

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 184 OF 2010

Avtar Singh

..Appellant

versus

State of Punjab

..Respondent

O R D E R

1. The deceased Manjit Singh, was three and a half years old. His father Om Prakash, PW2 registered a first information report on 14.09.1998, after the dead body of his son was recovered on 13.09.1998. On investigation, it was believed that the appellant-Avtar Singh, and his servant Ramu @ Sanjit Kumar @ Bhaiya, were responsible for the death of Manjit Singh.

2. The prosecution version, as is apparent from the first information report, is principally based on the testimony of Mohinder Singh PW5, an uncle of Om Prakash, PW2. Mohinder Singh alleged, that he had seen the two accused on 13.09.1998. The accused were stated to have been pulling a scooter, which had something wrapped in a cloth ("palli") which seemed to be 'like a dead body of a child'. This statement of Mohinder Singh PW5, was originally recorded by the police under Section 161 of the Code of Criminal Procedure. Consequent upon the recovery of the dead body on 13.09.1998, a post mortem of the body of Manjit Singh was conducted by Dr.Didar Singh, PW3, who was the Medical Officer at the Civil Hospital, Dasuya. It is essential to extract herein the relevant part of the statement of Dr. Didar

Singh, PW3:

"....There was no ligature mark on the neck. It was dead body of male child moderately built and moderately nourished with eyes closed and mouth semi-open. The tongue's tip protruding between teeth and semi digested food particles were coming out of mouth and nostrils. PM staining was present on the left side of trunk and buttocks and was fixed. Rigor Mortis was absent in upper limbs and partly present in lower limbs and bite marks were present on the front of the body which were post-mortem. Cloths, light yellow colour shirt. There was no injury on the dead body. Scalp, skull vertebra were healthy. Larynx and trachea contained semi digested food particles. Stomach with contents, a piece of small intestine with contents, a piece of large intestine with contents, a piece of liver spleen and kidney were sent to Chemical Examiner. All other organs were normal/healthy.

The cause of death in this case was to be declared on receipt of report of Chemical Examiner. The cause of death in this case was cafecornary which was sufficient to cause death in an ordinary course of nature. The death occurred instaneous in this case. Police request for post-mortem is Ex. PD, inquest report is Ex. PE, copy of the PMR is Ex. PF. The report of the Chemical Examiner is Ex. PG."

(emphasis is ours)

The Chemical Examiner's report, which may also be relevant for the determination of the controversy in hand, is being extracted hereunder:

"1. I hereby certify that I received by Constable Surjan Singh No. 1257, a packet from the Dr. Didar Singh, Medical Officer, Civil Hospital, Dasuya Distt. Hoshiarpur alleged to have been despatched by him on the 14th of September, 1998 referred to in his office Memo No.1089-A dated 14.09.1998 and received by me on the 18th of September, 1998.

2. The packet consisted of a one sealed parcel was sealed with a seal bearing the impression on the invoice hereunto attached received by me with

12 seal entire and intact.

The contents of the packet were as follows:

I. A sealed bottle said to contain stomach and its contents.

II. A sealed bottle said to contain piece of liver, spleen & kidney.

III. A sealed bottle said to contain piece of small and large intestine with contents.

IV. A sealed bottle said to contain blood.

V. A sealed bottle said to contain sample in preservative.

3. The above seals were opened in my presence and the contents of the Packet were duly examined by me and remained under my immediate custody until examination was completed.

The poisons I was let to examine for were:-

The result was as follows:- No poison was detected in the contents of exhibits No. I, II, III, IV and No. V."

(emphasis is ours)

3. First and foremost, it is apparent from the statement of Dr. Didar Singh, PW3, that the cause of death in this case was 'cafecornary'. It is also apparent from his statement, that there was no ligature mark on the neck, and further that there was no injury on the dead body. Cafecornary, we have been assisted, is a situation wherein an individual chokes himself to death, as a consequence of food entering into the wind pipe. If it is so, it is apparent that it has not been shown from the evidence produced by the prosecution that the deceased Manjit Singh was done to death. He had died on his own.

4. Further more, the link of the accused, to the cause of

death of Manjit Singh, is based on the last seen evidence, namely, the statement of Mohinder Singh, PW5. A perusal of the statement of PW5 does not show, that he ever identified the deceased as being present on the scooter. Or that, the object wrapped in a cloth, which was placed on the scooter of the accused Avtar Singh (which was being pushed by Avtar Singh and the other co-accused Ramu), was actually a dead body. And further that, the dead body was that of Manjit Singh. In such a situation, the statement of Mohinder Singh, PW5 cannot be treated as a last seen evidence. As a matter of fact, in the above view of the matter, it is apparent that no link whatsoever was established, between the accused and the deceased.

5. Thus viewed, there is hardly any justification for sustaining the conviction of the appellant Avtar Singh. More so, the co-accused, who was a juvenile at the time of occurrence, was acquitted by the Juvenile Court, Rupnagar, vide judgment dated 21.5.2001, which concluded the matter by holding as under:

"In the present case, there is no eye witness of the occurrence. The prosecution failed to examine any witness to show as to how Manjit Singh was kidnapped and as to who kidnapped said Manjit Singh. There is also no evidence of the prosecution to show as to how the death of Manjit Singh took place and there is no eye witness of the manner the death of Manjit Singh. Thus the present case of circumstantial evidence. The law on this point is well settled that any case based on the circumstantial evidence, the chain of circumstances should be completed and the only conclusion which can be drawn from the said chain of circumstances should be that only the accused committed the said offence. However, in the present case, the prosecution failed to prove the chain of circumstances leading to irresistible conclusion

that it was the accused who committed the offence for which he had been charged. Thus the accused has become entitled to benefit of doubt. Extending him the same as a matter of abundant caution the accused is acquitted of the charged framed against him. Accused is ordered to be set at liberty."
(emphasis is ours)

Learned counsel for the appellant, has further brought to our notice, that the judgment of the Juvenile Court has not been assailed or contested by the State, and has attained finality. In such view of the matter, it would not be appropriate to treat the two accused of the same offence, differently.

6. Accordingly, the conviction and sentence of the appellant imposed by the trial Court, as well as, by the High Court, are hereby set aside.

7. While granting leave in the matter, this Court had ordered the release of the appellant on bail, during the pendency of the appeal. Since, we have set aside the conviction and sentence imposed upon the appellant, his bail bonds shall stand discharged.

8. The appeal is allowed in the aforesaid terms.

.....J.
[JAGDISH SINGH KHEHAR]

.....J.
[MADAN B, LOKUR]

NEW DELHI;
MAY 13, 2015.

.....J.
[KURIAN JOSEPH]

ITEM NO.111

COURT NO.4

SECTION IIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 184/2010

AVTAR SINGH

Appellant(s)

VERSUS

STATE OF PUNJAB
(with office report)

Respondent(s)

Date : 13/05/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE KURIAN JOSEPH

For Appellant(s) Mr. Sudhir Walia, Adv.
Ms. Niharika Ahluwalia, Adv.
Mr. Abhishek Atrey, Adv.
for Mr. Jitendra Kumar, AOR

For Respondent(s) Mr. Jayant K. Sud, AAG
Ms. Jasleen Chahal, Asst. AG
Mr. Ajay P. Tushir, Adv.
for Mr. Kuldip Singh, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

Since, we have set aside the conviction and sentence imposed upon the appellant, his bail bonds shall stand discharged.

(Renuka Sadana)
Court Master

(Parveen Kr. Chawla)
AR-cum-PS

[signed order is placed on the file]