

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 17.03.2015

CRA No.898-DB of 2003

Banni Singh & others

...Appellants

Versus

State of Punjab

...Respondent

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

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

Present: Mrs. Aditi Girdhar, Advocate, as Amicus Curiae,
for the appellants.

Ms. Manjri Nehru Kaul, Addl. AG, Punjab,
for the respondent.

HEMANT GUPTA, J.

The present appeal is preferred by Banni Singh son of Ram Sarup and Preetu son of Tara Chand against the judgment of conviction and order of sentence dated 06.11.2003 passed by the Additional Sessions Judge, Jalandhar, whereby appellant Banni Singh was convicted for an offence punishable under Section 302 IPC, whereas appellant Preetu was convicted for an offence punishable under Section 302 read with Section 34 IPC. However, both the appellants were sentenced to undergo life imprisonment and to pay a fine of Rs.5000/- each and in default of payment of fine to undergo further rigorous imprisonment for one year.

The prosecution case was set in motion on the statement of

Madan Lal son of Babu Ram and brother of the deceased, made to SI/SHO

Sakattar Singh, P.S.Shahkot on 09.02.2001, who reached at the spot. In his statement (Ex.PH), Madan Lal, who retired as Inspector from Cooperative Department, stated that they are seven brothers and that all are married and reside separately. His elder brother Dass Ram, aged about 65/66 years, who used to do labour work, has five sons and two daughters. All of them are married. His brother used to take liquor occasionally. He stated that on 09.02.2001 at about 4.00 PM, when he came back to village and reached in front of Gurdwara of village after doing his domestic work from village Bhullar on bicycle, he saw that Banni Singh son of Ram Sarup and Preetu son of Tara Chand, who were also labourers and sometime doing the work of selling illicit liquor, were grappling with his brother Dass Ram in front of his house, whereas Balbir Singh son of Harbans Singh was restraining them. In the meanwhile, Banni Singh and his nephew Preetu made his brother Dass Ram to fall on the ground and Preetu caught hold of his both arms, whereas Banni Singh twisted his testicles. Thereafter, Banni Singh and Preetu after dragging Dass Ram from in front of his house brought him near pipes lying in the corner of Gurdwara. After throwing Dass Ram there, both of them ran away from the spot while saying that they have taught a lesson to Dass Ram, as he was defaming them without any reason regarding their selling of illicit liquor. He further stated that he and Balbir Singh asked Dass Ram that what had happened on which he told that he earlier used to take liquor from Banni Singh and Preetu and today also came to take liquor from them. He further stated that while saying so, Dass Ram died. Thereafter, Balbir Singh informed Balwinder Singh, Sarpanch of the village, who informed about the occurrence to the police station through telephone. On the basis of such statement, ruqa (Ex.PH/1) was sent to the Police Station for registration of an

FIR at about 5.45 PM. On receipt of ruqa, FIR (Ex.PH/2) was recorded by ASI Amrik Singh.

After completing the inquest proceedings (Ex.PG), the IO sent the dead body of Dass Ram for post mortem examination. He also prepared rough site plan Ex.PO. The post-mortem examination on the dead body of Dass Ram was conducted by PW-5 Dr. Bhupinder Singh, Civil Hospital, Nakodar on 10.02.2001, who found the following injuries:-

“There was bluish contusion present on the lateral surface of the right forearm in its upper part 5 cm below the right shoulder joint. It was 7 cm x 5 cm.

Another bluish contusion was present on the left forearm on its anterior and medial part 7 cm below the left shoulder joint and the contusion was 3 cm x 4 cm. His thorax including walls, ribs and cartilages were healthy. His lungs larynx and trachea including pleura were healthy. His pericardium was healthy and heart was pale in colour and the anterior surface was having a gracious yellow patch and the artery was thrombosed. Left side of the heart was empty and right side was having blood. His brain and skull was healthy.

His small intestines, large intestines, liver, spleen and kidneys were sent for chemical analysis. His bladder was empty and healthy and the testicals were swollen and on dissection there was no bleeding into the testicals and both the testies and spermatic cord was normal.”

After the arrest of the accused and on completion of necessary formalities, report under Section 173 Cr.P.C. was filed against the present appellants.

To prove its case, apart from examining PW-5 Dr. Bhupinder Singh; PW-10 SI Surinder Singh and PW-12 SI/SHO Sakattar Singh, who deposed with regard to the investigations carried out by them as well as other witnesses of formal nature, the prosecution examined PW-9 Madan Lal,

brother of the deceased Dass Ram, who reiterated his earlier version i.e. statement given leading to the recording of the FIR.

After conclusion of prosecution evidence, the statements of both the accused were recorded under Section 313 Cr.P.C. They were put all the incriminating circumstances appearing against them in the prosecution evidence. They denied the prosecution case and pleaded false implication. In their defence, the accused examined DW-1 Balwinder Singh son of Kesar Singh.

After going through the evidence on record, learned trial Court returned a finding that the prosecution has been able to prove the guilt of the present appellants beyond any reasonable doubt and accordingly convicted and sentenced them, as mentioned above.

Before this Court, learned counsel for the appellants has vehemently argued that independent eye-witness i.e. PW-4 Balbir Singh has turned hostile, therefore, there is only statement of PW-9 Madan Lal, brother of the deceased, which has been relied upon by the trial Court to convict the appellants. It is argued that the statement of PW-9 Madan Lal is that of an interested witness and that his presence at the time of occurrence is doubtful. Still further, as per the medical report, there was no bleeding; therefore, the manner of causing of death is not tenable. It is further argued that it is not a case of culpabale homicide amounting to murder, but is a case where death was unintended. Thus, at best, it is a case of an offence punishable under Section 304 IPC.

On the other hand, learned counsel for the respondent-State has argued that the presence of PW-9 Madan Lal at the time of occurrence is natural, as he has deposed graphically about the role of each of the appellants.

Such evidence is corroborated by the medical evidence deposited by PW-5 Dr. Bhupinder Singh. Mere fact that Madan Lal is a near relation of the deceased, is not a reason to discard his statement, but his statement may be scrutinized with little more caution than the statement of an independent witness. It is also argued that PW-4 Balbir Singh has turned, but he has admitted in his cross-examination that he has given statement to the police and that he has compromised with the accused. Thus, the fact that Balbir Singh has turned hostile cannot be used against the prosecution.

Having heard learned counsel for the parties at length, we do not find any merit in the present appeal. PW-9 Madan Lal has seen his brother Dass Ram at about 4.00 PM on 09.02.2001. He deposed that accused Preetu caught hold his brother from his arms, whereas Banni Singh twisted his testicles. Thereafter, both the accused dragged his brother from in front of his house and thrown him near the pipes lying in the corner of Gurdwara. On the basis of such statement made before SI/SHO Sakattar Singh on 09.02.2001, ruqa was sent to the Police Station for registration of an FIR at about 6.15 PM and the FIR was lodged at about 7.10 PM. Meaning thereby, that in the first statement itself, which was recorded within two hours approximately of the death, the role of each of the appellants has been clearly mentioned.

PW-4 Balbir Singh while appearing in the witness-box admitted his statement to police; his signatures on Ex.PE i.e. recovery memo of Hawaii Chappal. He stated that he has compromised with the accused and that Mohinder Singh, present in Court, is his uncle and his son Mukhtiar Singh is S.P. in Punjab Police. He admitted that it is Mohinder Singh, who has brought him to the Court today. In view of the said fact, the statement of Balbir Singh that he informed Madan Lal about the occurrence, when he was

at home, cannot be believed, as admittedly he has settled with the accused to turn hostile.

The statement of PW-9 Madan Lal, brother of the deceased, is clear and categorical that he saw both the appellants and that Preetu immobilized the deceased, whereas Bani Singh twisted his testicles. PW-5 Dr. Bhupinder Singh has conducted post-mortem on the dead body of Dass Ram on 10.02.2001. Initially, he deposed that the cause of death will be given after receiving report of the Chemical Examiner. On receipt of report of the Chemical Examiner Ex.PJ, he opined that the cause of death was due to vasovagal and neurogenic shock resulting into sudden cardiac rest, which was sufficient to cause death in an ordinary course of nature. He further deposed that no poison was found in the viscera of the deceased. He also proved the post mortem report Ex.PF. He deposed that the testicles were swollen and on dissection there was no bleeding into the testicles. Therefore, the prosecution story, as deposed by PW-9 Madan Lal, brother of the deceased, stands corroborated by the medical evidence given by PW-5 Dr. Bhupinder Singh for the reason that the testicles were swollen which could be possible only on account of its twisting in the manner deposed by the witness.

We do not find any merit in the argument that in the absence of bleeding, the death could not be caused as per the prosecution story of twisting of testicles. The Chemical Examiner has ruled out death by poison. There is no external injury which could prove causing of injury by any sharp or blunt weapon. The fact that testicles were swollen corroborates the statement of PW9 Madan Lal who deposed that Banni twisted the testicles while Preetu caught hold of the arms. Such oral testimony cannot be brushed aside only for the reason that PW9 Madan Lal is brother of the deceased.

There is no evidence on record to show that Madan Lal was inimical towards the appellants. The presence of Madan Lal at the place of occurrence cannot be doubted as the FIR was lodged within two hours of the alleged occurrence. Though PW4 Balbir Singh did not support the prosecution case in chief but admitted in the cross examination the fact of giving his previous statement and that he has effected compromise with the accused. Therefore, PW4 Balbir Singh has turned hostile not for the reason that he was not the eye-witness but for the reason that he entered into settlement with the accused. Therefore, we find that the statement given by Balbir Singh to the police which he accepts as had been given and the fact that he has settled with the accused shows that he has been won over by the accused.

We also do not find any merit in the argument that the appellants are liable to be convicted for an offence punishable under Section 304 IPC. The stand of the appellants is not of a sudden fight, but a case of denial in their statements recorded under Section 313 Cr.P.C. None of the prosecution witness has been suggested that the death was unintended or in the fit of anger. Therefore, the joint effort of both the appellants in firstly immobilizing the deceased and subsequently taking his life by twisting his testicles, does not warrant any interference for an offence punishable under Section 304 IPC.

We find that the testimony of PW-9 Madan Lal, brother of the deceased is that of a reliable and trustworthy witness, which inspires the confidence and has been rightly taken into consideration by the learned trial Court. We do not find that the findings recorded by the learned trial Court suffer from any illegality or irregularity. The entire evidence has been taken

into consideration to return a finding that the prosecution has been successful in proving its case against the accused beyond any reasonable doubt.

Consequently, the present appeal is dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

17.03.2015
Vimal/D.Gulati