

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CRM-A-2300-MA-2017 (O & M)

Reserved on: 08.09.2022

Pronounced on: 12.09.2022

AMANDEEP SINGH

.....Appellant

Versus

STATE OF PUNJAB AND ORS.

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Argued by: Mr. Lovepreet Singh Sidhu, Advocate for
Mr. Sumeet Puri, Advocate
for the applicant-appellant.

Ms. Ishma Randhawa, Addl. A.G., Punjab.

Mr. H.S.Saggu, Advocate
for respondents No. 2 and 3.

Mr. P.P.Chahar, DAG, Haryana.

Mr. Charanjit Bakshi, Addl. Public Prosecutor,
for U.T., Chandigarh.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, rendered on 20.09.2017, upon case SC No.257/11 dated 12.10.2016, by the learned Additional Sessions Judge, Patiala, with respect to charges drawn against the respondents-accused, qua offences punishable under Sections 302, 506, and, under Section 120-B of the Indian Penal Code,

1860, whereby, a verdict of acquittal was made upon them.

2. The complainant-aggrieved, son of the deceased Sukhdev Singh through instituting thereagainst, the instant appeal before this Court, has strived to seek the verdict (supra) becoming quashed, and, set aside.

FACTUAL BACKGROUND

3. The above complaint was initially instituted by Avtar Singh, on 16.04.2014, but since Avtar Singh died during the pendency of the complaint leaving behind his legal representatives namely Harcharan Kaur (widow), Gurdeep Singh, and, Manjit Singh (sons), Amandeep Singh (grandson), and, Sharanjit Kaur (granddaughter). Therefore, the learned trial Court vide order dated 15.06.2015 permitted Harcharan Kaur widow of Avtar Singh to prosecute the complaint on behalf of all the LRs of deceased Avtar Singh. However, subsequently Harcharan Kaur also died, and, then the learned trial Court vide order dated 19.01.2016, permitted Amandeep Singh, (grandson) of the deceased to prosecute the complaint.

COMMITTAL AND TRIAL COURT PROCEEDINGS

PHASE – I

4. Originally the complaint was filed by the complainant-Avtar Singh before the Court of learned Chief Judicial Magistrate, Sangrur, on 01.07.2009. After recording the preliminary evidence, the learned Additional Chief Judicial Magistrate, Sangrur, made a summoning order on 27.04.2013, upon the accused to face trial for commission of offences embodied under Sections 302, 506 read with Section 34 of the IPC. The accused put their appearance before the

learned Additional Chief Judicial Magistrate, Sangrur, and, the latter committed the case for trial to the Court of Session. However, the commitment order was set aside by the learned Sessions Judge, Sangrur vide order made on 07.10.2013, as the relevant occurrence had not taken place within the territorial jurisdiction of the committing Magistrate. The above order was unsuccessfully challenged by the complainant before this Court, and, accordingly the complaint was filed at Nabha.

PHASE- II

5. The learned Magistrate at Nabha after recording the preliminary evidence, made a summoning order on 18.04.2016, upon the accused to face trial for commission of offences embodied under Sections 302, 506, 120-B of the IPC.

6. As the offence under Section 302 IPC was exclusively triable by the Court of Session, therefore, the learned committal Court, vide order dated 27.09.2016, committed the case for trial, to the Court of the learned Sessions Judge, Patiala.

7. On finding a prima facie case, charge(s) under Sections 120-B, 302, and, under Section 506 of the IPC became framed, against both the accused, and, to which they pleaded not guilty, and, claimed trial.

8. To prove the prosecution case, the prosecution led five witnesses into the witness box. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge, Patiala drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and,

pleaded innocence. The accused though opted to lead defence evidence, but did not adduce any evidence in defence.

GENESIS OF THE PROSECUTION CASES, AS CARRIED IN THE COMPLAINT.

9. The genesis of prosecution case, becomes embodied in the complaint (supra). The brief facts of the complaint are that Sukhdev Singh son of Avtar Singh was married to Gurpreet Kaur in the year 1994. Out of their wedlock son Amandeep Singh, and, daughter Sharanjit Kaur, were born. After the marriage Gurpreet Kaur developed illicit relations with one Ramesh Puri. When Sukhdev Singh stopped Ramesh Puri not to come in his house, then both the accused started abusing, and, quarreling with him. In the month of October, 2007, the accused threatened that if Sukhdev Singh, or, his family member tried to interfere in their life, they would kill Sukhdev Singh, and, his children. Both the accused told that they would get married with each other. Thereafter, Ramesh Puri in the presence of both the children told accused Gurpreet Kaur on telephone to get rid of Sukhdev Singh upon which accused Gurpreet Kaur told that after some days, they would together kill Sukhdev Singh. The said conversation was heard by children of Sukhdev Singh in the month of November, December 2008, Gurpreet Kaur used to go to meet Ramesh Kumar during night after leaving the children at home. Ramesh Puri continued his illicit relations with Gurpreet Kaur. Accused Ramesh Puri told himself to be *sadhu* of Dera Banniwala Village Majha. On 03.12.2008, at about 7.00 A.M., children of Sukhdev Singh were present in the house. Both the accused served Sukhdev Singh with poison laced food. At that time, both the accused were wearing white gloves in their hands. They threatened the

children not to narrate that incident to anyone otherwise, they would be eliminated. At that time, Harcharan Kaur mother of Sukhdev Singh was not present. After Sukhdev Singh was served with poison laced food, and, due to strangulation, his condition had become critical. Both the accused took his body to some other place and threw away at some secluded place. Amandeep Singh and Sharanjit Kaur, children of Sukhdev Singh narrated the entire story to their grandparents. Thereafter, they started searching for Sukhdev Singh. On 03.12.2008, accused Gurpreet Kaur did not come back to her house. Then on the same day i.e. 03.12.2008 at about 8.00 P.M., they found Sukhdev Singh lying unconscious in the fields of Ajaib Singh. They got him admitted in Civil Hospital, Nabha where doctors declared him brought dead. On 04.12.2008, police registered a false report in connivance with both the accused that Sukhdev Singh died natural death. In fact, he has been murdered by both the accused by mixing some poisonous substance in his food. The said occurrence was witnessed by Amandeep Singh, and, Sharanjit Kaur. Thereafter, postmortem of the dead body of Sukhdev Singh was got conducted. The accused forcibly took the children to the Baniwala Dera, and, threatened them not to disclose incident of giving poisonous substance to Sukhdev Singh, and, then strangulating him, to anybody otherwise they will be killed. After the death of Sukhdev Singh on 03.12.2008, both the accused got contracted marriage through Court on 23.01.2009. They tried to forcibly pick up children of Sukhdev Singh from the police of Police Station, Bhawanigarh. Complainant filed a civil suit against the accused, and, SHO of Police Station, Bhawanigarh which has been decided in his favour on

29.04.2009. Thereafter, both the accused forcibly entered into the house of Sukhdev Singh, and, took away Rs. 35,000/- in cash, 6-7 tolas of gold, gas cylinder, and, one bicycle in a car. The custody of minors Amandeep Singh, and, Sharanjit Kaur was handed over by SDM Sangrur to the complainant, and, his wife Harcharan Kaur. The accused moved false applications before the higher police officers for taking custody of minor children, as they were eye witnesses of the murder of Sukhdev Singh. Both the accused have killed Sukhdev Singh by giving him some poisonous substance, and, then strangulating him. On 15.06.2009, when complainant, and, his wife along with children were going to appear before DSP (D) Sangrur at Police Lines, then both the accused along with some unknown persons came there, and, tried to kill all of them, but they saved their lives by running from there.

DISCUSSION, AND, CONCLUSIONS FROM THE DEPOSITIONS OF MATERIAL PROSECUTION WITNESSES PW-1 and PW-2.

10. The star prosecution witness, is one Amandeep Singh, who stepped into the witness box as PW-1. In his examination-in-chief, he has supported the version, as carried in the complaint. He has deposed with firmness that both the accused were having an illicit relationship, and, that they both intended to marry each other. Furthermore, he testifies that his overhearing a telephonic conversation, as made by co-accused Gurpreet Kaur to co-accused Ramesh Puri, to the effect that they will kill the deceased, and, marry each other. Moreover, he has deposed that on the ill fated day, he had witnessed his mother Gurpreet Kaur preparing a sweet dish, and, also witnessed that accused Ramesh Puri had brought some liquid substance in a small bottle, which his

mother mixed in the sweet dish, and, served it to his deceased father, who after consuming the sweet dish, suffered deterioration in health. Thereafter, he deposed that both the accused were wearing white gloves at that time, and, both of them strangulated the neck of his father. He has continued to testify that the above occurrence was also witnessed by his younger sister. The reason for his not reporting the incident earlier, is stated by him, to arise from threatenings' being meted to him, and, his sister by both the accused. He was subjected to a rigorous cross examination. During the course of his cross examination, he admitted that his statement in his examination-in-chief about accused Ramesh Puri, on the relevant day bringing some liquid substance, is not recorded in his previous statement. He has also admitted that his statement in the examination-in-chief about his mother mixing the said liquid substance, in the sweet dish, was also earlier not recorded in his previous statement. Therefore, the above facts occurring in his examination-in-chief are but an improvement, or, an embellishment. Consequently, the factum of his eye witnessing co-accused Ramesh Puri, to, on the relevant day, bring a liquid substance in a bottle, as also his statement in his examination-in-chief that his also witnessing his mother to mix the same in a sweet dish which became consumed by his deceased father, leading to deterioration in his health, obviously does come under a cloud of doubt.

DEPOSITION OF PW-2 AND ITS EFFECT

11. PW-2 is the sister of PW-1, and, in her examination-in-chief though she has corroborated the version, as spelt by PW-1, in his testification. However, in her cross examination, she has denied

suggestions that her deceased father had met a natural death. Even though in her cross examination, no suggestions became meted to her with respect to hers' falsely stating, that on the relevant day, co-accused Ramesh Kumar had brought to her home, a liquid substance in a bottle, nor, any cross examination is made upon her with respect to her stating that her mother mixing the same in the food served to her deceased father, who after consuming it suffered deterioration in his health.

12. Nonetheless, when PW-1 has been concluded to improve, or embellish, the above echoed facts, as existing in his examination-in-chief, as also, when he testifies that at the relevant time his younger sister PW-2 was available at the crime site. Therefore, the effect of the above inference qua the above testification existing in the examination-in-chief of PW-1, hence becoming incredible, is that, even the statement of PW-2, his younger sister also becomes untruthful. Necessarily qua hers' speaking about co-accused Ramesh Puri, on the relevant day bringing a bottle of liquid substance, besides qua hers' also further speaking that her mother mixed the same in the food served to her deceased father, who after consuming it suffered deterioration in his health.

MEDICAL EVIDENCE COMPRISED IN THE POST-MORTEM REPORT OF THE DECEASED

13. The post-mortem report, is comprised in Exhibit PW-3/A, the same was proven by PW-3. Upon PW-3 stepping into the witness box, he in his examination-in-chief has testified that when he made an autopsy on the body of the deceased, his noticing the hereinafter extracted facts.

“ There was no visible external injury on the dead body. The viscera of the dead body was preserved in a jar and sealed by me with my seal bearing impression DK and handed over to HC Pawan Kumar for sending the same to the office of Chemical Examiner, Kharar. The cause of death was to be declared after the receipt of report of chemical examiner.”

14. In his cross-examination, he admitted a suggestion that in some cases of consumption of poison, or, any intoxicant material, it leads to froth coming out of his, or, her mouth, and, has also deposed that he has not noticed froth coming out of the mouth of the deceased. Moreover, he has also deposed that he did not observe the existence of any external injury marks on any part of the body of the examined deceased. Therefore, the absence of any external injury marks on any part of the body of the deceased, does prima facie bely the depositions of PWs (supra), that their deceased father was strangled by the accused.

CONCLUSIONS

15. Be that as it may, even if this Court hence prima facie belies the oral testifications of the PWs (supra). However, even if their respective testifications are wanting in any legal vigor, yet when the motive for the crime arising from both accused having an extra-marital affair, besides intending to marry, when is clearly, and, consistently established by both. Resultantly with cogent proof qua motive (supra), becoming adduced, therefore, may be, the same did lead both the accused to even in the absence of PWs (supra), at the crime site, hence administer poison to the deceased. If so, the report of the chemical examiner on the *viscera* of the deceased, as sent to the FSL, for examination, comprised the foremost best forensic evidence for

declaring the charge to become unflinchingly proven. However, neither the *viscera* of the deceased was sent for examination to the FSL concerned, nor any report about poison being present therein was adduced before the Court. Resultantly in its absence, a verdict of acquittal was made upon the accused.

THE EFFECT OF NON PRODUCTION OF REPORT OF THE FSL AND ITS EFFECT.

16. This Court on 28.02.2018, had referred to paragraph 15 of the impugned verdict, para whereof stands extracted hereinafter.

“The trial Court has made the following observations in Para 15 of the impugned judgment which is as under:-

“15. Dr. Dalbir Kaur posted as SMO at Civil Hospital, Nabha who conducted post mortem examination on the dead body of deceased Sukhdev Singh while appearing as PW3 has proved post mortem report as Ex.PW3/A on the file. She further stated the dead body was brought by HC Pawan Kumar no.2414 of Police Station Sadar Nabha and it was identified by Gurdeep Singh and Kulwinder Singh. There was no visible external injury on the dead body. The viscera of dead body was preserved and sealed with her seal bearing impression DK and handed over to HC Pawan Kumar for sending the same to the office of Chemical Examiner. The cause of death was to be declared on receipt of report of Chemical Examiner. She further stated that report has not been received as yet. Thereafter, the examination in chief of witness was deferred as report of Chemical Examiner was not received. Dr.Dalbir Kaur again appeared in the court on 8.8.2017 and she stated that report of Chemical Examiner has not been received by her. Thereafter, the learned Public Prosecutor made a request for adjourning the case. However, the said request was declined by this Court and Dr. Dalbir Kaur stated that she could tell the cause of death only on receipt of report of Chemical Examiner. She further stated that she handed over viscera of deceased Sukhdev to HC Pawan Kumar on 5.12.2008. In her cross examination she stated that there was no external injury mark on the body of deceased Sukhdev Singh.

She admitted that no froth was coming from the mouth of deceased. She admitted that in some cases if poison or intoxicated material is administered to a person then froth comes from the mouth of said person.”

Learned counsel for the State is directed to respond to the above observation as to why report of Chemical Examiner was not produced by the prosecution before the Court. Explanation shall be tendered by the concerned officer of the police department. This shall be done within four weeks from today.....”

17. A reading of the hereinabove extracted paragraph does reveal that though the *viscera* of the deceased was preserved, and, was sealed with seal bearing impression “DK”, and, was handed over to HC Pawan Kumar for sending the same to the Office of Chemical Examiner, for an opinion being made thereons. However, as stated (supra), the report of the Chemical Examiner was never received, nor, was tendered in the Court. Therefore, since the report, if any, of the Chemical Examiner, as made on the *viscera* of the deceased, comprised the best scientific evidence to prove the charge drawn against the accused, but since the *viscera* of the deceased never became sent, nor, became received in the laboratory concerned, nor when any opinion was made thereons, besides obviously when the report of the Chemical Examiner also never became tendered into evidence. Resultantly a verdict of acquittal was aptly made upon the accused. However, the above gross omission shook the judicial conscience of this Court, and, led it to make a direction to the State of Punjab, to assign a reason, for the non-production of the report of the Chemical Examiner, in the Court.

18. The above made order led to the filing of an affidavit by the State of Punjab with a statement therein, that the carrier constable,

who was deputed to carry the *viscera* of the deceased to the forensic laboratory had not deposited the same in the laboratory concerned. Though appropriate action against him was drawable, but the said constable was stated to expire. However, this Court had yet opened a wider issue with respect to the delays in the making of analyses on the items/material sent to the FSLs, located in the State of Punjab, State of Haryana, and, U.T., Chandigarh. This Court was led to make a direction to the States of Punjab, Haryana, and U.T., Chandigarh to assign an explanation, as to why steps are not being taken to provide adequate scientific instruments, and, adequate staff in the laboratories concerned, and, as to why steps are not being taken to propose the establishment of such laboratories at each, and, every district. In addition, affidavits in the above regard were directed to be filed by all concerned.

19. On 24.08.2018, this Court felt that at least one laboratory for two, or, three adjoining districts would ease the pressure of work on the laboratories concerned. On 19.09.2018, this Court again expressed that delays in testing of the samples at the laboratories concerned, results in delay in presentation of challan. Moreover, also a reading of the order made on 23.01.2019 by this Court, relevant portion whereof becomes extracted hereinafter, reveals that a sum of Rs. 10 Crores, and, 10 lacs, have been sanctioned by the Punjab Government, for the relevant purpose, but despite earlier expressions being made by this Court about compensation being paid to the appellant, yet there being no commitment on the part of the State of Punjab.

“.....Prima facie, we are satisfied with the statement made in the affidavit about the steps undertaken by the Punjab Government which are in the right direction. It is stated that an amount of Rs.10 Crores and 10 lacs has been

sanctioned by the Punjab Government for the said purpose. We are afraid the amount would be released so as to complete the project within reasonable period. There is no commitment about compensation to the appellant as stated. We therefore expect the schedule of release of funds for completion of project.....”

20. This Court has been pained, not only about the deficit number of laboratories in the States of Punjab, Haryana, and, U.T. Chandigarh, but is also pained at the shortage of staff therein, besides is pained at the lack therein of the state of art scientific equipment(s)/instrument(s). The FSLs concerned, purvey the best scientific forensic evidence, for enabling the Courts of Law, to administer justice, and, are an inseparable part of the justice dispensation mechanism. Therefore, when there is, since the year 2017, obviously an increase in the number of criminal matters, hence necessitating the investigating officers concerned, to avail the laboratory facilities. However, the enormous increase in crime rate, has not made a corresponding increase in the numbers of laboratories in the States of Punjab, Haryana, and, U.T., Chandigarh, which has but ultimately resulted in enormous delays occurring in testings' being done at the laboratories in the above States of Punjab, Haryana, and, U.T., Chandigarh. The further effect thereof, is that, in some cases there being delay in the institution of reports under Section 173 Cr.P.C., before the judicially empowered Magistrate, resultantly in the offenders' claiming default bail. The above situation would not occur in case to cope with the pressure of work at the laboratories concerned, either the man power therein is increased or more laboratories are established within the territories (supra).

21. It is on account of delays in testings' at the laboratories

concerned, that either there is a disintegration, or, deterioration of the items/samples sent to the laboratories for theirs' making analyses thereons. Moreover, the above situation also leads to verdicts of acquittals being pronounced. The above can easily be undone through the States of Punjab, Haryana, and, U.T., Chandigarh, ensuring that the laboratory testing facilities corresponding to the increase in crime, also become expeditiously increased in each of the above territorial jurisdictions.

22. Therefore, this Court directs that all above shall, after collecting data about backlog of materials/items to be tested, at the laboratories concerned, besides with a futuristic vision about increased tendency towards criminality in society, leading to an increase in crime rate, hence ensure but after obtaining all requisite approvals from the authorities concerned, that laboratories with state of art instrument(s)/equipment(s) become established within the territorial jurisdictions (supra). The approvals to be sought by each above, from the competent authorities concerned, shall also relate to overcoming the shortages of staff in the laboratories concerned. The approvals be ensured to be secured within three months hereafter, and, subsequently all concerned (supra), are directed to ensure that within a year hereafter, hence state of art of forensic science laboratories, corresponding to the increase in crime rate, are established within the territories of Punjab, Haryana, and, U.T., Chandigarh. The above increases in laboratory testing facilities in the above territorial jurisdictions, is but a dire need to enable the Courts of Law to dispense justice in an expeditious manner.

24. This Court, as above stated, has earlier expressed that the State of Punjab, irrespective of a verdict of acquittal, being made upon the accused to, and, that too squarely on account of non deposit by a deceased official of the Punjab Police, of the *viscera* of the deceased in the laboratory concerned. Emphasizingly, if the *viscera* of the deceased had become deposited at the FSL concerned, and also if an analyses was made thereons, but may have ensured the emergence(s) of best scientific evidence to may be hence sustain the charge. However, since the official concerned, who was handed over the *viscera* of the deceased for its deposit in the FSL concerned, has since died. Therefore, no disciplinary action can be ordered to be initiated against him.

25. Nonetheless, it is but expected from the State of Punjab, that on account of negligence of a constable in the Punjab Police, to, at least, on the principle of its vicarious liability, qua the tort of its servant, demonstrate a genuine commiseration towards the appellant, inasmuch as, its depositing within three months from today, a sum of Rs.10 lakhs, in his Savings Bank Account.

FINAL ORDER BY THIS COURT

26. In view of the above discussion, this Court finds no merit in the appeal, and, is constrained to dismiss it. The impugned verdict of acquittal, as made upon the respondents is maintained, and, affirmed.

27. The case property, if any, be dealt with in accordance with law, after the expiry of period of limitation for the filing of an appeal. The records be forthwith sent down.

28. A copy of the above verdict be forthwith sent to the Chief

Secretaries of States of Punjab, and, Haryana, and, to the Home Secretary, U.T., Chandigarh, for each making compliance with the above directions, but with an intimation in respect thereof being made within three months thereafter, to the Registry of this Court.

(SURESHWAR THAKUR)
JUDGE

(N.S. SHEKHAWAT)
JUDGE

12.09.2022

kavneet singh

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

सत्यमेव जयते