

(2011) 04 P&H CK 0298

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 457-DB of 2010

Harjit Singh @ Gora and Another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: April 18, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 302, 32

Hon'ble Judges: Hemant Gupta, J; A.N. Jindal, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

This order shall dispose of the present appeal filed by Harjit Singh @ Gora and Ram Narain Thakur against the judgment dated 26.02.2010 passed by the learned Additional Sessions Judge, Ludhiana, vide which the Appellants were convicted for the offences punishable under Sections 302 and 34 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 1000/- each. In the event of default of payment of fine, the defaulter shall further undergo rigorous imprisonment for a period of three months.

2. Kulwant Singh @ Gola son of Devi Singh is the deceased, who was in lock up of Police Station Jagraon on 01.04.2004. It is the prosecution case that on the said date, Manjit Kaur, who was living with him as his wife and the Appellants administered tablets, which led to death of Kulwant Singh on 02.04.2004. Therefore, the Appellants along with Manjit Kaur were made to stand trial and have been convicted and sentenced by the learned trial Court, as mentioned above.

3. The prosecution case was set in motion on the statement of the deceased Kulwant Singh @ Gola (Ex.PB) recorded by Manmohan Kumar, Naib Tehsildar, Jagraon at about 2.20 pm on 01.04.2004. The said statement of Kulwant Singh @

Gola reads as under:

I am the resident of the above address. The police has arrested me many times in the poppy husk cases. About six months ago from today, I brought ten bags of poppy husk for selling but the police arrested me alongwith poppy husk. I was confined to judicial lock up in this case. About 2/3 months back, I absconded from police custody at the time of my peshi in court. Today on 01.04.2004 the police arrested me and confined in police lock up. Today at about 12.30/1 at day time, Manjit w/o Karam Chand Jogi, r/o Rampura Mohalla, Jagraon come to give me food. I took meal in the lock up. Immediately thereafter Thakur resident of New Anaj Mandi, Jagraon with said Goran s/o Surjan Dass, r/o Mohalla Rampura, Jagraon came to see me. They told me that Ludhiana police has come to take me and that they have brought two tablets of intoxicants for me and told me that if I will consume the same, I will be saved from interrogation by Ludhiana police. I took the tablets thinking them to be that of intoxication. I rested. After few moments, I vomited and became motionless. Sentry on guard told this fact to Munshi, who got me admitted in Hospital, Jagraon. Thakur and Gora gave me some poisonous substance on the excuse of intoxication tablets. No police employee compelled me to take these tablets and nor any police man ever beat me. I complain against Gora and Thakur above. Necessary action may be taken.

4. As mentioned above, the deceased breathed his last on 02.04.2004. The post-mortem examination on the dead body of the deceased was conducted on 03.04.2004 by Dr. R.K. Sharma. On the same day, the dead body was handed over to Manjit Kaur against receipt Ex.PK for funeral. The present Appellants were arrested on 06.04.2004, whereas Manjit Kaur was arrested on 09.04.2004 after she made extra judicial confession before Surjit Singh.

5. During interrogation in police custody, Manjit Kaur suffered a disclosure statement Ex.PC on 10.04.2004 and in pursuance of such disclosure statement; she got recovered one vial labeled as "Quick Phos" with salt name written as "Aluminum Phosphide 50% (F)" from the disclosed place. Two tablets were found in the said vial after it was opened. Inspector Satnam Singh, the Investigating Officer also joined Tara Singh and Darshan Singh in the investigations in respect of the role of the Appellants and Manjit Kaur in causing death of Kulwant Singh. On completion of necessary investigations, both the Appellants along with Manjit Kaur were made to stand trial.

6. To prove its case, the prosecution has examined P.W.-11 Dr. R.K. Sharma, who has conducted post-mortem examination on the dead body of Kulwant Singh @ Gola on 03.04.2004. On the basis of Chemical Examiner's report Ex.PU, he has declared poison as the cause of death as a result of Aluminum Phosphide vide his report Ex.PV.

7. Dr. Navdeep Singla, who has initially examined the deceased in Dayanand Medical College & Hospital, Ludhiana has left the said Hospital, therefore, the record of treatment was produced by Pawan Kumar, Head Clerk.
8. P.W. 2 Manmohan Kumar, Naib Tehsildar, Jagraon, who recorded the dying declaration (Ex.PB) of Kulwant Singh @ Gola on 01.04.2004 has deposed that SDM, Jagraon vide endorsement Ex.PA directed him to go to Civil Hospital, Jagraon for recording the statement. Thereafter, he along with police visited Civil Hospital, Jagraon and recorded the statement of Kulwant Singh @ Gola after getting consent of the Doctor vide endorsement Ex.PA/2 to the effect that patient Kulwant Singh @ Gola is fit to make statement. Thereafter, the statement (Ex.PB) of Kulwant Singh @ Gola was recorded by SI Satnam Singh on his dictation. In his cross-examination, he stated that the Doctor was present during the recording of statement of the deceased and that he did not ask the Doctor to attest the statement of the deceased. He further stated that the deceased was fully conscious and speaking and that he has not put time under his signatures.
9. P.W. 5 Darshan Singh was examined to prove the conspiracy between Manjit Kaur and the Appellants. He has deposed in respect of role of Manjit Kaur, but has not identified the other two persons in his examination in chief. He was declared hostile. In his cross-examination by the Public Prosecutor, he admitted his statement Ex.P.W.-5/A to be correct. The said statement made to the Police is u/s 161 Code of Criminal Procedure He further stated that he could not identify the Appellants on account of time lag.
10. P.W.-10 Tara Singh has deposed that on 01.04.2004 at about 1.00 am, he along with Darshan Singh son of Malkiat Singh, Ex-sarpanch, resident of Village Lakha were taking tea in a tea stall near Police Station, Jagraon. He further deposed that one lady and two male persons, who were sitting on the table adjoining to them. Gora (Harjit Singh) told Manjit Kaur that her husband has been arrested by the Police and that if the police will interrogate her husband, he will disclose their names and about their activities. Manjit Kaur said that her husband Gola will never disclose their names. The Appellants said to Manjit Kaur that if Gola is eliminated, we will be saved. She was not agreeing to their proposal, but they started pressurizing Manjit Kaur. He further deposed that she said that they will give some intoxicant to Gola and then he will die in police custody. In his cross-examination, he admitted that he did not know the names of the parents or of the accused and whether the conversation between the accused were heard by the owner of the tea stall and his servants, who were also present at the tea stall. He reported to the police at about 8.00 pm, when he came to know about the death of one person in the police custody. In further cross-examination, he has stated that being a politician, he has to go to police station to solve the disputes between the parties and that he has not mentioned about the conversation, when he visited Police Station, Jagraon in relation to land dispute of one Jora Singh.

11. P.W. -1 Surjit Singh has been examined to prove the extra judicial confession made by Manjit Kaur on 09.04.2004. He has deposed that Manjit Kaur told him that she was residing with Kulwant Singh @ Gola as his wife. Initially, he was living nicely with her family, but later on he had bad eyes on her daughters. One day, he tried to catch her daughter and then she administered tablets to Kulwant Singh @ Gola, when he was confined in lock up, as he was in the habit of taking intoxicants. In his cross-examination, he stated that he has not seen the tablets nor he has the knowledge in respect of number of children of Manjit Kaur.

12. P.W.-4 HC Tirath singh has been examined to prove the disclosure statement Ex.PC suffered by Manjit Kaur in police custody, which led to recovery of one vial containing two tablets and taken into possession vide recovery memo Ex.PD.

13. P.W.-6 HC Mehar Singh proved the record in respect of arrest of Kulwant Singh @ Gola and the fact that he was kept in lock up at 6.00 am vide DDR No. 24 dated 01.04.2004. He further deposed that he was transferred on the same day to the Police Line and he informed SHO Satnam Singh regarding vomiting by Kulwant Singh @ Gola through telephone. In his cross-examination, he stated that as per rojnamcha, Kulwant Singh @ Gola was not taken out of the lock up between 6.00 am to 1.35 pm and that he was relieved at 1.38 pm.

14. Inspector Satnam Singh, the Investigating Officer has examined himself as P.W.-9. He, inter alia, deposed that he had gone to Court Complex, Jagraon to move request for recording the statement of Kulwant Singh. He came to know that Shri H.S. Grewal, the then JMIC had since been transferred and the substitute officer has not taken charge. Thereafter, he requested Shri Gurmeet Singh, SDM, Jagraon, who deputed Shri Manmohan Kumar, Naib Tehsildar, Jagraon for recording the statement of Kulwant Singh. He further deposed that thereafter he along with Manmohan Kumar, Naib Tehsildar reached Civil Hospital, Jagraon and on police request (Ex.PA/1), the Medical Officer has made his endorsement Ex.PA/2 to the effect that the patient was fit to make statement, which was also signed by Shri Manmohan Kumar after the statement of the deceased was recorded.

15. The prosecution has also examined other formal witnesses to complete the chain of events. On the basis of evidence led, the learned trial Court convicted and sentenced the Appellants and Manjit Kaur, as mentioned above. However, Manjit Kaur, has not filed any appeal against the judgment dated 26.02.2010.

16. Learned Counsel for the Appellants has vehemently argued that the Doctor, who has declared the deceased Kulwant Singh @ Gola as fit to make statement has not been examined and that the statement (Ex.PB) has not been recorded by Judicial Magistrate though the judicial complex is in the town. It is also argued that the prosecution has not led any evidence in respect of the criminal cases, if any, pending against the present Appellants, the fear of which could be said to be sufficient motive for elimination of the deceased. Thus, it is contended that there is no motive

with the Appellants to eliminate the deceased and that the motive attributable to Manjit Kaur and that the Appellants is not common. Manjit Kaur is said to be aggrieved against Kulwant Singh for having teased her daughters, whereas the present Appellants does not share such motive. The evidence led by the prosecution in respect of meeting of minds by the Appellants before the commission of crime is not made out. It is also argued that on account of the pungent smell of tablets and its bitter taste, it cannot be administered in the manner suggested by the prosecution. The consumption of Aluminum Phosphide tablet is suicidal or accidental, but generally not homicidal.

17. We have heard learned Counsel for the parties at some length, but did not find any merit in the present appeal.

18. P.W.-9 Inspector Satnam Singh, the Investigating Officer has deposed that no Judicial Officer was available at Jagraon on the date of occurrence. The said part of the statement has not been challenged in cross-examination. Even in the request Ex.PA, the Investigating Officer has written that Judicial Magistrate is not available. In the absence of any Judicial Magistrate, the Investigating Officer has chosen the next best option i.e. of requesting an Executive Officer, as an independent and impartial person to record the statement of the deceased. Shri Gurmeet Singh, SDO (Civil), Jagraon, has deputed P.W.-2 Shri Manmohan Kumar, Naib Tehsildar, Jagraon for recording the statement of Kulwant Singh. P.W.-2 Manmohan Kumar has recorded the statement Ex.PB of the deceased, as reproduced above. In the dying declaration, the role of each of the Appellant is clearly described.

19. No doubt that the prosecution has not examined the Doctor from the Civil Hospital, Jagraon, who has declared the patient as fit to make statement, but there is no reason to doubt the testimony of P.W.-2 Manmohan Kumar, Naib Tehsildar, in respect of the physical condition of the deceased before and during the course of recording of the statement. There is no motive attributed to P.W.-2 Manmohan Kumar, Naib Tehsildar for recording of the statement under the influence of the police or anybody else. Therefore, mere fact that the Doctor has not been examined in respect of physical fitness of the deceased to make the dying declaration is not sufficient to treat the statement (Ex.PB), as not the true dying declaration of the deceased. It may be noticed that the deceased breathed his last on 02.04.2001 at about 2.20 pm i.e. almost after 24 hours of recording of such statement. Thus, we do not find any merit in the argument raised by the learned Counsel for the Appellants that the deceased was not in physical or mental condition to make statement.

20. Though P.W.-5 Darshan Singh had turned hostile, but he admitted his statement Ex.P.W.-5/A was made to Police in its entirety. He wanted to wriggle out of the statement by stating that he is not able to identify the Appellants, as long time has elapsed. He is the person, who is said to be present with P.W.-10 Tara Singh at tea stall near the Police Station. P.W.-10 Tara Singh has supported the prosecution case.

Keeping in view the stand of P.W.-5 Darshan Singh during his cross-examination in the Court admitting his statement made before the police, the part of the statement that he does not recognize the Appellants cannot be treated as sufficient to doubt the prosecution story.

21. The argument that the prosecution has not proved the involvement of the Appellants in other cases, the fear of which alone is said to be motive in elimination of the deceased, is not tenable. It is not necessary that the Appellants are involved in the past cases in respect of which the police is seized of the investigations. It is a lurking fear which led the Appellants to commit crime with the assistance of Manjit Kaur, who had an independent grievance against Kulwant Singh with whom she was residing as his wife. The role attributed to the Appellants in the dying declaration (Ex.PB) stands corroborated by P.W.-5 Darshan Singh and P.W.-10 Tara Singh as well as by the medical evidence.

22. The argument that aluminum phosphide is bitter and emits pungent smell, therefore, the consumption of such tablets can either be suicidal or accidental. The said argument does not help the present Appellants for the reason that the tablets were passed over as an intoxicants. The fact remains that tablets were delivered to the deceased, when he was in lock up. The deceased was arrested at 6 o'clock in the morning and therefore, the story that Manjit Kaur along with other Appellants visited the deceased in lock up cannot be said to be untrustworthy or unnatural. The visit to an accused in the lock up is a natural human conduct. The tablets have been given by some one, who was visiting deceased in lock up. Had it be not so, the deceased could consume tablets from 6.00 am to 1.00 pm. The supply of tablets, which led to its consumption has to be an act of a third person. The Appellants are proved to be such persons. Therefore, the prosecution case that the Aluminum Phosphide was supplied by the Appellants for consumption of the deceased cannot be said to be unreliable and untrustworthy, which may doubt the prosecution case.

23. In view of the above, we do not find any illegality or irregularity in the findings recorded by the learned trial Court holding the Appellants guilty for the offences punishable under Sections 302 and 34 IPC.

24. Consequently, the present appeal is dismissed.