
(2009) 07 P&H CK 0253

In the Punjab And Haryana At Chandigarh

Case No : Cr.M. No. 36584-86 of 2009 and Cr.A. No. 517-DB of 2006

Kulwinder Singh and others

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : (2009) 5 RCR(Criminal) 489

Hon'ble Judges : Mehtab S. Gill, J;Jitendra Chauhan, J

Bench : Division Bench

Advocate : R.S. Cheema, with Miss Tanu Bedi, for the Appellant;

Final Decision : Dismissed

Judgement

Mehtab S. Gill, J.—Learned counsel for the applicant/appellants Chamkaur Singh and Sohan Singh has argued that the applicants were Constables posted at Police Station Sherpur District Sangrur where the unfortunate death of Ravinder Singh took place. The learned counsel has further argued that as per the medical report, the cause of death was due to Cynope due to Vasovagal inhibition. This is a natural form of death and the applicants had nothing to do with the death of Ravinder Singh. The co-accused Mukhtiar Singh appellant No. 5 of the applicants was granted bail on 12.9.2006. The applicants are better placed than Mukhtiar Singh. The applicants were mere constables and they had nothing to do with the interrogation of deceased Ravinder Singh.

2. We have heard the learned counsel for the applicant/appellants, perused the medical report and statements of the witnesses attached with the bail application.

3. During the course of arguments, we consistently and persistently kept asking the learned counsel for the applicants, as to if any sort of explanation had come from the side of any of the accused as to what was the reason of which Ravinder Singh had died, as he was in police custody in Police Station Sherpur but nothing substantial was being told to us apart from that it has been stated by one of the

accused that Ravinder Singh died a natural death.

4. We cannot overlook this fact that Ravinder Singh was in the custody of the applicants in Police Station Sherpur, though the applicants have a right to give a flat denial and no question can be asked by the Court but it is difficult to overlook this fact that the deceased was within the four walls of Police Station Sherpur in the custody of the applicants, when his death took place. Appellants were the ones who only knew as to what happened within those four walls at that moment of time immediately before Ravinder Singh was taken to the hospital.

5. It has been mentioned in para-10 of the judgment of the learned trial Court that when the accused were examined u/s 313 Cr.P.C. with regard to the incriminating circumstances appearing against them, they denied the prosecution allegations and pleaded innocence. The co-accused of the applicants, Kulwinder Singh took up a stand that Ravinder Singh became unconscious when he found difference between the Registration Certificate and Engine number of the car. He tried to save the life of Ravinder Singh and took him to the hospital at Sherpur, but the doctor did not attend to him, nor noted anything in the register, but asked Kulwinder Singh to take deceased Ravinder Singh to Dhuri. He took Ravinder Singh to the Civil Hospital, Dhuri and there he was declared dead by the doctors. Ravinder Singh did not have any injury with electric current apart from two superficial abrasions which could be caused by a fall while doing agriculture work which was the profession of Ravinder Singh. Apart from the statement of Kulwinder Singh (accused) no light has been put regarding the circumstances leading to the death of Ravinder Singh, nor has any convincing suggestion been put to the witnesses.

6. Learned counsel for the applicants has argued that it was a natural death, but going through the report of the Pathologist (Ex.P6) it comes out that the organs which were sent for examination were autolysed or showing partially autolytic changes. The learned trial Court has rightly held that the parcel containing these parts was tampered with, so that a truthful and a correct report did not come.

7. Dr. R.P. Jindal PW-1 whose statement has been attached as Annexure A-1, produced reports Exs.DA and DB. The report Ex.DA has been given by the Medical Board of Medical College, Amritsar. In the statement of Dr. R.P. Jindal PW-1 he has stated, that the report Ex.DA and endorsement Ex.DB was made on 11.5.2004. It has been stated in para-24 of the judgment of the learned trial Court, the bail application of Kulwinder Singh was taken up in the Hon'ble High Court on 28.3.2005 when the trial of the accused was going on. The main thrust of the arguments at that time was that Ravinder Singh died a natural death. During the course of the arguments of the bail application or the bail petition, on 11.9.2004, there was no mention of report Ex.DA regarding the natural death of Ravinder Singh. It seems this document (Ex.DA) has been procured by the applicants to save their skin. The learned trial Court has held as under :-

Whatever reasons the doctors tried to assign about the death, the above

discussion shows that whatever reasons are being assigned by the doctors, they know that they are not assigning the reasons in a convincing manner rather the reasons given appear to be procured what to say more.

8. Coming to the argument of the learned counsel for the applicants that one of the appellants has been granted bail i.e. Mukhtiar Singh appellant No. 5 and the present applicants also be granted bail as they are at parity with him does not cut much ice. Mukhtiar Singh appellant No. 5 was granted the concession of suspension of sentence vide order dated 12.9.2006 of this Court. We have perused the order. Merits for suspension of sentence and granting bail have not been discussed. We would not like to go any further into that order, which is as under :-

Present :- Mr. R.S. Ghai, Senior Advocate with Mr.Vinod Ghai, Advocate for the applicant-appellant.

Mr. K.S. Boparai, Addl. A.G. Punjab.

Mr. H.R. Nohria, Advocate for the complainant.

Mukhtiar Singh applicant-appellant No. 5 is praying for suspension of substantive sentence.

We have heard learned counsel for both the sides and gone through the impugned judgment.

Besides pointing out certain flaws in the case of the prosecution qua the present applicant-appellant, Mr. Ghai states that he was on bail during trial.

On the basis of the aforesaid submissions, learned counsel for the applicant-appellant prays for suspension of substantive sentence which is opposed by the learned State counsel.

Having regard to the facts of the case and also on account of the fact that it may not be possible to hear the appeal in the near future, therefore without commenting on the merits of the case, lest it may prejudice the case of either side at the relevant stage, we deem it appropriate to suspend the substantive sentence imposed upon the applicant-appellant.

Consequently, the instant miscellaneous application is allowed, and Mukhtiar Singh applicant-appellant No. 5 is ordered to be released on bail on his furnishing adequate surety bond to the satisfaction of the Chief Judicial Magistrate, Sangrur.

Sd/-

(VIRDINDER SINGH)

JUDGE

Sd/-

(A.N.JINDAL)

September 12, 2006 JUDGE

9. Notice of motion has been issued for accused Kulwinder Singh, but on the basis of the ratio of the law laid down in Dharam Pal v. State of Haryana 1999 (4) R.C.R. 600, as he has completed 5 years of actual sentence and 3 years after conviction. It is to come up on 13.8.2009.

10. Since custodial deaths are a serious matter which are taking place very frequently in the State of Punjab, we cannot show any leniency for suspending the sentence of the applicants when the applicants have been convicted and sentenced to undergo life imprisonment by the learned trial Court, after elaborately going into all the aspects of the evidence of the prosecution and the defence. Applicants are not undertrial prisoners that they should be presumed to be innocent. They are convicts and after having been held guilty by the competent Court have been awarded life imprisonment.

The prayer for bail for applicant/appellants Chamkaur Singh and Sohan Singh is declined.

Cr.M. No. 36584 of 2009 is dismissed.

Cr.M. Nos. 36585 and 36586 of 2009

Formal Cr.M.s are allowed as prayed for.