# Pal Singh Vs The State of Punjab

## Criminal Appeal No. 76-DB of 1993

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** May 22, 1995

**Acts Referred:**
Criminal Procedure Code, 1973 (CrPC) â€" Section 294#Penal Code, 1860 (IPC) â€" Section 302

**Citation:** (1995) CriLJ 3596 : (1995) 2 ILR (P&H) 505

**Hon'ble Judges:** P.K. Jain, J; J.B. Garg, J

**Bench:** Division Bench

**Advocate:** S.P. Soni and Legal Aid-Counsel, for the Appellant; M.S. Gill, D.A.G., for the Respondent

## Judgement

J.B. Garg, J.
Pal Singh son of Pritam Singh has been convicted by the Sessions Judge, Amritsar on 24-12-1992 for offence u/s 302, of

the IPC and sentenced to imprisonment for life and also required to pay a fine of Rs. 2,000/- and in default of payment of fine to undergo further

rigorous imprisonment for a period of six months. Aggrieved against it, the present appeal has been preferred through jail.

2. Briefly, the story of the prosecution is that on the intervening night of 30-6-1991/1-7-1991 Gurdip Singh armed with a Barchhi, Nand Singh

armed with a sua and Pal Singh armed with a lathi came to the tubewell of the complainant where several persons including Banta Singh were

asleep. Pal Singh gave a lathi blow on the jaw of Banta Singh and several other injuries were caused by the other two accused who have been

declared proclaimed offenders from the very beginning. After recording the evidence of Partap Singh, the complainant and Chanohal Singh, his

another brother -- two eye witnesses, and the statement of the Investigating Officer, the trial Court recorded the conviction without examining the

medical officer who conducted the post-mortem examination.

3. The learned counsel for the appellant at the very outset has pointed out that in this case the trial Court has not examined Dr. Gurmanjit Singh

when he came to the Court as a witness for the prosecution and instead kept the postmortem report on the file giving it the shape of Exhibit PA in

asmuch as the accused had no objection to the placing of postmortem report on the record. Placing of the postmortem report on record without

examining the medical officer who conducted the post mortem examination did not fulfil the requirement of law. In Jagdeo Singh v. State , it was

observed that the notes of the post mortem examination popularly known as postmortem examination report were nothing but a contemporaneous

record prepared by the Medical Officer while performing the post mortem examination on the dead body. It was only a kind of previous statement

of the Medical Officer based on his examination of the deadbody. In fact, we are of the view that it is the statement of the Medical Officer made

on oath in the Court which alone could be treated as substantive piece of evidence. A similar question arose before a Division Bench of the

Bombay High Court in Ganpat Raoji Suryavanshi Vs. State of Maharashtra, and the relevant paras of this authority are reproduced as under:--

In Re Rangappa Goundan ILR (1936) Mad 349 the Division Bench of the Madras High Court pointed out that in a murder case, no consent or

admission by the accused''s advocate to dispense with the medical witness would relieve the prosecution of proving by evidence the nature of the

injuries received by the deceased and that the injuries were the cause of death. It has been pointed out that the postmortem report was not

evidence and could only be used by the witness who conducted the postmortem enquiry as an aid to memory. The facts of that case disclose that

the Public Prosecutor asked the defence Advocate if he wished to examine the medical witness, who had in fact been present in the Court. The

defence Advocate answered in the negative. The result was that no evidence was given at the trial with regard to the injuries received by the

deceased or to the cause of his death or whether the injuries received by him were responsible for death. In view of this state of prosecution

evidence, it was pointed out that the consequence was that an essential element of proof of the crime alleged against the two accused was wanting

and the conviction which had taken place in the absence of that evidence could not stand. The learned Sessions Judges'' reliance upon the

postmortem report as establishing beyond doubt that the man was murdered was disapproved in the following terms :--

But a post-mortem report proves nothing. It is not even evidence, and can only be used by the witness who conducted the postmortem inquiry as

an aid to memory. These propositions have already been stated in Queen-Empress v. Jadub Das ILR (1900) Cal 295"".

If this is the correct, as we think, it is the correct, legal position relating to the evidentiary value of the postmortem report, it will not be difficult to

see that such a report cannot be tendered in evidence by resorting to the provisions of Section 294 of the Code.

Thus, the mere fact that Dr. Gurmanjit Singh who came to the premises of the trial Court but was returned unexamined when the defence counsel

told that he had no objection for placing the postmortem report on record as an exhibit, could not give the postmortem report the evidentiary value

of a proved document regarding cause of death because the information regarding sufficiency or otherwise of the injury to cause death has to be

deposed by the Medical Officer. In the absence of the substantive piece of medical evidence it appears that the trial Court was led by probabilities

in this case.

4. The occurrence relates to 1-7-1991 and the appellant had been in custody since 1-8-1991 and the learned counsel for the appellant has pointed

out that even according to the First Information Report no fatal injury was at all attributed to the present appellant. The other two accused who

allegedly caused multiple injuries are proclaimed offenders as seen above. In these peculiar circumstances, the conviction of Pal Singh recorded by

the trial Court and that too for the offence u/s 302 of the IPC is hereby set aside and he is acquitted of the charge now under consideration. The

appellant be released forthwith.