

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1119-MA-2014

Date of Decision: November 14, 2017

Gurdev Singh

.....Applicant

Versus

Narinder Singh and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDHIR MITTAL**

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| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Mr.Jasbir Singh, Advocate for the applicant.

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SURYA KANT, J.

The instant application under Section 378(4) Cr.P.C. has been filed by Gurdev Singh son of Sarwan Singh seeking leave to appeal against the judgment dated 15.04.2014 passed by learned Additional Sessions Judge, SAS Nagar, Mohali, whereby his complaint under Sections 302, 148, 149 and 120-B IPC filed against the respondents has been dismissed. The facts may be noticed briefly.

[2] Dilbagh Singh (since deceased) was the only son of the applicant, who did not return home on 23.03.2000 till late evening. While searching him, the applicant went to the '*Phirni*' of the village and saw that his son was lying on the '*katcha*' place and he was surrounded by the respondents. The complainant took his son into his lap and cleaned his face. It is alleged that son of the complainant told him that Narinder Singh, Raja Singh, Jagtar Singh, Bachittar Singh and Teja Singh had administered some

poisonous substance to him by mixing in liquor and made him to drink

forcibly. Meanwhile, Rajinder Singh, Raja Singh and Beant Singh slipped away from the place and brought a scooter and they made his son to sit on the scooter and left the place. The complainant got perplexed and started crying when one Mohinder Singh Sohi son of Basta Singh brought the appellant to his house. The complainant -applicant went to the house of Jagtar Singh son of Rajinder Singh and inquired about his son but later on he learnt that his son Dilbagh Singh had expired in PGI, Chandigarh on 24.03.2000. Thereafter, allegedly under the pressure of the village Panchayat, the complainant-applicant made a statement to the Police Inspector that his son Dilbagh Singh had got intoxicant while spraying insecticide in the fields and hence died. The complainant, his wife and daughter-in-law Gurpreet Kaur wife of late Dilbagh Singh gave affidavits attested by Tehsildar to the Police Inspector to the same effect. The complainant-applicant further alleged in the complaint that he had lost his power to think due to shock of death of his son and that is why the affidavits were given. After meeting Mohinder Singh Sohi son of Basta Singh when the complainant was convinced that his son was killed by administering poison which was mixed with liquor, and thus, he was killed intentionally in connivance with each other by the respondents-accused, then the criminal complaint was filed.

[3] On consideration of the preliminary evidence, the accused were summoned under Sections 302 and 120-B IPC. From the prosecution side the complainant-applicant appeared as PW1, Dilbgah Singh son of Nasib Singh as PW-2, Dr.S.P.Mandal, Assistant Professor, Department of Forensic

[4] The statement of the accused under Section 313 Cr.P.C. was recorded in which they denied the allegations and pleaded innocence. In defence evidence, the respondents examined six witnesses besides producing the documents comprising enquiry report conducted by S.P.(D) and the death summary of Dilbagh Singh as Mark-D2. Learned trial Court formulated the following three questions to be answered:

- “1. Whether accused agreed to do an illegal act of administering poisonous substance in the liquor of Dilbagh Singh (deceased) son of Gurdev Singh and made him to drink, with intention to kill him?
2. Whether accused administered poisonous substance to Dilbagh Singh (deceased) mixing it in the liquor and forcibly administering him and thereby committed murder of Dilbagh Singh (deceased) by intentionally or knowingly caused his death?
3. Whether there is delay in lodging the FIR, if so, its effect?”

[5] The trial Court has observed and rightly so that according to the statement of the complainant-applicant (PW1), his son Dilbagh Singh (since deceased) died on account of inhaling of pesticide spread by him on Cauliflower and dead-body of Dilbagh Singh was identified by Gurdev Singh (PW1). The postmortem examination on the dead-body was conducted on 24.03.2000 and Viscera was sent to the Chemical Examiner and its report was received vide Ex.PW2/B whereupon FIR under Section 306, 34 IPC was registered. The statement of the complainant-applicant-Gurdev Singh (Ex.PA) was recorded and after scanning the report and statements etc., the Superintendent of Police(D), District Rupnagar who held

enquiry into the incident, recommended the cancellation of FIR. The Sub

Divisional Judicial Magistrate, Kharar, accepted the cancellation report vide order dated 14.12.2000. Thereafter the cancellation report was presented in the trial Court, who vide order dated 17.04.2002 held that since the offences are exclusively triable by the Court of Sessions, hence, the cancellation report was returned back to be filed again in the Court of learned Sessions Judge, Ropar. When notice of the cancellation report was sent to complainant-applicant-Gurdev Singh, he made a statement that he had already filed a private complaint, therefore the cancellation report be also clubbed with the private complaint and the same was ordered accordingly.

[6] Learned trial Court has minutely examined the statement made by the complainant-applicant, who is the star prosecution witness (PW1) as also the statement of PW2-Dilbagh Singh and Dr.S.P.Mandal, who appeared as PW3. The trial Court has found that from the testimony of Dr.S.P.Mandal, it stands established that the cause of death was due to 'aluminium phosphide', a pesticide and poison which was said to have been consumed by the deceased for which he was referred to the PGIMER, Chandigarh. PW1 has mainly relied upon the information passed on to him by Mohinder Singh Sohi, who allegedly witnessed the incident, but neither Mohinder Singh Sohi came into the witness box nor the chit (a small piece of paper) on which he statedly wrote the incident has been proved on record in accordance with law. Learned trial Court has further found inordinate delay in initiation of action by the complainant-applicant as a fatal blow to his case.

[7] There is no eye-witness account to the occurrence. No liquor

report. The complainant-applicant and his family members themselves earlier made statements to the police authorities regarding the cause of death, namely, inhaling of poisonous substance while spreading it on the Cauliflowers.

[8] The motive alleged by the complainant-applicant, namely, that the respondents have planned to kill his only son as they had an eye on his property, is too far fetched as it cannot be said that in the absence of any male issue, the property of the complainant-applicant would have certainly go to them only.

[9] The complainant-applicant's explanation for the delay in changing the statement at a highly belated stage does not inspire confidence as it was after over three years of the occurrence that he came out with the allegations of forcibly poisoning his son as the cause of his unfortunate death.

[10] In these facts and circumstances, it is difficult to accept the version of the complainant-applicant, to bring the alleged guilt of the respondents beyond any doubt. Taking into consideration the totality of the circumstances, we do not find any ground to interfere with the impugned order passed by the trial Court.

[11] Dismissed.

(SURYA KANT)
JUDGE

November 14, 2017
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(SUDHIR MITTAL)
JUDGE

- 1. Whether speaking/reasoned ?**
- 2. Whether reportable ?**

Yes/No
Yes/No