In virtual Court

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-23818-2020 (O&M)
Date of decision: 06.08.2021

Lakhwinder Jassal @ Vicky

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. H.S. Brar, Sr. Advocate with
Ms. Anshika Sharma, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

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ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this 2nd petition is for grant of regular bail in FIR No.12 dated 08.02.2019 under Sections 304/34 IPC (Section 302 IPC was added later on), registered at Police Station Goraya, Police District Jalandhar Rural, District Jalandhar; earlier one was dismissed as withdrawn with liberty to approach the trial Court vide order dated 17.02.2020.

On 15.10.2020, following order was passed by this Court: -

"As per the allegations in the FIR, registered at the instance of

Darshan Kaur, aged 60 years, she is married to one Sharan Dass @ Meet Ram, who is an old person and because of weakness of his leg, he used to walk with the help of two sticks. On the date of incident, she along with her daughter Tamanna and her husband, were present in their house whereas Vicky, who is son of the brother-in-law, parked his car on her gate. In the meantime, when she asked not to park the same, he came out of the car and when Sharan Dass @ Meet Ram, went outside with the help of his sticks, to raise a protest, the petitioner – Lakhwinder Jassal @ Vicky started giving abuses and snatched his sticks, which made him to fall down on the ground.

Thereafter, Pamma, who is brother of Vicky also came at the spot and both of them started giving beatings to her husband and caused injuries on the head and back of Sharan Dass @ Meet Ram and when she and her daughter tried to save him, they were also manhandled.

As per the post-mortem report, it was opined that the cause of death will be given after receiving the Chemical Examiner report.

As per the Viscera report, from the office of Chemical Examiner, it is stated that no poison was detected and the cause of death as per the post-mortem report, is "Mayocardial Infraction",

which is ante mortem in nature and sufficient to cause death. As per the affidavit of the Assistant Superintendent of Police, Sub-Division Phillaur, District Jalandhar (Rural), it is stated that on the basis of this opinion of the Chemical Examiner, a cancellation report is prepared and submitted before the trial Court, which is pending consideration.

Since in number of cases, where the cause of death is reported as "Mayocardial Infraction", which occurs mainly in the elderly persons, who are given injuries with fist blows and kick blows, etc. on their abdomen, chest or back, dies because of Mayocardial Infraction. Such type of injuries which are not visible being internal injuries are not reported either in the MLR at the first instance or in the post-mortem report, if the death occurs at the subsequent stage.

Therefore, it is difficult for the Courts to form an opinion despite specific allegation made by the eye-witnesses, of causing injuries with fist blows or kick blows, etc.

List again on 14.12.2020.

In the meantime, the Director General, Health Services, Punjab, is directed to constitute a Board of Senior Doctors, who are expert on the subject matter and submit a report regarding the opinion given in the Chemical Examiner's report for the cause of

death as "Mayocardial Infraction". The Board shall interpret if no external injury was reported in MLR/Post-mortem Report to the victim(s), even if the same is supported by eye-witness in the FIR or if the injuries are internal and are not visible in the MLR/post-mortem but it is complained in the FIR that fist or kick blows, have been given, "Mayocardial Infraction" amounts to natural death as in the instant case, the police taking it to be natural death has prepared a cancellation report. Moreover the Board will also suggest whether the Ultrasound Scan or any other scientific investigation, can be conducted in this regard to find out any internal injury while conducting the MLR/postmortem report.

Even in some cases where the FIR is registered at the instance of an injured person, (who later on died) and has given the history of assault, however, it is not noticed while conducting the MLR and post-mortem by just observing that no external injury is visible.

The report of the Board be submitted before this Court on or before the next date of hearing."

Thereafter, on 14.12.2020, Director General, Health Services, Punjab was directed to file an affidavit in compliance of the aforesaid order dated 15.10.2020. Again Director, Health and Family Welfare, Punjab was directed to file a fresh affidavit by constituting a Board of Doctors/Experts to

comply with the aforesaid orders.

For the sake of brevity, the facts, as noticed above, are not reproduced again.

Learned senior counsel for the petitioner submits that as per statement of complainant Darshan Kaur, it is stated that when her husband Sharan Dass @ Meet Ram asked petitioner Lakhwinder Jassal @ Vicky not to park the car in front of his house, he started abusing and snatched his stick/crutches, due to which her husband fell down. Thereafter, brother of Vicky namely Pamma came at the spot and they gave beatings to her husband on his head and back and ran away in the car. The incident was witnessed by her daughter Tamanna, who gave statement to the police on the date of incident and after death of her husband, Section 302 IPC was added.

Learned senior counsel for the petitioner further submits that the petitioner is in custody since 11.02.2019 and a period of more than 02 years and 04 months has passed; challan stands presented and a supplementary challan was presented by the police, after obtaining opinion of the Chemical Examiner, wherein the doctor has opined that deceased died due to heart attack. The opinion of the Medical Board reads as under: -

"1. There is no external mark of any injury.

2. Chemical Examiner's report No.2494 dated 07.05.2019 shows no poisoning.

3. In the PMR No.US/03/PMR/2019 dated 09.02.2019, it has been

mentioned that there is a big clot in left coronary artery."

Learned senior counsel for the petitioner has further submitted that in the affidavit of Director, Health and Family Welfare, Punjab, it is stated that the exact cause of death could not be ascertained by the Board of Doctors. It is also opinion of the Medical Board that a forensic expert is mandatory to evaluate the exact cause of death in the case of death due to "Mayocardial Infraction", as in the absence of forensic expert report, it is beyond the capacity of the Board to comment upon the exact cause of death, as in such cases, the heart could not be sent for histo-pathological examination.

Learned senior counsel has next submitted that in the subsequent affidavit of Director, Health and Family Welfare, Punjab, in paras No.4 to 16, it is stated as under: -

"4. That to answer the specific queries raised by this Hon'ble Court, the deponent is referring to "Medicolegal Manual" on "Manual of Instructions on conduct of Medicolegal Examination including Post Mortem Examination", issued by Govt. of Punjab. As per the "Medicolegal Manual" as stated above, specific guidelines have been issued for conducting the Post Mortem Examination. Clause 54 of "Medicolegal Manual" stating important guidelines for conducting the Post Mortem Examination is reproduced herein below for kind perusal of this Hon'ble Court:-

"54) Important Guidelines for conducting the PME:

a) Written request/ requisition along with copy of the inquest report from competent authority like police or magistrate. The Inquest Report include Forms 25.35(1) A, B or C, according as the deceased appears to have died (A) Sudden death from natural causes, (B) Unnatural death by violence and (C) Unnatural death by poisoning. Form (C) is filled in addition to Form (B).

b) Post-mortem examination is permitted from sunrise to sunset. (As per Hospital Manual of Ministry of Health & Family Welfare, Govt. of India 2002, section 15.12).

c) A receipt should be issued to the police official indicating the date and exact time of bringing the body in the mortuary. Prior to receipt of the police papers, it should be ensured that a tag indicating the name of police post with FIR/DD number has been put on the dead body by the police for purposes of identification and a completely filled request form has been submitted along with the inquest papers by the police officials.

d) PME should be carried out as early as possible in adequate light. Always avoid delay in performing PME. The PME report shall be prepared in prescribed format.

e) The identity of the dead body must be confirmed by the relatives/police before the start of the PME; always take signature/ thumb impression of at least two relatives/police in case of known bodies, and police officials in case the body is unknown. Identification marks in case of unknown bodies must be noted. Police may be advised to take photographs of the unknown deceased.

f) Medical officer should always try to study all available facts of the case prior to PME from inquest report, hospital record, if any, condition of the deceased before death for taking universal precautions in all cases & special precaution for self as well as staff of the mortuary in case of high risk infectious diseases like AIDS, rabies etc; in hospital death, the bed head ticket/summary of the death must be perused to know his clinical condition, treatment and terminal events etc;

g) Don't allow any unauthorized person in the mortuary while PME is going on.

h) Medical Officer should not borrow the version of the relatives or the police while giving opinion, which must be based objectively on the scientific evidence and observations available.

i) Prepare the PM report simultaneously and at the earliest and hand over a copy to the police immediately.

j) Hand over the PM report and other articles only to an authorized police official i.e. to the investigating officer of the case or any other official duly authorized by him.

k) Do not supply copy of the medico legal report/PMR to individuals other than the police officer investigating the case or immediate family."

5. That as per the above stated guidelines for conducting the Post Mortem Examination, every officer authorized to conduct the Post Mortem Examination is required to follow the guidelines issued by Government of Punjab. Clause 54(h) specifically states that a Medical Officer should not borrow the version of the relatives or the police while giving opinion, which must be based objectively on the scientific evidence and observations available.

6. That the deponent also seeks permission of this Hon'ble Court to reproduce the procedure of conducting Post Mortem Examination, which is also stated in the "Medicolegal Manual". Clause 59 of "Medicolegal Manual" is reproduced herein below:-

"59) Procedure for PME

a) Belongings – Always compare with the inquest papers. The clothes should be examined for any evidence of injuries,

struggle marks and stains;

b) External injuries – Examine from head to heel/toe, first front and then back aspect of the body, in a systemic way so as to see all the parts of the body. Details of the injuries in respect of type, size, location/situation, direction, edges, ends, colour changes/ healing process, surrounding area, foreign bodies, etc. be described/noted down in the PME. Also depict the seat of the injuries on the pictorial diagrams. The photographs of the injuries/parts may be taken with scale/measuring tape kept alongside.

c) Examination of the dead body should be thorough and complete. All the body cavities and the organs should be carefully examined even though the apparent cause of death has been found in one of them. Extensive mutilation may be avoidable.

d) The Post-mortem findings shall be recorded in the prescribed Performa/report preferably then and there. If any rough notes have been prepared, the same may be destroyed immediately.

e) Sample of blood (FTA/EDTA/Dried stain), molar teeth, plucked hair with roots, bones and deep red skeletal muscle may be collected in case of unidentified,

decomposed/putrefied dead bodies for identification by DNA. Coordinate with police to send the sample to authorized lab viz. State FSL or Central FSL.

f) When natural death is suspected to be the cause of death; relevant organs need to be preserved in 10% formalin solution for histopathological examination; and the same may be forwarded to Professor & Head of Pathology of the concerned Medical College. Any other test as required may also be got conducted.

g) Medical Officer should refer to standard text books to understand the procedures of conducting PME. Medical officers may seek help of forensic medicine specialists regarding PM/ML and court evidence.

h) Each page of the Post mortem report should bear PMR No./Date/Initials of the Medical Officer. One copy to be retained by Medical Officer, another copy to the police, further copies as required to accompany request for examination to Chemical Examiner/ FSL/ Pathology Deptt."

7. That as per the above stated clause 59 of "Medicolegal Manual", there are specific instructions and procedure for conducting the Post Mortem Examination. Clause 59 (b) specifies the examination of External Injuries. Clause 59 (c) also clearly

states that the examination of the dead body should be thorough and complete. A perusal of clause 59 of "Medicolegal Manual" shows that the officer authorized to conduct the post mortem report examines the dead body externally and internally as well. A copy of "Medicolegal Manual" regarding "Manual of Instructions on conduct of Medicolegal Examination including Post Mortem Examination" is attached as Annexure A-1. The Government of Punjab through Health and Family Welfare Department had also issued directions to all the concerned Medical Departments vide letter dated 17.01.2019 whereby it was specifically instructed to following the guidelines to be followed at the time of conducting the Post Mortem Examination and Medical Legal Examination. A copy of the letter dated 17.01.2019 is attached as ***Annexure A-2.***

8. That it is also relevant to mention here that for Post Mortem Examination of body, the autopsy must be complete, all the body cavities should be opened and every organ must be examined. The deponent seeks kind permission of this Hon'ble Court for reference to a book titled as "The Essentials of Forensic Medicine and Toxicology" written by Dr. K.S. Narayan Reddy and Dr. O.P. Murty. As per the settled Medical phrase and Book as stated above, Autopsy or Necropsy means Post Mortem Examination of a Body. Chapter-5 of the above stated book gives

definition and objects of "Medicolegal Autopsy". The objects as stated in Chapter-5 of "Medicolegal Autopsy" are reproduced herein below for the kind perusal of this Hon'ble Court: -

> *"**Objects: (1) To find out the cause of death, whether natural or unnatural. This is done by detecting, describing and recording any external or internal injuries, abnormalities and diseases. (2) To find out how the injuries occurred. (3) To find out the manner of death, whether accidental, suicidal or homicidal. (4) To find out the time since death. (5) To establish identity when not known. (6) To collect physical evidence in order to identify the object causing death and to identify the criminal. (7) to retain relevant organs and tissues as evidence. (8) In newborn infants to determine the question of livebirth and viability.**"*

9. That a perusal of joint reading of the "Important Guidelines for conducting the PME", "Procedure for PME" & "Definition of Medicolegal Autopsy and its Objects" makes it clear that the Post Mortem Examination is conducted by complete analysis of dead body through internal as well as external organs.

10. That as regard to the specific query in the order dated 15.10.2020, it is respectfully submitted that all injuries including

external as well as internal can be seen in Post Mortem Report, if guidelines and procedure to conduct the Post Mortem Examination, is followed by the concerned officer authorized to conduct Post Mortem Examination. However, as far as the procedure of Medicolegal Report is concerned, in that regard also, specific guidelines have been issued from time to time to follow the "Medicolegal Manual". Clause 10 of the "Medicolegal Manual" (A-1) describes the protocol for Medicolegal Report (MLR). The Clause 10 of the Medicolegal Manual is reproduced as under: -

"10) Protocol for the medico-legal report (MLR):

a) Consent - Written consent of the examinee (patient/injured) person is mandatory on the MLR. If the patient is less than 12 years, take the consent of the guardian/accompanying person and get his signature/thumb impression; consent is not required in case of accused person u/s 53 and 53A of CrPC.

b) If an unconscious / semiconscious patient is brought in emergency by family / guardian, the consent shall be taken from them. In case of refusal by the patient / family / guardian, then the medical officer shall mention the same on the admission register/MLR taking their signature (informed

refusal). Police information must be sent in all medicolegal cases. Consent is not required for police information.

c) The preliminary entries like name of the hospital/institute, MLR No., with date, name of the doctor with full designation and place of posting, exact date and time of examination, name of the injured with complete address age/sex, occupation, name of the accompanying person and relation with the injured, name and number of the constable/HC with police post/police station and district must be entered before the examination of the injured is started. If admitted, write the ED/CR/Adm No. with date and name of the ward. Consent is a must before proceeding for examination for medicolegal purposes; otherwise informed refusal must be recorded.

d) Identification marks: Two identification marks preferably on the exposed parts of the body be recorded for comparing the same for identification in the court while giving the evidence. Moles and common surgical scars should be avoided. If marks on any other parts are not available, then thumb prints (labelled) may be taken.

e) Brief history of the incident be taken from the injured/ accompanying person regarding time, manner (accidental /

suicidal / homicidal / intentional) with weapon / means caused and place of event of injury / poisoning, and the time sequence of symptoms / incapacitation developed etc. (when/where/why/what/whom) This will help the medical officer in proceeding with the examination.

f) Standard General Physical Examination (GPE) be recorded which may include important relevant positive findings like level of consciousness, pulse, BP, respiration, temperature, pupils, posture, gait, speech, bleeding through natural orifices like ear, nose, mouth, rectum, vagina, etc., paralysis/weakness, urinary/faecal retention/incontinence, smell etc. The condition of the clothes be recorded regarding their disorder, buttons (intact, undone, or torn), tears, cuts whether coinciding with a particular injury, presence of stains like blood/mud/sand/weeds/faecal/seminal, foreign matter, stippling, burns etc.

g) Particulars of injuries - The person should be examined in a systematic way from front as well as back aspect from head to heel/toe. Depict the site of the injury on the pictorial diagram. The following particulars of each and every injury must be recorded.

h) Type of injury like abrasion, contusion/bruise, wounds (lacerated, incised, punctured, etc.), fracture, dislocation, burns etc.

i) Dimensions (preferably in centimeters) of each injury should be noted down in respect of its length, breadth and depth wherever possible.

j) Location of injuries should be described for exact placing later on and include left/right, front/back, anterior/posterior, lateral/medial, and distance from nearest landmarks.

k) Additional features like direction, shape whether circular, oval, spindle, triangular, elliptical, crescentic, stellate, etc., margins/edges of wounds should be examined (by hand lens wherever necessary), regular or irregular having bruise on its vicinity, floor must be examined by just retracting the edges for seeing the tissue in it. Foreign matter like grease, dirt, gravel, straw, coal, paint, glass, weed, metal, pellets, bullets, wads, clothes, hair etc. should be reported and must be preserved for further analysis.

l) Age / Duration of injuries. Time elapsed between infliction of injuries and examination. This should be as per examination / changes like colour, bleeding and healing

process and not merely as per history.

m) Nature of injuries: Simple/Grievous: with justifying reasons, keeping in mind section 320 IPC. In doubtful cases, they should seek the advice of the Civil Surgeons/SMO/Forensic Medicine expert/relevant specialist, but opinion regarding nature of injury is to be furnished by the Medical Officer conducting the medicolegal examination. If the Grievous injury falls in the ambit of clause 8 (endangering life) then it should be supported by proper documentation, e.g. surgeon opinion/notes (clinical or operative) etc. The medical officer is solely responsible for declaring the nature of Injury.

n) Kind of weapon (324/326 IPC): Weapon used include blunt or sharp or firearm, and other opinions are also possible, like teeth, fire, heat, poison, corrosive, explosive, animal, etc. as the case may be.

o) Medical Officers may specify that an injury is self-inflicted / self-suffered only in those cases in which this is quite obvious, preferably with justifiable reasons. They should, however, refrain from committing themselves on this point in doubtful cases. (High Court Rules & Orders, Chapter 18, Medico-Legal Work, Part D, Appendix B (b),

No. III & X).”

11. That a perusal of Clause 10 of “Medicolegal Manual” shows that a registered Medical Practitioner (Medical Officers/Doctors) should prepare the Medicolegal Report, wherever, requested/consented. Every officer authorised to conduct Medicolegal Report is bound to state the brief history, particulars of injury, type of injury, dimensions of injuries, location of injuries, duration of injury, nature of injuries and kind of weapon used for such type of injury etc. Therefore, both Medicolegal Report and Post Mortem Report are conducted by officers authorized to conduct in an extensive manner. However, the “Medicolegal Manual” itself prescribes the procedure/option of re-examination in case of Medicolegal/Post Mortem cases. Clause 39 of “Medicolegal Manual” states about the conditions for re-examinations. It specifically states that re-examination in case of Medicolegal/Post Mortem cases shall not be conducted except on written request of Investigating Officer, supported by orders of Higher Authority (Judicial Magistrate, District Magistrate, Senior Superintendent of Police, Civil Surgeon), however, in present case relating to FIR No.12 dated 08.02.2019, under Sections 304, 34, 302 IPC registered at Police Station Guraya, no request of the Investigating Officer was received by

the concerned Medical Officers for re-examination. It is also further stated in clause 38 (b) that re-examination should be done by the Board of Doctors.

12. That it is also worth mentioning here that the officer authorized to conduct Medicolegal Report or Post Mortem Report is not under any statutory obligation to consider the statement of eyewitness at the time of conducting Medicolegal Examination or Post Mortem Examination.

13. That the deponent also seeks permission of this Hon'ble Court to answer another query raised in the order dated 15.10.2020 with regard to the fact that whether the Ultrasound scan and any other scientific investigation, can be conducted in this regard to find out any internal injury while conducting the MLR/Post Mortem Report. In this regard, it is relevant to mention here that as far as Ultrasound scan is concerned, the same is possible only in case of Medicolegal Examination and it cannot be conducted on a dead body as the tissues become dead. As far as the other scientific investigation is concerned, the opinion of Medical Board was taken on this subject by considering the Post Mortem Report dated 09.02.2019 of Sh. Sharan Dass, it has recommended and has given the opinion that a Forensic Expert is mandatory to evaluate the exact cause of death and in such cases, the heart could have

been sent for Histopathological Examination. The report dated 12.12.2020 of the Medical Board is attached as ***Annexure A-3.***

14. That therefore, as far as 'any other scientific investigation' is concerned, the answering deponent also recommends 'Histopathological Examination of heart or other required organs' to determine the proper cause of death in PMR cases. The deponent has already issued specific instructions to all the Civil Surgeons of Punjab in this regard. The specific instructions have been issued to conduct x-ray/Ultrasound/CT Scan and necessary tests and investigation to know the nature of injuries also. It is further submitted that the deponent also issued instruction regarding Training/Sensitization of all the doctor who are performing Medicolegal and Postmortem duties at district level. The copies of letter bearing No.2021/1592-1613 dated 21.01.2021 is annexed as ***Annexure A-4*** *for the kind perusal of this Hon'ble High Court.*

15. That the deponent had also constituted another Medical Board and had taken its opinion with regard to Post Mortem Report dated 09.02.2019 of Sh. Sharan Dass. The Medical Board has opined that in the PMR itself, it has been mentioned that there is a big clot in left coronary artery and it has also been opined by the newly constituted Medical Board vide its report dated

18.01.2021 that a big clot in left coronary artery can lead to sudden cardiac arrest. The copy of opinion of Medical Board dated 18.01.2021 is attached as ***Annexure A-5.*** *Therefore, to know the exact cause of death in this case, the heart could have been sent for Histopathological Examination. The Histopathological Physical Examination is actually a Microscopic Examination and it identifies the normal to abnormal detection of tissues of an organ. However, it is respectfully submitted that in view of absence of external and internal visible marks of injuries and in view of the fact that no poison was detected in the Chemical Examiner of viscera of the deceased, no new result or possibility of any injury could have been checked even with the help of scientific examination i.e. Histopathological Examination. However, as already stated, the answering deponent has already issued specific guidelines to all the Civil Surgeons of Punjab to conduct the MLR and PMR by following certain instructions as stated in the letter itself (A-4).*

16. That therefore, the only scientific investigation, which could be conducted is Histopathological Examination i.e. Microscopic Examination of an Organ."

It is thus submitted that though some guidelines have been issued by the Office of Director, Health and Family Welfare, Punjab, however, in the

instant case, as per opinion of the Medical Board, there was a big clot in the left coronary artery of deceased Sharan Dass @ Meet Ram, which can lead to sudden cardiac arrest, therefore, it will be a matter of trial whether offence under Section 304 IPC or under Section 302 IPC is made out. It is also submitted that the evidence is yet to start and it will take long time in conclusion of the trial.

Learned State counsel, on the basis of affidavit of Director, Health and Family Welfare, Punjab, submits that now the necessary guidelines have been issued for the doctors, who conduct the post-mortem in such type of cases, where death is caused due to Mayocardial Infraction and further submits that necessary directions have been issued to all the concerned hospitals to follow the Medicolegal Manual and Manual of Instructions on Conduct of Medicolegal Examination including Postmortem Examination, as per the letter dated 21.01.2021 issued by the Director, Health and Family Welfare, Punjab. He could not dispute the cause of death of the deceased. It is also not disputed that the petitioner is in custody since 11.02.2019 and the case is still at the initial stage.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the fact that the petitioner is in long custody; one of the moot point to be decided during the course of trial is whether offence under Section 304 IPC or under Section 302 IPC is made out, I deem it appropriate to release the petitioner on regular bail.

In virtual Court

Accordingly, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

06.08.2021
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No