

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

(I) CRA-S-1292-2019
Reserved on: 10.02.2023
Date of decision: 23.02.2023

RAJINDER KUMAR AND OTHERS

...Appellants

Versus

STATE OF HARYANA

...Respondent

(II) CRA-S-1362-2019

RANBIR SINGH

...Appellant

Versus

STATE OF HARYANA

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Vikas Bishnoi, Advocate
for appellants No.1 and 4.

Mr. Sukhjit Singh, Advocate
for appellant No.2.

Ms. Kshitij Sharma, Advocate and
Ms. Mehak Sawhney, Advocate
for appellant No.3.

Mr. Amit Khatkar, Advocate
for the appellant (in CRA-S-1362-2019).

Mr. Pradeep Parkash Chahar, DAG, Haryana

Mr. Rakshit Gupta, Advocate
for the complainant.

SURESHWAR THAKUR, J.

1. Since both the criminal appeals arise from a common verdict made
on 30.03.2019, upon Sessions Case No.08 of 2014, instituted on 14.03.2014, by

the learned Additional Sessions Judge, Fatehabad, thus both the criminal appeals are amenable for a common verdict being made thereons.

2. Through the impugned verdict (supra), the learned Additional Sessions Judge concerned, made a verdict of conviction in respect of offences punishable under Sections 323, and, 304 II of IPC read with Section 34 of IPC against the accused. Moreover, the learned Additional Sessions Judge concerned, also made a verdict of acquittal upon accused in respect of an offence punishable under Section 325 of IPC read with Section 149 of IPC. Moreover, through a separate sentencing order drawn on 30.03.2019, the learned trial Judge concerned, imposed upon the convicts the hereinafter extracted sentence(s).

Offence under section	Sentence RI	Fine	RI in default of payment of fine.
323 of IPC read with section 34 of IPC	6 (six) months	Rs. 1,000/- each	15 days
304-II of IPC, read with section 34 of IPC	5 (five) years	Rs.20,000/- each	Six months.

3. The above sentence(s) were ordered to run concurrently. However, the period spent in custody by the convicts during investigations, and, trial of the case, was in terms of Section 428 of the Cr.P.C., ordered to be set off from the above imposed substantive sentence of imprisonment.

4. All the convicts (supra) become aggrieved from the above made verdict of conviction, besides become aggrieved from the consequent therewith sentence(s) (supra), as became imposed upon each of them, thus they are led to institute thereagainst the instant appeals (supra) before this Court.

FACTUAL BACKGROUND

5. Brief facts of this case are that complainant Shamsher Singh son of Babar, resident of village Kharal, P.S. Gari, Tehsil Narwana, District Jind

(hereinafter referred to as "the complainant" for brevity) filed the instant complaint (Ex.P20) under Sections 302, 323, 325, 201, 202, 209, 120-B, 191, 192, 193, 217, 218, 219, 148 and 149 of IPC against accused Rajinder Kumar etc. referred above, in the court of Illaqa Magistrate at Tohana. Complainant alleged that on 15.5.2008, his brother Dalbir Singh (since deceased) son of Babar Singh had gone from village Dhamtan Sahib to Beas Dera. He was to board a train from Jakhal at about 8.15 PM. On 18.5.2018, Ranbir Singh, EHC No.423 (accused No.2) came to his house and told that one member of the complainant family was lying admitted in PGI M.S. Rohtak. Thereupon, he (the complainant) and others went to PGI M.S. Rohtak. It is further case of the complainant that his brother was lying admitted there and was not identifiable from his face. Every body part of his brother Dalbir had injuries thereon. Complainant inquired from his brother about the injuries but Dalbir Singh could not speak and placed his (complainant's) hand on his (Dalbir) chest only. Complainant further alleged that he realized that there were injuries to his brother Dalbir on the chest as well. Thereafter, the complainant and others contacted the doctor who told that there were serious injuries on the head as well as on the chest of Dalbir Singh. There was clotting of blood in the head due to serious/excessive injuries and surgery for head was required. Complainant further alleged that a panel of doctors operated Dalbir for his head injury. The condition of Dalbir Singh became more serious and ultimately, he expired at about 4.00 PM on 20.5.2008. The post mortem examination on the dead body of Dalbir was conducted at PGI M.S. Rohtak at about 5.00 PM on 21.5.2008. The dead body was handed over to Bansi Constable No.1554 of Police Station, Civil Line, Hisar, who handed over the dead body of Dalbir Singh to him and others. It is further case of the complainant that a case bearing FIR No. 92 dated

16.5.2008 under Section 294 IPC, Police Post, GRP Jakhal was registered against his brother Dalbir Singh. Complainant also came to know from one relative Raju, received a telephonic call that Dalbir be got released on bail being relative of Dalbir to which Raju replied that he would inform the family members of Dalbir Singh whereupon the caller Rajinder ASI said that till some one comes, he would remove intoxication. It is further case of the complainant that all the accused, named above, in pursuance of a criminal conspiracy, gave beatings to him with lathis/sticks and other instruments throughout the night in Police Post, GRP, Jakhal and on account of the injuries, his brother ultimately died on 20.5.2009 at 4.00 PM. His brother was booked in a false case under Section 294 IPC of 16.5.2008 and was to be detained in judicial custody by the order of the court till 30.5.2018. The complainant further alleged that Dalbir was taken to jail but jail authorities refused to take him as inmate on account of his serious condition and his brother was got admitted in Civil Hospital, Hisar on 16.5.2008 and then referred to PGI M.S. Rohtak on 18.5.2008. Complainant further alleged that FIR No.123 dated 13.7.2008 under sections 304/34 IPC in Police Station, GRP Hisar was registered against all the accused on the application of complainant to higher authorities. He alleged that the accused were highly influential and politically and economically sound. His brother Dalbir was examined by Dr. Kulbhushan, M.O., CH Jakhal and then by Dr. Dalel Singh, M.O. Govt. Hospital, Hisar from 16.5.2008 to 18.5.2008 alongwith Dr. Sunil Kumar Jalodhia, M.O. Govt. Hospital, Hisar. Dr. Munshi Lal also examined his brother Dalbir in Central Jail, Hisar. At that time, no head injury was found on the person of Dalbir Singh. During post mortem examination at PGI M.S. Rohtak, head injury and chest injuries were found on the dead body of Dalbir as per autopsy report. Opinion was sought from the doctor of All Indian

Institute of Medical Sciences if there was head injury or not and the doctors opined that there was head injury which was cause of death.

INVESTIGATION

6. During the course of investigation, statement of Balbir Singh was recorded by the police under section 161 Cr.P.C. in which Balbir Singh clearly stated that Dalbir Singh was badly beaten by the accused by danda, slaps and fist blows on his head, eye and chest and Dalbir Singh died in police custody due to the said injuries. The complainant alleged that the death of his brother Dalbir was caused in Police Post, Jakhal at the hands of the accused when he was in police custody. Police submitted untraced report vide serial No.2428 dated 3.7.2008 stating that Dalbir Singh had fallen on the ground when he was getting down from the train and received injury on his head due to fall on the ground. During investigations, the complainant and others namely Balbir Singh son of Ramji Lal, resident of village Kharal stated that Dalbir Singh was badly beaten by the accused in Police Station, GRP, Hisar. PW Karambir also made the statement against the accused. The police did not correctly record the statements of the witnesses. The matter was not investigated fairly. Two inquiries were conducted, one at the instance of A.D.G.P/ (Crime), Haryana, Panchkula and other under the orders of Hon'ble High Court of Punjab and Haryana but the justice was not done to the complainant. Untraced report (cancellation report) was submitted by police in court and accepted by the learned JMIC, Tohana on 1.7.2010. The complainant filed protest petition. He alleged that police had created and prepared false record and documents.

COMMITTAL PROCEEDINGS

7. Since the afore offences were exclusively triable by the Court of Session, thus vide committal order dated 05.03.2014 the learned Judicial

Magistrate Ist Class, Tohana, committed the accused to face trial before the Court of Session.

TRIAL PROCEEDINGS

8. The prosecution examined as many as 11 witnesses and, subsequently, the public prosecutor closed the prosecution evidence. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. In defence, the learned defence counsel examined 3 defence witnesses.

SUBMISSIONS OF THE LEARNED COUNSELS APPEARING FOR THE CONVICTS-APPELLANTS

9. The learned counsels appearing for the convicts-appellants submit before this Court, that the deceased Dalbir Singh died in judicial custody, as is revealed by the statement Ex.P-15, as made by the learned Public Prosecutor concerned. Therefore, they argue that since the deceased was never ever in the custody of the convicts concerned. Resultantly, they argue that the demise of one Dalbir Singh occurred not in police custody rather it occurred while he was in judicial custody.

10. The learned counsel for the appellants-convicts further submit, that since Dr. Sunil Kumar (PW-4) in his affidavit has stated, that the attending guards upon the deceased stated to him, that the deceased Dalbir Singh, was an alcoholic, and, was beaten up by a crowd on 16.05.2008. Therefore, they argue that the demise of the deceased as became opined in the post mortem report to occur on account of a head injury, cannot be related to the convicts-appellants rather it is to be related to an assault as made upon the deceased by the members of the assaulting crowd.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

11. On the other hand, the learned State counsel has vigorously contended before this Court that the impugned verdict of conviction, as well as the consequent therewith sentence of life imprisonment, as becomes imposed upon the convicts-appellants, is well merited, as the same is planked upon a worthy appraisal of the evidence germane to the charge.

CIRCUMSTANTIAL BASED EVIDENCE CASE

12. The post mortem on the body of the deceased was conducted by Dr. Sanjiv Kumar, who appeared in the witness box as PW-4. In his examination-in-chief he deposed that he along with Dr. Harbans Singh, was a member of the autopsy Board, whose signatures as occur on the post mortem report Ex.P9 also become proven by him. He testified that on his making an autopsy on the body of deceased Dalbir Singh, his noticing thereons the hereinafter extracted ante mortem injuries.

“a. Multiple Bluish black bruises at front of whole chest, both upper limbs and lower limbs of varying sizes with ecchymosis present in underlying soft tissues.

b. Stitched wound of 27 cm with 23 stitches running from left parietal region back and down to left Temporal bone with hemotoma under scalp at left underlying area and some bone missing from left temporal bone below operation site. Also diffuse EDH and diffuse SDH at left temporo fronto parietal region of 10 X 7 CM with some clotted blood and left Frontal Contusion present.”

13. Ultimately he opined that the cause of demise of Dalbir Singh was owing to head injury, and, such an injury was a sequel of the ante mortem injuries (supra), as were noticed by him to occur on the body of deceased Dalbir Singh. He further deposed that the said ante mortem injuries were sufficient to

cause death. Therefore, naturally from the above made deposition by PW-4, it becomes unfolded, that the deceased suffered head injuries, and, in consequence thereof his demise occurred. He further deposed that he noticed a contusion in the brain of the deceased, and, that the said contusion was owing to a head injury, and, further stated, that the brain contusion cannot occur in case of chronic alcoholism, but is a result of trauma. Therefore, the inference to be drawn from the deposition of PW-4, is that, the deceased was subjected to a physical assault.

14. For drawing a verdict of conviction against the accused it is, but imperative to determine (i) that whether the said injuries were suffered by the deceased on account of his being thrashed by the members of the assaulting crowd, as becomes contended by the learned counsels appearing for the convicts-appellants, and/or whether his demise occurred while he was in the custody of the police officials. (ii) That furthermore, it is also to be determined, whether as submitted by the learned counsels appearing for the convicts-appellants, but on the premise that the learned public prosecutor concerned, in Ex.P-15, making a statement, that the deceased suffered his demise while in judicial custody, *qua* whether the inculpatory evidence, as became adduced by the prosecution rather suggestive, that the police officials had assumed custody over the deceased for ensuring that medical treatment is purveyed to him, at the hospitals concerned, rather is a taint ridden inculpatory evidence or is worthy of credence being assigned thereto. (iii) That moreover, hence the assumption of the said custody by the police officials was but a continuation of the judicial custody of deceased Dalbir Singh, with them and/or, whether it was a transit assumption of judicial custody of the police officials over the deceased, but

merely for ensuring that medical treatment is purveyed to him at the hospitals concerned.

ANSWERS TO THE ABOVE FORMULATED QUESTIONS

15. The inculpatory evidence which suggests that the deceased was in transit judicial custody becomes comprised in the hereinafter alluded facts:

(i) the accused was uncontrovertedly arrested by the police officials on 16.05.2008. However, as revealed by an order of judicial remand as became made by the learned Judicial Magistrate concerned, and which becomes carried in Ex.P-11, *qua* the accused being ordered to be sent to judicial custody, on account of his failing to furnish bail bonds, in respect of a bailable and non-cognizable offence. The jail warrants as became prepared for the above purposes are embodied in Ex.P-13.

(ii) PW-7 one Satpal, Deputy Superintendent, Central Jail, Hissar making a testification that from 08.05.2008 to 25.05.2008 as per the entry drawn on 16.05.2008, Head Constable Vijay Singh entered the jail premises at 06:15 p.m., and, made his departure at 06:25 p.m., for enabling his taking along with him deceased Dalbir Singh to General Hospital, Hissar for medical treatment being purveyed to him.

INFERENCES FROM OTHER INCRIMINATORY EVIDENCE QUA ASSUMPTION OF TRANSIT JUDICIAL CUSTODY OVER THE DECEASED BY THE ACCUSED CONCERNED

16. Though, normally the Superintendent of Jail concerned, was not authorized except under validly made orders by the Judicial Magistrate concerned, to even for medical purposes release, the deceased Dalbir Singh from judicial custody, and/or, to hand over his transit custody, to the police officials concerned, for enabling the latter to purvey medical treatment to the deceased

from General Hospital, Hissar. However, yet the said release from judicial custody of the deceased, to the police officials concerned, can yet be construed to be a transit judicial custody which became assumed by the police officials concerned, over deceased Dalbir Singh. Therefore, at this stage, it can be said that the statement, as made by the learned public prosecutor concerned, and which becomes carried in Ex.P-15 and its making an echoing that the deceased died in judicial custody was but made on the premise, that the police officials concerned, had assumed transit or temporary judicial custody over deceased Dalbir Singh, rather only for purveying medical treatment to him at the hospital concerned.

17. Revelations occur in the deposition of Dr. Kulbhushan Garg, who stepped into the witness box as PW-1, *qua* his on 16.05.2008 noticing two injuries on the person of one, Dalbir Singh, and, the said injuries are carried in his report Ex.P-2. The above deposition has remained uncontroverted. Therefore, the above unrebutted evidence leads to a firm conclusion, that the police officials had assumed transit judicial custody over the deceased.

18. Dr. Dalel Singh, who stepped into the witness box as PW-2 has deposed that on 16.05.2008 at 07:40 p.m., one Dalbir Singh becoming admitted and in respect of the said admission, he proved the Bed Head Ticket of Dalbir Singh, to which Ex.P-4 became assigned. The above deposition has remained uncontroverted. Therefore, the above unrebutted evidence leads to a firm conclusion, that the police officials had assumed transit judicial custody over the deceased.

19. However, what is of striking importance and which does but comprise the prime inculpatory evidence, does becomes well rested upon, *qua* the police officials evidently assuming transit judicial custody over one, Dalbir

Singh but after his being released, as deposed by PW-7 from the prison concerned, at 06:25 p.m., besides, also becomes rested upon the deposition of PW-8. PW-8 has deposed that Dalbir Singh was admitted at PGIMS Rohtak on 18.05.2008, given his being brought there, by the police from Central Jail, Hissar, and, with the alleged history of an injury under unknown circumstances becoming suffered by him. He deposed that the CT scan revealed acute SDH left fronto parietal region with bilateral PCA infarct. He further deposed that the patient expired on 20.05.2008 at 03:15 p.m., at PGIMS Rohtak. Therefore, after the release of Dalbir Singh from prison at 06:25 p.m., on 16.05.2008 upto the demise of deceased on 20.05.2008 at PGIMS Rohtak, the deceased was in the transit judicial custody of the police officials.

20. However, yet it has to be determined whether there is strong cogent evidence in respect of the police officials concerned, who are but the convicts-appellants before this Court, rather suggestive that throughout since the evening of 16.05.2008, and, upto his demise at PGIMS Rohtak, on 20.05.2008, rather theirs holding the deceased in transit judicial custody, but for medical purposes.

21. An answer to the above is readily available from a perusal of the Bed Head Ticket of Dalbir Singh which occurs at page No.447 of the record of the learned trial Judge concerned, as Ex.P4 wherein, it is mentioned that the police officials were then with the patient Dalbir Singh. As the above evidence has remained unrebutted, therefor it has the fullest evidentiary efficacy.

22. Ex.D-6 encloses the rapat roznamcha drawn on 22.05.2008, with mentionings therein, that ASI Rajender along with EHC Chander Bhan 432, Vijay HC 240, Diwan Singh HC 704, Rajpal HC 796 after Pervi and Nigrani of accused and after his death reporting to police post. The natural inference therefrom, is that, the convicts-appellants herein were holding judicial custody

of deceased Dalbir Singh, and that only after his demise they reported to the police post concerned. Therefore, but naturally, they admit that the demise of the deceased occurred during the phase when they assumed transit judicial custody over Dalbir Singh rather for medical treatment being purveyed to him. Resultantly, it can be concluded that the demise of one, Dalbir Singh occurred not in prison, but it occurred owing to a physical assault being made upon the deceased by the police officials concerned. The above inference is supported by the deposition of Dr. Ishwar Singh (PW-8), who has deposed that there was a contusion in the brain owing to a head injury suffered by the deceased, and, that the occurrence of the said contusion was not owing to alcoholism rather was owing to a physical assault or a trauma. The above made deposition by PW-8 who stepped into the witness box as PW-8 is also supported by the proven opinion, as made by Dr. Sanjiv Kumar PW-4 about the cause of demise of the deceased ensuring from ante mortem injuries.

23. The inculpatory evidence in respect of the accused concerned, is also available from an inquiry report, as became drawn by the learned Sessions Judge-cum-Inquiry Officer, Hissar. The above inquiry report was tendered into evidence as Ex.P-19, and, even after its being tendered into evidence, the learned defence counsel did not choose, to impeach the credibility of the inculpatory findings as occur in Ex.P-19, and, which are but supportive of the deposition (supra) as made by PW-8, and, also but corroborate the opinion as made in the post mortem report Ex.P-9, rather about the cause of demise of deceased Dalbir Singh. The effect, of no challenge being made hence by the learned defence counsel, to the tendering of inquiry report Ex.P-19, either through his seeking or to ask for the author of Ex.P-19 stepping into the witness

box or through any other contra therewith adduction of cogent evidence, is but, that the defence acquiescing to the inculpatory findings, as occur(s) therein.

NEGATION OF THE EXCULPATORY PLEA

24. Though, the accused set up a defence, that the said fatal head injuries suffered by deceased, was a sequel of his being thrashed by the assaulting members of the crowd, but even the defence (supra) rather is not borne out either from the order of judicial remand as became made by the learned Judicial Magistrate concerned, and, as becomes carried in Ex.P-11 nor is the said defence borne out from the deposition of PW-8 nor further it is borne out, from any other documentary evidence, inasmuch as, from the Bed Head Tickets, drawn in respect of one Dalbir Singh, at the hospital concerned, where he he was taken on transit judicial custody by the police officials concerned. Significantly, none of the above exculpatory pleas find their occurrence thereins.

CONCLUSION

25. Therefore, the above referred inculpatory material does, not capitalize, the defence to make any able argument, that there is any gross mis-appreciation or non-appreciation of evidence germane to the charge. Consequently, but naturally this Court is of the firm view, that the verdict of conviction, and, the consequent therewith order of sentence as became imposed upon each of the accused, but is meritworthy, and, is required to be upheld.

FINAL ORDER

26. This Court finds no merit the appeals, as such both the appeals stand dismissed. If the appellants are on bail, thereupon they are ordered to be forthwith taken into custody through the learned trial Judge concerned, forthwith drawing committal warrants against the accused. Case property, if any,

be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

27. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

23.02.2023

Ithlesh

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No