. All the recovered articles were identified by PW-12 Vinod Kumar Gambhir, son of the deceased.

5. On 10.05.2000, accused Harpal Singh who is Appellant herein and Pavitar Singh were apprehended while they were coming in a car bearing

No.PB-02H-3113. They were formally arrested in this case and the car in question was seized. Both the accused were interrogated and they also

suffered disclosure statements, in pursuance thereof, from Harpal Singh police recovered 10 gold biscuits of 5 tolas each and 08 gold biscuits of 10

tolas, in addition to cash amount of Rs.2,84,000/-, whereas, from accused Pavitar Singh police recovered 2 gold biscuits weighing 10 tolas each and a

ladies'™ wrist watch.

These articles were identified by prosecution witness PW-12, Vinod Kumar Gambhir, son of deceased.

6. On 18.05.2000, IO went to the hotel Sita Niwas and obtained copy of the entry register of the hotel Ext.PAA. It was seized, vide a recovery memo

Ext.PKK. On 06.06.2000, Head Constable Kapal Dev produced two photographs along with negatives, which were taken into possession. Statements

of witnesses were recorded. After completion of investigation and other formalities, the challan against the accused was filed in the Court of Judicial

Magistrate 1st Class (for short 'JMFC'), Amritsar, who supplied copies of documents relied upon in the challan to the accused free of costs as

provided under Section 207 Cr.P.C and then find the offence under Section 460 was exclusively triable by the Court of Session, vide her detailed

committal order dated 22.08.2000, committed the case to the Court of Session. On committal, learned Session Judge, Amritsar, after finding prima

facie case framed the charges for commission of offences under Sections 460, 302, 342 and 120ÂB of IPC. The accused persons were abjured the

guilt. During the course of trial 15 prosecution witnesses were examined.

7. Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused

were put to them but they denied the same, contending that they are innocent and have been falsely implicated in the case. Accused Ashwani Kumar,

Bikramjit Singh and Gulzar Singh had filed written statements, contending that the allegations against them were false. They were kept in illegal

detention and created false evidence against them.

8. Appellant Harpal Singh had filed separate written defence, mentioning therein that he was having a mini bus No.PBÂ02ÂHÂ 9661 which was sold

on 05.11.1999 for consideration of Rs.3,80,000/Â to Hakumat Singh, resident of Village Harpura, Tehsil Batala, District Gurdaspur and delivered the

custody of vehicle to the purchaser. The accused further stated that he wanted to purchase a truck with the sale proceeds of the mini bus which

amount was lying at his house. During the investigation of the case, the police unlawfully recovered that amount and out of which, recovery of a sum

of Rs.2,84,000/Â was shown from the possession of Harpal Singh with a view to create evidence against him as a matter of fact, no recovery had

been effected.

9. Learned Sessions Judge, Amritsar, vide judgment dated 04.02.2003, convicted and sentenced all the accused persons including appellant herein for

the charge under Section 302/120ÂB IPC and directed to undergo sentence for imprisonment of life and to pay a fine of Rs.1000/Â in default further

rigorous imprisonment for six months. All the five accused persons filed appeal against the judgment of their conviction and sentence before High

Court of Punjab and Haryana.

10. In the impugned order passed by the High Court, the testimony of PW¹ Leela Wati has been relied upon to support the case of prosecution and the commission of murder with robbery. In her testimony, she has described the looted articles and also supported the supplementary statement. The defence taken by the defendant regarding planting of the gold articles by the son of the deceased Vinod Kumar being gold smuggler was not found worthy to rely upon. For the purpose of commission of the offence, the testimony of PW⁴ Vinod Singh Chauhan was found worthy of credence, however, the commission of the offence with the aid of recoveries and also by identification of the looted articles. The High Court has also relied upon the extra-judicial confession made by PW¹⁴ Devinder Kumar. Thus, concluded that the conviction of the appellant for the charges proved beyond reasonable doubt and the finding of the Trial Court do not suffer from any infirmity warranting interference. Consequently, the appeal was dismissed by the impugned order.

11. Learned counsel for the appellant has strenuously urged that the recovery of articles and cash from him has not been proved as per law. The recovered articles claimed from the accused were not the same articles as described by the complainant. The appellant has taken several defence regarding sale of mini bus No. PB⁰² H⁹⁶⁶¹ for the consideration of Rs.3,80,000/- to Hakumat Singh and the police has illegally recovered the said consideration amount for the sake of looted article with intent to implicate him falsely. The defence to show false recovery has been supported by the testimony of DW¹ Dhanpal Singh and DW² Surinder Mohan Luthra. The evidence regarding prior meeting of mind is not on record thereby the appellant conspired or was a part of conspiracy in committing the loot and murder of the deceased. The connecting evidence regarding recovery of the record of the hotel has not been produced in original. Thus, merely on the basis of the said evidence and the recovery, which is not summarised in the FIR, the conviction of the appellant is wholly unsustainable.

12. On the other hand, the State counsel contends that the amount recovered from the possession of the appellant as a sale proceed of the mini bus has not been proved in support of his defence. The identification of the gold biscuits and looted articles were made by PW¹² Vinod Kumar Gambhir

son of the deceased. In the defence, it has not been said that the gold articles seized were of the accused persons. No explanation for huge recovery

of gold items has put forward from the accused, simultaneously Hakumat Singh, to whom the mini bus was sold, has not been examined, hence, the

defence was not found plausible. On the other hand, looking to the testimony of PWÂ1 Leela Wati, PWÂ2 Nasib Singh, PWÂ4 Vinod Singh Chauhan

and also the extraÂ judicial statement given by PWÂ14 Davinder Kumar, the High Court has rightly confirmed the findings of the Trial Court. Thus,

the findings of fact concurrently recorded are based on due appreciation of evidence and those findings are not perverse.

13. After having heard learned counsel for the parties and on perusal of the record, it is seen that ample evidence to have conspiracy between all five

accused have been duly proved. The involvement of the appellant is fully established by the testimony of PWÂ4 Vinod Singh Chauhan, who was an

employee on the shop â€~Sunder Shoes Houseâ€™™. As per his testimony, it is clear that coÂaccused Ashwani Kumar another employee in the shop,

met with appellant/accused Harpal Singh and Pahlwan Bikramjit Singh on the shop at about 4Â5 p.m. on 15.03.2000. At that time deceased Banarasi

Dass was counting the cash currency at the counter. Ashwani Kumar told Harpal Singh and Bikramjit Singh that Banarasi Dass was having ample

money with him and he was also involved in the money lending business keeping the gold as security. Subsequently, on the date of incident i.e.,

02.04.2000, appellant alongwith coÂaccused visited the shop and made inquiry about coÂaccused Ashwani Kumar (another employee of Sunder

Shoes). Thus, by the evidence of this witness, nexus between appellant Harpal Singh and coÂaccused persons is fully established. The defence taken

by the appellant regarding recovery of the cash money of Rs.2,84,000/Â from him by virtue of sale of mini bus has not been proved because the said

mini bus was not sold to him and the buyer of the said mini bus Hakumat Singh has not been examined. DWÂ1 Dhanpal Singh in his crossÂ-

examination has categorically admitted that the amount was not lying in his bank account or of his father. Thus, the defence of the appellant was not

found plausible. Simultaneously no plausible defence to disprove other looted articles have been brought on record.

14. We have perused the testimony of other witnesses that includes PW¹ Leela Wati, PW⁴ Vinod Singh Chauhan, PW¹² Vinod Kumar

Gambhir and PW¹⁴ Davinder Kumar on the basis of the same the involvement of the appellant alongwith other co^{accused} has been fully proved

by prosecution beyond reasonable doubt. The Trial Court and the High Court has rightly appreciated the evidence and proved the charges while

convicting the appellant. The minor inconsistencies in the statement of witnesses are not of any consequence looking to the finding concurrently

recorded by two courts. Thus, the findings of fact recorded against the appellant and the other co^{accused}, who have not come forward to file the

appeal before the Court, are neither perverse nor illegal so as to warrant interference by this Court. Therefore, while affirming the view taken by the

High Court and the Trial Court, we dismiss the appeal.