

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

CRA-D-337-DB of 2004 (O&M)
Date of Decision:- 09.01.2017

Jasmail Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE DARSHAN SINGH

Present:- Mr. A.P.S.Mann, Advocate for the appellant.
Ms. Ritu Punj, Addl. A.G. Punjab for the State.

S.S.SARON, J.

The appeal has been filed by Jasmail Singh-appellant against the judgment and order dated 04.03.2004 passed by the learned Additional Sessions Judge, Ludhiana convicting and sentencing him for the offence punishable under Section 302 of the Indian Penal Code ('IPC' – for short) and Section 27 of the Arms Act. The appellant was sentenced to undergo life imprisonment; besides, pay fine of Rs.5,000/- and in default thereof undergo rigorous imprisonment for 3 months for the offence under Section 302 IPC. He was also sentenced to undergo rigorous imprisonment for 5 years; besides, pay a fine of Rs.2,000/- and in default thereof undergo rigorous imprisonment for one month for the offence under Section 27 of the Arms Act. Both the sentences were ordered to run concurrently.

FIR in the case was registered on the statement of Balraj Singh, complainant on 19.10.2000. According to Balraj Singh-complainant his father Jasmail Singh i.e the appellant, was spending heavy amounts in drinking liquor. On the date of incident i.e. 19.10.2000, the mother of the complainant namely Malkiat Kaur (deceased in the case) had stopped him from drinking. After that Jasmail Singh went towards his fields. The mother of the complainant at about 2.30 p.m. was preparing meals in the kitchen. The complainant with his wife Kulwinder Kaur was standing nearby. They were conversing amongst themselves. In the meantime Jasmail Singh came from the side of the fields and quietly brought his licensed 12 bore gun. He announced to his mother that on the said day she had stopped him from drinking and he was annoyed with her, therefore, he would not spare her life. On saying this he fired from the 12 bore gun on the back of the head of Malkiat Kaur while she was preparing the meal. Blood started oozing out from her head. She took support of the wall. The complainant and his wife Kulwinder Kaur raised an alarm while Jasmail Singh-appellant along with his gun ran away towards the fields and his wife died at the spot. The appellant was arrested and sent up for trial.

The learned Additional Sessions Judge, Ludhiana after considering the evidence and material on record convicted and sentenced the appellant in the manner as mentioned above.

According to the office note Jasmail Singh-appellant has died. Learned counsel appearing for the appellant submits that he has also been informed of his demise.

Section 394 of the Code of Criminal Procedure ('CrPC' – for short) relates to abatement of appeals. In terms of sub-Section (1) thereof every appeal under Section 377 or 378 CrPC is to abate on the death of the accused and in terms of sub-Section (2) every other appeal under Chapter XXIX except an appeal from a sentence of fine is to finally abate on the death of the appellant. In terms of the proviso where an appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relative may, within thirty days of the death of the appellant, apply to the appellate Court for leave to continue the appeal; and if leave is granted, the appeal is not to abate. Section 377 CrPC relates to appeal by the State Government against sentence and Section 378 CrPC relates to appeal in case of acquittal. The present appeal is against conviction and would fall under Section 374 (2) CrPC. Therefore, in terms of Section 394 (2) CrPC every appeal under Chapter XXIX CrPC is to finally abate on the death of the appellant unless a 'near relative' within thirty days of the death of the appellant, applies for leave to continue the appeal and if leave is granted, the appeal is not to abate.

The office note regarding death of the appellant is dated 7.11.2016. The appellant has probably died much earlier than that and no application has been received from a 'near relative' of the deceased seeking leave to continue the appeal. Besides, the FIR had been lodged by the son of the deceased for the death of his mother. Therefore, it may have been felt that there was no need to continue the appeal.

Keeping in view the fact that the appellant has died, the present appeal stands abated in terms of Section 394 (2) CrPC.

Accordingly, the appeal is disposed of as having abated.

(S.S.SARON)
JUDGE

(DARSHAN SINGH)
JUDGE

January 09, 2017
mohan

Note:

Whether speaking /reasoned:	Yes / No
Whether Reportable	: Yes / No