

(2014) 07 P&H CK 0319

High Court Of Punjab And Haryana At Chandigarh**Case No:** Crl. Appeal Nos. S-273-SB and S-295-SB of 2002

Onkar Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: July 31, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 174, 306, 319, 330
- Penal Code, 1860 (IPC) - Section 302, 306, 328, 330, 34

Hon'ble Judges: Anita Chaudhary, J**Bench:** Single Bench**Advocate:** Ravi Sharma and Parminder Singh, Advocate for the Appellant; G.S. Sandhu, AAG, Advocate for the Respondent**Final Decision:** Allowed

Judgement

Anita Chaudhary, J.

This order shall dispose of two appeals Crl. Appeal No. S-273-SB of 2002 and Crl. Appeal No. S-295-SB of 2002. The facts are being taken from Crl. Appeal No. S-273-SB of 2002.

2. Appellants have assailed the judgment and order of conviction dated 04.02.2002 passed by Additional Sessions Judge, Yamuna Nagar at Jagadhri in FIR No. 233 dated 29.10.1994 registered at Police Station Farakpur under Sections 342/34 IPC.

3. The challan was filed by the State against four persons, however, Sahab Singh was acquitted of the charges while Chandgi Ram, Onkar Singh and Gurdial Singh were convicted u/s 342 IPC and were sentenced to undergo rigorous imprisonment of one year alongwith fine of Rs. 1,000/- and in default to undergo simple imprisonment for two months.

4. Noticing the factual matrix first, Balbir Singh made a statement to the C.I.A. Staff, Yamuna Nagar alleging that his son Devender Singh alongwith two other Mohan

Singh and Manjit Singh had been picked up by the police in connection with some case and he had received information on 29.10.1994 at about 2.00 p.m. that all these three persons had consumed poison while in the custody of C.I.A. staff Yamuna Nagar and had died. On receipt of this information, the complainant proceeded to Gaba Hospital, Yamuna Nagar and identified the bodies in the Dead-house. He further disclosed that he learnt that all the three had been beaten up by C.I.A. staff in order to extract confession and had died on account of the beatings they had received. Allegations were levelled that C.I.A. staff had forcibly administered poison to make out a case of suicide.

5. On these allegations, the FIR was registered under Sections 302, 328 and 342 IPC. The investigation of this case was handed over to D.S.P. Rajinder Singh by the Superintendent of Police, Yamuna Nagar. In the report submitted by the police, certain facts concerning the accused and their family were brought up which are briefly being referred. According to it, Devender Singh was residing with Kirpal Kaur though Kirpal Kaur was married to Gurmukh Singh. Kirpal Kaur had administered poison to the mother of Gurmukh Singh, who survived and made her stay difficult in the house, therefore, Kirpal Kaur started living with Rattan Singh who was her friend. Subsequently, she divorced Gurmukh Singh. Devender Singh used to visit Rattan Singh, who was a habitual drinker and had become physically weak. Kirpal Kaur developed illicit relations with Devender Singh. Rattan Singh was administered some poisonous substance, which led to his death. The report refers to the fact that Devender Singh did not have a good reputation and he had left his wife and had started living with Kirpal Kaur and was involved in criminal cases and had been sentenced to two years rigorous imprisonment in one of the cases. The Investigating Team found that Devender Singh, Manjeet Singh and Mohan Singh had committed robbery at Shashi Gas Agency in the year 1993 regarding which FIR No. 77 of 1993 had been registered. The allegations were that Devender and others went to effect recovery relating to FIR No. 77 of 1993 and they made confessional statement that they had abducted one Manohar Singh, driver of the truck and these trucks and cylinders had been sold and a case u/s 406 IPC was registered in 1994 at Police Station Kankhal.

6. The case of the prosecution was that accused got recovery of 178 Gas cylinders which were looted from Shashi Gas Agency, Yamuna Nagar. The case of the prosecution further is that on 28.10.1994 Chandgi Ram, accused took all the three persons to Haridwar and brought them back to the C.I.A. staff late night at 11.00 p.m. and they were put in the lock up. Devender Singh had managed to carry poison back with him. The next morning, tea was ordered from a dhaba for the inmates of the cell and these three persons died after consuming poison laced tea. The condition of Devender Singh, Manjit Singh and Mohan Singh started deteriorating and they were shifted to Gaba Hospital, where they were declared dead.

7. The postmortem examination showed no injury on any of them. The police collected the material and recorded the statements and submitted a report u/s 173 C.P.C. The name of Sahab Singh was placed in column No. 2 and was not challaned.
8. Charge was framed against Chandgi Ram, Gurdial Singh and Onkar Singh under Sections 330, 342, 306 read with Section 34 IPC to which all of them pleaded not guilty. The prosecution after examining 15 witnesses closed its evidence. The prosecution filed an application u/s 319 Cr.P.C. to summon Sahab Singh which was allowed and the witnesses were recalled for their examination.
9. The prosecution had examined its witnesses and tendered the report of the chemical examiner, the post mortem report and the inquest report.
10. The accused abjured the trial and pleaded innocent. In defence the accused examined one witness and produced documents, including copy of writ petition filed by Kirpal Kaur in the High Court.
11. The trial Court after analyzing the evidence was of the view that no case u/s 330, 306 IPC was made out but convicted accused Chandgi Ram, Onkar Singh and Gurdial Singh u/s 342 IPC. Accused Sahab Singh was acquitted. The convicts were sentenced to punishment mentioned aforesaid.
12. Two separate appeals have been filed by the accused assailing the findings.
13. Before dealing with the submissions, it is necessary to briefly refer to the evidence led by the prosecution.
14. Om Pal PW-1 had deposed that he was sitting at his shop in the area of Gobindpura, 50 yards away from the C.I.A. premises and he saw the police officials bringing out three persons from CIA office premises and they were taken to Gaba Hospital and they were in an unconscious state.
15. Sham Lal PW-2 did not support the prosecution and was turned hostile. He stated that he had never worked as a cleaner on Truck No. UP10 3159 driven by Devender. He denied that police had arrested Devender Singh, Manjit and Mohan alongwith him on 24.10.1994.
16. Birbal Das PW-3 deposed that the Sentry posted with the CIA Staff had ordered tea from his shop at 8.00 a.m. on 29.10.1994 and he had delivered tea and after half an hour he heard that some one had consumed poison.
17. Dr. B.S. Gaba PW-4 had medically examined Devender Singh, Manjit Singh and Mohan Singh. He stated that despite best efforts they could not be revived and were declared dead at 9.40 a.m. on 29.10.1994.
18. Dr. S.K. Gupta PW-5 had conducted the postmortem examination and had found that the death was on account of poison.
19. Ranbir Singh ASI PW-6 had conducted the proceedings u/s 174 Cr.P.C.

20. Angrej Singh PW-7 Constable was on sentry duty at the CIA office. He stated that he had escorted Devender Singh, Mohan and Manjeet Singh to the toilet and thereafter they had ordered tea for them and their condition worsened after they consumed tea. He stated that MHC brought the key of the lockup and the inmates were brought out and were taken to the hospital. He was categorical that the inmates were not in custody at the CIA premises. The witness was turned hostile as he did not support the prosecution version. He denied that he had told Rajinder Singh, DSP that these persons had been brought to CIA premises 2/3 days prior to 29.10.1994 or that they were brought by Gurdial Singh, Onkar Singh and Sahib Singh.

21. Nar Singh Inspector PW-8 deposed that he had received information about the death of the inmates and he had recorded the statement of Chandgi Ram Inspector and had sent it to the Police Station and he had conducted inquest proceedings. He stated that he had closely examined the bodies and did not find any mark of injury. He admitted that on account of three deaths the politicians had created lot of hue and cry.

22. Roshan Lal, Prem Bahadur and Ram Bahadur were given up as won over by the accused.

23. Parveen Kumar PW-9 deposed that the police from Yamuna Nagar had come to him on 28.10.1994 and Devender Singh had deposed that he had sold 120 LPG cylinders to him and he had admitted of having received some cylinders from Devender Singh and the police wanted to recover those cylinders but he was not in a position to get the recovery effected as they had been sent to the market and he had paid Rs. 1,32,000/- for those cylinders and the police had then returned.

24. Balbir Singh PW-10 father of Devender Singh deceased stated that he came to know that his son has been arrested by CIA staff Yamuna Nagar and he got this information only after his death and he went to the Gaba Hospital. He stated that he did not know the circumstances under which his son had died. He stated that he did not know what the police had written but they had taken his signatures on Ex. PR. He denied that he had made a statement to the police that the CIA staff in order to extort confession gave beatings to his son and two others. He refused to support the prosecution that the police had administered poison to his son.

25. Sukhchain Singh PW-11 runs a dhaba at the bus stand of Bedri, District Haridwar. He stated that Devender used to pass by that side and used to stop at his dhaba. He stated in the year 1994 Devender came to his dhaba and told him that his truck had to be repaired and he wanted the gas cylinders to be unloaded and kept in the godown. He unlocked a room which was locked by Devender with his own key and he returned 4-5 days later. He stated that he had requested Devender to take away his cylinders and he had assured that the cylinders would be taken as and when his truck was repaired but he spoke to him in a threatening manner. He stated that after 4-5 days later he came to know that police had come along with Devender and

two other sikh gentlemen while he was away and the cylinders were taken away by the police and he met the police party near the bridge. He pointed to Gulzar Singh and stated that he was one of the members of the raiding party. He could not give the date on which the police had come to his godown.

26. Sahab Singh, PW-13 deposed that he was a truck driver and on 24.10.1994 he had gone to Kurukshetra and Lalru with the truck containing LPG cylinders. He stated that the cylinders were unloaded at Kurukshetra. He stated that after unloading the cylinders he drove his truck towards GT road where he was intercepted by the police people. He was arrested for causing an accident and death of one person. It was stated that he was brought to Jagadhari on 24.10.1994 and was kept there till 28.10.1994. He stated that Manjit was also with him. He could not give the name of the police officials who had brought him to Jagadhri but stated that he was present in the Court. He stated that Devender, Mohan, Manjit and Sham Lal were lodged in the lockup with him and one more person was there whose name he did not remember. He was let off by the police on 29.10.1994. He stated that while in the lockup Devender had ordered for tea. Devender, Mohan and Manjit took tea and had just taken a sip and they stated frothing. He called for help and the police officials took them to the hospital. He stated that he alongwith three inmates of the lockup were blind folded by the police and they were taken to some other police station.

27. Kirpal Kaur PW-14 wife of Devender Singh deceased deposed that her husband was a driver with Ranjiv Kapur, resident of Haridwar and their own truck was driven by her sons Mohan and Manjeet. He stated that both the trucks were taken to Lalru gas bottling plant on 24.10.1994. She stated that one of the truck was driven by her husband while the other one was driven by her son, she stated that both the sons had gone together and neither her husband nor her sons returned and she waited for them till 12.00 at night and the next morning she called up Ranjiv Kapur and enquired about her husband but he asked her to enquire on her own. She enquired from the petrol pump situated near the bottling plant and came to now that one truck had gone to Haridwar and other had gone to Kurukshetra. She stated that she asked the petrol pump owner to make a call to Ranjiv Kapur. She deposed that after waiting for some time near Central Jail, Ambala she went to Yamuna Nagar and then to CIA staff premises and found that both the trucks were parked in front of the CIA office and when she went inside she saw Sahib Singh, Gurdial, Chandgi Ram and Onkar Singh and asked the reason for their arrest and she was told by Sahab Singh that he was keeping a watch on Devender Singh and he would be taken care of. She stated that she asked him to release her children and Sahab Singh told her that her sons were innocent and that he would release them and she returned home. She stated that later one Surya Kant came to her house and told her that she would have to pay Rs. 2 lacs for release of one of her son and this person came to her house for 2-3 days continuously. She stated that her son-in-law took her to CIA staff on 28.10.1994 and found that Mohan and Manjit were there but Devender was not

there. She stated that next morning she learnt that all the three had been killed. She admitted that she was married to Gurmeet Singh who was in the Indian Army and she had married Rattan Singh during the subsistence of the first marriage. She stated that Mohan and Manjit were born out of wedlock with Rattan Singh. She stated that she started living with Devender Singh. She could not say whether Devender Singh was involved in 8 cases of theft or had been sentenced to two years imprisonment. She admitted that she had approached the High Court for investigation of the matter by the CBI. She denied that she had made allegations against Ranjiv Kapur. She admitted that she had not made any complaint to any authority regarding the illegal custody of her sons. She denied that Devender Singh, her sons were apprehended from Dera of V. Bhagwanpur in Uttar Pradesh with cylinders, which were stolen on 28.10.1994. She stated that she had named Gurdev Singh in the writ petition filed in the High Court.

28. Rajinder Singh, D.S.P. PW-15 had arrested the accused and had prepared the report u/s 173 Cr.P.C.

29. The accused in their defence had examined Jagbir Singh Head Constable DW-1 who brought the Daily Diary Register for the month of October, 1994 and proved that Chandgi Ram, SHO, CIA staff had gone to police station Sarnawa (U.P) on 24.10.1994 at about 6.15 a.m. and had returned the same evening. He stated that the departure and arrival were noted. He also proved the entry of arrival on the same day.

30. The submissions made on behalf of the appellant are that Devender Singh, Mohan and Manjit were arrested on 28.10.1994 and they were wanted in a theft case for which the police had taken them to Haridwar and brought them back the same evening and they were put in the lock up. It was urged that the only independent witness Om Pal Singh had given the date as 28.10.1994 whereas Sham Lal PW-2 who was cleaner of the truck refused to support the prosecution and there is no evidence except the statement of Sahab Singh and Kirpal Kaur. It was urged that Kirpal Kaur had filed a writ petition in the High Court and had levelled allegations against Ranjiv Kapur. It was urged that Angrej Singh Constable PW-7 was categorical that these three persons were brought to the CIA premises a day prior to 29.10.1994, therefore, the allegations that the petitioners had been illegally confined in the lock up since 24.10.1994 are wrong. It was contended that Parveen Kumar, PW-9 was another independent witness who deposed that Yamunanagar police came to him on 28.10.94 and the police was pressing for recovery but he was unable to get the recovery effected as the cylinders had been distributed in the market, therefore, he had paid the amount to the police. It was urged that there was no reason for the police officials to keep these persons in illegal confinement and the prosecution does not get support from the statement of Angrej Singh PW-7 father of Devender Singh as he could not say whether the police had picked him up on 24.10.2010. It was urged that Sukhchain Singh PW-11 also does not refer to any date

and he had only mentioned that the police had effected recovery from his godown in his absence. It was urged that some of the cylinders which the three persons had stolen were sold to PW-9 and some were retained by Sukhchain Singh and the police had recovered some cylinders from the godown of Sukhchain Singh and the recovery memos were prepared. It was contended that the only statement that has come against the appellant is the statement of Sahab Singh but he did not know the names of the police officials who had brought him to Jagadhri on 24.10.1994. It was contended that in the cross examination it would be clear that Sahab Singh had gone to the Plant and had taken the empty gas cylinders on 26.10.1994 and those empty gas cylinders were deposited in the bottling plant on 29.10.1994, therefore, the prosecution story that they were in custody on 24.10.1994 is proved to be wrong.

31. Referring to the statement of Kirpal Kaur PW-14 it was urged that the statement given by the mother is contradictory to what she had stated in the writ petition filed in the High Court. It was urged that the DDR recites the date and time of departure and arrival of the police officials and the police party had left to investigate FIR No. 77 of 1993, registered u/s 392/395 at Yamuna Nagar. It was urged that there was a specific entry in the Daily Diary Report that the police party had returned with some gas cylinders. It was urged that these three persons were wanted in a number of cases and they were highway robbers and they were also wanted by U.P. Police and out of fear they consumed poison and it was not a case of wrongful confinement and police officials were only acting in discharge of their duty. It was urged that prosecution failed to take the sanction and the trial is vitiated.

32. On the other hand, learned State counsel supported the judgment and urged that trial Court had minutely examined the evidence and had accepted the statement of Sahab Singh who had been illegally detained alongwith those three persons and there is no reason to disbelieve his statement and the appeal be dismissed.

33. Having regard to the evidence it is now to be examined whether the evidence led by the prosecution was sufficient to convict the accused. Charge was framed against the accused u/s 330, 342, 306 read with Section 34 IPC for illegally detaining the deceased and for abetting the suicide. The trial Court acquitted the accused for the charges u/s 330 and 306 IPC and convicted the appellants only u/s 342 IPC. No appeal was filed by the State, therefore, the findings recorded against the appellants are only to be examined.

34. In criminal law, the burden of proof of guilt is always on the prosecution and the prosecution must prove beyond reasonable doubt that the accused had committed the offence. The burden of proving always rests on the prosecution from the beginning till the end of the trial and all the allegations have to be proved beyond a reasonable doubt. The Court is not required to act on mere suspicion, conjecture or surmises or suspicious circumstances. Mere suspicion does not relieve the

prosecution of its primary duty to prove its case against an accused nor the Court of justice can be swayed by sentiments or prejudices against persons accused of crime. They even cannot act on some conviction that the accused persons have committed a crime unless the offence is proved by satisfactory evidence, on record. If pieces of evidence on which the prosecution chooses to rest its case are so brittle that they crumble, when subjected to close and critical examination then the whole superstructure built on such insecure basis collapses, proof of some incriminating material which might give support to some evidence can not avert failure of prosecution evidence.

35. In [K.M. Nanavati Vs. State of Maharashtra](#), the principle of law laid down was to the effect that it is the cardinal principle of criminal jurisprudence that the accused is presumed to be innocent and, therefore, the burden lies on the prosecution to prove their guilt beyond a reasonable doubt. The prosecution is, thus, under a legal obligation to prove each and every ingredient of offence beyond any doubt, unless otherwise provided in any statute.

36. Keeping in view the principle of law laid down and referred to above, it is now to be seen whether the prosecution has been able to prove the charges beyond reasonable doubt. The allegations of the prosecution were that the accused illegally detained Devender, Mohan and Manjit from 24.10.1994 upto 28.10.1994.

37. The star witness for the prosecution was Kirpal Kaur widow of Devender Singh. She had deposed in the Court that when Devender and her sons did not return on 24.10.1994 she called up Ranjiv Kapur, the owner of the truck and having failed to get any answer she went out and made enquiries and hired a car and went to Lalru and had enquired at the Petrol Pump near the bottling plant. It is come in evidence that the truck driver used to ply gas cylinders which were filled at a bottling plant and then delivered at their destination. Kirpal Kaur appearing as PW-14 had stated that she had come to know that one truck had gone to Haridwar and other had left to Kurukshetra and Devender had taken the truck to Haridwar while Mohan and Manjit had taken the truck which were bound for Kurukshetra. Kirpal Kaur remained at Lalru upto 1.00 p.m. on 25.10.1994. Thereafter she had stated that she went to Central Jail, Ambala and then returned to Yamuna Nagar and went to CIA staff office where she saw both the trucks parked outside the CIA premises. According to her, she went inside the CIA office and saw Sahab Singh, Gurdial, Chandgi Ram and Onkar Sigh and she asked the reason for the arrest and she was told by Sahab Singh that she was keeping a watch on her paramour Devender Singh and he would be taught a lesson. On this, Kirpal Kaur asked Sahab Singh to release her children as they were innocent. She stated that she was made to sit for a long time in the CIA office but her children were not released and then she went home. Kirpal Kaur had then deposed about a demand received from one Surya Kant who asked her to pay Rs. 2 lacs to secure the release of one of her sons. Kirpal Kaur had then given some more details about what occurred on 28.10.1994 but strangely Kirpal Kaur made

allegation of murder accusing Ranjiv Kapur of contacting the police who used third degree method on Devender and her sons. The allegations were made in the writ petition filed by her in February 1995. Kirpal Kaur had also alleged that Sahab Singh cleaner on one of the truck was not seen by her and she suspected that he too had been killed or made to run away so that he was not able to give evidence.

38. The investigation of this case was carried out at a higher level and it was found that it was not a case of murder and the three persons had consumed poison. The police did not find any role of Ranjiv Kapur, the employer of Devender Singh.

39. A question would arise whether the statement of Kirpal Kaur who is the star witness of the prosecution can be accepted. According to her, when Devender and her sons did not return on 24.10.1994, she had started making enquiries and she had also seen the trucks parked outside the CIA premises and she went inside and asked the accused the reason for their arrest but still she did not make an effort to lodge a complaint with the police authorities nor sought help of the employer. She preferred a writ petition in February 1995 levelling allegations. A close examination of her statement reveals that she had met the accused and had spoken to them but in the cross examination there are contradictions. If Kirpal Kaur had seen her family members in the lock up she would have been able to give the details of the interior but when asked to give the details she was unable to explain, the reason is that she could not gain access to the interior of the office. She could not tell the number of rooms in the premises. There is a contradiction with respect to the plea raised by the petitioner in her writ petition filed in the High Court and the version she had given before the Court.

40. Additionally, it appears from the evidence that the truck had entered the bottling plant for refilling after 24.10.1994 which was driven by one of the sons of Kirpal Kaur and it takes a day before the truck is filled and sent out the bottling plant, therefore, the allegations that the appellants had wrongfully confined Devender and sons of Kirpal Kaur are found to be wrong.

41. Sahab Singh PW-13 is the other witness projected as the main witness but he also fails to give any evidence which incriminates the accused. According to him, he was arrested by the police in connection with accident and killing of a person and then he was brought to Jagadhri by the police and he was kept in the lock up till 28.10.1994. The prosecution failed to show that Sahab Singh had been arrested in an accident case on 24.10.1994. Sahab Singh failed to give the name of persons who brought him to Jagadhri. According to him, he was working as a driver on one of the trucks but in the cross examination, the witness was not able to give any details. He stated that he had not made any entry in the log book of the truck. He stated that his name was not entered in the register maintained at the gas bottling plant. He stated that only the number of trucks was mentioned. He did say that whenever a truck entered or came out, entry was made in the register. He stated that he never entered in the plant on 24.10.1994 but at the same time he stated that it was Manjit

who brought out the truck with the gas cylinders and he came to the driving seat outside the gas plant, therefore, he could not give the time of entry recorded in the register. The prosecution could have produced the register which was maintained at the bottling plant, which would have given some details and even the registration number of the truck and the time when it came out. There is no evidence to support the statement of Sahab Singh and can not be accepted.

42. The police maintains DDR register which contain details of the movement of the police officials. There is a entry that on 28.10.1994 the police officials had gone to investigate FIR No. 73/93 registered u/s 392/395 IPC and they had left the police station at 12.15 p.m. and their return is recorded at 11.00 p.m. that night. It also refers to the recovery effected in that case and the accused who had been arrested in that FIR. There are few entries subsequent to these entries and there is no reason to disbelieve them in the wake of the brittle evidence led by the prosecution. No evidence was led by the prosecution to show that the police party which had left the police station on 28.10.1994 did not go to Haridwar or that the entries in the Roznamcha were false. The police had returned with the case property. The prosecution had levelled allegations that the deceased were beaten up and were illegally confined but the record reveals that they were arrested in a robbery case and the police had brought them and had locked them in the CIA office, the previous evening. The postmortem report does not show that there were injuries on the body. There is no evidence against the appellant that they had participated in the assault of the deceased while they were in police custody. It is not a case of wrongful confinement.

43. The statement of the witnesses are discrepant and there is much doubt about their statement. It is difficult to believe the statement of Kirpal Kaur. Devender's father failed to support the prosecution and did not raise a finger against the appellant. On close scrutiny of facts of the present case it is found that the prosecution had failed to prove the charges.

44. Accordingly, conviction recorded u/s 342 IPC is set aside. Both the appeals are accepted. Summoned files be sent back.