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**(1992) 11 P&H CK 0054**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Criminal Appeal No. 38-DB-1991**

Abdul Rashid

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision :** 12-11-1992

**Acts Referred:**

**Citation :** (1993) 1 AICLR 819 : (1993) 2 RCR(Criminal) 626

**Hon'ble Judges :** R.K.Nehru, J and A.S.Nehra, J

**Advocate :** K.S. Brar, Mehtab Singh, Advocates for appearing Parties

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## Judgement

A.S. Nehra, J.

1. These two appeals, i.e. Crl. Appeal No. 38DB of 1991 titled as Abdul Rashid v. State of Punjab and Crl. Appeal No. 295DB of 1990 titled as State of Punjab v. Abdul Rashid are directed against the judgment dated September 27, 1989 by which the appellant has been convicted under Section 302 of the Indian Penal Code for the murder of Amrik Singh and Shinder Kaur on each of two counts and was sentenced on September 30, 1989 under Section 302 of the Indian Penal Code in respect of murder of Shinder Kaur to undergo imprisonment of life and also sentenced under Section 302 of the Indian Penal Code for the murder of Amrik Singh to undergo imprisonment of life. Both the sentences of imprisonment were ordered to run concurrently. State of Punjab has filed the appeal for awarding the death sentence of two appellant.

2. As a sequel to the homicidal death of two unfortunate children, one named Amrik Singh aged about five years and the other called Shinder Kaur aged about three years, Abdul Rashid accused, a selfstyled sorcerer obsessed with the efficacy of his whichcraft, was charged with the commission of the offence punishable under Section 302 of the Indian Penal Code to which he pleaded not guilty and claimed trial Horrible narrative, unfolded as it is in the deposition of their (deceased) parents, may be stated in broad essentials thus :

3. Jaswant Kaur, PW4 and Sewak Singh, PW5 respectively, are their (deceased)

mother and father. Marriage between them was solemnised about eight years ago. Sometimes after their (deceased) birth, they were affected with polio. And in spite of their medical treatment at various places, they could not be cured of the ailment. Sewak Singh, PW5 was engaged in the avocation of cutting/saving the hair of mules and thus work often took him to village Pharwahi where he came into contact with Abdul Rashid, accused, who assured him that with the aid of his sorcery he would treat/cure both of his polioafflicted children.

4. On June 9, 1987, Jaswant Kaur, PW4 and Sewak Singh, PW5 brought both of their children to the mosque which was the abode of Abdul Rashid in village Pharwahi. He assured them that he would cure their children through the magic of his witchcraft. In the first instance, he offered prayers/recited verses from the Holy Quran Sharif. Also, he started beating them (children) with the stick, Ex. P3 as well as gave slaps to them. And this process continued for the two days.

5. On the second day Abdul Rashid tied the hair of Shinder Kaur to the rope Ex. P7 and hung her from the 'Tangna' Ex. P6. He beat her with the soti, Ex. P3 and slapped her face while she was in the hanging position. Afterwards, he removed the rope, brought her down, and made her lie on the ground. Further, he beat Amrik Singh with the Soti, P3 on the various parts of his body.

6. As and when the parents i.e. Sewak Singh and Jaswant Kaur asked Abdul Rashid not to beat the children lest they should die, he made them not to resist him in his process. He rather assured them that he had rendered the children unconscious and would cure them through the charm of his magic. He then covered both of them under a quilt.

7. At about 7 a.m. on the third day, i.e. June 11, 1987, Abdul Rashid asked Sewak Singh, PW5 to fetch new clothes for the children and told him that on his return they would be fully cured and would walk happily. Sewak Singh, PW5 accordingly left for his village Mander Khurd to bring the clothes for his children. Mohinder Singh, PW3 was the Sarpanch, Gram Panchayat, Pharwahi. At about 11 a.m. i.e. on June 11, 1987, the village Sarpanch, Mohinder Singh alongwith Gurdev Singh came to the mosque. Since they suspected some foulplay, they made enquiries from Rashid, accused in regard to the children. He informed them that both the children were under his treatment and were asleep. But on lifting the quilt they found them dead. It all happened in the presence of Jaswant Kaur, PW4 who started crying.

8. In the company of the village Chowkidar, Chanan Singh, Jaswant Kaur, PW4 went to the Police Station, Barnala. Inspector Iqbal Singh, PW6 recorded the FIR Ex. PG on the basis of her statement made to him. Soon thereafter, the police party alongwith Jaswant Kaur, PW4 arrived at the mosque. Inspector Iqbal Singh prepared the inquest reports. Ex. PC and Ex. PF, in relation to the dead bodies of Amrik Singh and Shinder Kaur. Both the dead bodies were then sent for postmortem examination and Abdul Rashid, accused was taken into police custody. Eventually, on conclusion of the police investigation, the State launched

prosecution against Abtul Rashid, accused.

At 4.40 p.m. on June, 11, 1987 Dr. Narotam Singh, PW1 conducted autopsy on the dead body of Amrik Singh and he found the following injuries thereon :

1. Forehead right temporal region, left temporal and maxillary region, left periorbital region and back and left lateral side of the neck had turned bluish and were studded with multiple dark coloured abrasions of varying sizes.
2. A dark coloured abrasion 4 cm x 3 cm present over the dorsal aspect of right hand.
3. An abrasion 1 cm x 1 1/2 cm was present over the back of left elbow.
4. 16 cm x 12 cm area on the anterior aspect of right thigh was bluish and had multiple abrasions of various sizes.
5. 15 cm x 10 cm area on the anterior aspect of right thigh was bluish in colour and had multiple abrasions over it."
9. Besides the haematoma between the skull and scalp and various layers of scalp itself, Dr. Narotam Singh found that there was fracture of C5 vertebra, i.e., cervical vertebra. In regard to the cause of death, the medical witness, Dr. Narotam Singh stated :

"Death in this case, in my opinion, was due to shock and haemorrhage as a result of injury to the cervical spine and various other injuries which were sufficient to cause death in the ordinary course of nature."

10. In the course of cross-examination, Dr. Narotam Singh, PW1 averred that the multiple dark coloured abrasions on the forehead etc. as constituted the injury No. 1 could be caused by any stick; that the fracture of C5 vertebra itself did not cause respiratory arrest and that it did cause shock which could lead to death. In regard to the haematoma found between the skull and the scalp itself, Dr. Narotam Singh, PW1 gave out that, though there was no fracture on skull bone, the possibility of the injury, i.e. injury No. 1 being dangerous to life could not be ruled out altogether because the victim could go into shock on account thereof. According to this witness, Dr. Narotam Singh, the victim, might have died due to shock because of injury No. 1.

11. At 2.30 p.m. on June 11, 1987, Dr. Baldev Raj Gupta, PW2 conducted postmortem examination on the dead Body of Shinder Kaur and he noticed the below noted injuries thereon :

1. Bluish discolouration of almost whole of the back and left side of neck. Neck was abnormally mobile.
2. Circular contusion 1 cm wide was present on anterior lateral and posterior aspect of both the legs in their middle 1/3rd at the same level.
3. Abraded contusion 7 cm x 7 cm over the left cheek.

4. Multiple abrasions of varying sizes in an area of 6 cm x 5 cm on the back of left lumbar region."

12. Dr. Gupta, PW2 found that 4th vertebra was fractured. As to the cause of death, this medical witness averred :

"The death in this case, in my opinion, was due to shock and haemorrhage as a result of injury to the cervical spine and various other injuries which were sufficient to cause death in the ordinary course of nature."

During cross-examination, Dr. Gupta, PW2 deposed that there could be shock due to fracture of 4th vertebra and there could be death due to shock. And, according to this witness, the injuries No. 1 and 2 could not be due to slapping.

13. In the statement under Section 313 of the Code of Criminal Procedure, Abdul Rashid, accused denied the incriminating allegations of the prosecution and pleaded his defence as under :

"Sukhdev Singh of village Pharwahi brought Jaswant Kaur and Sewak Singh along with their children to me in the mosque at about 10.30 a.m. Heads of both the deceased were bent backwards and their tongues were protruding. I got tiloil brought by their parents and read. "Kalma". I then gave the oil for doing message of the children to their parents. Both of them then took back their children. On the next day at about 11 a.m. the police came to the mosque and arrested me. I was taken twice to mental hospital, Dhanaula. I am innocent."

14. Indubitably, both the children, namely, Amrik Singh and Shinder Kaur died on account of the shock and haemorrhage as a result of the multiple injuries which were sufficient in the ordinary course of nature to kill them. Thus, one of the crucial questions falling for determination is as to who caused those injuries to them. The evidence adduced on record unerringly proves that it was the accused, Abdul Rashid who tortured the children and inflicted those injuries on the various parts of their bodies. In this behalf, apart from the eyewitness account rendered in the sworn statements of their mother Jaswant Kaur, PW6 and father Sewak Singh, PW5, there are the sworn statements of the village Sarpanch Mohinder Singh, PW3 and Inspector Iqbal Singh PW6. With a view to facilitate reference, below noted extract ought to be reproduced from the statement of Mohinder Singh PW3 :

"On 11.6.1987, I along with Gurdev Singh had gone in a mosque in our village. Abdul Rashid accused, now present in the Court, used to reside in that mosque..... when we visited the mosque, the accused was standing in the doorway of that mosque and we asked him about the position and whereabouts of the children who came there two days earlier for treatment. The accused replied that both the children are under his treatment and sleeping inside the mosque. We had a doubt that some foul play had taken place. Then we entered the mosque and lifted the quilt lying on both the children and saw that both the children were lying dead. Those children included one male child and the other

was female. The male was of the age of about five years while the female was of three years. Both the children had signs of injuries on their persons. Jaswant Kaur, the mother of the children, was also present in the mosque at that time".

Iqbal Singh made the following statement :

"I also took into possession from the spot soti, Ex. P3, Tangna, Ex. P6, and rope Ex. P7 vide memo Ex. PG/1 attested by Mohiner Singh Sarpanch and Gurdev Singh.... I prepared inquest reports Ex. PC and Ex. PF of Amrik Singh and Shinder Kaur respectively....."

15. Mohinder Singh, PW3 gave out that the police party of which Inspector Iqbal Singh was the incharge had arrived at the spot at 11.30 a.m. on June 11, 1987 and prepared the inquest reports in regard to deadbodies and that the (Mohinder Singh) and Gurdev Singh signed those reports. It too is in his (Mohinder Singh) evidence that the soti, Ex. P3, Tangna, Ex. P6 and rope, Ex. P7 were seized into police possession from the mosque vide the recovery memo, Ex. PG/1 to which he (Mohinder Singh) and Gurdev Singh were the marginal witnesses.

16. Indeed, it is established beyond doubt that both the deadbodies were recovered from the mosque; that multiple injuries were found sustained thereon; that Abdul Rashid, accused caused those injuries to them and the soti, Ex. P3, the Tangna, Ex. P6 and the rope Ex. P7 were used in inflicting torture/hurt to them (children). It ought to be added that the soti, Ex. P3 had rough surface and nodules. Questions suggestive of the defence that both the children suffered injuries on account on their transportation to the house of Avtar Singh, a resident of village Pharwahi, were put to the eyewitnesses. Needless to say that, not only these questions were emphatically negated, rather also plea set up in defence through the medium thereof was based on surmises and conjectures. Undoubtedly, no other explanation with respect to the injuries found sustained on the dead bodies of both the children admits of ascertainment from the evidence on record except that it was the accused Abdul Rashid who beat them (children) with its blows and slaps.

17. Moot question, as has been canvassed at length at the Bar, is as to whether Abdul Rashid can be said to have committed the offence of murder some of the two children or as to whether he can be found guilty of lesser offence. It is not claimed for the prosecution that the accused intended to cause their (children) death. Mr. M.S. Gill, Advocate, vehemently argued that, on the established facts, from the evidence led in, clause "thirdly" of Section 300. Indian Penal Code applies. For facility or reference, it may be reproduced.

".....Culpable homicide is murder if the act by which the death is caused is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death."

18. Scope meaning of the clause "thirdly" ibid was explained in the well known

case reported as *Virsa Singh v. State of Punjab*, AIR 1958 SC 465, and the ratio of this decision of which approval was stamped in *State of Andhra Pradesh v. Rayavarapu Punnayya and another*, AIR 1977 SC 45 is that even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature and did not extend to the intention of causing death, the offence would be murder.

19. It is the settled rule that man intends the natural consequences of his act. And this rule, speaking reasonably stands crystallised in the proposition that, where the injury caused is not the result of accident or negligence, a strong presumption arises that injury caused was intended to be caused. True that this presumption is a rebuttable presumption. In other words, the question is whether this presumption stands rebutted by the circumstances appearing in evidence. And to our and, this question must be answered in the negative. Firstly, the evidence discloses that both the deceased were affected with polio and were of weak constitution. In fact, the object of their parents in bringing them to the accused, Abdul Rashid was to get them cured of Polio. To put it differently, the offender, Abdul Rashi was aware of the physical infirmity or defect in their bodies. Secondly, both of them (children) were of tender ages. He beat them with fists and Soti blow which resulted in the fracture of their cervical vertebral. In *Rayavarapu Punnayya's* case (supra), it has been held that fractures of vertebral column are generally known to be dangerous to life. One of the facts proved from the evidence is that Shinder Kaur aged about three years was hung from the Tangna, Ex. P6 with her hair tied with the rope, Ex. P7. No doubt, the beating to both the children was administered in a brutal and reckless manner. It was carried out with a cruel and sadistic determination. Protests of their parents not to beat them lest they should die were wholly ignored on the plea that it would adversely effect the charm of his magic. In the context, below noted ought be extracted from the statement of Jaswant Kaur, PW4 :

"Myself and my husband Sewak Singh asked the accused not to beat the children and also told that they would die but the accused replied that he had made the children unconscious and he will cure them by his power of magic."

Further, her statement in the cross-examination reveals :

"The accused gave 15/20 blows with stick while Shinder Kaur was hanging the accused did not allow us to see the girl to know if she is alive or not when she was put on the ground....Shinder Kaur did not speak after she was removed from the Tangna.....The accused also gave 15/20 blows that the stick to my son Amrik Singh. Said Amrik Singh did not talk after receipt of blows."

Again, Sewak Singh, PW5 has deposed :

"When accused gave beatings to the children we used to raise noise but not loudly. When accused asked us not to make a noise we stopped. Volunteered, the accused told us that his magic may not fall due to noise."

20. The learned counsel for the appellant has argued that, howsoever deluded the accused might have been, he was under the genuine impression that he could cure the children effectively through the medium of his beating ritual. In support of his argument it has been contended that their (children) parents) had the faith that he (accused) would cure them. In this behalf, he has referred to the following statement made by Sewak Singh PW5 in his cross examination, which reads as under :

"I had a faith that accused will cure the children. The accused told me that he will cure the children by magic, sorcery and power of spirits. I believed that accused will cure my children in that way. The accused had told me that he will recite verses from Quaran Sharif. The accused recited verses Quaran Sharif when we brought the children to him."

21. To attribute the killing of two small children to religiosity or faith is to make a mockery of whatever is pious or pure in a human being. Undoubtedly, there is no room for reflecting, in a passive manner, of the possibility of a destructive fact or act having its genesis in human aberrations. Abdul Rashid, accused, may not have the intention or motive to cause death of the two small children. The very fact that he gave merciless beating to them, though as a part of the cruel ritual aberrantly aimed at relieving them of the ailment, bore testimony to it that he intended to cause those injuries to them. In short, the weapon (soti) used by the accused Abdul Rashi in beating the children, the savage manner in which the ritual was executed, the helpless state of the hapless infant victims, the intensity of the violence caused, and his (accused) callous conduct in persisting in the cruel ritual even against the protests of their parents irresistibly indicate to the conclusion that the injuries caused to them (deceased) were intentionally inflicted. Lone circumstance that the accused did not have the intention to cause their death is too insufficient to displace the presumption raised against the accused, namely, that the injuries caused were intended to be caused. Indeed, it sounds convincing that the ritual the object of which was to cure the children was intended to be executed through the medium of the injuries inflicted. And thus by no stretch of logic or argument it can be said that the bodily injuries found on the person of both the deceased were not intentionally inflicted by Abdul Rashid, accused. And, Dr. Narotam Singh, PW1 as well as Dr. Baldev Raj Gupta, PW2 both of whom performed autopsy on the dead bodies did convincingly state that the injuries were sufficient to cause their (children) death in the ordinary course of nature. Thus, both the statutory ingredients of clause "thirdly" of Section 300, Indian Penal Code are satisfactorily established from the evidence adduced on record. Thus, the offence committed by Abdul Rashid, accused was murder notwithstanding the fact that he had no intention or motive to cause their death.

22. In re, Diwan Sahib alias Pythiakkaran alias Samiyar, AIR 1964, Madras, 480, the appellant was an exorcist or magician who was charged with the murder of an unfortunate young woman by literally suffocating her to death with smoke in

the course of an attempt to cure her of the evil spirits believed to have possessed her. On the dead body second degree burns involving both knees, legs and left cheek as well as first degree burns on both breast, face and shoulders were found. Also, the two lacerated wounds one over the front of the chest and the other in the lower part of the right side of the neck, were detected thereon (deadbody). The appellant, Diwan Sahib was convicted under Section 304, Part II, Indian Penal Code. But, to our mind the ratio of this decision is not attracted on the given facts in the case in the hand. Speaking precisely, the medical evidence in that case was that actually death was not due to the burns or to the external violence and that, in fact, it was due to suffocation. But in the instant case, the death of the two children was caused as a result of shock and haemorrhage on account of the injuries having been intended to be inflicted and sufficient in the ordinary course of nature to cause death.

23. During the course of arguments urged at Bar, Mr. K.S. Brar, learned counsel for the appellant urged that the medical evidence indicative of shock as a result of the injuries caused to the two children was not worthy of credence. To put it differently, the contention was that shock was not the cause of their (children) death. But this submission cannot be accepted. In Modi's textbook of Medical Jurisprudence and Toxicology (12th Edition 1957), at page 232 it has been stated thus :

"Shock may be produced from exhaustion resulting from several injuries combined, though each one of them separately may be very slight. Shock may also result.....from pain felt in flogging.

Shock usually appears immediately after receiving the injuries....."

24. Except the fracture of the cervical fifth vertebrae in the case of Amrik Singh had of the fourth vertebra in the case of Shinder Kaur, rest of the injuries caused to them were simple in nature and on the nonvital parts. But, both Dr. Narotam Singh, PW1 and Dr. Baldev Raj Gupta, PSW2 have stated that the nonvital parts injuries though not individually sufficient to cause death could cause shock. It too is in their evidence that though a patient with fracture of fifth vertebra or fourth vertebra may survive for weeks but that there would be shock on account thereof which may result in death. Both these medical witnesses directed the deadbodies and examined the injuries to the internal organs. Needless to say that they were therefore the best experts who could opine with authority as to the cause of the death and as to the sufficiency or otherwise of the injuries from which the death ensued. There is no reason why their evidence be not accepted.

25. Probable time that elapsed between injury and death could not be ascertained even after the autopsy conducted on the deadbodies. In this behalf. Dr. Narotam Singh, PW1 has disclosed.

"The exact time between injury and death could not be determined because in my opinion the death was due to the collective result of injuries which might have been caused at different intervals per se."

26. Ocular account of the occurrence rendered by the eyewitnesses at the trial reveals that Abdul Rashid, accused caused injuries to both the children on two consecutive days, i.e., on June 9, 1987 and June 10, 1987. Also the evidence of the eyewitnesses shows that at about 6 p.m. on the second day, i.e. June 10, 1987 the meals were served to them (children). Both the children were put under the quilt, according to Jaswant Kaur, PW4, at about 12 midnight after they had been given beatings. On the next day, i.e., June 11, 1987, they were found dead under the quilt when Mohinder Singh, Sarpanch and Grdev Singh went to the mosque and it was at about 11 a.m. Indeed, it is reasonable to infer that it was on the second day's late evening/night that Shinder Kuar was hung from the Tangna, was beaten and was brought down, that soon thereafter Amrik Singh too was beaten mercilessly and that it was subsequent thereto that neither of them did speak or showed signs of life when the accused, Abdul Rashid put them under the quilt on the pretext that, through the charm of his magic, he had rendered them unconscious. Viewed against this background, the medical evidence that both the deceased might have died one to three hours after taking meals corroborates the eyewitness account of the version of the prosecution. For want of the ascertainment of the exact time that elapsed between injury and death the prosecution case does not deserve to be thrown overboard. On the facts established from the evidence it is proved that Abdul Rashid, accused did commit the murder of Amrik Singh and Shinder Kaur by intentionally causing their death.

27. Inevitable conclusion, therefore, is that version of the prosecution against the appellant accused is proved beyond all reasonable doubt. Therefore, the CrI. Appeal No. 38DB of 1991, filed by the Abdul Rashid, is dismissed. In CrI. Appeal No. 295DB of 1990, filed by the State of Punjab the learned counsel for the State has emphatically urged that in the instant case two small and helpless children were murdered in a brutal manner and that, therefore, it is case which warrants the passing of the death sentence against Abdul Rashid. In support of his arguments, he had relied upon Balwant Singh v. State of Punjab, 1976 Criminal Law Journal 291. On the other hand Mr. K.S. Brar, learned counsel for the appellant was argued that as is envisaged under Section 354(3), Code of Criminal Procedure, for persons convicted of murder, life imprisonment is the rule and death sentence is an exception. In support of his arguments, he has relied upon Bachan Singh v. State of Punjab, AIR 1980 Supreme Court 891.

28. On a careful consideration of facts and circumstances unfolded in the evidence adduced, to our mind, it is not the rarest of rare cases warranting the passing of death sentence on Abdul Rashid. Therefore, we find no merit in the appeal, filed by the state of Punjab and the same is dismissed.