

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. D-703-DB of 2015 (O&M)

Date of decision : 10.07.2015

Gurdas Singh @ Dass

.....Appellant

Versus

Avtar Singh @ Tar and another

....Respondents

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Sunil K. Nehra, Advocate
for the appellant.

LISA GILL, J.

1. Appellant - Gurdas Singh @ Dass being aggrieved of acquittal of respondent - Avtar Singh @ Tar for the offence punishable under Section 302 IPC by the Additional District Sessions Judge, Ludhiana vide judgment dated 19.02.2015 has preferred the present appeal.

2. Prosecution was set in motion on the statement Ex. PE of Gurdas Singh @ Dass on 30.09.2011 to ASI Davinder Singh. He disclosed that he is a labourer having two sons and one daughter. Youngest son Balwant Singh was a driver of Truck No. PB-11C-3400 owned by Avtar Singh @ Tar. Balwant Singh and Avtar Singh loaded bales of wastage of hosiery on 27.09.2011 at Ludhiana to be transported to Baroha in Uttar Pradesh (UP) in the said truck. Balwant Singh talked to his wife on telephone while they were loading their vehicle. Thereafter, there was no communication with

Balwant Singh or Avtar Singh. Avtar Singh on 30.09.2011 at 7.00 PM brought the dead body of his son Balwant Singh in an Ambulance No. UP-20T-1318 driven by one Pardeep Kumar son of Naresh Kumar resident of Talamabad Baroha, District Bijour. Avtar Singh revealed that Balwant Singh had fallen sick and he had died. Before his death, Avtar Singh took him to Pandit Din Dayal Hospital, Bijour UP, where the doctor declared him dead. One Balwinder Singh @ Binder Singh resident of Kothe Fatehdin, Police Station, Jagraon was also with them. Complainant suspected the cause of death of his son. Therefore, he discussed about getting the post mortem conducted with Sarpanch Davinder Singh. He went to Civil Hospital, Jagraon and asked for post mortem. Upon which, he was informed by the doctor that a police report was necessary. Consequently, ASI Davinder Singh was informed, who recorded the statement of the complainant and conducted the proceedings under Section 174 Cr.P.C. FIR No. 68 dated 07.04.2012 was registered under Section 302 IPC. Post-mortem was conducted at Civil Hospital, Jagraon. Viscera was sent to the Chemical Examiner. On receipt of report Ex.PX dated 14.12.2011, cause of death was opined to be Aluminum Phosphide poisoning. PW7, Inspector Rachpal Singh sent ruqqa Ex. PW7/A through HC Jatinder Singh on which formal FIR Ex. PW7/B was registered by ASI Amarjit Singh.

3. As per post-mortem Ex. PW8/A, following injuries were found on the dead body:

1. Abrasion 4 x 3 cm on the interior lateral surface of the testis. Brownish blackish in colour. The swelling of the

surrounding area was present.

2. Abrasions 3 x 2 cm on the ventral side of right arm.

Browning colouration was present.

4. Investigation in this case was conducted by the Inspector Rachpal Singh, PW7. Respondent - Avtar Singh was arrested on 28.04.2012. He allegedly suffered a disclosure statement on 02.05.2012 to the effect that he has kept concealed two mobile phones without SIM and he can get the same recovered. One mobile phone was recovered on 02.05.2012 which was taken in possession vide Ex. PD.

5. On completion of investigation, report under Section 173 Cr.PC was presented. Charge framed against respondent-AVtar Singh for the offence punishable under Section 302 IPC to which he pleaded innocence and claimed trial.

6. Prosecution examined nine witnesses to prove its case. While denying incriminating evidence put to the accused he pleaded innocence and false implication in his statement under Section 313 Cr. P.C. He took a definite stand that he was falsely implicated due party faction in the village and due to close links of the complainant with the police and politician of the area. Deceased had infact taken ill and he had taken him to the Pandit Din Dayal Hospital, Bijnour UP where he died. After his death complainant himself brought his dead body by arranging an ambulance. There is no dispute between him and family members of the deceased. No evidence was, however, led in defence.

7. Learned trial Court on considering the facts and

circumstances as well as evidence on record concluded that the prosecution had failed to prove its case beyond reasonable doubt against the accused thereby acquitting him of the charge framed against him for the offence punishable under Section 302 IPC. Aggrieved therefrom complainant has filed the present appeal.

8. Learned counsel for the appellant vehemently argues that wife and the father of the deceased has specifically deposed regarding complicity of respondent No.1 in the murder of Balwant Singh. He submits that the admitted factum of the deceased being last seen in the company of the respondent by itself is enough to conclude the guilt of the accused. It is strenuously argued that there is no dispute about the deceased going with respondent-Avtar Singh, driving the truck in question to UP, therefore, it was incumbent upon the accused to have proved that deceased had fallen ill and had been taken to Pandit Din Dayal Hospital, Bijnour at UP. No doctor from the said hospital has been examined by the accused and neither has the ambulance driver been examined. A mobile phone of the deceased was recovered from the house of the accused. Furthermore, complainant specifically deposed that there was a dispute with accused-Avtar Singh who wanted to put his share in one of the trucks owned by the complainant. Avtar Singh had also given ₹20,000/- to the complainant for this purpose but he did not accept the same as a share in the truck because the truck was having value of more than ₹2.5lacs to ₹3 lacs. Said amount was returned with interest i.e a sum of ₹ 37,500/-. It is due to this grudge that his son

had been killed. Therefore, accused had a specific motive to kill Balwant Singh.

9. Learned counsel while pointing to the statement of PW4 Chhinder Kaur wife of the deceased submits that she has specifically testified that her husband was going from Ludhiana to UP in connection with transportation of goods. Balwant Singh had talked to her on telephone on 27.09.2011. Thereafter, there was no communication and dead body of her husband was brought home by Avtar Singh on 30.09.2011. She has further deposed regarding the dispute between Avtar Singh and her husband and father-in-law. In view of the above as well as medical evidence, learned counsel of the appellant submits that acquittal of the accused Avtar Singh is not justified. He prays for conviction and imposition of suitable sentence upon respondent No. 1-Avtar Singh.

10. We have heard the learned counsel for the appellant and gone through the file. Present is a case of circumstantial evidence. Admittedly, there is no direct evidence available on record. It is a matter of record that the deceased - Balwant Singh has died due to Aluminum Phosphide poisoning as proved by PW8 Dr. Surinder Singh on the basis of report of Chemical Examiner (Ex.PX). As per Dr. Surinder Singh, PW8, two injuries as detailed in foregoing paras were found present on the body of the deceased. However, the possibility of these injuries to be a result of a fall have not been ruled out. No mark of resistance has been found on the body. No other injury was detected. There is no evidence of forcible administration

of aluminum phosphide to the deceased much less by the appellant.

11. It is well settled that Aluminum Phosphide cannot be administered accidentally. Neither can its presence be masked by mixing it in food or drink due to the extremely pungent and strong smell emitted by it. In this regard this Court in **Anita versus State of Haryana 2010 (3) R.C.R. (Criminal) 112** has observed as under:

“ Such extracts from the Journals on Toxicology show that Aluminium Phosphide (celphos) is available in the form of chalky white tablets used as pesticide and rodenticide. When these tablets are taken out of the sealed container, they come in contact with atmospheric moisture and the chemical reaction takes place liberating phosphine gas. All the published works are to the effect that Aluminium phosphide i.e. celphos tablet is not homicidal as it cannot be taken accidentally as it emanates highly pungent smell. In fact, the Hon’ble Supreme Court in Jai Pal v. State of Haryana, AIR 2002 Supreme Court 3447 has quoted extensively from Modi’s Medical Jurisprudence and Toxicology as well as the paper titled as “Toxicology – Acute Aluminium Phosphide Poisoning in Northern India” written by Dr. Mitra Basu and Prof. S.B. Siwach, Head, Deptt. Of Medicine, PGIMS, Rohtak, and has concluded that CrI. Appeal No. 151-DB of 2006 [17] Aluminium Phosphide on account of its very pungent smell, which can drive out all inmates from house if left open, cannot be taken accidentally.”

12. Furthermore, there is nothing on record to prove that the accused had procured the poison and administered it to the deceased. It is borne out from the record that respondent-Avtar

Singh brought back the dead body from UP by arranging for an ambulance. His conduct is not such which points to his complicity in the commission of the offence as alleged.

13. Contention of learned counsel for the appellant that accused had a specific motive to murder Balwant Singh by itself is not sufficient to convict the accused. There is nothing on record to prove the ownership of the truck in question with the complainant. PW 4 Chhinder Kaur deposed that her father-in-law was possessing a truck before her marriage. Avtar Singh had given ₹20,000/- to her father-in-law for putting his share in that truck. Learned trial Court has specifically concluded that prosecution has failed to prove that complainant was indeed an owner in possession of the truck at that point of time or if sold earlier, the registration number of that truck, when it was produced, and when it was disposed of, if at all. It is not disputed that deceased was a driver with accused-Avtar Singh, meaning thereby Avtar Singh was himself having a truck. There is no proof of handing over of ₹20,000/- by the accused or return of the said amount, that too with interest by the complainant. Motive even if proved cannot by itself be the basis for conviction. In the instant case the facts as alleged have not been proved by the prosecution.

14. Similarly, circumstance that the deceased was last seen in the company of the accused cannot be a pointer to the guilt of the accused in this case. Fact that deceased had accompanied Avtar Singh from Ludhiana to UP for transportation of goods as his driver is a matter of record. However, PW4 Chhinder Kaur has herself

stated that Balwant Singh on 27.09.2011 disclosed that he was suffering from fever. It is in consonance with the explanation offered by respondent that Balwant Singh had fallen ill and he had taken him to the hospital at Bijnour but Balwant Singh died. Contention of the learned counsel for the appellant that it was for the accused to have proved the illness of Balwant Singh, his admission to Pandit Din Dayal Hospital, Bijnour, UP is misconceived and false. It was for the prosecution to have taken steps to investigate the same. Non-examination of the driver of ambulance or the doctor at Pandit Din Dayal Hospital, Bijnour, UP cannot lead to adverse inference against the respondent. Prosecution has to stand on its own legs and prove its case beyond the reasonable doubt.

15. Similarly, recovery of mobile phone cannot be considered sufficient to connect the accused with the commission of offence keeping in view the complete fact scenario. It is extremely relevant that having brought back the dead body himself there is no question of trying to conceal the mobile phone of the deceased. It cannot be termed to be sufficient evidence to convict the accused.

16. It is a settled position that suspicion, however, strong can never take place of proof or positive evidence. There have to be strong, compelling and substantial reasons to set aside acquittal of an accused. Simply because another view may be possible cannot be a ground for reversing a judgment of acquittal.

17. Learned counsel for the appellant is unable to point out any infirmity, perversity or illegality in the impugned judgment, which

warrants interference by this Court.

Consequently, this appeal is dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

10.07.2015
rts