

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

Criminal Appeal S-1033-SB of 2004
Date of Decision: October 19, 2016

Mohan Lal		Appellant
	Versus	
State of Punjab		Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Gurinder Singh, Advocate
for the appellant.

Mr. Vikram Bishnoi, Asstt. A.G., Punjab.

T.P.S.MANN. J. (Oral

Convict Mohan Lal has filed the present appeal for challenging the judgment and order dated 16.4.2004 passed by learned Sessions Judge, Patiala, whereby he stood convicted under Section 304 Part II IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year.

The case of the prosecution has been detailed by the learned trial Court in para 2 of its judgment, which is reproduced herebelow:-

“ The case relates to an unfortunate tragedy, in which the accused in order to make some unlawful gain, allegedly sold denatured spirit mixed with some poisonous substance on 12.2.2003. Resultantly,

Mohinder Singh, Nandu, Balbir Singh, Harmohinder Singh, Balwant Singh, Jaswant Singh, Gurdev Singh, Harmesh Kumar, Kulwant Singh, Ram Chander, Ram Kali and Rakesh Kumar died after consuming this illicit spirit. Accused Mohan Lal is spirit licensee and is having licence No.L-17 PWB. One Gurdev Singh, who was running a cycle repair shop near Ayurvedic College, Patiala used to take intoxicants. On 12.2.2002, Gurdev Singh father of Sukhwinder Singh complainant went to his shop, but returned in the noon time to his house under the influence of some intoxicants. He told Sukhwinder Singh complainant that he was having a headache and he further told that he had consumed spirit after purchasing the same from Mohan Lal accused. Gurdev Singh, further told Sukhwinder Singh complainant that besides him, 12 other persons had also consumed spirit after purchasing the same from Mohan Lal accused. The condition of Gurdev Singh became deteriorated and he was taken to Rajindra Hospital, Patiala by Sukhwinder Singh and was got admitted there. The doctor treating Gurdev Singh applied an injection to him at 11.00 p.m. However, he died at 1.00 a.m. Then he came to know that Balbir Singh, Harwinder Singh @ Munshi Ram Chander and some other persons were also got admitted in the hospital by their attendants and they had also died by consuming the poisonous spirit. On receipt of information about the death of 12 persons due to consumption of some poisonous substance, Inspector Devinder Singh along with SI Ajmer Singh and Sub-Inspector Ranjit Singh and other police officials reached Rajindra

Hospital, Patiala and met Sukhwinder Singh complainant and recorded his statement Ex.PR. Sukhwinder Singh after admitting the contents of the said statement, signed the same. Thereafter, Inspector Devinder Singh made his endorsement Ex.PR/1 and sent the same to Police Station, Civil Lines, Patiala, on the basis of which, FIR Ex.PR/2 was registered at Police Station, Civil Lines, Patiala by Sub Inspector Harpreet Singh. Law was set in motion. Inspector Devinder Singh prepared the inquest report of Gurdev Singh Ex.PL. Then he came to know that other 11 persons had also died due to taking of some poisonous substance. Then, he made request through Head Constable Joginder Singh Ex.PA for conducting post mortem examination on the dead body of Gurdev Singh. The post mortem examination of all the dead bodies was conducted. He also prepared inquest report of Balwant Singh Ex.PZZ, inquest report of Ram Kali Ex.PV/2, inquest report of Ram Chander Ex.PX/2, inquest report of Rakesh Kumar Ex.PZ/2 and inquest report of Mohinder Ex.POO and dispatched the dead bodies to the hospital for post mortem examination, through Head Constable Joginder Singh vide request Ex.PZ, Ex.PX/1, Ex.PV/1, Ex.PS, Ex.PO, Ex.PF and Ex.PE. He also inspected the spot, recorded the statement of Kishan Dev. He also prepared rough site plan of the place Ex.PZZ/1 where the accused had supplied spirit to the deceased. Then, he reached hospital and collected the viscera of 12 bodies from the doctor vide memo Ex.PZZ/2. Sub-Inspector Ranjit Singh prepared inquest report of Balbir Singh Ex.PT, and

that of Nandu son of Ram Sarup Ex.PJJ and recorded the statements of the witnesses under Section 175 Cr.P.C.”

In order to prove its case, the prosecution had examined PW1 Dr. S.S.Oberoi, PW2 Sukhwinder Singh, complainant, PW3 Dr. D.S.Bhullar, PW4 Parveen Kumar Joshi, PW5 Kishan Chand, PW6 Constable Prithipal Singh, PW7 Constable Sukhchain Singh, PW8 Head Constable Narinder Singh, PW9 Indresh Khanna, PW10 Dr. Harjinder Singh, PW11 Inspector Devinder Singh and PW12 Ranjit Singh.

When examined under Section 313 Cr.P.C., the appellant denied the incriminating circumstances put to him. He pleaded that he was innocent and falsely involved in the case at the instance of the interested parties and with the active connivance of the police.

In his defence, the appellant examined DW1 Chander Mehta.

After hearing learned counsel for the parties and on going through the evidence brought on the record, the trial Court accepted the prosecution case and convicted and sentenced the appellant, as mentioned above.

Having heard learned counsel for the parties and on scanning the evidence with their able assistance, this Court finds that the conviction of the appellant is well founded. Complainant Sukhwinder Singh, who had stepped into the witness box as PW2

had deposed that on 12.2.2003, his father Gurdev Singh returned home at noon time under the influence of some intoxicants and told him that he was having headache. He further told the complainant that including him 12 persons had consumed spirit after purchasing the same from the appellant. The condition of the complainant's father deteriorated and he was taken to Rajindra Hospital, Patiala. Though, he was sought to be treated and an injection given yet he died at 1.00 a.m. The said statement made by Gurdev Singh (since deceased) son of Sukhwinder Singh PW2 amounts to oral dying declaration as the statement related to the circumstances which resulted in his death. The oral dying declaration stood corroborated by the medical evidence as per which the death of Gurdev Singh and others was due to poisoning from methyl alcohol. Under these circumstances, no fault can be found with the conviction of the appellant under Section 304 Part II IPC.

As regards the question of sentence, it may be noticed that the appellant is facing the agony of criminal prosecution for the last more than 13 ½ years. At the time of the occurrence, he was aged 46 years and by now 60 years. The appellant is not shown to be either involved or convicted in any other case. He is sole bread winner of his family consisting of wife and two children. As per the custody certificate produced by the learned State counsel, he has already undergone total sentence

of two years, four months and twenty eight days. At the same time, it may be noticed that on account of consumption of denatured spirit sold by the appellant, twelve persons lost their lives.

Taking into consideration the totality of circumstances, this Court is of the view that sentence of imprisonment of ten years awarded to the appellant for the offence under Section 304 Part II IPC is on the higher side. Ends of justice shall be suitably met, if the same is reduced to imprisonment for a period of five years. At the same time, the fine of Rs.10,000/- can be enhanced to Rs.1,20,000/-.

Resultantly, the conviction of the appellant under Section 304 Part II IPC is upheld. The substantive sentence of imprisonment is reduced from ten years to rigorous imprisonment for five years. However, the fine is enhanced to Rs.1,20,000/-. The fine amount be deposited by the appellant with the trial Court within a period of three months from today, failing which, he shall be required to undergo rigorous imprisonment for a period of 2½ years.

The appeal is, accordingly, disposed of.

October 19, 2016
amit rana

(T.P.S. MANN)
JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No