

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

**CRA-D-892-DB-2002 (O&M)
Date of decision : 27.08.2019**

Kabal Singh

..... Appellant

versus

State of Punjab

..... Respondent

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE HARNARESH SINGH GILL**

Present : Mr. Parminder Singh, Advocate
 for the appellant.

Mr. H.S.Sullar, DAG, Punjab.

AJAY TEWARI, J. (Oral)

1. This appeal has been filed against the order dated 30.10.2002 passed by the Additional Sessions Judge (Adhoc), Amritsar whereby the appellant has been convicted and sentenced to undergo rigorous imprisonment of one year under Section 342 IPC and life imprisonment and fine of Rs.5,000/- and in default six months rigorous imprisonment under Section 302/34 IPC. Both the sentences were ordered to run concurrently.

2. As per the case of the prosecution a dispute had taken place between the deceased Gurdev Singh and one Lakhwinder Singh @ Lakha on 06.07.1996. A police complaint was filed by the deceased Gurdev

Singh against Lakhwinder Singh and both of them were summoned to the Police Station Kacha Pacca on 08.07.1996 where the police was able to prevail upon them to enter into compromise. After the compromise was hammered out they all had liquor in the premises of Police Station Kacha Pacca along with the appellant-who was the Sub Inspector and co-convict Teg Bahadur Singh (SHO). It is stated that after consuming liquor they left but Lakhwinder Singh did not reach home. On 11.07.1996 the wife of Lakhwinder Singh i.e. Kashmir Kaur accosted the deceased and directly accused him of having murdered her husband. It is further alleged that Lakhwinder Singh was friendly with one Mander Singh, then DSP Patti and that is why the police was very very keen to solve the case of his disappearance. On 14.07.1996, the dead body of Lakhwinder Singh was recovered from Canal distributory of Valtoha. It is further stated that on 14.07.1996 itself the deceased Gurdev Singh was produced in the Police Station Bhikhiwind. It is further alleged that Gurdev Singh was taken into illegal custody then and there. On 17.07.1996 the villagers went to the Police Station Bhikhiwind and saw the appellant and Teg Bahadur Singh aforementioned mercilessly beating Gurdev Singh and also saw that Gurdev Singh was weeping and crying. Thereafter on 24.07.1996 the family members of Gurdev Singh-deceased made an application to the Deputy Commissioner, Amritsar complaining about the illegal detention and torture of Gurdev Singh. On 25.07.1996 they were informed that Gurdev Singh had died. The appellant, Teg Bahadur Singh and Mander Singh were charged for the offence. Mander Singh was acquitted while the appellant and Teg Bahadur Singh were

convicted. Both originally filed appeals but Teg Bahadur Singh having died during the pendency of appeal his appeal was abated. During the trial the following evidence was led against them :-

“LC Raj Kumar PW/1, HC Mashhoor Singh PW/2, Sukhdev Singh PW/3, Karam Singh PW/4, Jagdev Singh PW/5, Dr. Jagdish Gargi PW/6, Jaswinder Kaur PW/7, ASI Suba Singh PW/8, ASI Lakhbir Singh PW/9, Ravinder Mohan PW/10, Surinderpal PW/11, MHC Sukhdraj Singh PW/12, C.Parveen Kumar PW/13, DSP Balwinder Singh Ramana PW/14, Harpal Singh ASI PW/15 and Preetinder Singh PW/16 and also tendered into evidence report of Chemical Examiner Ex.Px. Major Singh, Jarnail Singh, Sukhdev Singh @ Baldev Singh were given up by the prosecution as won over by the accused and Dr. Ashok Channana, Dr. Maridul Manjri, ASI Lakha Singh, Surinder Pal Singh SP were given up, they being unnecessary witnesses”.

3. The contentions of the learned counsel for the appellant are that in the original FIR specific allegations were made only against Teg Bahadur Singh and there was no reference to the incident of 17.07.1996 and it was only mentioned that Gurdev Singh had died due to police beatings. Moreover as per him it was proved on record that he was transferred on 21.07.1996 and he left charge to join his new place of posting on 22.07.1996. He has further pointed out that the Doctor who conducted the post mortem testified that the injuries on the deceased were 2-5 days old. Developing this argument he has further asserted that in the first place the testimony that the villagers saw Gurdev Singh being tortured on 17.07.1996 is not credible because even if police want to torture an accused person they are hardly likely to do it in public view.

Alternatively he has argued that even if that part of the testimony is to be believed yet the injuries which the appellant allegedly caused to the deceased on 17.07.1996 were not the cause of his death as opined by the Doctor. The appellant having been transferred and left charge on 22.07.1996 had no occasion to cause any injuries to the deceased after having been relieved from his charge and after having joined his new place of posting. As per learned counsel for the appellant, the allegation against the appellant has not been proved beyond reasonable doubt. To support his argument he has relied upon *Kailash Chand Vs. State of Rajasthan, 2018 All SCR (Crl.) 249*.

4. Countering this the learned State counsel has defended the judgment. He has argued that the extra interest which was taken by the appellant and Teg Bahadur Singh was due to the influence of Mander Singh who was closely aligned with Lakhwinder Singh deceased. At this point counsel for the appellant had interjected by saying that Mander Singh having been acquitted and the State having accepted his acquittal can not now turn around to implicate Mander Singh in the offence or to attribute any motives to Mander Singh.

5. In our considered opinion, the argument of the counsel for the appellant has to prevail. If the king-pin was Mander Singh then the State should have challenged his acquittal. By not challenging his acquittal, the State has accepted that the case against Mander Singh was not proved and once that is so it is hard to resist the conclusion that in any case after the transfer of the appellant he would have no interest in trying to extract a confession from Gurdev Singh. Even if we are to believe that

he was witnessed giving beatings to the deceased on 17.07.1996 the testimony of the Doctor clearly exculpates him by opining that the injuries were caused within the duration of 2-5 days of death. In the case of *Kailash Chand (supra)* one Radhey Shyam Darji along with two other persons, who was wanted in a theft case, was beaten in the police station and tortured as a result of which Radhey Shyam Darji succumbed to the injuries. Case of prosecution was based on the allegation of custodial and tortured death and as no sufficient evidence had been produced to show how and from where Radhey Shyam Darji was picked up and tortured and it has not been proved beyond reasonable doubt, the conviction was set aside.

6. Learned State counsel has tried to impress upon the seriousness of the offence where a person had died in un-natural circumstances in police custody but a feeling of revulsion against such an act can not take the place of proof. Death in police custody is a matter of shame for any civilized society but even in such a case the duty of the prosecution to prove it beyond reasonable doubt does not cease. In the present case, we have reasonable doubt that the appellant was involved in the death of Gurdev Singh in view of the circumstances pointed out above.

7. In view of these facts, the appeal is allowed and the appellant is acquitted of the charges. Personal bond/surety, if any, stands discharged.

8. Since the main case has been decided, the pending C.M. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

27.08.2019
pooja sharma-I

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