

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. S-944-SBA of 2004

Date of Decision: 08.04.2016

The State of Punjab

...Appellant

Versus

Joginder Singh

...Respondent

Coram: Hon'ble Mrs. Justice Raj Rahul Garg

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters? Yes
3. Whether the judgment should be reported in the Digest?

**Argued By: Mr. Surjeet Singh Chaudhary, Deputy Advocate General,
for the appellant-State.**

**Ms. Loveleen Dhaliwal, Advocate
for the respondent.**

Raj Rahul Garg, J.

1. This appeal is directed against the judgment dated 13.09.2003 rendered by learned Additional Sessions Judge, Patiala whereby accused-Joginder Singh @ Shaku was acquitted giving him benefit of doubt.

2. Briefly, the prosecution case is like this; that on 17.08.2000, Deepa son of Sher Singh lodged report Ex. PC with the police to the effect that on 15.08.2000 his brother-in-law namely Joginder (accused) and sister Pinki came to his house on account of *Rakhi* festival. On 16.08.2000, they were to go back to their village-Sangatpura (Punia). At about 4.00 PM, Joginder started beating his sister Seema. On this, complainant Deepa and his wife Pinki and sister-in-law Deepo Devi wife of Roshan Lal came to her rescue. On this,

Joginder gave a leg blow in the stomach of his wife Pinki, after leaving his sister. As a result of leg blow, Pinki fell on the 'Pahwa' of the cot from the abdomen side. At that time, his wife was carrying an 8-8½ months pregnancy. His wife suffered severe pain in her stomach. Complainant and his father-in-law Beli Ram got her admitted in Samrita Nursing Home, Court Road, Rajpura for treatment. Pinki gave birth to a dead baby in the evening at about 4.00 PM. As per complainant, his child has expired on account of leg blow given by Joginder in the stomach of his wife and due to her fall on the cot. Complainant further explained that his elder brother Roshan Lal was away in the relations. After asking him, while they were going to give information to the police, police met him on Basantpura Bus Stand. On this information, ruqa was sent to the police station for registration of the case whereupon formal FIR Ex. PC/4 was recorded. Rough site plan of the spot was prepared as Ex. PD. Statements of witnesses were recorded. Dead body of still born child was brought from Samrita Nursing Home by the complainant party and was lying in the room of their residential house. Inquest report Ex. PE was prepared. Dead body of the child was sent for post-mortem with written request. Dead body was got identified from Shanno Devi and Reshma Devi. After post-mortem of the dead body of the child, HC Aroor Singh produced before Investigating Officer one sealed parcel bearing seals of the doctor. The same was deposited with the MHC of police station with the seal intact on the same day. By moving an application Ex. PF, opinion of Dr. Samrita Kaur of Samrita Nursing Home was sought which is Ex. PF/1. On 24.08.2000, accused-Joginder was arrested. On request Ex. P2, doctor of APJ Hospital, Rajpura gave opinion Ex. PH. After

completion of necessary investigation, the challan was put in the Court against the accused.

3. Finding a prima-facie case against the accused for committing offence punishable under Section 316 of the Indian Penal Code, accused was charge-sheeted accordingly to which he did not plead guilty but claimed trial.

4. After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded wherein accused denied each prosecution allegation and pleaded his innocence and false implication. It was also alleged that he has been involved in the false case due to matrimonial dispute.

5. After hearing both the counsel for the parties and appraising the entire evidence and material on record, the learned trial Court recorded the impugned judgment of acquittal dated 13.09.2003.

6. Against the aforesaid judgment of acquittal, the State has come up in this appeal before this Court with the grouse that the learned trial Court has not appreciated the evidence in true perspective and further that the trial Court has ignored the most clinching medical evidence as well the oral evidence available on the file against the accused leading to his conviction.

7. I have heard Mr. Surjeet Singh Chaudhary, Deputy Advocate General, Punjab, learned counsel for the appellant-State and Ms. Loveleen Dhaliwal, Advocate, learned counsel for the respondent besides appraising the entire material and evidence on record.

8. Learned State counsel has drawn my attention towards the statement of Dr. Manpreet Sodhi PW-1 who examined Pinki wife of Deepa on

18.08.2000 and also conducted the post-mortem on the dead body of the baby of Pinki wife of Deepa, caste-Bazigar, resident of Basantpura, Rajpura. From the statement of PW-1, learned State counsel pointed out that baby was having haematoma as per the injury described in the post-mortem which is as follows:

“1. A haetoma 3.5x2 present beneath the scalp over right parietal region extending upto occipital bone on right side. On dissection, a haematoma of brain was present on the parietal region of both the sides. There was no mark of external injury seen on scalp. Right and left lung collapsed. Send for histopathological examination for evidence of intra-urine death.”

9. Thus, with this injury, it is proved on the file that accused gave a leg blow on the abdomen of Pinki resulting which haematoma appeared on the head of the child. Further referring to the statements of PW-2 Jaimal Singh, PW-3 Seema, PW-4 Pinki and PW-5 Deepa, it was argued that all these witnesses have categorically deposed that accused gave leg blow to Pinki who was having pregnancy of 8-8½ months. After receiving leg blow, she fell on the 'Pahwa' of the cot resulting which she became unconscious and started bleeding and thus a still child was born. In order to prove that Pinki delivered a dead baby he also referred the statement of Dr. Samrita Kaur PW-7 in whose clinic the child took birth. Thus, with this evidence available on the file, it was argued by learned State counsel that oral as well as medical evidence prove that accused-Joginder was guilty of causing miscarriage.

10. On the other hand, Ms. Loveleen Dhaliwal, Advocate, learned counsel for the respondent argued at length that the medical evidence is not in consonance with oral evidence led by the prosecution and even the histopathological report, in order to establish the cause of death of child, is not

produced on record by the prosecution which goes to show that it was not in favour of the prosecution. With non-production of histopathological report, the actual cause of death of child cannot be said to be established. Even there are discrepancy regarding cot as PW-2 Jaimal Singh deposed that it was a wooden cot. It was not a folding bed. It was made of *pattedar nawaar* whereas Seema PW-3 deposed that cot was made of iron which was taken into police possession. If the cot was taken into police possession then the same should have been produced in the Court as well but so has not been done. Even, it is not the prosecution case that the cot was taken into police possession. Even there is discrepancy regarding place of occurrence. PW-2 Jaimal Singh deposed that the occurrence took place in the courtyard of the house whereas per Seema the occurrence took place in the fourth room of the house. Pinki also followed Seema. Seema as PW-3 deposed that police came on the spot on the same day. The police came within one minute. The police came of its own. Pinki who is the star witness of the prosecution deposed as PW-4 that the police arrived after hearing their noise because the police post was just near their house. Police had taken her to hospital at village-Chamaru. She became unconscious immediately after the foot blow given by the accused whereas per Investigating Officer ASI Kanwaljit Singh as PW-6 deposed that he came to know about the incident in question on 17.08.2000 when Deepa got recorded his statement Ex. PC by going to the Police Post-Basantpura, PS-Rajpura. Thus, with this evidence on record, it was argued by the learned defence counsel that the judgment of acquittal recorded by the trial Court is neither perverse nor misreading of evidence and the appeal filed by the State is liable

to be dismissed.

11. From the above discussed statement of Pinki PW-4, it is evident that on hearing their noise, police reached the spot of its own as the police post was just near their house. Even Seema PW-3 also deposed that police came within one minute. The police came of its own. Under these circumstances, if police had reached the spot at that very moment and Pinki was taken to hospital at village-Chamaru, there would have been evidence on the file in this regard. But, there is no evidence on the file in this regard. Dr. Samrita PW-7 deposed that on 17.08.2000 at 1.00 PM patient Pinki was admitted to hospital with labour pain since 11.00 PM on 16.08.2000. This statement of doctor negates the statements of Seema that she was taken to hospital at village-Chamaru by the police. There is no reference in the statement of PW-7 regarding taking of Pinki to some hospital at Chamaru nor Pinki was referred by any such hospital. Not only this, PW-7 also deposed that Pinki was '*Dai*' handled since 11.00 PM. During the course of her cross-examination, she deposed that no police personnel approached her in respect of this case. There was no injury on the still born child. There was no injury on the person of patient. She further deposed that it was a normal delivery as per her examination of the patient. No abnormality of any kind was found. Pinki delivered a dead baby at 3.04 PM. Thus, as per evidence laid by the prosecution, Dr. Samrita Kaur PW-7 is the first one who attended Pinki. She had medically examined Pinki and reported no injury either on the person of patient or on the baby. With the absence of police at the hospital of Dr. Samrita further speaks volumes about the fact that it is not a police case. Had the occurrence taken place in the manner as stated

by the prosecution and police reached at the spot on the day of occurrence itself and took Pinki to hospital, the police must have also contacted this doctor and must have been present in her hospital. In fact, as per PW-7, Pinki was taken to this doctor on 17.08.2000 at 1.00 PM. Where was Pinki before that, i.e. Between 4.00 PM on 16.08.2000 upto 1.00 PM on 17.08.2000. The link is missing which creates serious doubt regarding genuineness of the present case. Had Pinki started bleeding at the spot, there was no escape for the family members and even with the police to take Pinki to the hospital. In that eventuality, the case of Pinki must not have been '*Dai*' handled. Only in normal cases villagers do get the deliveries done through '*Dais*'. The statement of Investigating Officer ASI Kanwaljit Singh PW-6 further creates doubt regarding genuineness of the prosecution case, when he deposed that the dead body of still born child was brought from Samrita Nursing Home by the complainant party and was also lying in the room at the residence of the complainant-Deepa. Had the police reached the spot on 16.08.2000, then such like situation would not have been there. This part of the statement of Investigating Officer further shows that police did not go to the spot on the day of the occurrence nor took Pinki to the hospital. Rather, when police visited their house, dead body of still born child was lying in the room of the residence of complainant Deepa. Under these circumstances, prosecution case cannot be said to be free from doubt.

12. Though, Dr. Manpreet Sodhi PW-1 proved the post-mortem report of baby of Pinki as Ex. PB, yet, he deposed that the cause of death would be given after report of histopathological examination. Admittedly, the report of

histopathology was not received nor produced on record by the prosecution. In the absence of the same, cause of death of baby could not be said to have been proved. For this reason as well, it cannot be said that baby of Pinki had died on account of alleged leg blow given to Pinki by the accused.

13. Besides above, the contradictions appearing in the statements of witnesses as pointed out by the learned defence counsel also carry weight.

14. For the reasons recorded above, finding that the impugned judgment dated 13.09.2003 is neither perverse nor misreading of the facts, this appeal being without any merit is ordered to be dismissed.

(Raj Rahul Garg)
Judge

08.04.2016.

Waseem Ansari