

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-841-DB-2004
Reserved on : 24.01.2020
Date of decision : 27.01.2020

Baljinder Singh alias Lovely and another

... Appellants

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mrs. Baljit Kaur Mann, Advocate
for the appellants.

Mr. H. S. Grewal, Addl. A. G. Punjab.

RAJIV SHARMA, J.

This appeal has been instituted against the judgment and order dated 14.09.2004 rendered by the Additional Sessions Judge, Gurdaspur, in Sessions Case no. 48 of 2002/2004 whereby the appellants were charged with and tried for the offence punishable under Section 302/34 Indian Penal Code (in short 'IPC'). The appellants were convicted thereunder and sentenced to undergo imprisonment for life and to pay a fine of Rs. 10000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of two years each.

2. The case of the prosecution in a nutshell is that PW-3 Kuldip Singh had lodged the report with SI Sowaran Singh on 25.06.2002 to the effect that his father Bur Singh had retired from service in 1989. He was running a shop of motor repair at Bus Stand Sohal. Bur Singh used to sleep

on the first floor of the shop. On 24.06.2002 he went to see his father in the

evening at about 8.00 P.M. Thereafter he went to sleep at his tubewell. On the next morning, he went to the shop of his father Bur Singh along with his bedding to place it on the first floor. He found the door of the *chobara* open. It was dark inside. The feet of his father were naked. He asked his father why he had not come to take bath on the tubewell. Thereafter, he removed blanket from the face of his father. He found his body in a pool of blood. There were injuries on the face, neck and chest. There was one electric bulb in the *chobara*. The electric bulb was removed and placed on the floor. He informed his brother Hardip Singh and uncle Charan Singh. Police visited the spot. Inquest report Ex.PC was prepared. The dead body was sent for post-mortem examination. The police took into possession one electric bulb after getting the finger prints developed from SI Karanjit Singh, Finger Print Expert. These were made into parcel and sealed with the seal bearing impression 'SS'. The parcels were taken into possession vide memo Ex.PQ. Rough site plan Ex.PR was prepared. He recorded statements of witnesses. On 26.06.2002 he recorded the statement of Salwinder Singh PW wherein he deposed that on 24.06.2002 he heard the conversation between the accused. According to him, Baljinder Singh said to Balwinder Singh that now Bur Singh will repair motors in heaven and now Balwinder Singh would have good work. He stopped his bicycle and asked what they were doing. The accused told him that they were planning to take liquor. On 16.07.2002 ASI Talwinder Kumar had taken the moulds of both the accused in the Court and had taken the mobile into possession vide memo Ex.PH. Specimen fingerprints of the accused were also taken by ASI Talwinder Kumar. Specimen fingerprints are Ex.PJ and Ex.PK. Investigation was

completed. Challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses. Statements of the appellants were recorded under Section 313 Cr.P.C. They denied the case of prosecution. The appellants produced one witness in support of their case. The appellants were convicted and sentenced, as noticed hereinabove. Hence the appeal.

4. Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove the case against the appellants.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

6. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

7. PW-1 Dr. Sudhir Kumar conducted the post-mortem examination. He noted the following injuries on the dead body:-

“1. An incised wound 8.5 x 4.0 cm on the left side of chest 6 cm below the left nipple.

2. An incised wound 6.0 x 1 cm on the left side of chest 2 cm above the injury no.1.

3. An incised wound 5.0 x 2.5 cm on the left side of the chest 5 cm above the left nipple.

4. An incised wound 5.0 x 2.5 cm on the left side of axilla on posterior half of the lower angle of left scapula.

5. An incised wound 5.0 x 2.5 cm just 7.5 cm below the injury no.4.

6. An incised wound 5 x 2.5 cm on the left side of

chest 3 cm above injury no.3.

Dissection of the left side of chest

The underlying bones of the chest of injuries no.1 to 5 were fractured. Injuries no.1 and 2 were puncturing the heart and all the injuries were puncturing the left lung. The chest cavity of left side was having clotted blood.

7. *An incised wound 5.0 x 2.0 cm on the right side chest 6.0 cm inner to right nipple.*

8. *An incised wound 5.0 x 2.0 cm on the right side of the chest 5.00 cm above the right nipple.*

Dissection of right side of chest

The underlying bone of the chest was fractured corresponding injury to right lung was present. The right side of the chest was having clotted blood.

9. *An incised wound 3.5 x 1.4 cm on mid and outer side of left side of neck.*

Dissection :- The underlying muscles of the neck were cut.

10. *Abrasion of 4.5 x 3.0 cm on the back of right hand in its outer half.”*

The cause of death was injury to the vital organ. The injuries were ante mortem in nature and sufficient to cause death in ordinary course of nature. Probable time that elapsed between injuries and death was immediate and between the death and post-mortem one day.

9. PW-2 Janak Singh prepared site plan Ex.PD.

10. PW-3 Kuldip Singh is the complainant. According to him, he

went to see his father in the evening of 24.06.2002 at about 8.00 P.M. Thereafter he went to sleep on his tubewell. On the next morning at about 5.00 A.M., he went to the shop of his father along with bedding. He found the door of the *chobara* open. It was dark inside. The feet of his father was naked. He touched his feet. He asked his father why he had not come to take bath on the tubewell. Thereafter, he removed blanket from the face of his father. He was lying in the pool of blood. There were injuries on the face, neck and chest. His father was dead. The fan was on whereas the electric bulb was removed. It was placed on the floor. He knew the accused. Balwinder Singh accused worked with his father for 15 years. He also used to sleep with his father.

11. PW-4 Salwinder Singh testified that on 24.06.2002 he went to village Sarspur to meet his relative. At about 11.30 P.M. he started for his village on a bicycle. He was coming on Dadwan road near Dhariwal. When he reached near the Sheller of Banarsi Dass, he saw Baljinder Singh and Balwinder Singh accused standing there. A scooter was also parked nearby. Baljinder Singh said to Balwinder Singh that Bur Singh will now repair motors in heaven and now Balwinder Singh would have good work. He asked them that what were they doing. They told him that they were planning to take liquor. Thereafter, he left for his village. In his cross-examination, he deposed that Kuldeep Singh was his co-employee. He did not inform the police on 24.06.2002 and 25.06.2002. He told about the incident on 26.06.2002. He told the police that he used to get repair motor from Balwinder Singh. He was confronted with his statement Ex.DA where it was not so recorded.

12. PW-5 Paramjit Singh deposed that he along with the police

party went to the place of occurrence. SI Sowaran Singh had shown him an electric bulb bearing finger prints which he developed. Bulb was taken into possession vide recovery memo Ex.PF. He admitted in his cross-examination that there were several people from the public collected at the spot.

13. PW-6 Constable Narinder Singh had taken the wooden box bearing seal impression 'SS' for examination at Phillaur.

14. PW-7 Constable Sanjeev Kumar led his evidence by filing affidavit Ex.PG.

15. PW-9 ASI Talwinder Kumar deposed that he moved application for taking the moulds of the accused. The moulds were taken by him of both the accused. He prepared the memo after making the moulds into parcel and sealed with the seal bearing impression 'TK'. The Magistrate attested the moulds. The moulds are Ex.P2 to Ex.P5. Specimen finger prints of accused were also taken. In his cross-examination, he deposed that he had not seen any application mentioning that Magistrate passed any order for taking the moulds.

16. PW-13 SI Sowaran Singh deposed that he recorded the statement of Kuldeep Singh vide Ex.PE on the basis of which FIR Ex.PE/2 was recorded. He went to the spot. He prepared inquest report. Dead body was identified by Sadhu Singh. Dead body was sent for post-mortem examination. He inspected the spot and took into possession one electric bulb after getting the finger prints developed from SI Karanjit Singh. On 25.06.2002 he lifted the moulds which were three in number and made into a parcel and sealed by him bearing impression 'SS'. The moulds are Ex.P7 to Ex.P9. He prepared rough site plan. He arrested accused on 30.06.2002. In

his cross-examination, he admitted that he recorded the statement of Salwinder Singh Ex.DA without any addition, alterations or omissions. He also admitted that in the FIR the names of accused were not mentioned. In column no.23 of the inquest report, this fact was not mentioned that electric bulb was taken into possession from the spot. There was no mention in the inquest report about taking into possession the moulds.

17. DW-1 Prem Dutt produced the attendance register of 25.06.2002. As per record, Salwinder Singh was present in the mill from 7.00 AM to 3.00 P.M. on 25.06.2002. He proved photo copy of attendance register for 25.06.2002 vide Ex.DK. The employees signed the attendance register. The signature of Salwinder Singh were appended in the register against the date 25.06.2002.

18. According to report of the Director, Finger Print Bureau, Phillaur, the nature, direction and sequence of each point has been indicated in its relevant circle. So many points of similarity could not be found to occur in the impressions of different thumbs and fingers. These are, therefore, identical or are of one and the same person, i.e. Baljinder Singh.

19. Ex.PQ is the FSL report. According to it, the impression of left naked foot on crime mould C-1 contained in parcel 'C' was from the left naked foot of suspect Balwinder Singh. The test impression of which has been provided on test mould T-1 contained in parcel 'T'. On the basis of evidence available from the impression of left and right naked feet on crime mould C-2 and C-3 contained in parcel 'C' and from the impression of left and right naked feet on test moulds T-2, T-3 and T-4 contained in parcel T stated to be of suspects, it was not possible to link them together.

20. Many people had assembled on the spot as per evidence on

record. It is difficult to believe that how PW-13 Sowaran Singh, Investigating Officer came to know that these foot prints were of accused Balwinder Singh even those were picked up from kacha portion near the ladder.

21. The case of the prosecution is that PW-3 Kuldip Singh went to see his father in the morning. He was found dead. Statement was recorded by the police vide Ex.PE. Neither in the statement nor in the FIR he had named the accused. The names of accused were revealed only after recording the statement of PW-4 Salwinder Singh vide Ex.DA. According to the contents of Ex.DA, Baljinder Singh was saying to Balwinder Singh that Bur Singh now will repair the motors in the heaven and now Balwinder Singh would have good work. In his statement recorded while appearing as PW-4, he has reiterated the same. However, PW-4 Salwinder Singh has not given the name of any relative to whom he had gone to see village Sarspur. In case he had heard conversation, he should have immediately informed the police, family members or any other person. In his cross-examination, he admitted that he knew Kuldip Singh being co-employee. If he was co-employee, he should have immediately informed Kuldip Singh about conversation which he heard on 24.06.2002. He admitted that he did not inform the police even on 24.06.2002 and 25.06.2002. In his cross-examination, he deposed that he came to village Sohal at 12 o'clock on 26.06.2002 where the police met him and his statement was recorded. Statement of PW-4 Salwinder Singh thus does not inspire confidence. The motive attributed is that Balwinder Singh had opened the repair shop in front of the shop of Bur Singh. However, it has come in the evidence of

PW-3 Kuldip Singh that Balwinder Singh was apprentice of his father and

used to sleep with him. The prosecution has also relied upon the report Ex.PQ qua finger prints of Baljinder Singh. It has come in the statement of the Investigating Officer that at the time of preparation of inquest report, recovery of bulb was not shown. The cause of death as noticed hereinabove, was injury to vital organs, i.e. lung and heart. The police had not recovered any weapon of offence in this matter. Accused were arrested only on 30.06.2002. The prosecution has failed to prove the case against the appellants beyond reasonable doubt.

22. Accordingly, the appeal is allowed. The judgment and order dated 14.09.2004 are set aside. Appellants are acquitted of the charges framed against them by giving them benefit of doubt. Bail bonds and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 27, 2020.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No