

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Appeal No. S-332-SB of 2004
Date of decision : 29.05.2015**

Kulwant Kaur **... Appellant**
versus

State of Punjab **... Respondent**

with **Crl. Appeal No. S-402-SB of 2004**

Purro **... Appellant**
versus

State of Punjab **... Respondent**

and **Crl. Appeal No. S-466-SB of 2004**

Harpal Singh **... Appellant**
versus

State of Punjab **... Respondent**

CORAM:- HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the digest?

**Argued by:- Ms. Ruchi Sekhri, Advocate for
appellants Kulwant Kaur and Harpal Singh.**

**Mr. Vishnav Gandhi, Advocate
for appellant Purro.**

Mr. DeepSingh, AAG Punjab.

ANITA CHAUDHRY, J.

Appellants Kulwant Kaur, Purro and Harpal Singh have preferred the instant appeal against the judgment of conviction and sentence dated 22.01.2004 and 24.01.2004 respectively passed by Addl. Sessions Judge(Adhoc), Fast Track Court, Gurdaspur, vide which they were held guilty under Sections 314, 315, 318 and 201 IPC. They have been sentenced in the following manner:-

Kulwant Kaur

314 IPC	To undergo rigorous imprisonment for eight years and pay a fine of Rs. 5000/-. In default of fine, to further undergo rigorous imprisonment for six months
315 IPC	To undergo rigorous imprisonment for seven years and pay a fine of Rs. 5000/-. In default of fine, to further undergo rigorous imprisonment for six months
318 IPC	To undergo rigorous imprisonment for two years and pay a fine of Rs. 200/-. In default of fine, to further undergo rigorous imprisonment for one month
201 IPC	To undergo rigorous imprisonment for two years and pay a fine of Rs. 200/-. In default of fine, to further undergo rigorous imprisonment for one month

Purro

314 IPC read with Section 109 IPC	To undergo rigorous imprisonment for three years and pay a fine of Rs. 500/-. In default of fine, to further undergo rigorous imprisonment for one month
315 IPC	To undergo rigorous imprisonment for three years and pay a fine of Rs. 500/-. In default of fine, to further undergo rigorous imprisonment for one month
318 IPC	To undergo rigorous imprisonment for two years and pay a fine of Rs. 200/-. In default of fine, to further undergo rigorous imprisonment for one month
201 IPC	To undergo rigorous imprisonment for two years and pay a fine of Rs. 200/-. In default of fine, to further undergo rigorous imprisonment for one month

Harpal Singh

314 IPC read with Section 109 IPC	To undergo rigorous imprisonment for five years and pay a fine of Rs. 2000/-. In default of fine, to further undergo rigorous imprisonment for three months
315 IPC	To undergo rigorous imprisonment for seven years and pay a fine of Rs. 5000/-. In default of fine, to further undergo rigorous imprisonment for six months
318 IPC	To undergo rigorous imprisonment for two years and pay a fine of Rs. 200/-. In default of fine, to further undergo rigorous imprisonment for one month
201 IPC	To undergo rigorous imprisonment for two years and pay a fine of Rs. 200/-. In default of fine, to further undergo rigorous imprisonment for one month

The epitome of facts which necessarily requires narration are as

under:-

On 31.07.1998 SI Darshan Singh along with other police party were on patrol duty and present at bus stand Narranwali. Sharam Singh, Sarpanch of village Ghosal got recorded statement(Ex.PD)informing about the unnatural death of Harjit Kaur daughter of Purro and Naranjan Singh during abortion. He informed the police that Harjit Kaur was married to Kulwant Singh and she along with her four children had been residing with her parents at village Ghosal for the last 4/5 years. Her husband was a drug addict and used to remain away. Harjit Kaur developed illicit relationship with Harpal Singh and became pregnant. In order to get rid of seven month pregnancy, Purro and Harpal Singh took Harjit Kaur to Kulwant Kaur, a nurse in village Bakshiwal for abortion. A female child was born, which was thrown away by Harpal Singh and Purro. Harjit Kaur died due to excessive bleeding. The accused fled away and the dead body of Harjit Kaur was handed over to Naranjan Singh, her father.

On this statement, FIR No. 57 dated 31.07.1998(Ex.PW8/B) was registered at Police Station Kalanaur under Sections 314, 318, 201 and 34 IPC. The police party reached Purro's house and took into possession the dead body, lying in the courtyard. Scaled site plan was prepared by Jagir Singh, Draftsman. Inquest report (Ex.PW8/C) was prepared and dead body was sent for autopsy, which was conducted by Dr. S.K. Hans and Dr. Rajinder Pal Kaur and it was handed over to Naranjan Singh for last rites. The police arrested accused Harpal Singh on 03.08.1998, accused Purro on 01.09.1998 and Kulwant Kaur on 01.09.1998.

Disclosure statement of Kulwant Kaur was recorded and pursuant thereto she got recovered one dilate, one scissors and plastic bottle of glucose lying in a gunny bag from Guru Nanak Clinic Hospital. The same were taken into police possession vide separate memo, which were attested by HC Malkiat Singh and SI Darshan Singh.

Statements of witnesses were recorded and on completion of investigation, final report was submitted to the Court for trial.

Initially, charge under Section 314, 201 and 318 IPC was framed against the accused. Lateron, an application was moved by the prosecution for amendment of charge, which was allowed and additional charge under Section 315 IPC was also framed. The accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined nine witnesses, viz., HC Makhan Singh PW1, Dr. S.K. Hans as PW2, Dr. Rajinder Pal Kaur as PW3, complainant Sharam Singh as PW4, Jagtar Singh as PW5 who deposed about the illicit relations of Harjit Kaur and Harpal Singh and she died during excessive bleeding during abortion; HC Malkiat Singh as PW6, Draftsman Jagir Singh as PW7; investigating officer SI Darshan Singh as PW8 and PW9 Dr. Hardeep Singh Bajwa who proved the certificate Ex.DB of Kulwant Kaur as trained nurse.

The incriminating circumstances led by the prosecution were put to the accused in their statements under Section 313 Cr.P.C., which they had denied and pleaded false implication. No evidence in defence was led by them.

On appraisal of the evidence produced on record, the trial Court convicted and sentenced the appellants in the manner indicated above.

Dis-satisfied with the same, the above appeals have been filed by the appellants.

Since in all the appeals, a challenge has been laid to the common judgment of conviction and sentence, the same are being disposed of by this order passed in CrI. Appeal No.S-332-SB of 2004 preferred by Kulwant Kaur.

During the course of hearing, since there was no representation on behalf of appellant Harpal Singh, Ms. Ruchi Sekhi, Advocate, who represented appellant Kulwant Kaur, was appointed as amicus curiae to assist on behalf of appellant Harpal Singh.

I have heard learned counsel for the parties and with their able assistance gone through the record of the case very carefully.

The learned Counsel for the appellants have assailed the findings of the learned trial court inter-alia on the ground that the foundation of the prosecution was laid on circumstantial evidence, which is very weak and feeble. According to them, the chain of evidence is also missing as none of the witnesses, including complainant PW4 Sharam Singh and PW5 Jagtar Singh saw deceased Harjit Kaur going with accused Purro and Harpal Singh to the nursing home of appellant Kulwant Kaur for abortion. They further submitted that the medical evidence contradicts the prosecution story and it was a case of full term delivery, which appellant Kulwant Kaur was legally permitted to carry out and this fact was not disputed by PW3 Dr. Rajinder Pal Kaur and PW9 Dr. Hardeep Singh, who

proved the certificate Ex.DB of appellant Kulwant Kaur.

Continuing with the arguments, they further submitted that the conviction of the appellants was based on conjectures and was not sustainable and was liable to be set aside.

On the other hand, learned State counsel supported the judgment of trial Court. According to him, the findings returned by the Court below were based on proper appreciation of evidence and called for no interference.

The instant case is based on circumstantial evidence and there is no direct evidence against the appellant proving their involvement in the offence.

In the case of **Musheer Khan @ Badshah Khan and Anr. Vs. State of Madhya Pradesh, AIR2010SC762**, the Hon'ble Apex Court while dealing with a case based on circumstantial evidence, held as follows:-

“46. In a case of circumstantial evidence, one must look for complete chain of circumstances and not on snapped and scattered links which do not make a complete sequence.

47. This Court finds that this case is entirely based on circumstantial evidence. While appreciating circumstantial evidence, the Court must adopt a cautious approach as circumstantial evidence is "inferential evidence" and proof in such a case is derivable by inference from circumstances.

48. Chief Justice Fletcher Moulton once observed that "proof does not mean rigid mathematical" formula since "that is impossible". However, proof must mean such

evidence as would induce a reasonable man to come to a definite conclusion. Circumstantial evidence, on the other hand, has been compared by Lord Coleridge "like a gossamer thread, light and as unsubstantial as the air itself and may vanish with the merest of touches". The learned Judge also observed that such evidence may be strong in parts but it may also leave great gaps and rents through which the accused may escape. Therefore, certain rules have been judicially evolved for appreciation of circumstantial evidence.

49. *To my mind, the first rule is that the facts alleged as the basis of any legal inference from circumstantial evidence must be clearly proved beyond any reasonable doubt. If conviction rests solely on circumstantial evidence, it must create a network from which there is no escape for the accused. The facts evolving out of such circumstantial evidence must be such as not to admit of any inference except that of guilt of the accused. {See **Raghav Prapanna Tripathi and Ors. v. State of U.P.** : AIR 1963 SC 74}.*

50. *The second principle is that all the links in the chain of evidence must be proved beyond reasonable doubt and they must exclude the evidence of guilt of any other person than the accused. {See: **State of UP v. Ravindra Prakash Mittal**; 1992 CrL.J 3693(SC) - (Para 20)}*

51. *While appreciating circumstantial evidence, we must remember the principle laid down in **Ashraf Ali v. Emperor** 43 Indian Cases 241 at para 14 that when in a criminal case there is conflict between presumption of innocence and any other presumption, the former must*

prevail.

52. The next principle is that in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and is incapable of explanation upon any other reasonable hypothesis except his guilt.”

A reference may be made to **Sharad Birdhichand Sarda v. State of Maharashtra** : 1984CriLJ1738. Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent, before conviction could be based on circumstantial evidence, must be fully established. They are:

- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;*
- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
- (3) the circumstances should be of a conclusive nature and tendency;*
- (4) they should exclude every possible hypothesis except the one to be proved; and*
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the*

accused and must show that in all human probability the act must have been done by the accused.

Sir Alfred Wills in his admirable book "Wills' Circumstantial Evidence" (Chapter VI) laid down the following rules to be observed in the case of circumstantial evidence : (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.

There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested on the touch-stone of law relating to circumstantial evidence, referred to above. Let us now advert to the evidence adduced by the prosecution keeping in view the above settled law.

The case in hand was registered on the basis of statement made by Sharam Singh, Sarpanch PW4. He deposed that Harjit Kaur was in a relationship with Harpal Singh and Harjit Kaur got pregnant from him. He further stated that Harpal Singh and Purro took Harjit Kaur to Kulwant Kaur for abortion and the child was thrown somewhere and Harjit Kaur died at

the Nursing Home. He further stated that there was a whisper in the village that Harjit Kaur had died due to abortion and he reported the matter to the police. From the very tenor and the manner of the deposition, it is clear that the testimony is just hearsay. He admitted that he had not gone with Harjit Kaur for medical check up.

PW5 Jagtar Singh deposed on the same lines as PW4. He deposed Harjit Kaur was in the advanced stage of pregnancy and got it aborted at the Nursing Home of accused Kulwant Kaur and there was a talk in the village that Harjit Kaur had died due to abortion. He, however, admitted that he did not see Harjit Kaur going to the nursing home.

Dr. Rajinder Pal Kaur, Medical Officer PW-3 was member of the medical team which had conducted the postmortem examination. She had stated that the postmortem report was prepared by Dr. Hans. She stated that the vaginal tear was due to delivery. She admitted the suggestion that the tear in the vagina is also there in normal delivery cases. A query was posed by the Court as to whether the age of the fetus at the time of delivery could be given. The Medical Officer had responded that from the length of the uterus and the cervix and the breadth of the uterus, it was a full time delivery. Another query was posed as to whether the delivery was in the 7th, 8th or 9th month. The witness had responded that the delivery was after 37th week, which meant that the delivery was normal. The Court questions put to the witness read as under:-

Court Question

Whether the vaginal tears in normal delivery are different from the instant case?

Answer	Normally vaginal tears are not such extensive, in rare cases or in certain cases they can be.
Court Question	Whether this was the normal or caesarean?
Answer	It was per-vaginal delivery (normal delivery).
Court Question	From your postmortem reports can you tell the age of the fetus at the time of the delivery.
Answer	From the length of the uterus and cervix and breadth of the uterus, it was a full time delivery.
Court Question	Can you tell that the delivery was on 7 th , 8 th or 9 th month?
Answer	In this case the delivery was after 37 weeks which means a normal delivery.
Court Question	When it was a normal delivery then why are there so many injuries in this case?
Answer	Such injuries could be due to. Again said, Injuries in this case can be due to non-elasticity of perineum over stretching of perineum due to very healthy baby, mal-presentation of the fetus.
Court Question	Do you think that the delivery was done by the trained doctor or gynecologist?
Answer	If the delivery was done by the gynecologist or trained doctor then such injuries would not have occurred.

Head Constable Malkiat Singh PW-6 stated that Kulwant Kaur was apprehended near the bus-stand and had suffered a disclosure statement Ex.PW6/A and thereafter had led the police party to the clinic where she got the plastic bottle, scissor and the gunny bag recovered which were taken into possession by the police.

Jagir Singh PW7 had prepared the site plan Ex.PW7/A.

Darshan Singh SI had recorded the FIR. He had accompanied the police officials to the house where the body was placed. He prepared the

inquest report Ex.PW8/C. He had also prepared the rough site plan and had arrested the accused. He stated that the accused had suffered a disclosure statement and had thereafter led the police party to the shop and had got the articles recovered. He stated that the aborted fetus was not recovered and the only evidence of abortion was the statement given by Harjit Kaur's mother who took Harjit Kaur to the clinic. He stated that no independent evidence was collected as to whether the abortion was carried out against the will of Harjit Kaur. Court questions were put to the witness and PW8 had stated that Kulwant Kaur was running a clinic and she was a qualified nurse and Kulwant Kaur had produced a certificate but it was not taken into possession as it was not easily legible.

Dr. Hardeep Singh Bajwa PW9 had deposed that a trained nurse could do delivery cases but not abort. He stated that the certificate Ex.DB was issued to Kulwant Kaur by Registrar Punjab Nurses, Chandigarh. In the cross-examination, he stated that for delivery, a trained Dai need not apply for registration or approval.

From the above, it would be seen that the independent witnesses examined by the prosecution were not present when Harjit Kaur was taken to the clinic of Kulwant Kaur. Their evidence is just hear say. They have not even disclosed from where they had got the information. The case of the prosecution was that Harjit Kaur was in a relationship with Harpal Singh and she was 7 months pregnant and was taken to a nursing home for abortion and Harjit Kaur and the female child died. To prove the case, the prosecution examined nine witnesses. The prosecution was required to lead evidence to establish all the circumstances set up by the

prosecution. The prosecution has only been able to prove from the medical evidence that Harjit Kaur had died after giving birth to a child. No evidence was led by the prosecution to show that the child was pre-mature or it was a full term pregnancy. Since this is a case based purely on circumstantial evidence, the Court has to be more conscious and the case cannot be decided merely on inferential evidence. The prosecution was expected to lead proof to prove each circumstance but I find that they have failed to lead any evidence to arrive at a conclusion that any of the accused were guilty.

The medical evidence led by the prosecution only suggests that Harjit Kaur had died after delivery. Dr. S.K. Hans had clearly stated that it was a delivery after 37 weeks which is considered a normal delivery. This opinion was given after he had noted the length and the breadth of the uterus and was categorical that it was a full time delivery. The cause of death was stated to be excessive bleeding.

No scientific evidence was led by the prosecution to show that Harjit Kaur's case was dealt by Kulwant Kaur at her clinic. The prosecution had examined the police officials to prove that a disclosure was made by Kulwant Kaur and they had seized certain articles but those were not got scientifically examined to prove that the delivery case took place in the clinic. The trial Court could not have accepted the testimony of Sharam Singh, Sarpanch of the village and that of Jagtar Singh. The medical evidence does not point out any finger at any of the accused.

The prosecution has miserably failed to prove that Harjit and Harpal were in relationship or that the child in the womb of Harjit Kaur was from Harpal. Had there been any negligence, the mother of the deceased

would have made a complaint. Instead the police registered the FIR against the mother. They failed to examine the father. The police failed to recover the fetus and I find that there was no incriminating evidence against either of the accused. The trial Court has mis-read the evidence. The prosecution had miserably failed to prove any of the circumstances. There were no circumstances from which an inference could be drawn that the accused were involved. The prosecution was first to prove that Harjit Kaur had not completed full term and that it was a case of abortion. There is no evidence that the Harjit Kaur was taken to the clinic of Kulwant Kaur. The chain is incomplete. The condition precedent before recording conviction have not been established.

Accordingly, all the appeals are allowed. The appellants are acquitted. Fine if deposited would be refunded. LCR be sent back.

May 29, 2015

jiten/sunil

**(ANITA CHAUDHRY)
JUDGE**