

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA No. D-1324-DB-2014 (O&M)

Reserved on: 30<sup>th</sup> MARCH, 2022

Pronounced on: 16.12.2022

KARAJ SINGH

.....APPELLANT

VERSUS

STATE OF PUNJAB

.....RESPONDENT.

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH.  
HON'BLE MR. JUSTICE SANDEEP MOUDGIL.**

Present:- Mr. S.S. Rana, Advocate  
for the appellant.

Ms. Monika Jalota, DAG, Punjab.

**SANDEEP MOUDGIL, J**

1. The present appeal emanates from the judgment of conviction and order of sentence dated 5<sup>th</sup> April, 2014, whereby, appellant was convicted for the offence under Section 302 of Indian Penal Code (for short "IPC") and was sentenced to undergo imprisonment for life with fine of Rs.10,000/- and in default of payment thereof, to further undergo RI for one year.

2. In nutshell, the case of prosecution is that on 4<sup>th</sup> December, 2010 Inspector/SHO Vikram Chand, along-with other police officials, was present at Gumtala Chowk where Pargat Singh, Warden No. 4256, Central Jail, Amritsar came and handed over a memo No. 2213, dated 4<sup>th</sup> December, 2010 of the Superintendent, Central Jail, Amritsar, addressed to Commissioner of Police, Amritsar, for taking action regarding the death of Baljit Singh son of Lakha Singh. As per version in FIR, on 4<sup>th</sup> December, 2010 at about 12.10 PM in Room No. 3 of Barrack No. 8, Karaj Singh, Satinder Singh @ Sonu and Balwinder Singh @ Bill had a clash with Baljit Singh and Jatinder Singh. In the scuffle injuries were sustained by Jatinder Singh and Baljit Singh. Jatinder

Civil Hospital, Amritsar by the Jail Doctor. The doctors declared Baljit Singh brought dead on 4<sup>th</sup> December, 2010 and the memo was sent to Police Station for registration of FIR.

3. On the basis of said memo, a case under Section 302 read with 34 IPC was registered and police party went to the place of occurrence to conduct spot inspection. The rough site plan of the place of occurrence was prepared and the statements of witnesses were recorded. Proceedings under Section 176 Cr.P.C were conducted by learned Judicial Magistrate Ist Class, Amritsar. On production warrant accused were produced before the then Duty Magistrate and thereafter, accused were formally arrested. In pursuance of the disclosure statement suffered by the accused Karaj Singh, on 9<sup>th</sup> December, 2010, he got recovered a spoon like knife used in the commission of crime, from Room No.3, Barrack No. 8 of Central Jail, Amritsar. The investigating officer also obtained the Post Mortem Report of Baljit Singh.

4. After completion of investigation and other formalities, report under Section 173 Cr.P.C. was presented in the Court of learned Jurisdictional Magistrate against Karaj Singh, Satinder Singh and Balwinder Singh. Since an offence under Section 302 IPC was exclusively triable by the court of Sessions, vide order dated 28<sup>th</sup> March, 2011 the case was committed to the Court of Session, Amritsar.

5. Finding a prima facie case from the report under Section 173(2) of the Code of Criminal Procedure and documents annexed with it, accused Karaj Singh, Satinder Singh and Balwinder Singh were charged to face trial under Section 302 read with 34 IPC by the learned Sessions Judge, Amritsar vide order dated 6<sup>th</sup> May, 2011. They did not plead guilty to the charge and claimed trial.

6. In order to substantiate the charge, prosecution examined as many as 20 witnesses; besides relying upon various documents.

7. When the incriminating circumstances appearing in prosecution evidence were put to the accused by the learned trial Court for eliciting his explanation as required under Section 313 Cr.P.C., the accused denied them and pleaded false implication. Accused, Karaj Singh and Balwinder Singh @ Billa further pleaded that they never inflicted any injury to Baljit Singh (since deceased), rather in the free fight between inmates, he fell down on a sharp-edged surface and died as he was drug addict and facing trial in various NDPS cases.

8. In defence, accused examined Gursharan Singh Sidhu as DW1. Accused Karaj Singh tendered copy of newspaper report dated 5<sup>th</sup> December, 2010 Ex.DB. Thereafter, defence evidence was closed.

Thus, the trial Court framed three questions for examination and determination in the trial and proceeded to record as under:-

- (i) *Whether accused-Karaj Singh in furtherance of common intention of his co-accused committed murder of Baljit Singh?*
- (ii) *Whether Baljit Singh (since deceased), was a drug addict?*
- (iii) *Whether there was free fight in the jail and Baljit Singh fell on the hard surface and died?*

9. Trial Court record was requisitioned and received.

10. The trial Court convicted the appellant accused Karaj Singh under Section 302 IPC holding that the prosecution has proved the case beyond any shadow of doubt qua him, though acquitted Satinder Singh @ Sonu and Balwinder Singh @ Billa giving them benefit of doubt, who were ordered to be released in the case forthwith.

11. The accused-appellant was heard on sentence and awarded imprisonment for life with fine of Rs.10,000/-, in default of which was further ordered to undergo RI for one year.

dated 5<sup>th</sup> April 2014, the present appeal came before this Court which was admitted vide order dated 25<sup>th</sup> August, 2014 wherein recovery of fine was ordered to remain stayed during the pendency of present appeal after condoning the delay of 78 days in filing of the same.

The co-ordinate Bench of this Court vide order dated 9<sup>th</sup> April, 2019 ordered for fixing the date of hearing in the main appeal itself for 26<sup>th</sup> August, 2019 and requisitioned the lower court record.

Finally the appeal was heard on 30<sup>th</sup> March, 2022 and the judgment was kept reserved.

The learned State counsel produced the custody certificate, according to which the appellant-Karaj Singh son of Bagicha Singh has undergone actual sentence including custody as 5 years, out of which custody period after conviction is 4 years and 17 days. The same is taken on record.

Heard learned counsel for the parties and with their assistance examined the evidence on record.

13. While assailing the impugned judgment of conviction and order of sentence, it has been ebulliently argued by the learned counsel for appellant that he has been falsely implicated and the prosecution has totally failed to adduce cogent, convincing and reliable evidence to bring home the guilt of the appellant. The case of the prosecution solely hinges on circumstantial evidence. Learned counsel for the appellant argues that at the time of occurrence, nearly 100 prisoners were present in the room but none of them has been examined by the prosecution. Much reliance has been made upon the depositions of Gursewak Singh, Head Warden, PW3; Dilbagh Singh, Warden, PW4, Balbir Singh, Superintendent Jail, PW-5, Jaswant Singh, PW12 and Jatinder Singh, PW19, highlighting that these witnesses did not support the prosecution case and all of them were declared hostile except Balbir Singh, PW-5.

registered on the basis of memo sent by Balbir Singh, PW5 who deposed that he received information that a fight had taken place but he did not see the occurrence. He further argues that the accused were arrested after four days of occurrence and as admitted by Balbir Singh PW-5, the names of the accused were not mentioned in the letter Ex.DA written by Superintendent, Central Jail, Amritsar to the then Sessions Judge, Amritsar. It is further submitted that the prosecution has failed to explain as to why appellant was arrested after four days of occurrence despite the fact that he would have been arrested there and then being in custody, had the injuries been caused to Baljit Singh by him.

15. Learned counsel for the appellant has vehemently argued that the alleged spoon recovered vide memo Ex.MO1 is an ordinary spoon as stated by SI Ramesh Chander, PW-13 who also went to the extent of saying that it did not contain any special mark showing its belonging to the Jail cutlery. PW-13 has also deposed that the spoon shown in the Court was not sharp from its handle side to which the appellant has argued to have been planted. IT is further submitted that the entire story is concocted and an afterthought inasmuch as neither the statement of Balbir Singh, PW-5 inspire confidence who reached 15 minutes later to the place of occurrence as well as Gurmeet Singh, Warden PW-6 who also did not disclose the name of the official who narrated about the occurrence.

16. Learned Counsel for the appellant has referred to the Inquest report to contend that according to it, there were injury marks on the right & left side of stomach, near the left eye and on the head only, on the person of deceased whereas the doctor has noticed as many as 12 injuries on the person of the deceased during post-mortem out of which injuries no.7, 8 and 9 are on index finger, dorsum of right hand and right thumb on its proximal phaylnx, respectively, however, the same do not find mentioned in the Inquest report. Similarly, injury No.4 is on left shoulder which is also not referred in the Inquest

report. Injury No.6 is on the right side of lower abdomen, however, there is no injury noticed by the Doctor on the left side of abdomen/stomach of the deceased as stated in the Inquest report. This clearly shows that these injuries were not given by the appellant, even if the story of the prosecution is believed to be true.

17. Learned counsel for the appellant has further contended that according to the communication sent by the Superintendent, Central Jail, Amritsar, addressed to the Commissioner of Police, Amritsar City, at Exhibit PW5/A & Exhibit PW 21/A, the Jail Authorities recommended legal action against two more inmates namely Satinder Singh @ Sonu s/o Mehal Singh and Balwinder Singh @ Billa son of Jagir Singh, apart from the appellant but have been acquitted by the learned trial Court, however, appellant alone has been found guilty and accordingly convicted and sentenced which itself casts doubt on the veracity of prosecution story and the correctness of the impugned judgment because same set of evidence was produced by the prosecution against the appellant also which was produced against those two inmates and as such judicious mind has not been applied uniformly. Therefore, the appellant deserves acquittal on parity.

18. It is asserted by the learned counsel for the appellant that as per Post Mortem Report, eyes & mouth of the deceased were open at the time of post mortem but Column No.8 of the Inquest Report speaks otherwise because entry made in the said column says "Eyes Closed and mouth closed". Therefore, both reports viz. the report prepared by the Police at the time of preparing Inquest Report which is the first report on the place of occurrence and the report prepared by the Doctor after the dead body reached the Hospital for medical examination, do not match with each other which again casts serious doubt on the prosecution story.

19. It is further asserted by the learned counsel for the appellant that the

main prosecution witness namely Gursewak Singh who appeared as PW3 and is the Head Warden of the Central Jail, Amritsar, has also failed to assign any injury on the person of the deceased from the hands of the appellant. The relevant part of his examination in chief reads like this “On 04.12.2010, my duty was from 6.00 a.m. to 12.00 noon in Ward No.8 of Jail Hospital. Gurmit Singh was also present there. At about 7.00 a.m., there was some altercation in the jail in between accused Karaj Singh and Baljit Singh on the issue of shoes but the matter was compromised. Then at about 12.15 noon, I heard noise when I was present in hospital jail and then I came at the spot but there was no altercation at that time. Nothing happened in my presence. No injury was caused to deceased Baljit Singh in my presence by any one.” Therefore, the appellant was not attributed any injury by this prosecution witness. Further, during his cross examination also by the Public Prosecutor, after being declared hostile, he did not support the prosecution case by saying that he did not make any statement before the police. As such, the conviction of the appellant is totally wrong and erroneous.

20. It is the further contention on behalf of the appellant that the Inquest Report has been marked as Exhibit PW-20/B and it bears the signatures of Civil Judge, (Senior Division), Ludhiana, as is deposed by Sh.Jagdeep Sood, Civil Judge, (Senior Division), Ludhiana, before the learned trial Court while appearing as PW-20. Therefore, the number of injuries and their seat, referred in the Inquest Report, cannot be doubted. A comparative examination of Ex.PW-20/B, Inquest Report and post mortem report Ex.PW-1/A crystallize that there is tampering while subsequently preparing the inquest report as the number of injuries and their seat got changed/increased during the post mortem which was conducted later in time to the preparation of inquest report. Such tampering is obviously not by the appellant who had already been taken in custody by the police but is the handy work of someone who was after the blood of Baljeet

Singh (deceased). Such argument of the counsel appearing on behalf of the appellant seems to be impressive with the further fact that only said person has designed the murder of Baljeet Singh in a manner to mislead the investigating agency by implicating the appellant under the garb of referring to an altercation which took place on the morning between the appellant and deceased on the issue of shoes.

21. Another glaring fact has been highlighted from the statement of PW1- Dr. Jatinder Pal Singh to contend that the testimony of PW-2-HC Bakshish Singh No.3128/ASR P.S. Chheharta also create doubt in the story of prosecution in the light that PW-1 stated the probable time between injury and death to be few hours, as the case of prosecution unfolds showing the deceased Baljeet Singh was referred by the Jail Hospital to the Civil Hospital, Amritsar and doctor declared him dead whereas at the same time PW-2 deposed that the post mortem upon the dead body of the deceased was on 05.12.2010. While considering the deposition of PW-1 and PW-2 the prosecution version is not corroborated since the probable time between the injuries and death as stated by PW-1 does not match with the deposition of PW-2. The relevant part of deposition of the PW-2 needs to be looked herein "I do not know the time when the dead body was handed over to us for post mortem on 05.12.2010. Clothes of the deceased were handed over to MHC in the police station by me at about 6.00 pm. Clothes were not put into sealed parcel and the same were handed over to MHC in loose conditions. No other police officials accompanied us at the time of taking the dead body for post mortem. Dead body was handed over to me from Central Jail, Amritsar. I did not notice any senior police officer and the Illaqa Magistrate in the hospital at the time of post mortem examination."

This Court while scrutinizing it very cautiously also cannot loose sight of the aspect that there is no explanation as to whey the dead body was brought back to jail by the authorities from the Civil Hospital, Amritsar instead

of keeping it in the mortuary and on the next day on 05.12.2010 took it again for post mortem to the Civil Hospital, Amritsar.

22. On the other hand, learned State counsel has contended that there is no infirmity, illegality or impropriety in the judgment of conviction and order of sentence, wherein, the findings are based upon cogent, convincing and reliable link evidence. It is also argued that the defence has not made out a case of any kind of enmity between the parties and there is no reason for false implication of the appellant. Lastly, learned State counsel, prayed for dismissal of appeal.

23. Heard learned counsel for the parties.

24. Considering the submissions and the documentary material on record, the submission made by the counsel for the appellant to the effect that the inquest report and the injuries along-with their seat in MLR do not match cannot be accepted for the reasons that the police may record only those injuries which are immediately visible on the person of an injured/deceased. It is only the Doctor who, while medically examining the patient, records each of the injury noticed by him on the person of the patient and as such there is no force in this argument.

As far as the contention regarding the witnesses being declared as hostile is concerned, this argument is also of no help to the appellant because every prosecution witness has proved on record that there was an altercation between the appellant and the deceased in the morning on that fateful day on account of issue over the shoes. Although, due to intervention of the jail officials, the matter was compromised at that moment, however, the appellant might had been nourishing a grudge in the mind against Baljit Singh-deceased, raising the fight again so as to teach him a lesson.

25 Further the examination of rough sketch of the weapon Ex.PW-13/F used in the commission of offence, which is in the shape of spoon is a sharp

edged handle with a length of about five fingers and recovery memo Ex.PW-

13/G crystallize that was a sharpened and formulated like knife looking object, which was got recovered by the appellant from the corner of the barrack, apart from the fact that parcel 'Ä' containing apparels of the deceased have stains of human blood, as per the FSL report.

It will not be appropriate to lose sight of the fact that jail officials had seen the appellant inflicting injuries to the deceased with the weapon looking like a spoon in the abdomen, which was opined to be fatal by the Doctor.

26 As such it is the appellant who caused murder of Baljit Singh. Accordingly, the learned trial Court has rightly convicted the appellant. The argument relating to signing of Inquest report by the Civil Judge (Senior Division), Ludhiana is also not helpful to the appellant because the said officer signed it and it was prepared under his supervision. Further the injuries recorded in the Inquest report cannot be accepted as final because the Inquest report is prepared on the basis of appearance of the dead body whereas, in the post mortem the examination of the dead body is done minutely. Therefore, any such discrepancy in Inquest as well as the post mortem report is of no help to the appellant.

27. We, on minute consideration of the records before us, also cannot ignore the fact that the appellant in his statement under Section 313 Cr.P.C. has taken a plea that the deceased-Baljit Singh was a drug addict and had fallen on a sharp edged surface during the free fight between the inmates. In fact, to support such plea, in his defence no evidence whatsoever, has been produced to substantiate such plea.

28. After a thoughtful examination of sequel of events and the link evidence and considering the submissions as discussed hereinabove, we do not find any perversity, infirmity or illegality in the impugned judgment of

Sessions Judge, Amritsar.

The present appeal therefore, fails and is dismissed.

(SANDEEP MOUDGIL)  
JUDGE

(AUGUSTINE GEORGE MASIH)  
JUDGE

Dec., 16<sup>th</sup>, 2022  
*sham*

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| <i>Whether speaking/reasoned</i> | <i>Yes</i> |
| <i>Whether reportable</i>        | <i>Yes</i> |