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STATE OF PUNJAB  
v.  
JOGINDER SINGH AND ANR.

OCTOBER 29, 2003

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[K.G. BALAKRISHNAN AND B.N. AGRAWAL, JJ.]

*Penal Code, 1860 :*

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*S. 304(Part-II)—Quarrel between accused and victim over money—Accused pressing neck of victim, who was a frail person—Death of victim—Trial court convicting accused and his companion u/s 302 r/w s.34—Acquittal by High Court disbelieving prosecution case—Held, High Court seriously flawed in disbelieving evidence of eye witness—As regards delay in sending FIR, keeping in view the disturbed conditions prevailing in the locality, few hours delay is of no consequence—Acquittal of accused was not correct as prosecution has satisfactorily proved that accused strangled the deceased—Companion of the accused did not cause any injury to deceased—Both the accused and his companion came to house of deceased just to demand the money borrowed by the latter—It is not possible to assume that the companion of accused had common intention with him for commission of any offence—As regards the accused, he was not armed with any weapon—When deceased was not in a position to pay the money, accused got flared up and pressed his neck which caused his death—Post-mortem report shows that deceased was frail and slight pressure on his neck must have resulted in death—It cannot be said that by using such force accused had any intention to cause death, though he could be attributed with knowledge that his act would cause death of the victim—Accordingly accused is guilty of offence punishable u/s 304 Part-II and is sentenced to six years RI—Delay in filing FIR—Common intention.*

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.  
1783 of 1996.

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From the Judgment and Order dated 6.9.95 of the Punjab and Haryana  
High Court in Cri. A. No. 258-DB of 1993.

Bimal Roy Jad, Ms. Sunita Pandit for the Appellant. A

Vivhu Bakhru, Vivek Sibal and A.P. Medh for the Respondents.

The Order of the Court was delivered :

This is an appeal preferred by the State of Punjab against the acquittal of two accused persons namely Joginder Singh and Nachhattar Singh. These two accused persons were tried by the Sessions Judge, Ferozpur, for having caused death of Makhan Singh. The Sessions Judge found both of them guilty of the offence punishable under Section 302/34 IPC and sentenced them to undergo imprisonment for life. Aggrieved by the same they filed appeal before the High Court and the High Court was pleased to find them not guilty and acquitted them of the charges framed against them under Section 302 IPC read with Section 34 IPC. The acquittal of these accused is challenged before us. B C D

The incident happened at about 10 p.m. on 20.4.1992. The deceased Makhan Singh was the son of PW-2 Gurdial Singh. On the date of incident Makhan Singh and his brother Amrik Singh returned to their house after the days work. They were about to take meals when accused Joginder Singh and Nachhattar Singh came there and demanded hundred rupees from Makhan Singh which he had borrowed from accused Joginder Singh. Makhan Singh was not in a position to pay Rs. 100, but Joginder Singh insisted that money should be paid immediately and he started abusing Makhan Singh and others. Joginder Singh then caught hold of him by tuft and dragged him towards his house. PW-2 Gurdial Singh and his son Amrik Singh followed and Gurdial Singh implored not to kill his son. Joginder Singh kicked Makhan Singh on his chest and pressed his neck with his hands. According to the prosecution Nachhattar Singh set on the legs of Makhan Singh. Bearing alarm raised by PW-2 Gurdial Singh, three other persons came to the scene of occurrence. Accused Joginder Singh and Nachhattar Singh ran away from the place. Makhan Singh who was lying on the floor unconsciously was brought to the house of PW-2. An attempt was made to pour water in his mouth but he died immediately. PW-2 contacted Dharam Singh, Sarpanch, of the village in the night itself and as it was the time of disturbed conditions in that area he could not go to H

A the police station to lodge FIR and on the next day, at 7.20 a.m. he gave first information statement which was recorded by the ASI.

B PW-1 to PW-6 were examined on the side of the prosecution. PW-1 who conducted the post-mortem examination found as many as nine injuries on the body of the deceased. Injury nos. 1 to 8 are abrasions on the various parts of the body. Injury no. 9 is abrasion 4.5 cm x 2.5 cm on the joint aspect of neck and its lower point. The post mortem examination revealed that as a result of the neck injury, Hyoid bone was Fractured and on dissection of the neck, there was subcutaneous haematoma below the injury no. 9.

C The accused persons were questioned under Section 313 Cr.P.C. Accused Joginder Singh stated that he was not present at the time of the incident. Accused Nachhattar Singh stated that on the date of incident when he came to his house at about 11 p.m. after the harvest work was over he saw his wife being assaulted by deceased Makhan Singh and in order to give his wife he grappled with Makhan Singh and when Makhan Singh tried to strangle him, he overpowered him and strangled deceased Makhan Singh. The Sessions Judge accepted the prosecution evidence and relied on the evidence tendered by the two witnesses namely PW-2 D Gurdial Singh and PW-3 E Gurdev Singh and found these accused persons guilty.

F The High Court reversed the finding of the Sessions Court. According to the High Court the prosecution story was highly improbable and it is stated that if five persons including PWs.2 and 3 were present at the time of incident they could have very well intervened and saved the deceased Makhan Singh from the clutches of Joginder Singh and Nachhattar Singh. On this point the prosecution story was disbelieved by the High Court. Yet another reason given by the High Court is that in the post mortem report it is stated that there was partly digested food material in the stomach of G the deceased and this indicated that the deceased must have taken food 2-3 hours prior to the incident and according to the prosecution deceased had taken food at 10 O'clock in the night and incident must have happened much later and therefore the defence version putforth by Nachhattar Singh must have been probable. The High Court also found that there was delay H both in lodging First Information Report and also sending the same to the

Magistrate. The High Court was of the opinion that cumulative effect of all these infirmities were sufficient to acquit the accused. A

Since this appeal is against the acquittal we have carefully considered the evidence adduced by the prosecution. PWs. 2 and 3 gave a consistent version regarding the incident, both the witnesses stated that deceased Makhan Singh was dragged by Joginder Singh and he was later assaulted by kicking and was strangulated. But nothing is attributed to the accused Nachhattar Singh. In the cross examination of these two witnesses also nothing has been brought out to cause serious doubt about the evidence of these two witnesses. The evidence of these two witnesses clearly shows that incident happened at about 10 p.m. There is no evidence as to when the deceased Makhan Singh had taken his last meal. PW-2 would say that Makhan Singh and his brother came from the place of work and they were about to take their meals. PW-3 would say that the incident happened when Makhan Singh was taking his meals. There is no other evidence regarding the time of taking the meals by Makhan Singh. Therefore, High Court seriously erred in fixing the time of the murder by assuming that the deceased must have taken food at about 10 p.m. and thereafter the incident took place. As there is no clear evidence as to when the last meal was taken by the Makhan Singh, the High Court seriously flawed in disbelieving the evidence of PWs. 2 and 3 and the Sessions Judge had rightly relied on their evidence. B C D E

As regards the delay in lodging FIR, PW-2 has given explanation that the disturbed conditions was prevailing in the locality and it was not possible for him to go to the police station. It is important to note that he informed Dharam Singh, Sarpanch of the village in the night itself and this aspect is not challenged in the cross examination. He gave the statement in the early morning of 21-4-1992 and the delay in sending the FIR is only few hours and that is not of serious consequence. The High Court was not justified in reversing the finding of the Sessions Court for these reasons. F G

The incident happened pursuant to a quarrel between deceased Makhan Singh on the one hand and Joginder Singh and Nachhattar Singh on the other. Joginder Singh demanded money and insisted that he should pay immediately. He caught hold of the hair of Makhan Singh and dragged H

A him to his house and started assaulting Makhan Singh. That shows that Joginder Singh was in a very violent mood. PW-2 Gurdial Singh and PW-3 Gurdev Singh and three others were present when this incident happened. Though they were close relatives of the deceased they did not intervene and this according to the High Court was highly improbable and the presence of these two witnesses were doubted. We do not think that the High Court was justified in doubting their presence. Accused Joginder Singh throttled deceased Makhan Singh and when PWs. 2 and 3 and other persons came, Joginder Singh and Nachhattar Singh ran away from the place. The physical violence on Makhan Singh lasted only for some time and he died later when he was brought to the house of PW-2. From these facts, it is not possible to assume that the whole story is unbelievable merely because these witnesses did not intervene, especially when two witnesses deposed that they saw deceased Makhan Singh being throttled by Joginder Singh.

D On a careful consideration of entire evidence, we are of the view that the acquittal of accused Joginder Singh was not correct and the prosecution has satisfactorily proved that he strangled deceased Makhan Singh. Of course Nachhattar Singh who put forth false case is not proved to have committed any serious offence. According to PWs. 2 and 3 he only sat on legs of deceased Makhan Singh. Nachhattar Singh had not caused any injury to deceased Makhan Singh. He was also not armed with any weapon. Both the accused came to the house of deceased just to demand hundred rupees borrowed by deceased Makhan Singh. Therefore, it is not possible to assume that Nachhattar Singh had common intention with Joginder Singh for the commission of any offence.

The next question is what is the offence, if any, committed by Joginder Singh. The prosecution evidence shows that he has not armed with any weapon. He went to the house of the deceased to get back Rs. 100 he had lent to him. When deceased Makhan Singh was not in a position to pay the money, accused Joginder got flared up and caught hold of him. It is proved that he put pressure on the neck of deceased and it caused his death. The post-mortem report shows that deceased was frail and slight pressure on his neck must have resulted in his death. When all others came the accused ran away. It is difficult to assume that by using such force he had any intention to cause death, though he could be attributed with

knowledge that his act would cause death of the victim. In the result we find him guilty of offence punishable with Section 304 Part-II IPC and sentence him to undergo rigorous imprisonment for six years. He is directed to surrender to his bail bonds to serve out the remaining period of sentence. The appeal is accordingly disposed of. Appeal filed by the State as against Nachhattar Singh is dismissed.

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R.P.

Appeal disposed of.