

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

Crl. Appeal No.S-1496-SB of 2013 (O&M)

Date of Decision: March 21, 2018

Amarjit Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Veneet Sharma, Advocate
for the appellant.

Ms.Ruchika Sabherwal, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Punjab, challenging the judgment of conviction dated 26.04.2013 and order of sentence dated 27.04.2013 passed by learned Addl. Sessions Judge, Amritsar, whereby he was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of seven years and to pay fine of ₹10,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of six months under Section 304 Part-II IPC.

The brief facts of the prosecution case as noted down in the judgment passed by learned Addl. Sessions Judge, Amritsar, are as under:-

“2. The prosecution story, in brief, is that a news was published in the newspaper Daily Ajit on 3.7.2009 regarding custodial death of prisoner Sukhchain Singh in Amritsar Jail. Thereupon an inquiry was marked by SSP, Amritsar to

Sh.Manvinder Singh, DSP City-I, Amritsar. During inquiry, Manvinder Singh, DSP City-I, Amritsar went to the dead house of Shri Guru Tegh Bahadur Hospital, Amritsar where the dead body of deceased Sukhchain Singh was lying. He recorded statements of HC Harjinder Singh, HC Sukhwinder Singh, Ranjit Singh, Harbhajan Singh, Inderjit Singh, Paramjit Singh, Partap Singh, Harbhej Singh and others. DSP City-I Maninder Singh along with DSP(Jails) inspected the Barrack No.6 of Central Jail, Amritsar. In the jail, he recorded statements of Satnam Singh, Gurdeep Singh, Vikram Masih, Nirmal Singh and others. He also recorded the statement of Dr.Gurdial Singh, Medical Officer, Central Jail, Amritsar, Pharmacist Ruby Kumar and also of the accused HC Amarjeet Singh. In the inquiry report Ex.PW30/B), DSP City-I Sh.Manvinder Singh concluded that accused Warden HC Amarjeet Singh was on duty in the jail and he took out Sukhchain Singh from the Barrack and due to their minor conflict, the accused caused injuries on the person of Sukhchain Singh and then Sukhchain Singh was taken to hospital in the jail and subsequently referred to Civil Hospital, Amritsar, where he was declared dead. On 3.7.2009 ASI Anil Kumar prepared inquest proceedings Ex.PW25/A) of deceased Sukhchain Singh. He recorded statement of Harbhajan Singh father of deceased, on which he prepared police proceedings (Ex.PW25/C). He gave an application (Ex.PW25/D) for conducting post mortem of dead body of deceased. That post mortem of the dead body of Sukhchain Singh was conducted by the Board of Doctors. After post mortem of deceased, his clothes were taken into police possession vide recovery memo (Ex.PW25/E). Thereafter ASI Anil Kumar handed over viscera to HC Shashpal along with rode no.199/21 dated 7.7.2009 who deposited the same with Pathology department on the same day.

3. *that on 7.7.2009, on the basis of inquiry report received in the police station by SHO SI Shivdarshan Singh of Police Station Sadar, Amritsar, he made his endorsement (Ex.PW23/C) and then registered formal FIR (Ex.PW23/B) u/s.304 of IPC against accused HC Amarjeet Singh. Thereafter, investigation was brought into action by SI Shivdarshan Singh. On 8.7.2009 he alongwith other police officials went to the Central Jail, Amritsar and prepared rough site plan (Ex.PW23/D) of the place of occurrence with correct marginal notes. He also recorded the statements of various jail inmates who had seen the occurrence namely Mandeep Singh alias Sonu, Satnam Singh, Gurdeep Singh, Jasbir Singh alias Sonu, Nirmal Singh, Harbhajan Singh, Ranjit Singh. On the basis of investigation conducted by SHO Shivdarshan Singh, it transpired that on 2.7.2009 Deputy Superintendent, Central Jail, Amritsar, chekced the hostel. He found that barrack No.6 of hostel No.10 where Sukhchain Singh was*

lodged was not clean. That Sukhchain Singh was undergoing life imprisonment in criminal case bearing FIR No.143 of 2004 u/s.302, 204 read with Section 34 of IPC pertaining to police station Sadar, Tarn Taran. That accused Amarjit Singh who was the warden of that barrack, asked Sukhchain Singh to clean the barrack. Sukhchain Singh told Amarjit Singh that he is not well and having chest pain. Accused Amarjit Singh got annoyed and gave fist blows in the chest and abdomen of convict Sukhchain Singh who was not feeling well at that time. Sukhchain Singh started vomiting blood after being beaten by accused. Initially he was treated in the jail hospital and when the condition of Sukhchain Singh became serious and he was shifted to Civil Hospital, Amritsar, where he was declared dead.

The accused was arrested on 5.9.2009. After necessary investigation, challan was presented against the accused-appellant. On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 304 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Kewal Krishan, PW-2 Jasbir Singh @ Sonu, PW-3 Nirmal Singh, PW-4 Jaswinder Singh, PW-5 Gaurav Kumar, PW-6 Baldev Singh, PW-7 Mandeep Singh @ Sonu, PW-9 Satnam Singh, PW-10 Gurdip Singh, PW-11 Jagtar Singh, PW-12 Harbhajan Singh and PW-13 Ranjit Singh. All these witnesses have not supported the prosecution version and have turned hostile. PW-15 Dr.Vijay Kumar Vohra, tendered into evidence his affidavit Ex.PX, copy of post-mortem report Ex.PW15/A, report of histopathologist Ex.PW15/B, copy of their opinion Ex.PW15/D. He found following injuries:-

- 1. On dissection of the chest, a 8.5 x 3.5 cm dark reddish brown contusion was present on the inner aspect of left side of chest wall in its lower part, overlying the 7th, 8th and 9th ribs. The 9th rib was fractured with infiltration of blood and clotted blood was present.*

The pleural cavities, both the lungs, heart and large blood vessels were NAD. On dissection of the abdomen, the peritoneal cavity had about 2.5 litres of fluid and clotted blood in it of dark red colour, which spilled out on opening of the peritoneal cavity. The stomach was NAD with about 20 CC of fluid present, no abnormal smell was present. The small and large intestines, pancreas, both kidneys, bladder, pelvic cavity tissues and bones and genital organs were NAD. The spleen was enlarged in size with a span of 18.5 cms. A 9 x 6 cms Y-shaped laceration was present on the posterolateral aspect of the spleen. Another laceration of 3.5 x 2.5 cms was present on the posterior surface of the spleen. Clotted blood was present at the sites of laceration. The weight of spleen was 270 Gms.

The probable time between death and post mortem examination was about 24-36 hours. The cause of death in this case was haemorrhage and shock due to laceration of the spleen as a result of injury No.1. The injury was ante mortem in nature. The manner of causation of injury was unnatural. After the receipt of histopathology report, the doctor gave the opinion as under:-

- 1. Injury no.-1, as described under column 3 is of ante mortem origin (as already mentioned in the opinion column of post mortem report) and it can be as a result of fall. It is also possible that this internal injury (injury no-1) may be sustained without any external evidence of bruise or any other injury.*
- 2. The laceration and clotted blood in the spleen can be caused to the spleen if the spleen is enlarged due to disease and if the deceased sustained an internal injury due to fall before death.*
- 3. It is possible for the diseased spleen to have lacerations as per the suggested manner.*
- 4. As per report of the pathology department, spleen was enlarged and this enlargement was as a result of malaria and the features found on the diseased spleen are not only as a result of disease.*
- 5. The injury no.1 is not sufficient in ordinary course of nature to cause death.*

6. *The actual cause of death in this is Haemorrhage and Shock due to laceration of spleen as a result of injury no-1, which is likely to cause death.*

PW-19 Dr.Mukhtiar Singh, mainly deposed that on 02.07.2009, he was posted as Medical Officer in Central Jail, Amritsar and Ruby Kumar was working as a Pharmacist in the jail Hospital. At about 7.45 a.m., when he was coming to his duty, Ruby Kumar called him as the patient was sick and was lying in the deori of the jail. At the same time, Dr.Manjit Singh also reached there. They checked the concerned patient Sukhchain Singh. He was asthmatic and he was in gestering stage and pre-medication was given to him by Dr.Manjit Singh and Ruby Kumar Pharmacist was asked to ride the escort so that the patient can be taken to the hospital. He further deposed that patient was referred to the Civil Hospital by them and on reaching Civil Hospital, patient was declared dead by the doctor. PW-28 Dr.Manjit Singh deposed the same facts as deposed by PW-19 Dr.Mukhtiar Singh. PW-8 Vikram Masih mainly deposed that on 02.07.2009, he was lodged in Central Jail, Amritsar in hostel No.10, barrack No.6 room No.1. He had gone to the hospital in the jail premises to see Sukhchain Singh, who was brought there by three or four persons in the deori and his statement was recorded. In cross-examination, this witnesses stated that Sukhchain Singh @ Bhupa died due to his illness. PW-14 Inderjit Singh, younger brother of Sukhchain Singh deceased, deposed regarding identifying the dead body of Sukhchain Singh. PW-16 Head Constable Santokh Singh deposed regarding depositing of parcel in the malkhana. PW-17 Head Constable Harvinder Singh mainly deposed regarding arrest of the accused.

PW-18 Head Constable Shashpal deposed regarding depositing of viscera

with the department of Pathology. PW-19 Constable Harjinder Singh deposed that on 02.07.2009, he along with Sukhwinder Singh Warden, Dr.Mukhtiar Singh and Dr.Manjit Singh took Sukhchain Singh to Civil Hospital, where he was declared dead. PW-20 Head Warden Jaswinderpal Singh deposed that on 02.07.2009, he was posted as Incharge of Guard. He brought the summoned record and deposed that on that day, HC Amarjit Singh accused was the lunger Incharge and his duty hours were from 4.00 a.m. to 12.00 p.m. and 3.00 p.m. to 6.00 p.m. He produced the photocopy of the original record and proved the same. PW-21 Ruby Kumar, Pharmacist mainly deposed the same facts as deposed by Dr.Mukhtiar Singh and Dr.Manjit Singh. PW-22 Bashambar Dass, Head Warden mainly brought the record pertaining to duty of accused Amarjit Singh, which he produced before the Investigating Officer. PW-23 SI Shivdarshan Singh, SHO, Investigating Officer, deposed regarding registration of the FIR and recording of statements of some of the witnesses. PW-24 SI Harminder Singh, SHO deposed regarding arrest of the accused on 05.09.2009 and preparation of challan after completion of investigation. PW-25 ASI Anil Kumar deposed regarding conducting inquest proceedings in this case. PW-26 ASI Waris Masih deposed that he was posted as Record Clerk in Police Station. The Investigating Officer enquired from him about the viscera report of Sukhchain Singh and he disclosed him that report has already been deposited in the Court of JMIC, Amritsar. PW-27 SI Shamsheer Singh mainly deposed regarding partial investigation conducted by him and recording of statements. PW-29 Sulakhan Mal mainly brought the service record of Head Constable Amarjit Singh. PW-30 DSP Manvinder Singh, City Batala deposed regarding inquiry report. He deposed that inquiry was

marked by SSP to him. As per the directions, he went to the dead house of Shri Guru Tegh Bahadur Hospital, Amritsar where the dead body of deceased Sukhchain Singh was lying. He recorded statements of some police officials along with some private witnesses i.e. Ranjit Singh, Harbhajan Singh, Inderjit Singh etc. There were no visible marks of injury on the person of deceased. Thereafter, he reached Central Jail, Amritsar and inspected Barrack No.6. He recorded statements of Satnam Singh, Gurdeep Singh, Vikram Masih, Nirmal Singh and many others. He also recorded the statement of Dr.Gurdial Singh, Medical Officer, Central Jail, Amritsar, Pharmacist Ruby Kumar and also of the accused. During his thorough inquiry, he came to the conclusion that accused HC Amarjit Singh, who was on duty in the jail, took out Sukhchain Singh from the Barrack and due to their minor conflict, accused caused injuries on the person of Sukhchain Singh and he was taken to the hospital in the jail and from there, he was referred to Civil Hospital, Amritsar, where he was declared dead. PW-31 Sh.Varun Nagpal, Judicial Magistrate Ist Class, deposed regarding inquest proceedings, regarding inquiry into the death of Sukhchain Singh and deposed that it is prima facie proved from oral and documentary evidence led on the record that all or any one of the jail official in whose custody Sukhchain Singh remained on the fateful day are/is responsible for causing his death by fracturing his ribs which further resulted into laceration of spleen and consequently convict died due to haemorrhage and shock.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent and his false implication in the present case. He further

pleaded that deceased Sukhchain Singh was suffering from Malaria and his spleen was enlarged due to disease and he had received the injury as a result of fall and due to this, his spleen was ruptured. He also pleaded that an inquiry was conducted by Sh.Baljit Singh Randhawa, SP(HQ), Amritsar and he was found innocent and in this regard, police challan under Section 173 (8) Cr.P.C. was submitted in the Court.

In defence, accused-appellant examined DW-1 Arvinder Kaur, who deposed that she moved an application for an inquiry to SSP, Amritsar. On her application, inquiry was conducted by SP H.Q. Amritsar Sh.Baljit Singh Randhawa and her husband was found innocent and in this regard, challan under Section 173(8) Cr.P.C. was submitted in the present case. DW-2 Inspector Upkar Singh also deposed that Amarjit Singh was found innocent and on the basis of the inquiry report, he submitted challan under Section 173(8) Cr.P.C. DW-3 Baljit Singh Randhawa, ADCP, who conducted inquiry, deposed that he found Amarjit Singh as innocent and challan under Section 173(8) Cr.P.C. was submitted by Inspector Upkar Singh.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant accused as stated above.

Aggrieved from the above-said judgment of conviction and order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellant argued that no evidence has been led by the prosecution against the accused. He further argued that learned trial Court has wrongly convicted and sentenced the accused-appellant on the basis of the inquiry report and statements of the witnesses recorded under Section 161 Cr.P.C. He next

argued that statement under Section 161 Cr.P.C. cannot be treated as substantial or corroborative piece of evidence. Learned counsel for the appellant, therefore, argued that there being merit in the present appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that keeping in view the medical evidence, inquiry report conducted by DSP Manvinder Singh holding accused guilty and in view of other evidence, the prosecution has duly proved its case. Learned State counsel, therefore, argued that there being no merit, the present appeal should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

From the perusal of the record, I find that all the material witnesses including the eye witnesses have turned hostile and have not supported the prosecution case. There is no witness in whose presence the occurrence took place. There is not even a single witness who has deposed against the accused qua the occurrence. I have gone through the judgment passed by learned trial court. Learned trial Court has relied upon the statements of the witnesses recorded under Section 161 Cr.P.C., inquiry report and medical evidence. The statement under Section 161 Cr.P.C., in no way, can be treated as evidence. When the witnesses have come to the Court and have deposed on oath in the Court and have not supported the prosecution version and have turned hostile, the accused-appellant cannot be convicted on the basis of statements recorded under Section 161 Cr.P.C. The statement under Section 161 Cr.P.C. can only be used for the purpose of confronting the witness. Statement under Section 161 Cr.P.C. even

report submitted by PW-30 DSP Manvinder Singh, in which DSP recorded the statements of the witnesses and on the basis of those statements, he gave report against the present accused but none of the witness, whose statement was recorded by the DSP Manvinder Singh, has supported the prosecution version. Therefore, only on the basis of inquiry report, accused-appellant cannot be convicted. This inquiry report is to be proved by bringing evidence before the Court. Rather, PW-30 DSP Manvinder Singh has deposed in his statement that no external injury was found. The Board of Doctors have also stated that injury can be result of fall. The accused-appellant has also produced defence evidence by examining DW-3 Baljit Singh Randhawa, who conducted inquiry and found present appellant as innocent and challan under Section 173 (8) Cr.P.C. was filed, which supports the defence version of the accused-appellant. Further, learned Judicial Magistrate, who also conducted inquiry, in his statement has stated that either all of them or any of the police official has caused injury. He has not given report specifically against the present appellant.

In view of the evidence produced by the prosecution, I find that prosecution has failed to prove the guilt of the accused beyond doubt. There is no cogent evidence on record against the accused-appellant to connect him with the crime and to prove beyond doubt that he caused injuries to the deceased.

Keeping in view the above discussion, I find that the judgment of conviction dated 26.04.2013 and order of sentence dated 27.04.2013 passed by learned Addl. Sessions Judge, Amritsar, are not as per law and the same are set aside. Appellant Amarjit Singh, is acquitted of the charged

framed against him.

Therefore, finding merit in the present appeal, the same is allowed. Since, appellant Amarjit Singh, is on bail, his bail/surety bonds stands discharged.

March 21, 2018	(INDERJIT SINGH)
Vgulati	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	No