

(2007) 07 P&H CK 0194

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 602-DB of 1997

Charan Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: July 5, 2007**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 201, 302, 34

Citation: (2007) 3 RCR(Criminal) 781**Hon'ble Judges:** Mehtab S. Gill, J; A.N. Jindal, J**Bench:** Division Bench**Advocate:** Vandana Malhotra, for the Appellant; S.S. Bhinder, Addl. A.G. Punjab, for the Respondent**Final Decision:** Allowed

Judgement

Mehtab S. Gill, J.

This is an appeal against the judgment dated 25.7.1997/26.7.1997 of the Additional Sessions Judge, Patiala, whereby he convicted Charan Singh son of Ram Singh and Jagjit Singh son of Charan Singh under Sections 302/201/34 IPC and sentenced them to undergo life imprisonment u/s 302/34 IPC and two years RI u/s 201 IPC. Fine of Rs. 500/- and Rs. 200/- was imposed u/s 302/34 IPC and u/s 201 IPC respectively. In default of payment of fine, to further undergo two months R.I. and one month R.I. respectively. Sentenced were ordered to run concurrently.

2. The case of the prosecution is unfolded by the statement Ex. PB of Harnek Singh given to ASI Hazur Singh within the area of Village Khalsapur.

3. Harnek Singh stated, that he is a resident of Village Sarkapra and is ex- Sarpanch of the village. On 3.12.1995 at about 9.00 p.m., his son Gurmit Singh had gone to sleep in the Baithak situated in the Bara after taking his meals. His son did not come upto 6.30 a.m., nor did he bring the cattle out. Harnek Singh went to the Baithak and found that Gurmit Singh was not there. Harnek Singh along with his other son Jagjit

Singh went towards his fields situated on the western side of the village. On reaching the Ghaggar bandh, they found the dead body of Gurmit Singh lying in the bushes. There were injuries on the forehead, mouth, neck, throat, both elbows and the back of the dead body. Blood oozed out from his right ear. His hair were full of mud. Harnek Singh stated, that his son Gurmit Singh had illicit relations with Ranjit Kaur daughter of Charan Singh. Charan Singh had complained to him a few days earlier about this relationship. Harnek Singh suspected that Charan Singh and his sons Jagjit Singh @ Bhola, Sukhwinder Singh @ Kaka and Birbal Singh @ Roda have murdered his son. On the basis of this statement, FIR Ex. PB/2 was recorded on 4.12.1995 at 12.15 p.m. The special report reached the JMIC on the same day at 4 p.m.

4. The prosecution to prove its case brought into the witness box Dr. O.P. Aggarwal PW-1, Harnek Singh PW-2, Mukhtiar Singh PW-3, Rajwinder Singh PW-4, Gurdial Singh PW-5, Gurbachan Singh PW-6, Sukhdarshan Singh PW-7 and Hazura Singh ASI PW-8.

5. Learned Counsel for the Appellants has argued, that the motive for the commission of the offence was that Ranjit Kaur daughter of Appellant Charan Singh had illicit relations with deceased Gurmit Singh. As alleged, she went to the house of Gurmit Singh and called him to her house, so that her father and brothers could take revenge on Gurmit Singh, does not appeal to the mind. Ranjit Kaur was in love with deceased Gurmit Singh. She would never have gone to call him in the night, when she knew the intentions of her father and brothers was to eliminate him. At the time of occurrence, she was a young girl of 20 years. Under the pressure of her parents and brothers, she would have stopped going to Gurmit Singh rather than being a party to have him eliminated. She would not have conspired with her father and brothers to murder Gurmit Singh. She would also have not gone along with her father and brothers to dispose of the dead body. She would have refused to cooperate rather being so treacherous with her beloved Gurmit Singh.

6. There is an unexplained delay of 13 hours in the lodging of the FIR and further 17 hours delay in the special report reaching the JMIC. If Gurmit Singh had been taken from the Baithak in the night, someone would have seen him being taken from the Baithak, as it was within the house compound and in a thickly populated area and also it was not too late in the night.

7. The medical report does not corroborate the ocular account. Dr. O.P. Aggarwal PW-1, who prepared the post-mortem report Ex. PA, has stated that the stomach of the deceased was empty. Harnek Singh PW-2, the father of deceased, has stated that Gurmit Singh had taken his meals at about 8.30 p.m. on 3.12.1995. Occurrence had taken place at 10.00/10.30 p.m. Dr. O.P. Aggarwal PW-1 has stated, that the probable time, when the deceased had taken his meals, was about 5-6 hours earlier. Taking this statement into consideration, the occurrence must have then taken place at about 2.00/3.00 a.m. on 4.12.1995. If the occurrence had taken place at

2.00/3.00 a.m. on 4.12.1995, then Rajwinder Singh PW-4 and Gurdial Singh PW-5 are not telling the truth.

8. The story of the prosecution is that Gurmit Singh was taken to the house of the Appellants, then beaten up and strangled. If he had been beaten up at 10.00/10.30 p.m., the neighbours would have heard his shrieks and shouts, who would have come to his rescue.

9. The joint confession made to Gurbachan Singh, PW-6 by Jagjit Singh, Sukhwinder Singh, Birbal Singh and Rani @ Ranjit Kaur is no confession in the eyes of law. Though the trial Court had acquitted all other accused apart from Jagjit Singh, but still the extra judicial confession made before Gurbachan Singh PW-6 by them jointly cannot be ignored. No corroboration is coming to the extra judicial confession made by Appellant Charan Singh to Sukhdarshan Singh PW-7.

10. Learned Counsel for the State has argued, that there is no delay in the lodging of the FIR. Occurrence had taken place at about 10.00/10.30 p.m. on 3.12.1995 and the FIR Ex. PB/2 came into existence on 4.12.1995 at 12.15 p.m. The special report reached the JMIC on the same day at 4.00 p.m. As it was night time, the FIR could not have been recorded earlier.

11. The motive for the commission of the offence was that Ranjit Kaur's father and brothers did not like deceased Gurmit Singh having illicit relationship with Ranjit Kaur. Ranjit Kaur called Gurmit Singh, as her loyalty to her brother and father was very strong and she herself felt to do so and thus went to Baithak of Gurmeet Singh, when he was sleeping and called him to his house.

12. The extra judicial confessions made by Appellants Charan Singh and Jagjit Singh are truthful and trustworthy. They have been made to independent witness, who have no axe to grind in favour of the complainant party. Rajwinder Singh PW-4 and Gurdial Singh PW-5 are independent witnesses, who are not inimical towards the Appellants.

13. We have heard the learned Counsel for the parties and perused the record with their assistance.

14. The medical evidence in this case is very crucial in deciding the case. Dr. O.P. Aggarwal, PW-1, in his post mortem report Ex. PA, has mentioned that the stomach of the deceased was empty. Harnek Singh PW-2 has stated in his testimony before the Court, that after having his meals at about 8.30 p.m. on 3.12.1995, Gurmit Singh went to the Bara and slept in the Baithak at about 9.30 p.m. Rajwinder Singh PW-4 has stated, that at about 10.00/10.30 p.m. on 3.12.1995, he heard shrieks coming from the house of Appellant Charan Singh. He stopped for a while and heard the voices of several persons. Meaning thereby, Gurmit Singh was beaten to death at about 10.00/10.30 p.m. on 3.12.1995. Dr. O.P. Aggarwal PW-1 has stated, that food takes 5 to 6 hours for complete digestion. He (PW-1) has further opined, that

deceased had taken his last meals 6 hours prior to his death. Taking the opinion of Dr. O.P. Aggarwal PW-1 into consideration, occurrence then must have taken place somewhere between 2.00/3.00 a.m. on 4.12.1995. The version given by both Rajwinder Singh PW-4 and Gurdial Singh PW-5 gets demolished, as Rajwinder Singh has stated, that he heard shrieks coming from the house of the Appellants at 10.00/10.30 p.m. Gurdial Singh PW-5 has stated, that he saw the Appellants at 11.00 p.m. going towards the Ghaggar. This clearly proves that both Rajwinder Singh PW-4 and Gurdial Singh PW-5 are implanted witnesses.

15. The extra judicial confession given to Gurbachan Singh PW-6 is a joint confession given by Appellant Jagjit Singh and the acquitted accused Sukhwinder Singh, Birbal Singh and Rani @ Ranjit Kaur. Though out of five only Appellant Jagjit Singh has been convicted and the others have been acquitted by the learned trial Court, but this joint extra-judicial confession allegedly made by them has no value in the eyes of law. It being joint in nature.

16. Similarly, the extra-judicial confession made before Sukhdarshan Singh PW-7 by Appellant Charan Singh also has holes in it.

17. The motive for the commission of the offence as per the prosecution is that Ranjit Kaur daughter of Charan Singh had illicit relations with Gurmit Singh (deceased). If she had been in love with Gurmit Singh deceased, she would not have gone to his house in the night at about 9.30/10.00 p.m. on 3.12.1995 to call him, so that her father and brothers could put him to death. She would also not have conspired and accompanied her father and brothers to dispose of the dead body of Gurmit Singh near Ghaggar bandh.

18. Occurrence in this case had taken place at 10.00/10.30 p.m. on 3.12.1995. The body of deceased Gurmit Singh was discovered at 6.30 a.m. on 4.12.1995. FIR Ex. PB/2 came into existence on 4.12.1995 at 12.15 p.m. As per the FIR Ex. PB/2, only a suspicion has been cast on the Appellants. Harnek Singh PW-2 has stated, that Appellant Charan Singh had threatened him to stop his son or he would have to face dire consequences. No explanation is coming from the side of the prosecution regarding the 13 hours delay from the time of occurrence till recording of the FIR Ex. PB/2. As per the prosecution, Rajwinder Singh PW-4 had heard the shouts and shrieks and also heard the voices of several persons, but strangely he did not go to the house of Harnek Singh PW-2 to inform him.

19. It is a case of blind murder. As discussed above, a doubt is created in our mind as to whether Appellants committed the murder of Gurmit Singh, the benefit of which goes to Appellants Charan Singh and Jagjit Singh.

20. Appeal is allowed. Conviction and sentence of the Appellants is set aside. Appellants are acquitted of all the charges. If in custody, they be set free forthwith.