

(2013) 10 P&H CK 0303

High Court Of Punjab And Haryana At Chandigarh

Case No: CRA-D-1116-DB of 2009

Darshan Singh @ Laddi

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Oct. 21, 2013

Hon'ble Judges: Hemant Gupta, J; Fateh Deep Singh, J

Bench: Division Bench

Advocate: Vinod Ghai and Mr. Simrandeep Singh, for the Appellant; Pavit Mattewal, Additional Advocate General Punjab, for the Respondent

Judgement

Fateh Deep Singh, J.

The appellant Darshan Singh @ Laddi was found guilty by the learned Additional Sessions Judge, Fast Track Court, Patiala and has been convicted u/s 302 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs. 5000/- and in default of payment of fine further imprisonment for six months. These findings have been assailed in the instant appeal before this Court as per the grounds specified in the grounds of appeal.

2. The gravamen of the allegations stems from the statement of complainant Jaswinder Singh son of Bant Singh PW4 by way of Ex. PW4/A made before ASI Kaur Singh. In his statement the complainant stated that his elder brother Kewal Singh (now deceased) and the accused had some dispute over money and had to settle the account of harvesting which the accused was not paying and on 10th September, 2004 around 2 p.m. deceased has left his house on a Jeep to meet the accused and when the complainant discussed this matter with his family on the insistence of his mother the complainant along with his cousin Jaswinder Singh @ Pappi son of Harphool Singh PW5 went on a scooter after him so that they may not fight over it. On reaching the haveli of the accused they came to know that the accused and Jagmohan Singh @ Billu along with deceased had gone to the tube well of Darshan Singh @ Laddi, where the complainant and his cousin reached and from a distance of 30-40 yards while they were parking their scooter, saw a scuffle

between accused and the deceased, whereby, accused was giving fist blows to Kewal Singh-deceased and thereafter, threw the deceased in the Well and inspite of efforts of the complainant and others could not save him and as a consequence of this fall in the Well which was dry had received injuries leading to his instantaneous death.

3. On the statement of the complainant, FIR Ex. PW4/A2 was registered on police proceedings Ex. P4/A1. The Investigating Officer reached Rajindra Hospital, Patiala and prepared inquest report Ex. PC and recorded statements u/s 175 Cr.P.C. Ex. PW12/A and Ex. PW12/B and thereafter, moved an application Ex. PB for post mortem examination of the dead body. Dr. Kuldeep Singh PW1 conducted the post mortem examination and gave his report Ex. PA as to the cause of death and handed over the parcel of the belongings of the dead body which was taken into police possession through memo Ex. PW3/A. Thereafter, the Investigating Officer visited the place of occurrence and on pointing out prepared rough site plan Ex. PW12/C and from inside the Well took blood stained earth and after preparing into a parcel took the same into police possession through memo Ex. PW12/D. It is during the course of the investigations the Investigating Officer got prepared scaled site plan of the place from Halqa Patwari, PW8 Gurdip Singh by way of Ex. PW8/A and collected jamabandi EX. PW8/B and copy of Registration Certificate of the vehicle EX/PW10/A from PW10 Kulwant Rai, Registration Clerk. On arrest of the accused he was served with formal memos Ex. PW7/A and EX. PW7/B and the articles were deposited with MHC Sahib Singh PW9.

4. After the investigations and presentation of challan by Inspector/SHO Krishan Singh, Panthey PW7, charges were framed against the accused u/s 304II IPC and the accused having denied the same claimed trial.

5. At the trial, the prosecution in all examined twelve witnesses consisting of Dr. Kuldip Singh PW1; Mehar Singh PW2; HC Gian Singh PW3; complainant Jaswinder Singh son of Bant Singh himself as PW4; eye-witness and cousin of the complainant Jaswinder Singh @ Pappi PW5. PW6 HC Kewal Singh tendered his affidavit Ex. PW6/A and, thereafter, Inspector Krishan Singh PW7, Gurdip Singh Patwari PW8, MHC Sahib Singh PW9, Kulwant Rai, Registration Clerk PW10, C. Bhupinder Singh PW11 and lastly ASI Kaur Singh PW12. The accused denied the allegations in his stand taken u/s 313 Cr.P.C. and in his defence has examined DW1 Pawan Kumar, Photographer. Consequent upon hearing of arguments, the impugned findings were pronounced and hence the instant appeal.

6. After hearing Mr. Vinod Ghai learned counsel for the appellant, Mr. Pavit Mattewal learned State counsel and perusing the record of the case the first and foremost argument canvassed by the appellant's counsel is regarding the factum of delay. It is by no means disputed that occurrence has taken place on 10th September, 2004 at 4 p.m. Whereas, the statement of the complainant has been recorded on the next very day i.e. 11th September, 2004 at 10.40 a.m. It is quite alarming as to why would

a real brother who claims to be a witness to this occurrence failed to report the matter to the police even in these days of fast communication when admittedly the distance from the place of occurrence is of 6-7 kms from the Police Post Dakala and not only this in the light of submission of the appellant's counsel the special report has reached the Magistrate on 11th September, 2004 at about 4.10. p.m. and which causes of delay could not be legitimately put forth on behalf of the State. No doubt, under the settled law a mere delay is not fatal for the prosecution, however, it certainly puts the Court on guard to scrutinise the evidence with more care and caution as there is every likelihood that an embellished account might have been put forth. Thus, to scan the evidence of the witnesses, the first hand account has been given by the complainant PW4 Jaswinder Singh and in the light of the submissions of Mr. Ghai learned counsel for the appellant the witness states that his brother deceased Kewal Singh had left for the house of the accused on a Jeep but in his cross-examination accepts that the keys of the jeep were never discovered/recovered from the person of the dead body and much less the vehicle has never been got recovered in the investigations nor in the site plan its position has been reflected certainly have a bearing on the truthfulness of this version. It has been rightly contended on behalf of the appellant that the accused and the person with him namely Jagmohan Singh @ Billu who has not been attributed any role were unarmed and even the complainant and his cousin too were two persons and as to why they never intervened to save the deceased from the clutches of the accused rather is highly unnatural conduct and when they have seen from a distance of 30-40 yards that the accused and the deceased were scuffling they could have easily intervened. More so, it is not a momentary action that the accused could throw the deceased in the Well and it must have taken some time and the fact that in his cross-examination the witness confronted with his previous statement to the police and the version that accused had given fist blows to the deceased were earlier not mentioned by him and even the name of Jagmohan Singh @ Billu does not find mention in his statement Ex. PW4/A. Furthermore, the complainant accepts in his cross-examination that there was no partnership of combine between his brother Kewal Singh-deceased and Darshan Singh accused, thus, clearly undermines the motive earlier set up by the prosecution for this murder and even accepts that he has not seen any document of partnership between Darshan Singh @ Laddi-accused and Jagmohan Singh @ Billu and the witness is unable to state if the police arrived at the spot before the dead body was taken to the hospital or if the police had come and took the photographs of the dead body at the spot and rather he has denied that these photographs were clicked by the police whereas, Photographer Pawan Kumar DW1 has been examined as defence witness and has categorically stated that it was on 10th September 2004 at the asking of the police he had gone to the place and got clicked the photographs of the dead body at the Well and has proved the photographs Ex. DA to Ex. DG and Ex. DH/1 to Ex. DH/3 rather negates the prosecution's version and especially of the complainant that they had taken the dead body immediately from the place of occurrence to the hospital and it was at

the hospital the police had come. The other witness of this occurrence PW5 Jaswinder Singh @ Pappi states in his cross-examination that the police had come at the spot when the dead body was brought out from the Well of Darshan Singh and the same was got photographed by the police who had come at the spot and identified the photographs Ex. DH/1 to Ex. DH/3 rather upsets the apple cart on which the prosecution has tried to take a ride and further adds that there were 3-4 persons in the police party which had come at the place of occurrence and rushed the dead body to the Rajindra Hospital, Patiala even put the ASI Kaur Singh in a bad light who has been specifically put these questions and has denied that he ever visited at the place of occurrence on the day of incident. Even this witness negates his presence and that of complainant by stating in his cross-examination that the police party consisting of two constables and ASI Kaur Singh were present at the spot before they arrived at the spot on 10th September, 2004 and cannot say since how long prior to their arrival the police party was present and further illustrates that when he reached at the spot on 10th September, 2004 so many people were present at the spot along with police party and further when he and his cousin Jaswinder Singh complainant reached at the spot together, the police party headed by ASI Kaur Singh was already present at the spot and thus, completely erodes the credibility of the prosecution's story and further undoes the truth by stating that it was a police party which had brought the dead body to the Rajinder Hospital, Patiala which further is substantiated by the post mortem report Ex. PA that it was head constable Gian Singh, who brought the dead body to the Rajindra Hospital, Patiala and even the presence of the complainant and eye-witness is negated as dead body in the hospital was identified by Harphool and Jasvir Singh. Thus, from this evidence it adequately stands reflected that the deceased had fallen into the Well and it was on the next day of the incident it came to light and, thus, subsequently a concocted version has been put forth for obvious reasons. Besides the fact that it is highly impossible that right in the presence of brother and a cousin brother the accused would ensure that he throws the deceased in the Well are matters which hinges on improbabilities of such a story. Besides the fact that there is nothing to suggest or prove by any means the motive of this occurrence neither any proof of the accounts has been brought on the record nor the factum that the accused and the deceased had any partnership over the combine and as has already been detailed above had been negated by the complainant's brother himself and even PW2 Mehar Singh, who has sold the combine to Darshan Singh-accused had not supported the prosecution's case as per their story is another distressing feature for the prosecution. Thus, from this overall evidence it is established that this delay has been utilised to bring about an embellished account and, therefore, proves fatal for the prosecution. The learned trial Court had failed to appreciate these serious lacunas and illegalities in the prosecution's story which have gone to the roots of the prosecution's case to make it highly unbelievable and so the presence of eye-witnesses at the time of occurrence. Thus, findings are illegal and improper and needs to be reversed. We therefore, accept the instant appeal and set aside the

judgment and conviction order dated 4th December, 2009.