

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

**CRA-S-553-SB of 2004.
Date of Decision: 27.08.2016.**

SARWAN SINGH

....APPELLANT.

VERSUS

STATE OF PUNJAB

....RESPONDENT.

CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. G.S. Sandhu, Advocate for the appellant.

Mr. P.S. Madahar, Assistant Advocate General, Punjab.

SNEH PRASHAR, J.

This appeal was preferred by appellant Sarwan Singh, assailing the judgment of conviction and order of sentence dated 26.09.2003 recorded by learned Additional Sessions Judge, Patiala, in Session Case No.1-T dated 04.07.2003 based on First Information Report No.980 dated 05.10.2001 registered at Police Station Sadar, Patiala, by virtue of which he (appellant) was sentenced to undergo RI for five years and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo RI for six months, for commission of offence punishable under Section 304 Part-II of the Indian Penal Code (for short, "I.P.C.").

The prosecution case, as extracted from the record, was as under:-

On 05.10.2001, when Sub Inspector Bhupinder Singh

alongwith his official companions was present at bus stop of village Kalyan

in connection with patrol duty, Niranjn Singh son of Norata Singh, resident of village Bibipur approached him and lodged a complaint. He stated that on 03.10.2001 when he had gone to visit his nephew (sister's son) Balbir Singh, who was residing separately with his family, he was told by Balbir Singh that he (Balbir Singh) alongwith one Kaka Singh had gone to the house of Sarwan (appellant) to purchase liquor where Binder Singh and Harbhajan Singh were already taking liquor. He and Kaka Singh purchased half sized bottle of liquor and consumed the same and he suspects that the liquor was not of good quality as because of it his stomach was upset.

Niranjn Singh stated that he advised Balbir Singh to drink lemon water and came back home. Next day, he again went to enquire about the well being of Balbir Singh but was told that he was not well and was lying inside. The very next morning, wife of Balbir Singh came to his house and informed him that Balbir Singh was badly unwell. He accompanied her and found that the condition of Balbir Singh was serious. A doctor was called who advised them to take Balbir Singh to Patiala. He received information regarding death of Kaka Singh who alongwith Balbir Singh had consumed the liquor purchased from Sarwan Singh. He was also told that the condition of Harbhajan Singh and Binder Singh, who too had consumed the same liquor, was serious. He and his son rushed Balbir Singh to Garg Hospital, Patiala in a tempo but Balbir Singh died on the way. They brought back the dead body to the village, which by then had turned black. At about 3:00 p.m., Binder Singh also died. It was stated by Niranjn Singh that all these deaths had taken place due to consumption of liquor purchased from Sarwan Singh.

Information Report was got registered by Sub Inspector Bhupinder Singh at Police Station Sadar, Patiala and investigation commenced. He visited the hut (Chhan) of Sarwan Singh but he was not available there. From the hut, one plastic can containing some milky coloured liquor was taken into possession and was sealed with seal bearing letters 'BS'. Statements of the witnesses were recorded. On 06.10.2001, pieces of bones from the cremation ground where Binder Singh, Balbir Singh and Kaka Singh were cremated were also taken into possession and packed in separate parcels. The case property was deposited with Mohrer Malkhana. Appellant Sarwan Singh was arrested on 07.05.2002 and on completion of investigation was challaned.

The appellant was charge-sheeted and subjected to face trial for commission of offence punishable under Section 304 I.P.C.

To substantiate the charge, the prosecution examined as many as 13 witnesses namely PW1 Niranjn Singh, PW2 Harbhajan Singh, PW3 Balwinder Singh, PW4 Dr. S.S. Oberoi, PW5 Dr. Sukhwinder Singh, PW6 Indresh Khanna, PW7 HC Rupinder Singh, PW8 C.Gurjiwan Singh, PW9 Dr. Simapreet Maan, PW10 Dr. Kunal Gupta, PW11 Inspector Bhupinder Singh, PW12 ASI Amarjit Singh and PW13 ASI Gurbaj Singh.

After closure of evidence of the prosecution, in his statement recorded under Section 313 of the Code of Criminal Procedure (for short, "Cr.P.C."), the appellant denied the charges of the prosecution and pleaded that he had never indulged in preparing or selling liquor and had been falsely implicated due to party friction in the village.

In his defence evidence, the appellant examined DW1 Kewal

Analyzing the evidence available on record and the submissions made by learned Public Prosecutor and learned counsel representing the appellant-accused, learned trial Court convicted and sentenced the appellant, as indicated above.

Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 26.09.2003 passed by learned trial Court, the appellant preferred the instant appeal.

The submissions made by Mr. G.S. Sandhu, learned counsel representing the appellant and Mr. P.S. Madahar, learned Assistant Advocate General for the State of Punjab have been heard and record perused.

The allegation against the appellant was that deceased Balbir Singh, Kaka Singh and Binder Singh and PW2 Harbhajan Singh had consumed liquor purchased from the appellant which, in fact, was spurious as it contained Methyle and Ethyle alcohol. The spurious liquor led to the death of Balbir Singh, Kaka Singh and Binder Singh, but fortunately Harbhajan Singh survived due to intensive medical treatment. The treatment record of PW2 Harbhajan Singh i.e. Bed Head Ticket Ex.PP, Ex.PQ, Ex.PQ/1 to Ex.PQ/3 proved by PW10 Dr. Kunal Gupta, Junior Resident Medicine Unit-III, Rajindra Hospital, Patiala and PW9 Dr. Simarpreet Mann, Junior Resident Medicine Unit-III Rajindra Hospital, Patiala indicates that he was diagnosed as a suspected case of “methyle poisoning”.

Learned counsel for the appellant argued that no substantive and reliable evidence could be produced by the prosecution to prove that the appellant was engaged in the business of manufacturing or selling any kind of liquor. He was not running any liquor shop nor had ever been engaged in

any criminal case relating to offence under the Excise Act etc. There was also no evidence to prove that the hut from which a can containing some liquor was taken into possession by PW11 Sub Inspector Bhupinder Singh, Investigation Officer, was owned and possessed by the appellant. There being nothing to connect the appellant with the liquor, if any, consumed by the deceased persons and PW2 Harbhajan Singh, he could not be alleged to have committed any offence. Assailing the credibility of PW2 Harbhajan Singh and of PW3 Dalwinder Singh, learned counsel contended that the said witnesses were inimical towards the appellant. Harbhajan Singh supported Dalwinder Singh during Panchayat elections. Deceased Balbir Singh, Kaka Singh and Binder Singh also used to work for Dalwinder Singh who was elected Sarpanch whereas the appellant supported the opposite candidate namely Kewal Singh, who appeared as DW1 and stated that the instant case was an outcome of party friction in the village. As far as the testimony of PW1 Niranjana Singh was concerned, learned counsel contended that he was not a witness either to purchase of liquor by deceased and PW2 nor had any special knowledge regarding type of illness of deceased Balbir Singh which had led to his death.

Elaborating his argument, learned counsel contended that according to PW2 Harbhajan Singh, he and Binder Singh had purchased half sized bottle of liquor allegedly from the appellant and they consumed the liquor and when only one peg was left they came home. He brought the bottle containing remaining liquor with him. PW3 Dalwinder Singh had handed over that bottle containing some liquor to the police and he deposed that the bottle was about 1/4th filled with the liquor which he gave to the police. Learned counsel pointed out that firstly PW3 Dalwinder Singh stated

that the bottle containing liquor handed over by him to the police was not sealed in his presence. Secondly, according to him only 1/4th of the bottle was filled with liquor. Contrary to his testimony, the half sized bottle, which was found to be containing some liquor and was subjected to chemical analysis at the Forensic Science Laboratory (for short, "FSL") Punjab, Chandigarh had 250 ml of liquor in the same as is mentioned in the FSL report Ex.PG. It means that the bottle of liquor which was sent for analysis was tampered with by the police to suite their interest in the case. Since that goes to the root of the matter, it cannot be said to be established that the liquor purchased or consumed by the deceased and PW2 Harbhajan Singh was spurious or that the said liquor was purchased by them from the appellant.

Indeed, as per prosecution story, three out of the four persons namely Balbir Singh, Kaka Singh and Binder Singh, who had consumed the spurious liquor sold had died. PW11 Inspector Bhupinder Singh, the Investigation Officer stated that he had collected burnt bone pieces from the cremation ground where Balbir Singh, Kaka Singh and Binder Singh had been cremated and had sent the same to FSL for analysis, but unfortunate for the prosecution although as per the FSL report Ex.PH, the burnt bone pieces were of human origin, but vide report Ex.PJ it was said that no metallic poison could be detected in the bones. However, importantly it was mentioned in Ex.PJ that the burnt bones of deceased could give positive test only for the presence of metallic poisons such as Arsenic, Lead, Antimony, Mercury, Bismuth and Zinc etc., if any of them had been consumed by the deceased, but other poisons get destroyed in the fire when the body is burnt.

In the instant case, the death of the deceased persons was

caused by consumption of spurious alcohol containing Methyle alcohol and Ethyle alcohol. In that manner, the fatal dose of combined Methyle alcohol and Ethyle alcohol, which caused death of the deceased persons, as explained by the FSL, could not possibly be detected on analysis of burnt bone pieces of human origin, but PW4 Dr. S.S. Oberoi, Assistant Professor, Department of Forensic Medicines, Government Medical College, Patiala, on application Ex.PF dated 16.07.2002 given by the Investigation Officer, gave opinion alongwith Dr. D.S. Bhullar on 17.07.2002 “that the possibility of death due to consumption of fatal dose of Methyle alcohol and Ethyle alcohol cannot be ruled out”. He proved his report Ex.PF/1 signed by him and Dr. D.S. Bhullar.

Another material piece of evidence is the half sized bottle containing liquor from which PW2 Harbhajan Singh and his companion Binder Singh had consumed liquor and which was handed over to the police by PW3 Dalwinder Singh, Sarpanch of the village. It was sent for chemical analysis to FSL Punjab, Chandigarh and it is proved by the FSL report Ex.PG that on analysis it was concluded that there was Methyle alcohol and Ethyle alcohol present in the contents of the half sized glass bottle. From that it follows that the liquor consumed by PW2 Harbhajan Singh was spurious. It contained the intoxicant mixture that amounted to methyle poison. Deceased Binder Singh had consumed the spurious liquor from same bottle purchased from the appellant in the company of PW2 Harbhajan Singh.

As regards, sale of the spurious liquor by the appellant is concerned, there is unimpeached testimony of PW2 Harbhajan Singh. He

appellant and purchased half sized bottle of liquor from him. He added that Kaka Singh and Balbir Singh were also taking liquor at the hut of the appellant. He and Binder Singh consumed liquor but he did not like the taste of the same and told the appellant that it didn't appear to be good, but the appellant insisted that it was good and he had brought the same from the office where he was working. He further stated that while coming back home, he brought the remaining liquor in the half sized bottle with him to his house. PW2 was cross examined by the appellant at length but he could derive nothing from him which could cast a shadow of doubt on his credibility. The statement of PW2 was duly corroborated by PW3 Dalwinder Singh who had handed over the half sized bottle containing remaining liquor brought home by PW2 Harbhajan Singh to the police. From the statement of PW2 Harbhajan Singh, it is also proved that Balbir Singh and Kaka Singh, the other two persons who died the same day had purchased and consumed the spurious liquor sold by the appellant.

The argument of learned counsel for the appellant that the quantity of the liquor in the half sized bottle stated by PW3 Dalwinder Singh was not in consonance with the quantity of liquor found in the half sized bottle received for analysis by the FSL, is devoid of merit. PW2 Harbhajan Singh stated that there was about one peg left in the 'half sized bottle' which he had brought home. The version of PW3 Dalwinder Singh was also that it was half sized bottle and he stated that there was about 1/4th of 'bottle of liquor' in the bottle which he took from the house of Harbhajan Singh and gave to the police. 1/4th of the bottle of liquor would almost come to one peg/250 ml of liquor which PW2 and PW3 stated was present in the 'half sized bottle' handed over to the police.

Indeed, PW3 Dalwinder Singh stated that the half sized bottle of liquor handed over by him to the police was not sealed in his presence but that appears to be a result of loss of memory. PW11 Inspector Bhupinder Singh testified that the half sized bottle containing some liquor which looked like spirit and its colour was white, was handed over to him by Dalwinder Singh. The bottle was sealed by him with seal having initials 'BS' and was taken into possession vide memo Ex.PE which was attested by Dalwinder Singh. During his statement PW3 Dalwinder Singh identified his signatures on the memo Ex.PE. The memo contains a specific recital that the bottle had been sealed by the Investigation Officer with seal bearing letters 'BS'. Further, PW7 Head Constable Rupinder Singh, by way of his affidavit Ex.PM and PW8 Constable Gurjiwan Singh through his affidavit Ex.PN proved that the case property when deposited with the MHC was sealed with seal having letters 'BS' and that so long the case property remained in the Malkhana or then during transit for being deposited with FSL, the seals remained intact and were not tampered with. The FSL report Ex.PG contains specific note that the articles received in the office had seals intact. Since the link evidence is complete, there remains no scope for the doubt that the case property was tampered with.

PW1 Niranjn Singh, paternal uncle of deceased Balbir Singh was not a witness to purchase of liquor consumed by Balbir Singh, but his categorical deposition was that he had gone to the house of his nephew Balbir Singh who had told him that he was having stomach ache ever since he had consumed the substance purchased by him from the appellant. It was also stated by him in his statement Ex.PA which formed the basis of First

hospital, Balbir Singh had told him that the liquor purchased by him from the appellant on 03.10.2001 was different in taste from the liquor earlier purchased by him and that he had fallen ill after he had taken that liquor. He also stated that after death of Balbir Singh his body had turned black. PW1 had the information given to him directly by deceased Balbir Singh prior to his death. The statement of PW1 Niranjn Singh was corroborated by PW2 Harbhajan Singh who had seen Balbir Singh and Kaka Singh taking liquor at the hut of the appellant.

The defence set up by the appellant that he was falsely implicated because of party friction in the village, has no base to stand on. Perusal of the testimony of PW1 Niranjn Singh, complainant, PW2 Harbhajan Singh and PW3 Dalwinder Singh would show that not a single question/ suggestion was put to either of the said witnesses relating to the Panchayat election or party friction in the village. It was apparently an after thought story presented as defence version by the appellant by examining DW1 Kewal Singh. The appellant and the witnesses are residents of the same village. It is not the statement of DW1 Kewal Singh that he was not in the village when the occurrence took place. He admitted that prior to appearing in the Court, he had never approached any higher authority to complain against false implication of the appellant. Nothing substantive could be produced or stated by him to prove that PW1 Niranjn Singh, PW2 Harbhajan Singh and PW3 Dalwinder Singh, who were all from different families, had any reason to feel hostile against the appellant and depose against him.

In the above premise, it is held that the evidence led by the

appellant had committed culpable homicide not amounting to murder by selling spurious liquor to the deceased persons. Accordingly, the judgment of conviction recorded by learned Trial Court is upheld. As regards sentence awarded to the appellant, it appears to be adequate. Thus, there being no merit in the appeal, it is hereby dismissed.

The appellant is on bail in this case, his bail/ surety bonds shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convict arrested and commit him to prison for serving the remaining period of sentence and shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The Registry shall keep track of the submission of compliance report and put up the papers, whether the reports are received or not within the time frame, immediately after the expiry thereof.

(SNEH PRASHAR)
JUDGE

27.08.2016.

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Whether speaking/ reasoned : **Yes**

Whether Reportable : **Yes**