

## **Surjit Singh And Another vs State Of Punjab on 23 March, 1993**

**Equivalent citations: AIR1994SC110, 1993CRILJ3901, AIR 1994 SUPREME COURT 110, 1993 AIR SCW 3741**

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**Bench: G.N. Ray**

### **JUDGMENT**

1. Heard learned Counsel for the parties.
2. Both these appeals arise out of the same judgment of the High Court. The two appellants in these appeals Gurcharan Singh and Surjit Singh were tried for offences punishable Under Section 302/34, Indian Penal Code and sentenced to undergo imprisonment for life. They preferred two separate appeals to the High Court and the same were dismissed by the High Court. Hence, these two appeals before us.
3. The prosecution case is as follows:

Both the appellants and the deceased Narinder Pal and some of the material witnesses belong to Amritsar. The two accused were indulging in gambling. About two months prior to the present occurrence, there was a dispute between the appellant Gurcharan Singh and the deceased Narinder Pal. On 17-5-1979 at about 8.45 p.m. the deceased was at the shop of his father Des Raj (PW 3) and at that time, PW-4 was also present at the shop. The accused took the deceased with them on the pretext of seeing a movie. On that night at about 1.00 a.m. both the accused had a quarrel with him at chowk Guru Ram Dass Sarai. It is alleged that Gurcharan Singh caught hold of the deceased by his neck while the other accused Surjit Singh gave him a knife blow on his thigh. The deceased got himself released and ran towards the street, but both the accused held him and they were alleged to have inflicted stab wounds. PW-6 has seen the occurrence only in its earlier part. But he did not inform anybody and he went away to his house. Next day, in the morning, Sham Sunder (PW-12) saw the deadbody of the deceased lying in the street and he went to inform the father of the deceased, PW-3 whom then went to the police station and gave a report after seeing the dead body. The Sub-Inspector, PW-13 went to the place of occurrence, held the inquest and sent the dead body for post mortem. By then the names of the accused were not known. The doctor, who conducted the post mortem, found several incised injuries and opined that the deceased died due to shock and haemorrhage.

4. It is alleged that the accused Gurcharan Singh was arrested on 1-6-79 and interrogated and at his instance a watch was recovered from PW-9 a pan broker. According to the prosecution, Gurcharan Singh pledged this watch and signed on the document evidencing the pledge. Surjit Singh was arrested on 24-5-79 and at his instance a dagger is said to have been recovered. After completion of the investigation a charge-sheet was laid. The accused when examined under Section 313, Cr. P.C, denied the offence and Gurcharan Singh, in particular, stated that his signature was obtained by force on the so-called pledgehit. The trial court relying on the circumstantial evidence and particularly on the evidence of PW-6 convicted them. The appellate court confirmed the findings of the trial court.

5. The learned Counsel for the appellant submits that PW-6 is a false witness and is of a questionable character and at the back and call of the police and his conduct is unnatural, and, therefore, it is unsafe to place any reliance on his evidence and that if his evidence is eschewed then the remaining circumstantial evidence is wholly insufficient to connect the accused with guilt.

6. The items of evidence relied upon by the prosecution is as follows:

(1) That there was an earlier quarrel between the accused and the deceased that is stated to be the motive. (2) On the day of occurrence at 8.30 p.m., the accused came and took the deceased on the pretext of seeing a movie, spoken to PW-3 and 4. (3) On the same night at about 1 a.m. PW-6 saw the accused and the deceased quarrelling somewhere in the town and he saw Surjit Singh inflicting a stab wound on the thigh and he left the place. (4) A recovery of watch at the instance of Gurcharan Singh from PW-9 and identified by the father as one belonging to the deceased. (5) A recovery of dagger at the instance of Surjit Singh on which the blood stain found to be that of human organ.

7. From the above stated circumstances, it may be seen that PW-6's evidence is of great importance in connecting these appellants with the crime. Therefore, we have carefully gone through the evidence of PW-6. He deposed that he was running a tea shop and on 17-5-79, he had gone to the theatre to see the last show and the show was over by 1 a.m. and he engaged a rickshaw for coming to his house and when he reached the chowk he noticed two accused quarrelling with the deceased and inflicting injuries. He proceeded to state that he did not interfere since the accused were gamblers and that having learnt next day about the death of the deceased, he himself volunteered and went to the police station and gave a statement on his own. The conduct of the witness is highly unnatural. When he has seen one of the appellants inflicting injuries one would expect him to raise an alarm or at least inform the kith and kin of the deceased so that they can go for the rescue of the victim, which he did not do. From the record, it does not appear that at least he was examined during the inquest. We do not know when his statement was recorded during the course of the next day. On his own showing, he was involved earlier in some cases. In one case, he was stabbed by the deceased and in another case he himself was the accused for molestation of a woman. Therefore, he is of a questionable character. However, his conduct is highly unnatural. Though we cannot call him entirely a false witness but in the absence of any other corroborating evidence we think it is highly unsafe to accept his evidence and then convict both the appellants. In this regard, the prosecution

could have examined the rickshaw puller in which he was travelling, which they have not done. For all these reasons we find it difficult to place any reliance on this witness. If the evidence of this witness is to be eschewed then, we are left with other circumstances mentioned above. The motive, by itself, is not a circumstance, though it may be relevant in a case of circumstantial evidence. But the prosecution case itself shows that these persons were gamblers and indulged in quarrels and again patching up their hostilities. Then, we are left only with the two circumstances, viz., the accused along with the deceased went to the picture, but that was at 8.30 p.m. The occurrence is said to have taken place at 1.30 a.m. That, by itself, does not connect the appellants with the offence. The last circumstance is the recovery of the watch at the instance of Gurcharan Singh. PW-9 supports the prosecution case and some documents also have been filed. Even assuming these circumstances as established, we cannot connect him with murder by invoking illustrations to Section 114 of Evidence Act. At the most, he can be convicted for being possession of stolen property. The recovery of the dagger is again depends upon the Panchnama and Panch witness. In any event, a recovery by itself, does not connect Surjit Singh with murder. Even taking all these circumstances after excluding the evidence of PWs-6 and 7 for consideration, they may create some suspicion but the same cannot take the place of proof. For all the reasons mentioned above, the convictions of both the appellants Under Section 302/34, Indian Penal Code are set aside and the Appeal No. 626/1984 filed by Surjit Singh is allowed. Since we have accepted the recovery of the watch belonging to the deceased at the instance of Gurcharan Singh an offence under Section 411, Indian Penal Code is made out, accordingly while setting aside his conviction Under Section 302/34, Indian Penal Code, we convict him under Section 411, Indian Penal Code and sentence him to undergo Rigorous Imprisonment for two years. Hence Criminal Appeal No. 36 of 1983 is partly allowed to the extent indicated above. The bail bond of Surjit Singh stands cancelled, since an Appeal No. 626/84 filed by him is allowed. If Gurcharan Singh, the other appellant in Criminal Appeal No. 36 of 1983 has already served out the sentence, he may be released forthwith.