

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5695-2016
Date of Decision: 08.05.2018

Preet Mohan Singh

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Manbir Singh Basra, Advocate,
for the petitioner.

Mr. J.S. Walia, Sr. D.A.G., Punjab.

Mr. DPS Randhawa, Advocate,
for respondent nos. 2 and 3.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner has challenged the order dated 22.03.2012, passed by the Judicial Magistrate Ist Class, Batala, as also the order passed by the revisional Court (Additional Sessions Judge, Gurdaspur), on 05.01.2016.

By the first order, the Magistrate has summoned respondents no. 2 and 3 herein, upon a complaint having been filed by the petitioner, alleging therein the commission of an offence punishable under Section 302 IPC, on account of the death of Tarlok Singh, the father of the petitioner.

As per the impugned order of the JMJC, the complainants' case is that on 23.01.2016, he along with his father, and mother (Balbir Kaur) were present at his house situated in the fields. At about 12:30 p.m., when his father had gone towards the "motor" on the southern side of the fields, thereafter upon hearing

Nitin
18.05.2018
I attest to the accuracy and
integrity of this document

some noise, the complainant and his mother came out of their house and saw respondents no. 2 and 3 abusing Tarlok Singh, with respondent no. 3 allegedly having pushed Tarlok Singh, and thereafter having given him a kick blow on his head, with respondent no. 2 Piara Singh having given a blow on the left knee of Tarlok Singh.

Upon seeing the complainant and his mother approaching the spot, the respondent-accused are stated to have fled away from the spot.

Tarlok Singh was taken to Bhatia Hospital, Qadian, where he was declared dead; and FIR No. 09 was registered on the same date (23.01.2006), at Police Station Qadian, Police District Batala, alleging therein the commission of an offence punishable under Section 302 IPC, read with Section 34 thereof.

It was also stated in the complaint that the heart of the deceased was sent for pathological examination to the Medical College at Amritsar, but allegedly it was replaced with another sample of a uterus, the allegation of such replacement again also made against the accused in order that 'important link evidence be destroyed.'

The complainants' grievance further was that despite numerous applications filed before the police authorities, no action was taken, thereby leading to the complaint being filed.

The impugned order of the Magistrate further goes on to state that in preliminary evidence, the following witnesses were examined.

1. Dr. Charan Kamal as CW-1;
2. Waryam Singh, Kanungo, Halqa Qadian, as CW-2;
3. the complainant himself, as CW-3;
4. Dalbir Kaur as CW-4 and
5. Constable Balwant Singh as CW-5.

A small summary of the testimonies of the aforesaid witnesses has been given in paragraph 4 of the impugned order.

It has also been, thereafter, stated that qua the FIR registered, a cancellation report was presented, but with the complainant having made a statement to the effect that he did not agree with the said report and the case therefore, sent for further investigation, with again a cancellation report filed before the Court, to the effect that from the statements of the witnesses, as recorded by the police, and other material gathered during investigation, it transpired that no such occurrence took place; and in fact Tarlok Singh had slipped in his fields, after which he was taken to a Registered Medical Practitioner, who advised that he be admitted to hospital, where he was declared to have been brought dead.

Having noticed the above, the impugned order thereafter goes on to state as follows:-

“Evidence brought on record by the complainant does not even remotely established on record any ingredient of the offence punishable under Section 302 IPC justifying summoning of the accused for committing murder of deceased Tarlok Singh. It is considered case of the complainant that only a push was given by Harjit Singh and thereafter he gave a kick blow on the head of deceased Tarlok Singh. The only attribution to accused Piara Singh that he gave kick blow on the left knee of Tarlok Singh. Admittedly none of the above named accused were armed with any weapon. Neither in the complaint nor in the evidence complainant or the eye witness examined by him deposed regarding any intention on the part of the accused to kill Tarlok Singh much less any knowledge attributable to the accused that injuries have been intentionally caused by them or would in all probabilities cause death or was likely to cause death. Mere giving of a push and one single blow by the accused who was not armed with any weapon and against whom

intention to kill is not attributed is not sufficient to even prima facie conclude that death of deceased Tarlok Singh resulted on account of intentional causing of bodily injuries by the above named accused with the knowledge that such injuries was likely to cause death. In all probabilities, in normal course of events giving of a mere push or a blow as is in the case in hand it cannot be anticipated that it must cause death or a bodily injury likely to cause death.

It is also pertinent to mention that when FIR was got registered by the complainant it was mentioned in the FIR that his father was suffering from heart problem, on account of which, after conducting postmortem no opinion was given by the doctor regarding cause of death of deceased Tarlok Singh, rather CW-1 mentioned in the postmortem report Ex. PA/1 that final opinion regarding cause of death would be given after receipt of report of Chemical Examiner, Patiala and HPE report from Amritsar. No subsequent opinion regarding cause of death of deceased Tarlok Singh claimed to have been given by CW-1 is on record. Only in his deposition he has deposed that head injury was sufficient to cause death in the ordinary course of nature. Ex. PB report of Chemical Examiner, Patiala, merely reveals that no poison was detected in viscera, heart and lungs of the deceased sent for chemical examination. In the given context at the most sufficient grounds exists for proceeding against accused only for the commission of an offence punishable under Section 323/34 IPC.”

As regards the commission of an offence punishable under Section 201 IPC, the impugned order states that no witness was examined by the complainant to depose on those lines, with CW-1 (the aforementioned doctor) also not having testified that the contents of the parcel sent to Amtirsar were found to be different, the testimony in fact saying that the “report was awaited”.

Thus it was held that the version of the complainant, that the accused, in connivance with police officials, changed the sample (heart) with a sample of a

uterus, was not *prima facie* also established, on the basis of any material available on record.

Consequently, holding as above, eventually respondents no. 2 and 3 herein were summoned by that Court alleging against them the commission of an offence punishable under Section 323 read with Section 34 of the IPC.

The revisional Court also, after discussing the entire matter, including the cancellation report submitted by the police, eventually came to the same conclusion, that since there was no subsequent opinion regarding the cause of death of Tarlok Singh, as given by the doctor while testifying as CW-1, his testimony could at best be taken to be that the head injury was sufficient to cause death in the ordinary cause of nature.

As regards the offence punishable under Section 201 IPC, it was stated that simply because respondent no. 03, Harjeet Singh, was an official in the Police Department, it could not be stated that he was in such a position that he could manage to send the uterus in place of heart, for the purpose of examination.

Consequently, the revision petition was dismissed.

Learned counsel for the petitioner has drawn attention of this Court to the testimony of CW-1, Dr. Charan Kamal, which is being reproduced herein in *toto*:-

“On 24.01.2006 at 12:45 p.m. I conducted post mortem of Tarlok Singh, son of Nafain Singh, resident of Basrawan under Police Station Qadian. The body was brought by HC Griffan Masi 2981 and LC Satnam Singh 3006 and was identified by Jaspal Singh, Ex. Sarpanch Basrawan and Avtar Singh, son of Gurdip Singh, resident of Basrawan. The body was brought from fields of Tarlok Singh near Dera Basrawan. Body was received in mortuary on 23.01.2006 at 8 p.m. and time of receipt of police papers was 12:45 on 24.01.2006. The time of death according to police papers allegedly 3:30 p.m. on 23.01.2006. Body was wearing a

colour coat, white sweater, green check short, brown under jacket, red tie, grey pant, grey pyjama, black belt, brown shoes and light brown socks with white bandian. Post mortem rigidity was developed in all the four limbs and post mortem staining was present in dependent part in supine position. It was body of old Sikh male, about 5 feet and 11 inches in length. On external examination, there was abrasion 2 x 1 cm on the front of left knee joint and no evidence of other external injury. On dissection of the cranial cavity, the extra dural space was normal. Dissection of the durameter revealed sub dural hematoma in the upper part of cranial cavity over the cervical hemi space. Amount of blood was about 70 to 100 mls was present in the cranial cavity. Dissection of thoracic and abdominal cavity revealed no internal injury.

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All the injuries were ante mortem in nature. The head injury was sufficient to cause death in ordinary course of nature. I have also sent heart to Pathological Department, Amritsar on 24.01.2006 to rule out heart attack. But the report of the heart is still awaited. The final opinion will be given after receiving H.P.E., report from Amritsar. The part of heart was also sent to Patiala alongwith parts of other viscera. The report was normal and no poison was detected. In the light of Patiala report head injury was sufficient to cause death in ordinary course of nature. I have brought the original post mortem report which is of my hand and bears my signatures, which is Ex. PA, which is copy of post mortem report of the original. Ex. PB is the attested copy of the chemical examiner report from Patiala received by me. On 24.01.2006, the boxes of viscera was hand over to HC Griffan Masih 2981 against his signature on the post mortem to be delivered at Medical College, Amritsar and Medical College, Patiala at point Ex. PA/1.”

From the above testimony, learned counsel specifically draws attention to the first part of the cross-examination, wherein the doctor stated that the head injury was sufficient to cause death in the ordinary course of nature and

that he had also sent the heart to the Pathological Department to rule out a heart attack, but with that report still awaited.

Learned counsel therefore submits that once the doctor has testified to the effect that the head injury was sufficient to cause death in the ordinary course of nature and the complainant in any case having testified before the trial Court in terms of his complaint, which is also similar to the complaint filed by him before the police leading to the registration of the FIR, the Magistrate wholly erred in issuing summons only in respect of an offence punishable under Section 323 IPC.

Per contra, learned counsel for respondents no. 2 and 3 submits that with the police having submitted a cancellation report twice, stating therein that even the presence of respondents no. 2 and 3 at the spot was not established at the time of occurrence, and that in fact the deceased Tarlok Singh had slipped and fallen in the fields, the impugned order does not deserve to be interfered with in any manner.

He further specifically points to that part of the order of the learned revisional Court, as regards the allegation that Tarlok Singh was murdered, which reads as follows:-

“It is pertinent to mention here that at the time of registration of the FIR, the revisionist himself got recorded that Tarlok Singh (deceased) was suffering from heart problem, on account of which, after conducting postmortem, no opinion was given by the doctor regarding cause of his death. Rather it is evident that CW-1 mentioned in postmortem report Ex. PA/1 that final opinion regarding cause of death will be given, after receipt of report of chemical examiner, Patiala and H.P.E. report from Amritsar. It is further evident that no subsequent opinion regarding cause of death of Tarlok Singh (deceased) was given by CW-1, is on record. At the most, CW-1 testified that head injury was sufficient to cause death in the ordinary course of nature. As far as the report of

chemical examiner Patiala Ex. PB, is concerned, the same reveals no poison was detected in viscera, heart and lungs of the deceased, sent for chemical examination.”

Having considered the aforesaid arguments on both sides, though learned counsel for respondents no. 2 and 3 have vehemently argued that the respondents have been facing the agony of a complaint filed in the year 2005, therefore even the complaint itself should not have been entertained, in the opinion of this Court, without making comment on the actual merits of the case, either for or against respondents no. 2 and 3, first what is to be noticed is that the summoning order is never shown to have been challenged by respondents no. 2 and 3, with regard to the alleged commission of an offence punishable under Section 323 IPC (read with Section 34 thereof).

Hence, if the cancellation report was to be relied upon by the respondents in any manner to disprove even their presence at the spot, the first thing that should have been done by them was to challenge the summoning order even on that ground.

That not having been done and they having accepted the summons as regards the lesser offence, in the opinion of this Court, though I agree with learned counsel for respondents no. 2 and 3 that no offence *prima facie* at least under Section 302 IPC is made out, and therefore the impugned order cannot be assailed on that ground, however, with the allegation in the complaint being that respondent no. 3 had given a kick blow on the head of the deceased, with that repeated by him in his testimony as CW-3 in the preliminary evidence, and the doctor (CW-1) having testified at least in cross-examination that all injuries suffered were ante mortem in nature, and that the head injury was sufficient to cause death in the ordinary course of nature, *prima facie* in the opinion of this

Court, an offence punishable under Section 304 Part II may have been made out, which is something the learned courts below should have considered.

It is to be stated again here that summons having been issued by the Magistrate, in the complaint filed by the petitioner, obviously the presence of the accused *prima facie* was accepted by that Court, despite the cancellation reports filed by the police stating to the effect (as contended on behalf of the respondents before this Court), that the presence of at least one of the accused was not even established there.

Consequently, this petition is allowed and the impugned orders are set aside and the matter remitted to the competent Magistrate at Batala, to examine the matter afresh with regard to ordering the summoning of respondents no. 2 and 3 in respect of the commission of offences punishable under Section 304, 323 and 201 IPC, the doctor also having testified that he had actually sent the heart of the deceased for pathological examination, and the allegation being that in fact it was replaced by a uterus.

It is again made absolutely clear that even having ordered as hereinabove, whether or not the aforesaid offences are eventually made out against respondents no. 2 and 3, or not, would be a matter to be seen afresh by the competent Court, only taking into account what has been noticed in this order.

May 08, 2018
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes