



In the High Court for the States of Punjab and Haryana at Chandigarh

CRA-D-369-DB-2004 (O&M)

Date of Decision:- 23.05.2025

Naresh Appellant

Versus

State of Haryana Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Ms. Simrat Kaur, Advocate,
Amicus Curiae, for the appellant.

Mr. Munish Sharma, DAG, Haryana.

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GURVINDER SINGH GILL, J.

1. Appellant-Naresh assails judgment dated 02.03.2004 passed by learned Additional Sessions Judge, Fatehabad vide which he has been held guilty of having committed offence under Section 302 IPC and has been sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.5000/-.
2. The matter arises out of FIR No. 245, dated 30.12.2000, Police Station Sadar, Tohana, District Fatehabad, under Sections 302 IPC (Ex.P-11), lodged at the instance of Hardit Singh, father of deceased. Initially one DDR No.7 dated 27.12.2000, Police Station Sadar Tohana (Ex.P-13) was recorded at the instance of Desa Singh. The translated gist of the statement (Ex.P-13) of Desa Singh reads as under:



“I am resident of village Laloda. Hardit Singh resident of the village belongs to my brotherhood. He is old and has four daughters and a son namely Kashmir Singh aged about 20/21 years. On 18.12.2000 at about 7.30/8 am, Kashmir Singh had been deputed by Naresh of our village to distribute newspapers. Kashmir Singh had left his home on bicycle to the house of Naresh from where he collected newspapers and after distributing the same in village Laloda at railway station and in nearby areas, he proceeded to village Nangla to distribute newspapers. On account of heavy fog on the said day, he fell in the canal after crossing railway bridge along with his bicycle at about 9.am. The said information was received in our village. Upon conducting a search for him, one of his glove (of one hand) and some newspapers were found lying near the bicycle. We saw a ‘chaddar’ which he had put on, in the canal which we took out with the help of hook. We made a thorough search for the dead body, but the same could not be found. Yesterday i.e. on 26.12.2000, the dead body of Kashmir Singh was located in District Sirsa in the area of village Phulkan near the rail-minor of Rajbah. We shifted his dead body in a ‘Canter’ to government hospital of Tohana. Being illiterate and rustic type of simpletons we had no knowledge that in fact the police of the area from where dead body was recovered ought to have been informed. Kashmir Singh died due to drowning on account of low visibility due to fog. Action may be taken. We shall continue making inquiries and in case there is any information about the mishap we shall inform the police. I have recorded my statement which is correct.

Signed
Desa Singh, Village Laloda”

3. The aforesaid statement (Ex.P-13) of Desa Singh was recorded by SI Ishwar Singh when he visited General Hospital, Tohana upon receipt of information (Ex.P-10) regarding a dead body having been brought to the hospital. While information (Ex.P-10) was received by SI Ishwar Singh on 26.12.2000, the



statement of Desa Singh came to be recorded the next day i.e. on 27.12.2000. SI Ishwar Singh conducted inquest proceedings and got post mortem examination conducted on the dead body.

4. While no foul play in the death of Kashmir Singh was suspected when the aforesaid DDR was recorded on 27.12.2000, but subsequently on 30.12.2000 Hardit Singh (PW-13), father of deceased submitted a written application to SHO Police Station Sadar, Tohana wherein the allegations were raised against Naresh to the effect that Naresh had pushed Kashmir Singh in the canal as there had been an altercation between them on an earlier occasion. It was pursuant to the said application that formal FIR (Ex.P-11) was lodged. It is further the case of prosecution that on 02.01.2001 accused Naresh was arrested and interrogated by Inspector Dhup Singh pursuant to which he made a disclosure statement (Ex.P-9) to the effect that he had seen Kashmir Singh in the village dispensary in a compromising situation with his wife and on 28.12.2000 in the morning in order to take revenge from Kashmir Singh as he had pushed Kashmir Singh into the canal along with the bicycle. Inspector Dhup Singh conducted the remaining investigation and upon conclusion of the same challan was presented in the Court of learned Sub Divisional Judicial Magistrate, Tohana on 30.03.2001 who committed the case to the Court of Sessions vide order dated 23.04.2001. Learned Additional Sessions Judge, Fatehabad framed charges against the accused for offence under Section 302 IPC on 24.5.2001 to which the accused pleaded not guilty and claimed trial.



5. The prosecution in order to substantiate its case examined as many as 14 PWs. The gist of their testimonies is referred to herein under:-

PW-1 Constable Balram stated that on 30.12.2000 he was posted at Police Station Sadar Tohana and had delivered the special reports to the Illaqa Magistrate and also to Deputy Superintendent of Police, Tohana and Superintendent of Police, Fatehabad.

PW-2 Constable Saim Raj tendered his affidavit Ex.P-2 in evidence wherein he deposed that on 04.01.2001 he was posted on general duty at Police Station Sadar Tohana and that on the said day MHC Sube Singh had handed over a parcel containing viscera along with a sealed envelope for the purpose of depositing the same in the office of DFSL, Madhuban which he accordingly deposited on the same day. He further deposed that as long as the aforesaid parcels remained in his possession the same were not tampered with.

PW-3 Head Constable Sube Singh tendered his affidavit Ex.P-3 in evidence wherein he deposed that on 27.12.2000 he was posted as Moharrir Head Constable at Police Station Sadar Tohana and that on the said day ASI Ishwar Singh deposited one parcel containing viscera alongwith sealed envelope and sample seal. PW-3 further stated that on 04.01.2001 the parcel containing viscera along with sealed parcel along with sample seal had been handed over to Constable Sem Raj for depositing the same in FSL, Madhuban. He further deposed that as long as the aforesaid parcels remained in his possession the same were not tampered with.



PW-4 Dr. Harwinder Singh, Medical Officer, Government Hospital Tohana stated that on 27.12.2000 post mortem examination on the dead body of Kashmir Singh was conducted by a Board of Doctors comprising of Dr. R.S.Bishnoi, Dr. Vijay Grover and himself. He proved the post mortem report as Ex.P-6 and opined that the cause of death to be asphyxia due to drowning.

PW-5 Dr. R.S.Bishnoi stated that on 27.12.2000 he was member of the Medical Board which had conducted post mortem examination on the dead body of Kashmir Singh. While referring to the report of FSL he stated that he endorsed the opinion of Dr. Harwinder Singh (PW-4) regarding the cause of death to be asphyxia due to drowning.

PW-6 Dr. Vijay Grover who was also a member of the medical board which had conducted medical examination on the dead body of Kashmir Singh also stated identically with regard to the opinion that cause of death of Kashmir Singh was asphyxia due to drowning.

PW-7 Atma Ram, Patwari, stated that he had prepared the scaled site plan Ex.P-8.

PW-8 Inspector Dhup Singh stated that on 02.01.2001 he was posted as Inspector at Tohana and was entrusted with the investigation of the present case vide orders of Superintendent of Police, Fatehabad and that on the said day Suraj Bhan, Sarpanch produced accused Naresh before him and he interrogated the accused pursuant to which he disclosed that he had caught Kashmir Singh in a compromising position with his wife in the village



dispensary a few days back and in order to take revenge he had pushed Kashmir Singh into canal. PW-8 stated that he recorded statement of Suraj Bhan and also of SI Ishwar Singh who had attested the disclosure statement made by the accused.

PW-9 SI Ishwar Singh who had recorded statement (Ex.P-13) of Desa Singh on 27.12.2000 stated about the same. He further stated that he had conducted inquest proceedings and had prepared the report. He further stated that he was associated with Inspector Dhup Singh on 02.01.2001 when accused Naresh was produced before Inspector Dhup Singh by Suraj Bhan Sarpanch and that accused had made his disclosure statement Ex.P-9 in his presence.

PW-10 Ram Kumar stated that on 18.12.2000 at about 8 am when he along with Dharam Singh was working on the railway line at a distance of about one acre from the bridge on railway line of Sidmukh canal, a boy was seen carrying newspapers on a bicycle who was a resident of village Laloda and when he inquired from the said boy as to where he was proceeding, the said boy disclosed that he was going to distribute newspapers. PW-10 further stated that it was a foggy day and that shortly after the boy had left from that place they heard a sound of “thud” from the canal water and immediately when he and Dharam Singh rushed towards the canal, the boy was not visible anywhere. However, Naresh was seen standing there and upon their arrival at the spot, Naresh left on his moped. PW-10 further stated that he went to village Laloda and informed the father of the boy that the boy had fallen in



the canal and thereafter father of the boy accompanied by 15/20 persons came at the spot in search of the boy to the canal and thereafter they continued with their work.

PW-11 Dharam Singh stated that about one year and four months ago, when he and Ram Kumar Gangman were enjoying bonfire at a distance of about one acre from the railway bridge then Kashmir Singh son of Hardit Singh passed near them on bicycle carrying newspapers and Kashmir Singh had told them that he was proceeding to village Nangal. PW-11 further stated that accused Naresh was standing near the bridge and upon seeing them he ran away and that when Naresh had gone, they heard a noise of thud in canal and newspapers were lying scattered and Naresh went away on his moped. He further stated that they did not see Kashmir Singh when they reached near the railway bridge and that they accordingly informed Hardit Singh, father of the deceased and thereafter the villagers came to canal and fished out the bicycle from the canal.

PW-12 Desa Singh stated that he is Nambardar of the village and that on 18.12.2000 Kashmir Singh had died having been pushed into the canal by Naresh. He further stated that Kashmir Singh had been employed by Naresh for selling newspapers and that the dead body of Kashmir Singh was later recovered on 26.12.2000.

PW- 13 Hardit Singh stated that Kashmir Singh was his son and about one and a half month prior to his death, Kashmir Singh had an altercation with Naresh and when he had asked Kashmir Singh about the reason for altercation his son informed me that it was a minor skirmish. PW-13 further



stated that on 14.12.2000 Naresh came to their house and asked Kashmir Singh to distribute his newspapers to which he (PW-13) had objected, but later Kashmir Singh agreed for the same. PW-13 further stated that on 18.12.2000 at about 6 am Naresh came to their house and took away Kashmir Singh along with him for distributing newspapers and thereafter his son Kashmir Singh did not return back. He stated that at about 11 am, Ram Kumar along with Dharam Singh came to his house and told him that Naresh had pushed his son Kashmir Singh into the canal. He further stated that he submitted an application (Ex.P-15) to the police alleging foul play in the death of his son.

PW-14 SI Shamsheer Singh stated that on 30.12.2000 he was posted as SI/SHO at police Station Tohana and on the said day Hardit Singh came to the police Station and moved an application (Ex.P-15) on the basis of which formal FIR Ex.P-1 was lodged which bears his signatures. He further stated that on the next day he had recorded statements of Ram Kumar and Dharma under Section 161 Cr.P.C. and had also inspected the place of occurrence and had prepared a rough site plan. He further stated that upon conclusion of investigation challan was presented on 08.03.2001.

6. Upon conclusion of prosecution evidence, the entire evidence was put to the accused in terms of Section 313 Cr.P.C. to enable him to explain the same, but the accused denied the entire prosecution case in toto and pleaded false implication. The accused in his defence examined two witnesses. The gist of their testimonies is referred to herein under:-



DW-1 Balwant Singh stated that about 2 years back at about 8 am when he had gone to the canal for easing himself near railway bridge he had seen a young boy carrying newspapers towards the railway station on a bicycle and when he reached near the railway bridge he slipped and fell down in the canal. He stated that they had raised alarm upon which 2/3 railway gangmen working nearby were attracted and they tried to search the body and the bicycle, but the same could not be found. He further stated that accused Naresh was not present at the spot.

DW-2 Partap Singh stated that he is Lambardar of village Laloda and had remained a member of Panchayat of village Laloda for about 20 years and that his wife Maina Devi remained as Sarpanch of the village. He stated that he knew deceased-Kashmir Singh, who had accidentally fallen in the canal and had died and that when the said information was received in the village they all had proceeded to the canal to search for the body of Kashmir Singh, but the same could not be found. He stated that Naresh belongs to his village and has been falsely implicated in the instant case.

7. Learned trial Court upon considering the evidence on record found the appellant guilty of having committed offence punishable under Section 302 IPC and sentenced him accordingly vide impugned judgment dated 02.03.2004.
8. Learned counsel for the appellant while assailing the conviction submitted that he has falsely been implicated in the present case and submitted that the incident was not witnessed by anybody and the entire case is based on flimsy



“last seen” evidence, which infact is not there. Learned counsel submitted that although the prosecution had tried to build up a case that the accused had confessed his guilt before Suraj Bhan, but since said Suraj Bhan has not been examined as a prosecution witness, the entire case of the prosecution falls to ground. It has further been submitted that although PW-10 Ram Kumar and PW-11 Dharma have both stated that on the day of occurrence when they were present near the railway bridge, they had come across Kashmir Singh who was going on a bicycle and that shortly thereafter they heard a noise of thud in the canal water and that they also saw Naresh going away from the spot on his moped, but their testimonies do not inspire confidence inasmuch as in case they had really seen accused Naresh pushing the deceased into the canal, they would have reported the matter immediately either to the police or to the respectables of the village, but they never took any such step.

9. On the other hand learned State counsel submitted that it is a case where accused Naresh was seen near the place of occurrence immediately before the deceased disappeared from near the canal apparently having been pushed into the canal by accused Naresh. It has further been submitted that in fact accused had also confessed his guilt before one Suraj Bhan and as such his complicity is clearly evident.
10. This Court has considered rival submissions addressed before this Court and has also perused the record of the case.
11. It is apposite to first of all refer to the medical evidence led by the prosecution. It is the case of prosecution that post mortem examination on



the dead body of Kashmir Singh was conducted by Board of Doctors comprising of Dr. Harwinder Singh, Dr. R.S.Bishnoi and Dr. Vijay Grover who have all been examined by the prosecution as PW-4, PW-5 and PW-6 and who all consistently stated that the cause of death of Kashmir Singh was asphyxia due to drowning. While, PW-4 was briefly cross-examined during the course of which he stated that there is no mark of injury on the dead body, PW-5 and PW-6 were not cross-examined despite opportunity having been afforded to the accused. In any case, the cause of death due to drowning is not disputed by the accused and as such this Court does not have any reason to doubt the medical opinion as regards the death of the deceased to be on account of asphyxia due to drowning.

12. Apparently, nobody had seen the accused pushing the deceased into the canal though two of the witnesses i.e. PW-10 and PW-11 state that immediately when Kashmir Singh disappeared from near the canal where he had been seen by PW-10 and PW-11, Naresh was also standing nearby and who immediately left from the said place on his moped. Even if the said statement is taken to be correct, the same would not even qualify to be termed as *res gestae* inasmuch as there is no such conduct on part of the accused which could connect him with the allegation that he had pushed the deceased into the canal. Mere presence near the canal bridge during day time *ipso facto* would not cast a suspicion unless there is some other evidence to connect him with the alleged occurrence.



13. Although, the police claimed that during the course of investigation statement of one Suraj Bhan had been recorded before whom the accused had allegedly confessed his guilt, but the said witness has not been examined by the prosecution. Any such statement on his part would have been in the nature of an extra judicial confession which in any case is a weak type of evidence. Other than the above referred evidence, we are left with the statement of complainant Hardit Singh (PW-13) who has imputed some kind of motive by saying that about one and a half months prior to the death of Kashmir Singh there had been an altercation between Naresh and deceased Kashmir Singh. The said motive itself, shorn of any other overt act on part of the accused is insufficient to hold the accused guilty.
14. As a sequel of discussion made above, we find that there is absolute dearth of evidence to connect the accused with the alleged death of Kashmir Singh. Apart from the fact that there is delay in lodging the FIR, even the evidence against the accused is that he was seen standing near the canal from where the deceased suddenly disappeared would not connect with the alleged murder. The extra judicial confession could not be proved as Suraj Bhan before whom the accused had allegedly confessed his guilt was never examined. Consequently, in the absence of any evidence to connect the accused with the alleged occurrence, we find that the findings of guilt as recorded by the trial Court cannot sustain and are hereby set aside. The appeal merits acceptance and is hereby accepted and while setting aside the impugned judgment dated 02.03.2004, the appellant is acquitted of all the



charges framed against him. Bail bonds and surety bonds of the appellant shall stand discharged.

- 15. Case property be destroyed as per rules after expiry of limitation for filing appeal or revision as the case may be.
- 16. A copy of this judgment be sent to quarters concerned for necessary compliance.

(GURVINDER SINGH GILL)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

23.05.2025
Mohan

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No