

Narain Singh Vs. State of Punjab

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Court : Punjab and Haryana

Decided On : May-12-2006

Reported in : 2006CriLJ2973

Judge : T.P.S. Mann, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304, 307 and 325; Code of Criminal Procedure (CrPC) - Sections 173, 175 and 313

Appeal No. : Cri. Appeal No. 667-SB of 1999

Appellant : Narain Singh

Respondent : State of Punjab

Advocate for Def. : Mehar Deep Singh, A.A.G.

Advocate for Pet/Ap. : A.S. Jattana and; K.S. Ahluwalia, Advs.

Judgement :

T.P.S. Mann, J.

1. By way of this judgment, I am disposing of Criminal Appeal No. 667-SB of 1999, filed by appellant-Narain Singh, against his conviction under Section 304, Part II, IPC and sentence of R.I. for four years and to pay a fine of Rs. 5000/-, as recorded by the learned Sessions Judge, Patiala vide judgment and order dated July 20,

1999 and Criminal Revision No. 1311 of 1999, filed by complainant-Kuldip Kumar for enhancement of fine imposed upon Narain Singh and payment of the same to the kith and kin of Baljit Kumar-deceased, as compensation.

2. The facts giving rise to the present case are that during the last week of August, 1989, appellant-Narain Singh was posted as a constable in Police Station, Ghanaur, whereas Baljit Kumar deceased was working as a cook in the Police Station. C. Narain Singh along with H. C. Kulwant Singh were posted on duty at the Electric Grid, as there was a Bharat Bandh in those days. On August, 29, 1989 at about midnight, C. Narain Singh came to Baljit Kumar's house and called him outside, saying that he was being called by the In-charge of the Police Station The accused also asked the deceased as to why he did not bring food to Grid Sub-Station, where the accused was on duty. At that time, Gurmail Kaur P.W. 3 and Kuldip Kumar P.W. 4, wife and brother, respectively, of Baljit Kumar-deceased were present in the house. The accused took Baljit Kumar towards the Police Station. While taking him along, he gave fist blows to Baljit Kumar, who started crying, but in spite of that he was not spared by the accused.

3. After about three hours, Baljit Kumar-deceased returned to his house. He apprised his wife Gurmail Kaur P.W. 3 and brother Kuldip Kumar P.W. 4 that he had been beaten by the accused. He started complaining of pain in his abdomen and flanks. On the next morning at 7.00 a.m. Baljit Kumar went to the Police Station for duty, though he was still complaining of pain. He did not return during the day time. However, at about 8.00/8.30 p.m., he was found lying outside the house in an unconscious stage. Both Gurmail Kaur and Kuldip Kumar made efforts to revive him by offering him milk, but it was all in vain. He was taken to Dr. Hari Krishan Chapria at Ghanaur, by the said doctor refused to attend upon Baljit Kumar, who was thereafter, brought back to the house. On the next morning i.e. 31-8-1989, Kuldip Kumar went to Police Station, Ghanaur to lodge report, upon which DDR No. 33 was registered at 6.30 a.m. on the basis of his statement. The police took Baljit Kumar in a Jeep to Rajindra Hospital, Patiala where he was, however, declared dead on his arrival. Upon receiving an information regarding the death of Baljit Kumar-deceased at Rajindra Hospital, Patiala, ASI Sukhdev Singh P.W. 6 went there and recorded the statements of Gurmail Kaur, Leela Devi

and Krishan Kumar under Section 175, Cr. P.C. Inquest report Ex. PE was prepared. The dead body was handed over to C. Mohinderjit Singh for post-mortem examination. Dr. Duni Chand Sharma D.W. 2 conducted post-mortem on the dead body of Baljit Kumar-deceased, who gave his report Ex. DA, as per which there was no external injury and no definite cause of death could be ascertained. Blood as well as the viscera were sent for chemical examination.

4. A Medical Board comprising Dr. Krishan Vij P.W. 2, Dr. Harish Tuli and Dr. S. S. Oberoi was constituted by the Principal of Government Medical College, Patiala. The Medical Board conducted second postmortem examination on the dead body of Baljit Kumar deceased on 2-9-1989 and the following injuries were noticed on the dead body:

1. An abrasion 2 cm x .5 cm was present just below the left tibial tuberosity.
2. Two abrasions adjoining each other 1 x .5 cm and 1.5 cm x .5 cm were present just above the lateral malleolus of left leg.
3. An abrasion 2 x .5 cm was present just below the right tibial tubercle.
4. Abrasion 1.5 cm x .5 cm on right elbow and an abrasion 2 x 1 cm on left elbow.
5. On dissection under surface of the abdominal wall was contused. An area of 10 cm x 2 cm of small intestines was also contused.
5. The Board did not give any cause of death stating that it was to be given after receipt of report of the Chemical Examiner, After receiving the report dated 13-12-1989 issued by the Chemical Examiner, wherein it was mentioned that there was no poison in the organs examined, the Medical Board gave an opinion that the death in this case was probably due to the effect of abdominal injuries. The injuries were ante-mortem in nature.

6. In the meantime. Senior Superintendent of Police, Patiala instructed SHO Police Station, Ghanaur to register an FIR. Accordingly, FIR Ex. P. W. 6/ was registered on 8-11-1989. The investigation of the case was then handed over to DSP, Rajpura. The statements of the witnesses were recorded and the investigation was

completed, whereafter final report under Section 173 Cr. P.C. was submitted against the appellant in the Court.

7. After commitment of the case, the trial was taken up by the learned Sessions Judge, Patiala. Initially, the appellant was charged under Section 304, Part-I, IPC, which was, however, modified later on to Section 304, IPC. The accused pleaded not guilty and claimed trial.

8. At the trial of the case, the prosecution examined Dr. Harpal Singh P.W. 1, who proved his report Ex. PA that no poison or alcohol was detected in the items sent to him for chemical analysis. Dr. Krishan Vij P.W. 2 testified with regard to the second post-mortem examination. Gurmail Kaur P.W. 3 and Kuldip Kumar P.W. 4 deposed regarding the circumstances in which the deceased had been taken away by the accused on the night of August 29, 1989. Site plan Ex. PF was proved by Paramjit Singh-Draftsman P.W. 5. S.I. Sukhdev Singh P.W. 6 was the one who had taken up the initial investigation of the case. HC Mohinder Singh P.W. 7 tendered his affidavit Ex. P.W. 7/A. C. Kartar Singh P.W. 8 stated about the employment of the deceased as a cook in Police Station, Ghanaur with effect from 23-8-1989. H. C. Sukhdarshan Singh P.W. 9 proved the posting of appellant-Narain Singh in Police Station, Ghanaur as a Constable vide order dated 16-2-1988. H. C. Kulwant Singh P.W. 10 was to depose regarding the ocular account, but he failed to support the prosecution case. A.S.I. Salinder Singh P.W. 11 tendered his affidavit Ex. P.W. 11 /A. DSP Chaman Lal P.W. 12 proved FIR No. 147/87 registered at Police Station Sadar, Patiala under Section 307, IPC, on the basis of the statement of C. Narain Singh against one Joginder Singh. Further the statement of Joginder Singh was also recorded, on the basis of which DDR was recorded against C. Narain Singh and both the cases were tried as cross-cases. The prosecution, thereafter, closed its evidence.

9. Statement of the accused was recorded under Section 313, Cr. P.C. who denied the correctness of the prosecution case. He also denied that the deceased was a cook in the police mess. However, the accused admitted that he was posted as a constable at Police Station, Ghanaur and his name was also entered in register Ex. P.W. 8/1 at serial No. 11, where he had been marked present for both

meals on August 29, 1989. The accused also admitted that on August 29, 1989 he and H. C. Kulwant Singh were on duty at Electric Grid, Ghanaur in connection with 'Bharat Bandh'. The accused, however, denied the rest of the prosecution and submitted that he had been falsely involved in the case and that the case had been registered against him due to political influence.

10. When called upon to enter defence, the accused examined Kulwinder Singh as S.W. 1, who deposed regarding the pay rolls of the police officials posted at Ghanaur. However, he did not support the defence and was declared hostile. Dr. Duni Chand Sharma D.W. 2 proved the post-mortem report Ex. DA, which was prepared on 29-8-1989, after he conducted the post-mortem examination on the dead body of Baljit Kumar-deceased.

11. Learned trial Court believed the prosecution evidence and held that C. Narain Singh gave beating to the deceased, as a result of which the latter felt pain in his abdomen and flanks. The second postmortem examination revealed injuries, which in the opinion of the Board, had probably caused the death. However, it was held that when the accused caused injuries, he did not have any intention of causing an injury, which he knew was likely to cause death, but it could certainly be said that the accused had the knowledge that his act was likely to cause death. Therefore, learned trial Court convicted and sentenced the appellant under Section 304, Part II, IPC, as mentioned above. Hence, the present appeal.

12. Learned Counsel for the appellant while challenging the judgment of conviction and sentence passed by the learned trial Court submitted that the conduct of Gurmail Kaur P.W. 3 and Kuldlp Kumar P.W. 4 in neither taking Baljit Kumar to the hospital on 30-8-1989, nor reporting the matter to the police at the earliest about the accused having caused injuries to Baljit Kumar-deceased belied their presence at the time of occurrence. They were close relatives of the deceased, being his wife and brother, respectively. In case such an occurrence, as alleged, had taken place, both these witnesses would have left no stone unturned. Further that in fact no such occurrence, as alleged by the prosecution, had taken place as was clear from the post-mortem report Ex. DA, prepared by Dr. Duni Chand Sharma D.W. 2. Second post-mortem examination on the dead body of Baljit Kumar-deceased was

conducted under political pressure and report was, accordingly, managed. Lastly, it was argued that no offence under Section 304, Part II, IPC was made out as there was no specific opinion regarding the death being the effect of abdominal injuries.

13. Learned Counsel representing the State of Punjab has refuted the arguments submitted by the defence. It has been contended that the testimonies of Gurmail Kaur P.W. 3 and Kuldip Kumar P.W. 4 could not be discarded merely because they were near relatives of the deceased or that they did not either take the victim to the hospital immediately or reported the matter to the police. The police agency was ought to help the present appellant C. Narain Singh, as it even managed to obtain post-mortem report Ex. DA from Dr. Duni Chand Sharma D.W. 2, as per which there was no injury whatsoever on the dead body of Baljit Kumar-deceased. The matter was agitated further by both the witnesses, as well as by the people of the neighbouring areas and because of the same a Medical Board was set up to conduct second post-mortem examination, which revealed the presence of multiple injuries on the dead body. Regarding the nature of offence, it was stated that the accused had knowledge that his act was likely to cause death and therefore, the accused had been rightly convicted under Section 304, Part II. IPC.

14. I have perused the record of the case minutely and heard the arguments.

15. Baljit Kumar-deceased was employed as a cook in Police Station, Ghanaur. He was not on the regular rolls of the police C. Narain Singh present appellant along with HC Kulwant Singh was posted as such in Police Station, Ghanaur. During the days of the occurrence, there was a 'Bharat Bandh'. With a view to protecting important installations like the Electric Grid, both C. Narain Singh and H. C. Kulwant Singh were put on duty at the Grid Sub-Station, Ghanaur, Baljit Kumar deceased was also supposed to have carried food for C. Narain Singh and HC Kulwant Singh to the Grid Sub-Station, where they were stationed to guard it. He, however, did not do the same. Accordingly, at about mid-night on August 29, 1989 C. Narain Singh came to the deceased's house and after calling him out told him that he was being called at the Police Station. He was also asked as to why he did not bring food to the Grid Sub-Section, where accused was on duty. At that point

of time and in the presence of Gurmail Kaur P.W. 3 and Kuldip Kumar P.W. 4, appellant gave fist blows to the deceased. In spite of the deceased protesting to the same, appellant did not spare him and took him along to the Police Station. After about three hours, Baljit Kumar-deceased returned and informed his wife and brother that he had been beaten by the appellant. At that time, he also complained about pain in his abdomen and flanks. On the next morning at 7.00 a.m. Baljit Kumar went to the Police Station to attend his duty, although even at that time, he was still complaining of pain. It was at about 8.00/8.30 p.m. on 30-8-1989 that he was found lying outside the house in an unconscious stage. Efforts were made to revive him, but they proved futile. He was taken to a doctor at Ghanaur, but he was not attended to. Next morning, after his brother Kuldip Kumar P.W. 4 lodged DDR No. 33 at 6.30 a.m., the police removed him to Rajindra Hospital, Patiala, where he was declared dead on arrival. Both the witnesses were crying at the top of their voice that deceased-Baljit Kumar had been beaten by C. Narain Singh, but nobody listened to them. They were helpless against the might of the police. So much so, Dr. Duni Chand Sharma D.W. 2 conducted post-mortem, as per which he did not find any injury on the dead body. Had there been no truth in the allegations of Gurmail Kaur P.W. 3 and Kuldip Kumar P.W. 4, both of them would have remained content with the first postmortem examination. However, they were insisting that their near relative Baljit Kumar had been given injuries by C. Narain Singh. The people of the area joined them in their concern and accordingly, the authorities were impressed upon to order second postmortem examination. This time multiple injuries were noticed by the doctors and they so stated in the post-mortem report. The doctors have further given opinion that the death of Baljit Kumar was 'probably' due to the effect of abdominal injuries. There is no material on the record to show that apart from both Gurmail Kaur P.W. 3 and Kuldip Kumar P.W. 4 seeing their near relative being beaten, they had any reason to make false allegations against C. Narain Singh. The defence has not been able to prove as to why C. Narain Singh was singled out by the complainant party to be named as an accused. There is also no evidence that he had been made a scapegoat. It is, thus, to be held that it was Narain Singh-appellant, who had given blows to Baljit Kumar-deceased.

16. Coming to the nature of the offence, it may be seen that though there were multiple injuries on the dead body of Baljit Kumar-deceased, as per the second postmortem examination, conducted by Dr. Krishan Vij P.W. 2 and two other doctors, yet there was no external injury in the abdominal area. Injuries Nos. 1 to 4 were the abrasions found on the extremities of Baljit Kumar-deceased, whereas injury No. 5 was in respect of the abdominal area. There was no external injury as injury No. 5. It was only on dissection of abdominal area that the doctors found the under surface of the abdominal wall to be contused. Further an area of 10 cm x 2 cm of small intestines was also found to be contused. After the receipt of the report of Chemical Examiner, opinion Ex, PG was given by Dr. Krishan Vij and two other doctors, as per which, the death in this case was 'probably due to effect of abdominal injuries'. The injuries were ante-mortem in nature.

17. The aforementioned opinion given by the doctors in regard to the death of Baljit Kumar-deceased is not sufficient to hold that the accused had knowledge that the injuries were likely to cause death. The death was stated to have been caused 'probably due to the effect of abdominal injuries'. There is no definite and conclusive opinion given by the doctors that it were the abdominal injuries which caused the death of Baljit Kumar-deceased. Moreover, these injuries were also not mentioned to be sufficient to cause the death in the ordinary course of nature. The accused was not armed with any weapon at the time of the occurrence. There is also no allegation that any weapon was used as such by anyone in causing injuries to Baljit Kumar deceased. The case of the prosecution was that the appellant had given fist blows to the deceased.

18. Accordingly, it is held that no offence under Section 304, Part II IPC was made out against the appellant. However, the act of the accused in causing fist blows to Baljit Kumar-deceased endangered his life. Accordingly, he caused grievous hurt to Baljit Kumar-deceased making him liable for punishment under Section 325, IPC.

19. On the question of sentence, it is to be seen that the appellant has faced the agony of criminal proceedings since the year, 1989. The Court has been informed that the appellant has lost his service also. It can also not be forgotten that a police

official has to act as a guardian of the society and not to beat innocent persons. Taking the totality of the circumstances into consideration, it would a fit case to order the appellant to undergo R.I. for two years and to pay a fine of Rs. 5000/- under Section 325, IPC.

20. Consequently, the appeal is partly accepted. The appellant is acquitted under Section 304, Part II, IPC and instead, he is convicted under Section 325, IPC and sentenced to undergo R.I for two years and to pay a fine of Rs. 5000/-. In default of payment of fine, the appellant shall undergo further R.I. for six months. The whole of the amount, on its realisation, be paid to the kith and kin of the deceased, as compensation.

21. The revision petition is also disposed of, in view of what has been ordered above.

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