

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 586 OF 2010

HARINDER SINGH @ HIRA

...APPELLANT(S)

Versus

THE STATE OF PUNJAB

...RESPONDENT(S)

J U D G M E N T

Deepak Gupta, J.

This appeal by the accused is directed against the judgment dated 14.11.2008 of the High Court of Punjab and Haryana, whereby the appeal filed by the appellant was dismissed and the judgment of the trial court holding the appellant guilty of having committed offences under Sections 302 and 201 of the Indian Penal Code, 1860 (IPC for short), and sentencing him to undergo punishment of life imprisonment with a fine of Rs.5000/-, in default of payment of fine to undergo further Rigorous Imprisonment (RI for short) for six months

on the first count, and RI for three years with a fine of Rs.2000/-, in default of payment of fine to undergo further RI for one month on the second count, has been upheld.

2. Sawinder Kaur (PW-3), widow of Major Singh filed a complaint on 31.01.2004 with the police. In this complaint she alleged that she and her husband had two sons viz., Gurdev Singh and Hardev Singh. Her elder son Gurdev Singh (deceased) was adopted by Daljit Kaur, (sister of her husband) and Suba Singh (husband of Daljit Kaur), since they had no issue. Harinder Singh (accused), is the son of Lakhwinder Singh, the elder brother of her husband. Harinder Singh and Suba Singh jointly purchased a tractor. According to her, she used to visit the house of Suba Singh to meet her elder son Gurdev Singh (deceased), and he also used to come over every 15-20 days to meet her. It was further alleged that Harinder Singh had quarrelled with Gurdev Singh and had accused Gurdev Singh of grabbing the land of Suba Singh free of cost. She was informed about this fact by Gurdev Singh. 15 days prior to the lodging of the complaint, Harinder Singh had told the complainant that Gurdev Singh had gone with some of his friends on a motorcycle and had not returned for many days. Thereafter, the complainant enquired about Gurdev Singh from his friends and also from Harinder Singh, but Harinder Singh did not give

any proper reply and kept putting her off on one pretext or the other. According to the complainant on 31.01.2004 Chanan Singh (PW-4), who is the son of another elder brother of her husband came to her house and told her that Harinder Singh had met him and told him that he had committed a grave mistake. About 22/23 days earlier he had quarrelled with Gurdev Singh (deceased), and had killed him by giving a blow of axe (*kulhara*) and buried his dead body by digging a pit. He also said that he had committed the said act in consultation with Suba Singh (accused).

3. Upon the said report being lodged, SI Inderjit Singh (PW-10), along with Sawinder Kaur and Chanan Singh, went to the house of Suba Singh at Ajnala and there Harinder Singh was taken into custody. When Harinder Singh was being questioned, he made a disclosure statement to the effect that he had buried the dead body of the Gurdev Singh (deceased) in the field of Suba Singh in village Chamari and he said that he could get the body recovered. His statement (Ex.PD) was recorded on which he put his thumb impression. The statement was signed by SI Gurmukh Singh (PW-5) and ASI Gurbax Singh. Thereafter, the investigating officer sent a request (Ex.PN) to the Deputy Commissioner, Amritsar, for deputing an Executive Magistrate so that the dead body could be recovered in

his presence. Thereupon, Naib Tehsildar Amarjit Singh (PW-11) joined the investigation. In the presence of Amarjit Singh, other police officials on duty and others, accused Harinder Singh dug out the body of Gurdev Singh from the place disclosed and identified by him. The clothes of Gurdev Singh were identified by Chanan Singh (PW-4) and Karam Singh (not examined). Recovery memo (Ex. PK) was prepared. Thereafter, the investigating officer conducted the inquest proceedings and prepared inquest report (Ex.PA). The entire process of recovery of dead body was video-graphed by Constable Ravinder Singh (PW-7), videographer of CIA Staff, Amritsar.

4. The body of Gurdev Singh was sent for post-mortem which was conducted by Dr. Ashok Channana (PW-1), who found chopped, incised wound measuring 20 x 13.5 cm on the front of forehead, nose and both eyes. The underlying bones were fractured into multiple pieces. He opined that the injuries were ante-mortem in nature and this head injury was sufficient in ordinary course of nature to cause death. According to him the death of Gurdev Singh had occurred 2-4 weeks prior to the post-mortem.

5. After completing the investigation charge-sheet was filed against the three accused Harinder Singh, Daljit Kaur and Suba Singh who were charged with having committed the murder of Gurdev Singh

(deceased), and having destroyed the evidence related to the crime. It appears that Suba Singh and Daljit Kaur were acquitted.

6. The trial court on the basis of evidence led before it came to the conclusion that the prosecution had proved many circumstances beyond reasonable doubt, which would clearly indicate that the appellant had murdered the deceased. Appeal filed by the appellant before the High Court was dismissed. Hence the present appeal.

7. It has been urged on behalf of the appellant that this is a case of circumstantial evidence and the prosecution has failed to link the circumstances in such a manner that it would lead to only one conclusion i.e., the guilt of the accused. According to the appellant the axe was not sent to the CFSL or to the doctor; there is no motive described; there is no last seen theory and recovery memo of the body has not been signed by PW-3 or other independent witnesses.

8. It is not disputed that deceased Gurdev Singh was adopted by Suba Singh and Daljit Kaur. The prosecution relies on the following circumstances:-

(i) The recovery of the body of Gurdev Singh at the instance of the appellant;

(ii) Extra judicial confession made by the appellant to Chanan Singh(PW-4);

(iii) The fact that the accused did not want the deceased to inherit the estate of Suba Singh;

9. SI Inderjit Singh (PW-10) is the person who recorded the complaint (Exh.PC) lodged by Sawinder Kaur (PW-3). According to him, Chanan Singh (PW-4) was accompanying Sawinder Kaur. Thereafter, he along with Sawinder Kaur, Chanan Singh and other police officials reached the house of Suba Singh at Ajnala and accused-appellant Harinder Singh was taken into custody. On interrogation the appellant informed that he had buried the dead body of Gurdev Singh in the field of Suba Singh in village Chamiari. His statement (Exh.PD) was recorded, which was thumb marked by him and signed by SI Gurmukh Singh (PW-5) and ASI Gurbax Singh. The witness sent an application (Exh.PN) to the Deputy Commissioner requesting that an Executive Magistrate be deputed to be present at the time of recovery of the dead body. Thereafter, Naib Tehsildar (PW-11) joined the investigation and in his presence the appellant-accused dug out the body from the place disclosed by him. The dead body was identified by Karam Singh and Chanan Singh (PW-4). The clothes of the deceased were also identified by them. Thereafter, he prepared recovery memo (Exh.PN) and inquest report. The entire process was video-graphed and photographed.

10. PW-11 has fully supported the prosecution and states that when he went to the spot, appellant Harinder Singh in his presence dug out

the dead body from the land of Suba Singh. The dead body was of Gurdev Singh. He states that he reached the place at about 4.30 P.M. since he was on VIP duty earlier. There is virtually no cross-examination of this witness.

11. Chanan Singh (PW-4) also states that in his presence the appellant-accused disclosed that he buried the dead body of Gurdev Singh in the field of Suba Singh. Thereafter, the appellant led the police to the tube-well of Suba Singh. Chanan Singh (PW-4) also accompanied them. At that place the dead body was got recovered at the instance of the accused. He denied the suggestion that some villagers had informed them on 30.10.2010 that some foul smell was coming from that place. The constable Ravinder Singh (PW-7) stated that on 31.10.2004, he being the videographer attached to the police department went to the fields of Suba Singh in village Chamari. The accused dug out the dead body in his presence and the presence of other police officials, the complainants Sawinder Kaur, Chanan Singh and the Magistrate. PW-7 video-graphed the entire recovery process in the video cassette (Exh. P-2).

12. Keeping in view the statements of these witnesses it is proved that the dead body was recovered at the instance of the appellant-accused Harinder Singh.

13. Chanan Singh (PW-4) has also made a statement that on 31.10.2004 at about 10:00/11:00 a.m., the accused Harinder Singh came to his house and confessed that 22 or 23 days earlier he had murdered Gurdev Singh. According to him, Harinder Singh told him that on the day of murder he had a quarrel with Gurdev Singh (deceased) near the tube-well of Suba Singh. He further told him that he (Harinder Singh) gave a blow with an axe (*kulhara*) on the head of Gurdev Singh who died and then he buried the dead body. In cross-examination, he stated that nobody suspected Harinder Singh before the accused made extra-judicial confession to him. He also stated that his statement was recorded by the police prior to the recovery of the body. He was confronted with his statement recorded under Section 161 CrPC (Exh.DA) in which it is not recorded that Gurdev Singh was murdered by Harinder Singh in consultation with Suba Singh and Daljit Kaur. According to us, this contradiction is meaningless since Suba Singh and Daljit Kaur have already been acquitted. There is no effective cross-examination with regard to the extra-judicial confession. The accused and this witness are closely related and the extra-judicial confession was made by the accused to a confidante. There is no reason to disbelieve the same.

14. The statement of PW-3 Sawinder Kaur is virtually the repetition

of whatever has been stated in the FIR and hence is not being reproduced. She supports the version that she was present when the dead body of the deceased was recovered at the instance of accused-appellant Harinder Singh.

15. From the statement of PW-3 it also stands proved that the accused kept mis-informing Sawinder Kaur and other relatives about the whereabouts of the deceased. She has clearly stated that firstly on 15.10.2004, the accused-appellant came to her and told her that Gurdev Singh (deceased) had gone with some boys on a motorcycle and had not returned. From the reading of the entire evidence the following circumstances stand proved beyond reasonable doubt:-

- (1) That Sawinder Kaur had made a complaint to the police even before the dead body of the deceased was recovered when Chanan Singh (PW-4) had told her that accused-appellant Harinder Singh had made an extra-judicial confession before Chanan Singh that he had killed the deceased Gurdev Singh;
- (2) That thereafter the police arrested Harinder Singh and he made a disclosure statement that he could get the body of the deceased recovered;
- (3) That the body of the deceased Gurdev Singh was recovered at the instance of accused-appellant Harinder Singh in the presence of various witnesses including Naib Tehsildar Amarjit Singh (PW-11);
- (4) The statement of Chanan Singh(PW-4) clearly shows that the accused-appellant had made extra-judicial

confession to him that the accused had killed the deceased Gurdev Singh;

- (5) That accused had misled and misinformed the complainant Sawinder Kaur (PW-1) about the whereabouts of the deceased.

16. In our view these circumstances by themselves form a complete chain which clearly leads to only one inference that it is the accused-appellant alone who could have murdered deceased Gurdev Singh.

17. In view of the above discussion we dismiss the appeal. The appellant who is on bail is directed to surrender forthwith and undergo the remaining sentence. A copy of this judgment shall be sent to the trial court to ensure that the appellant-accused undergoes the remaining part of his sentence. Pending application (s), if any, shall also stand dismissed.

.....**J.**
(DEEPAK GUPTA)

.....**J.**
(ANIRUDDHA BOSE)

New Delhi
December 17, 2019