

**(2014) 04 DEL CK 0151**  
**In the Delhi High Court**  
**Case No : CrI.L.P. 352/2012**

|                                |    |            |
|--------------------------------|----|------------|
| State                          |    | APPELLANT  |
|                                | Vs |            |
| Jeewan Kumar Paswan and Others |    | RESPONDENT |

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**Date of Decision :** 17-04-2014

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313

**Citation :** (2014) 5 AD 133

**Hon'ble Judges :** Sanjiv Khanna, J;G.P. Mittal, J

**Bench :** Division Bench

**Advocate :** Rajat Katyal, APP and Vivek Yadav, SI, Advocate for the Appellant;  
G.P. Singh, Advocate for Jeewan Kumar Paswan, Advocate for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Sanjiv Khanna, J.

CrI.M.A. 12502/2012

Delay in filing of the leave to appeal is condoned.

The application is disposed of.

CRL.L.P. 352/2012

1. Appellant-State has not been able to verify and positively ascertain whether respondent No.2 has expired. It is, however, stated that as per the information available and ascertained, respondent No.2 was a vagabond and resident of Nepal but no one knows his address in the said country. Orally it was stated that respondent No.2 has expired.

2. We have heard learned Additional Public Prosecutor for the State and Mr. G.P. Singh, Advocate, who has entered appearance on behalf of respondent No.1, Jeewan Kumar Paswan.

3. Learned Additional Public Prosecutor submits that the trial court has erred in

acquitting the respondents-accused, inter alia, on the ground that there was delay in recording of the FIR. He relies upon statement of Virender Kumar, PW-4, who it is submitted had also suffered beatings and was an eye witness to the beatings given to deceased Samson. Our attention is drawn to the testimony of PW-1, Radhika wife of the deceased Samson. He submits that the post mortem report, Ex.PX was admitted by the respondents and, therefore, the prosecution has been able to prove the cause of death. He has drawn our attention to the statement of respondent No.1, Jeewan Kumar Paswan recorded u/s 313 of the Code of Criminal Procedure, 1973, wherein he has stated that it is a matter of record whether mobile phone Ex.P1 was seized from the co-accused Rajesh.

4. At the outset, we notice that Rajesh in his statement u/s 313 Cr.P.C. had denied that the mobile phone belonging to Samson was seized from him. It is also noticeable that PW-1, Radhika wife of the deceased has not referred to mobile phone of the deceased Samson and whether the same was missing and whether she had tried to or could not contact the deceased Samson on the said mobile number/phone. On the other hand, her court deposition is that on 24th August, 2010, she had gone her mother's house at Rohtak and had made a telephone call to one Gabbar on 3rd September, 2010, who informed her that Samson had suffered injuries and was unable to speak. The mobile phone instrument of Samson was never shown to PW-1, Radhika or identified by her.

5. Trial court has not merely relied upon delay in registration of FIR to acquit the respondents. This is one of the facts noticed by the trial court. There are several reasons and ground for acquittal of the respondents. As per prosecution version, the deceased Samson and Virender Kumar, PW-4 were given beatings by the respondents on 30th August, 2010. Rajesh suspected that PW-4 or the deceased Samson had stolen his mobile phone. However, Virender Kumar, PW-4 had deposed that Jeewan @ Totla had not given beatings to Samson, but had driven the three-wheeler scooter and had taken him to the forest area where beatings were given by respondents Rajesh, Amit and one Manoj Gujjar. Manoj Gujjar was not prosecuted or charge sheeted. It is noticeable that PW-4 did not get himself medically examined on 30th August, 2010 or immediately thereafter. His MLC Ex.PW3/A is dated 12th September, 2010 and refers to alleged history of assault, but the date and time of assault is not indicated or stated. The said MLC was proved by Dr. Aadil Fahad Ansari, PW-3, who had stated that patient was having loss of consciousness and was vomiting. Accordingly, the patient was referred to Neuro Surgery Department for further treatment. The MLC shows that the occurrence or assault had taken place on 12th September, 2010 and in the said occurrence PW-4 had suffered injuries. However, as per the prosecution version, the injuries were suffered by PW-4 and the deceased Samson on 30th August, 2010.

6. Similar statement has been made by PW-1, Radhika, who at that time was not in Delhi, but had returned to Delhi as per her testimony on 3rd September, 2010 or shortly thereafter. On return, she did not find deceased Samson in the Jhuggi

but in Safdarjung Hospital. It is however stated by PW-1 that the deceased Samson was not admitted in the hospital, but was lying in the "verandah" of the hospital. Subsequently Samson died on 12th September, 2010 as proved from the MLC Ex.PW6/A recorded on 12th September, 2010, which is on the same day on which the MLC of PW-4 Ex.PW3/A was recorded. The MLC Ex.PW6/A of deceased Samson records that the patient was declared brought dead in the casualty at 4 p.m. It is mentioned that the patient was brought by PW-1, Radhika with alleged history of assault as stated/given.

7. The post mortem report Ex.PX, as noted above, was admitted by the respondents. The said report mentions that four external injuries were visible. These were:-

1. brownish abrasion 2x2 cm on middle back, 7.0 cm below the posterior hair line;
2. brownish green bruise 30x25 cm on right lumbar region with extension to right mid chest region;
3. brownish green bruise 15x15 cm on lateral aspect of left chest;
4. brownish green bruise 7X5 cm on right upper arm.

8. On internal examination, it was observed:-

Scalp:-

Extravasation of blood over vertex and over occipital region.

Skull:- NAD

Brain:-Pale

Neck:- All structures intact.

Ribcage: Right Side: 3rd to 5th ribs fractured with extravasation of blood on midclavicular line.

Left Side: 5th to 8th ribs fractured anterior axillary line.

Lungs: Multiple contusions present on both the lungs.

Right lung located in middle and lower lobes with extravasation of blood (about 600 ml. of fluid and clotted blood) in place cavity (right side).

Stomach: About 150 ml of fluid present (alcohol smell present).

Liver, spleen, Kidneys: Pale

Intestines: NAD

Bladder: Empty.

9. Multiple contusions were noticed on both the lungs and the right lung had

extravasation of blood. About 150 ml of fluid was present in the stomach and smell of alcohol was possibly present. On the cause of death in the post mortem report Ex.PX it is opined as under:-

Shock due to ante mortem injury to ribcage and lungs produced by blunt force impact. Injuries No.2 and 3 singularly and collectively fatal and sufficient to cause death in ordinary course of nature.

10. The doctor, who had conducted the post mortem was not examined as a witness. As per PW-4, deceased Samson was given beatings by legs and fist blows on 30th August, 2010. Post mortem report does not talk about the date and time when the injuries were caused. As per PW-1, Radhika, when she came back to Delhi from Rohtak on 3rd September, 2010, she found her husband lying in "verandah" of the Safdarjung Hospital. It has not been investigated or verified whether Samson was treated in the hospital after 30th August, 2010. Even if the deceased used to sell "Kafan" outside the hospital, it is probable that he would have gone for treatment in case he was having pain and had suffered an assault. There was fracture of the ribs. Trial court after referring to the post mortem report, recorded the following findings:-

Recalling the case of prosecution, allegedly the injuries were given by legs and fist blows. As per postmortem report Ex.PX, injuries No.2 and 3 produced by blunt force are fatal and sufficient to cause death. Prosecution did not bring any material on the record that these fatal injuries could have been caused by legs and fist blows. Even for the sake of arguments, if it is admitted that prosecution has brought material on the record that deceased was given beatings by accused persons, prosecution is bound to prove that the death occurred on account of such beatings. The main link between the alleged injuries caused by the accused persons and the death is missing. It is pertinent to mention here that during examination of PW6 Dr. Tashi, the court put a specific question to the witness regarding brownish discolouration of the skin. In reply to which, PW6 stated that brownish discolouration of the skin takes place due to the blunt injuries and it can happen within one or two days of such injuries. It is important to recall here that injuries in the present case were more than 12 or 13 days old. Prosecution was required to prove that the injuries appeared in the MLC or Postmortem report were caused by the accused persons.

11. Looking the entirety of the facts, we do not think that the order of acquittal passed by the trial court requires reconsideration or re-examination. The view taken by the trial court is plausible. Leave to appeal is accordingly dismissed.