

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

CRR-2864-2009 (O&M)
Date of decision : 06.09.2019

Jagrup Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nandan Jindal, Advocate for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

ANIL KSHETARPAL, J. (ORAL)

Challenge through this criminal revision petition is to the correctness of the judgment passed by learned Sessions Judge, Patiala while deciding Sessions Case No.86 arising from FIR No.205 dated 13.05.2008 under Section 302 IPC, Police Station Sadar, Patiala.

Learned Sessions Judge, after appreciating the evidence, has found that the prosecution has failed to lead cogent and convincing evidence to prove the guilt of the accused beyond shadow of reasonable doubts and in fact, reasonable doubts exist in the prosecution case and hence, benefit of doubt has to go to the accused.

Detailed facts have been noticed by the Court, however, some facts are required to be noticed. Late Smt. Bachan Kaur, had died in a hospital on 12.05.2008. The present FIR was registered on the statement of

Jagrup Singh son of Late Smt. Bachan Kaur on 13.05.2008. It has been stated that Bachan Kaur was residing in a separate house although having 5 sons and 2 daughters. Allegations are that Kura Singh, accused, other son of Smt. Bachan Kaur wanted to get the land underneath the house in which she was residing and since she intended to give the said house to all her sons in equal share, therefore, accused had given beating to Bachan Kaur during night hours and even her golden earrings were taken away by Kura Singh. First informant next stated that all these facts were disclosed by late Smt. Bachan Kaur to his wife Kamlesh Kaur on the next day when she went there to serve tea. Initially, late Smt. Bachan Kaur was got treated in the village but on 01.05.2008, she was shifted to Rajindera Hospital, Patiala where she disclosed that she was given beating by her son-Kura Singh, to her nephew Gurnam Singh son of Puran Singh. Learned Sessions Judge, after recording evidence, found following facts:-

- 1) The case is based upon circumstantial evidence as there is no eye-witness.
- 2) Prosecution witnesses in their evidence have made lot of improvements.
- 3) Cause of death of late Smt. Bachan Kaur is not connected to the alleged beating given by the accused as she was operated and the cause of injury as stated by the Doctor is as under:-

“That from post mortem findings, reports of the Chemical and Histo Pathological examination of Viscera, the cause of death in the case noted above is pulmonary embolis possibly subsequent to injury on lower limb and precipitated by long stay in bed and old

age.”

- 4) First informant, when appeared in evidence, has stated that late Smt. Bachan Kaur was given beatings by Kura Singh-his brother on 01.05.2008 whereas Dr. Amandeep Kaur-PW2 has stated that when she examined Smt. Bachan Kaur on 01.05.2008, the injuries were 8-9 days old. The injuries which were noticed by the Doctor are extracted as under:-

- “1. Tenderness over the left buttock over its outer aspect. X-ray and ortho observation was advised.*
- 2. Reddish brown abrasion with healing from periphery, scab formed was present on the right of the head, 6 cm above the lateral end of right eye, associated with slight swelling. Advised surgical observation.”*

- 5) Still further, it has come in evidence that late Smt. Bachan Kaur had died due to Pulmonary Thrombo Embolism and the risk on account thereof occurs if general anthesia given at the time of surgery was for more than 30 minutes and also if post operative precautions are not taken by the patient. It is proved from the bed head ticket and the statement of the Doctor that general anthesia was given to late Smt. Bachan Kaur for more than 30 minutes and she did not cooperate after post operation.

This Court has heard learned counsel for the petitioner at length. He has submitted that learned Sessions Judge has erred in acquitting the accused as the Court has overlooked the dying declaration Ex.PQ recorded on 01.05.2008. Hence, he submits that the judgment passed by the Court is perverse.

This Court has carefully examined the argument of the learned counsel. The alleged statement Ex.PQ has not been proved. No evidence has been led to prove that the aforesaid statement was given by late Smt. Bachan Kaur on 01.05.2008. No independent witness was joined while recording the alleged statement. Alleged thumb impression of the deceased on the aforesaid statement has not been compared with the thumb impression of late Smt. Bachan Kaur. Still further, such evidence cannot be said to be fulfilling requirements of law as enumerated in Section 32(1) of the Indian Evidence Act, 1872. The aforesaid statement as noticed above was recorded on 01.05.2008, the day she was admitted in hospital. Still further, thereafter, she underwent a major surgery. There were post surgical complications. It was found by the Doctors that she died due to Pulmonary Thrombo Embolism.

This aspect can be examined from another angle. There is absolutely no explanation as to why the FIR was registered on 13.05.2008. There is no reason as to why the report was not lodged if the incident of beating had taken place 8-9 days before 01.05.2008. Still further, PW5 SI Sher Gir-the Investigating Officer who conducted the investigation, has stated that no eye-witness about the alleged occurrence of alleged beating had ever appeared before him and during investigation, he came to know that late Smt. Bachan Kaur died natural death. He further stated that death of Bachan Kaur was neither directly nor indirectly was result of alleged injuries. Neither he recorded the statement of any of the neighbour of Bachan Kaur in the village about the alleged injuries on the person of Bachan Kaur nor did he collect any evidence as to how Bachan Kaur

received injuries. He further stated that no evidence regarding removal of the alleged earrings was collected by him during investigation.

Still further, it is not disputed that remaining 4 brothers of the first informant had filed a suit and claimed their share in the property, therefore, the first informant had a strong motive to falsely implicate accused.

For the reasons stated above, this Court does not find any good ground to interfere in the elaborate judgment passed by the learned Sessions Judge wherein a reasonable and probable view has already been taken. Hence, the present criminal revision petition is dismissed.

06.09.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No