

Before T.P.S. Mann & Mahabir Singh Sindhu, JJ

MAJOR SINGH—Appellant

versus

STATE OF PUNJAB—Respondent

CRA No.D-126-DB of 2004

December 4, 2017

Indian Penal Code, 1860—S.302—Murder—Prosecution proved death of deceased after drinking liquor—Allegation that death was due to poisoning not proved—No recovery of liquor, bottles or residue or steel tumbler allegedly containing poison stated to have to have been brought by accused—In the absence of evidence, no ground for conviction —Conviction set aside.

Held that from the above testimonies of the prosecution witnesses and the documentary evidence placed on record, the prosecution has proved that deceased Dev Singh died due to intake of liquor. There is no second thought to it that the deceased died due to poison. Even the report of chemical examiner (Ex.PX) shows that the deceased had died due to Cyanide. The question that arises for consideration before this Court is as to who has administered the poison to the deceased. The prosecution has failed to recover the material evidence, i.e. liquor bottle and its residue as well as steel tumbler which allegedly contained poison. In the absence of recovery of those material objects, the question that goes unanswered is that whether the liquor contained poisonous substance which was brought by Nand Lal or the steel tumbler contained poison which was allegedly brought by accused appellant Major Singh. There is no reference in the statement of the investigating officer PW8 SI Nachhattar Singh as to what happened to recovery part from the accused. The prosecution is totally silent on the issue of recovery. There is no mention as to what efforts were made by the investigating agency to procure those material objects. There seems to be a lapse on part of the investigating agency who failed to recover the material objects to prove the guilt of the accused.

(Para 8)

Navjeet Singh, Advocate
for the appellant.

V.G. Jauhar, Sr. D.A.G., Punjab.

MAHABIR SINGH SINDHU, J.

(1) Appellant Major Singh has preferred the present appeal against the judgement of conviction and order of sentence dated 6.12.2003, passed by learned Addl. Sessions Judge Ludhiana vide which he was convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of `500/- or in default, to undergo a further rigorous imprisonment for one year and also convicted under Section 120-B IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of `500/- or in default to undergo further rigorous imprisonment for one year for committing the murder of Dev Singh. Both the substantive sentences were ordered to run concurrently.

(2) Complainant Hakam Singh set the law in motion by making a statement (Ex.PG) on 19.5.1993, which is as under:-

“Stated that I am resident of village Daad. I and my brother Dev Singh and cousin Maghar Singh s/o Malkiat Singh work as labourers (Seeri) with Sarpanch Kartar Singh and for the purpose of sowing paddy crop, Sarpanch Kartar Singh engaged Nand Lal @ Kairon s/o Jagir Singh, Ramdasia r/o village Daad as labour to do the work on daily wages. We all four persons yesterday on 18.5.1993 at 7.00 a.m. were mending water course (Khall) when Jagdish Pal Singh s/o Sarpanch Kartar Singh was also present with us in the field. In the evening at about 7.00 p.m., we all declared that we are tired and let us remove our tiredness by taking liquor, then in the meantime, Nand Lal @ Kairon told that he has approximately three-fourth bottle of country made liquor in his house and he could bring it at once from the house. We sent Nand Lal @ Kairon to his house to bring liquor. At about 8.00 p.m. Nand Lal @ Kairon alongwith Major Singh s/o Rattan Singh, Ramdasia r/o village Daad came back when Nand Lal told Dev Singh to come and take liquor and we all went to the motor of Nirmal Singh s/o Sardara Singh, Jat r/o Daad, which is just adjoining and sat down on the ground. Motor was running. Nand Lal @ Kairon told Major Singh to take out steel glass which he was carrying having brought it from the house, on which, Nand Lal after

preparing first peg in the steel glass gave it to my brother Dev Singh and my brother Dev Singh drank the same after pouring water in the liquor and stated that it seemed to be poison. After saying this, he at once lay down on the ground and started writhing with pain. Nand Lal @ Kairon and Major Singh s/o Rattan Singh rs/o village Daad, fled away from the spot and while going away Nand Lal @Kairon also took with him the bottle of liquor. While running away, they were saying that they had taken revenge of Mohinder Singh. Jagdish Pal Singh on seeing my brother Dev Singh writhing stated that he would at once bring tractor-trolley from the house and we will go to the hospital for the treatment of Dev Singh. My brother Dev Singh died at the spot before bringing of tractor-trolley by Jagdish Pal Singh. The motive behind the incident is that Mohinder Singh, uncle of Nand Lal @ Kairon and brother of Major Singh, from the brotherhood was murdered by me and my father's brother's son Maghar Singh in which we both came two months back after undergoing imprisonment of 8 years. At night, we could not come to intimate on seeing the present circumstances and out of fear. Now in the morning, I accompanied by Jagdish Pal Singh but leaving Maghar Singh near the dead body at the spot for protection were going to intimate that you have met. Nand Lal @ Kairon and Major Singh after consultation, and by mixing some poisonous substance in the liquor made my brother drink the same with the intention to kill them. The death of my brother has occurred at the spot. Statement has been got written to you which has been heard and is correct. Proceedings may be initiated.”

(3) On the basis of aforesaid statement Ex.PG made to PW8 SI Nachhatar Singh, FIR Ex.PF was registered on 19.5.1993 at Police Station Sadar Ludhiana under Section 302/34 IPC. The spot was inspected, inquest proceedings were initiated, rough site plan (Ex.PW8/B) was prepared, death body of Dev Singh was sent for post mortem examination and statements of witnesses were recorded. The accused were arrested on 27.5.1993.

(4) After completion of investigation, report under Section 173 Cr.P.C. was presented in the Court and the case was committed to

the Court of Sessions. Charges for the offence under Sections 302 and 120-B were framed against the accused to which they pleaded not guilty and claimed trial.

(5) The prosecution examined as many as 10 witnesses to prove its case.

(6) During trial, accused Nand Lal expired and the proceedings against him stood abated.

(7) In his statement under Section 313 Cr.P.C. accused Major Singh stated that he was innocent and claimed false implication.

(8) The trial Court after taking into consideration all the material facts available on record convicted the accused as stated above.

(9) Hence, the present appeal.

(10) Learned counsel for the appellant vehemently contended that there is no evidence to convict the appellant for the commission of offence and charges levelled against him. It is further contended that there was no allegation that either the appellant brought the liquor bottle or that he administered any poison to the deceased. Further, that the investigation agency failed to recover the liquor bottle with residue and the steel tumbler being material objects. Learned counsel further argued that admittedly, the complainant had enmity with the accused party. Therefore, there was no occasion for them to sit and drink together.

(11) Learned counsel for the State submitted that the trial Court after taking into consideration each and every aspect of the matter has passed a well merited judgment convicting the appellant and the appellant deserves no leniency.

(12) PW4 Hakam Singh reiterated the version as stated in his complaint (Ex.PG). He deposed that as brother of accused, namely, Mohinder Singh was murdered by him and PW10 Saggar Singh, therefore, the accused had taken the revenge.

(13) PW5 Jagdish Pal Singh deposed that he employed deceased Dev Singh, PW4 Hakam Singh, PW10 Saggar Singh as Seeri. Nand Lal @ Kairon was also working as daily labourer with him. On 18.5.1993 at about 7.00 p.m., when he was present at the spot supervising them for cleaning khall, deceased Dev Singh made a remark that now he is tired and they should have liquor. Upon this,

Nand Lal @ Kairon offered that he was having a bottle of country made liquor at his house and brought the same at 8.00 p.m. Accused Major Singh was accompanying him. Nand Lal served a peg of whisky to deceased Dev Singh and he added water in the liquor and took the same. Immediately, deceased Dev Singh remarked that it was not liquor, but poison and fell down on the ground. Thereupon, the appellant and Nand Lal started running and said that they have taken the revenge of Mohinder Singh. While running, Nand Lal also carried the bottle alongwith him. He (PW5) rushed to his house to bring tractor-trolley to shift Dev Singh to hospital but by that time, he died. On 19.5.1993, the matter was reported to the police.

(14) PW6 Sadhu Singh deposed that he used to go to the house of accused to sell vegetables, of and on. On 17.5.1993 at about 7.30/8.00 p.m., he went to the house the accused to collect the payment of vegetables sold to him on credit. He found the appellant and Nand Lal taking liquor and accused Major Singh was saying that they want to kill Dev Singh by giving poison in liquor and will take revenge of murder of Mohinder Singh.

(15) PW7 Gurcharan Singh deposed that on 27.5.1993, appellant alongwith Nand Lal came to him and both separately confessed before him that they have murdered Dev Singh by giving him poison and that they be produced before the police and accordingly, the convict and Nand Lal were surrendered before PW8 SI Nachhattar Singh.

(16) PW8 SI Nachhattar Singh deposed that on 19.5.1993, he alongwith other police officials was present at bus stand in connection with patrolling duty where PW4 Hakam Singh met him and got recorded his statement Ex.PG. He inspected the spot, prepared inquest report and site plan and thereafter sent the body for post mortem examination to Civil Hospital, Ludhiana. The accused was arrested on 27.5.1993.

(17) PW1 Dr. U.S. Sooch, Medical Officer, Civil Hospital, Ludhiana deposed that on 19.5.1993 at 2.15 p.m., a board of Doctors including him conducted the post mortem examination on the dead body of Dev Singh and found that no external mark of injury was present on the body. The superior surface of the liver was congested. On receipt of the report of Chemical Examiner (Ex.PX), he opined that the cause of death in this case was potassium cyanide poison. As per the report of the Chemical Examiner (Ex.PX), Cyanide equivalent to 38.19 mg of potassium cyanide and alcohol were detected in the

contents of stomach and its contents. Presence of cyanide and alcohol were confirmed in the contents of large & small intestines, liver, spleen, kidney and blood. Blood alcohol concentration was estimated as 74.75 mg per 100 ml of blood. No poison was detected in the contents of saturated solution.

(18) From the above testimonies of the prosecution witnesses and the documentary evidence placed on record, the prosecution has proved that deceased Dev Singh died due to intake of liquor. There is no second thought to it that the deceased died due to poison. Even the report of chemical examiner (Ex.PX) shows that the deceased had died due to Cyanide. The question that arises for consideration before this Court is as to who has administered the poison to the deceased. The prosecution has failed to recover the material evidence, i.e. liquor bottle and its residue as well as steel tumbler which allegedly contained poison. In the absence of recovery of those material objects, the question that goes unanswered is that whether the liquor contained poisonous substance which was brought by Nand Lal or the steel tumbler contained poison which was allegedly brought by accused-appellant Major Singh. There is no reference in the statement of the investigating officer PW8 SI Nachhattar Singh as to what happened to recovery part from the accused. The prosecution is totally silent on the issue of recovery. There is no mention as to what efforts were made by the investigating agency to procure those material objects. There seems to be a lapse on the part of the investigating agency who failed to recover the material objects to prove the guilt of the accused.

(19) The deposition made by PW6 Sadhu Singh that on 17.5.1993 he had gone to the house of accused-appellant Major Singh to receive some amount towards purchase of vegetables on credit and he overheard accused-appellant Major Singh saying that he and Nand Lal are to kill Dev Singh by giving poison in liquor, seems to be an afterthought. Admittedly, initially, the accused-appellant Major Singh was not present alongwith Nand Lal, Dev Singh (deceased) and other persons and it was not Nand Lal who insisted for taking liquor, but it was only Dev Singh (deceased) who insisted to have the liquor to relieve tiredness. On the asking of Dev Singh (deceased) only, Nand Lal offered that he had liquor at his house and brought the same to the place of occurrence accompanying accused-appellant Major Singh. Nand Lal asked accused-appellant Major Singh to hand over the steel tumbler to him and Nand Lal poured liquor in it and thereafter Dev Singh poured water in the same and took it. It was never the case of

the prosecution that during the course of the fateful day, Nand Lal had ever discussed or planned with deceased Dev Singh that they would take liquor in the evening. Therefore, the deposition of PW6 Sadhu Singh that the accused-appellant and Nand Lal were planning to kill Dev Singh by giving poison in liquor seems to be improbable and untrustworthy.

(20) PW5 Jagdish Pal Singh who used to employ deceased Dev Singh, Hakam Singh, Saggar Singh and Nand Lal as labourers deposed that on 18.5.1993, he was present at the spot and supervising the work being done by the aforesaid persons. At about 7.00 p.m. Dev Singh asked for liquor and Nand Lal offered that he was having one bottle of country made liquor at his house and brought the same accompanied by accused-appellant Major Singh. Nand Lal served a peg to Dev Singh, who on consuming it said that it was not liquor but poison and fell down on the ground. He further deposed that accused-appellant Major Singh and Nand Lal ran away and Nand Lal remarked that they have taken revenge of Mohinder Singh. The aforesaid version of PW5 has to be given due consideration for the reason that he had no relation either with the accused or the deceased and was an independent witness. This witness had deposed that it was Nand Lal who remarked that revenge has been taken of the death of Mohinder Singh. This witness had not attributed any remark to accused-appellant Major Singh, as deposed by other witnesses.

(21) PW7 Gurcharan Singh before whom the accused made an extra judicial confession stated a little different in his cross-examination with regard to the time the law was set in motion. It has come in the evidence of PW4, PW5 and PW10 that after the death of Dev Singh, they decided not to report the matter at night due to terrorism and informed the police only in the morning of 19.5.1993. But this witness stated that the police came on the spot after about one hour. This discrepancy made by PW7 in his cross-examination also casts a shadow on the case of the prosecution.

(22) This Court is of the view that in the absence of recovery of material objects, i.e. liquor bottle and steel tumbler and taking into consideration the chain of events that happened on the fateful day, the prosecution has failed to bring home the guilt of the accused-appellant due to lack of sufficient evidence. There is no evidence available on record that whether the liquor in the bottle contained poison or the steel tumbler. It has also not come in evidence that whether on the fateful day there was any pre-mediation to sit alongwith deceased Dev

Singh and take liquor and murder him. Therefore, in the event of lack of evidence against the accused-appellant, it would be inappropriate to charge him for the offence committed and thus, he is entitled to be given the benefit of doubt and deserves acquittal.

(23) In view of the aforesaid discussion, the judgement of conviction and order of sentence passed by the trial Court is set aside and appellant Major Singh is acquitted of the charges framed against him. The appellant is on bail. His bail bond stands discharged.

(24) The appeal is allowed.

Sanjeev Sharma, Editor