

Jasbir Kaur

Vs

State of Punjab

C.A. No. 365 of 1980

(K. Jayachandra Reddy, G. N. Ray JJ)

17.09.1992

JUDGEMENT

K. JAYACHANDRA REDDY, J.:-

1. This is an appeal under Section 379, Cr.P.C. read with Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act. On the basis of a private complaint made by one Gurmukh Singh, P.W. 11, Jasbir Kaur (A-1) the appellant before us, one Surjit Kaur, her mother (A-2) and her brother Amarjit Singh, who died during the committal proceedings, were charge-sheeted for an offence punishable under Section 302/34, I.P.C. for causing the death of Amar Kaur, the deceased in the case, by administering poison. The case was committed to the Court of Sessions as against A-1 and A-2. The learned Sessions Judge acquitted both of them. The complainant P.W.11 filed an appeal against the acquittal. A Division Bench of the Punjab and Haryana High Court admitted appeal only against Jasbir Kaur, A- 1 and did not issue any notice to A-2, thereby confirming her acquittal. The High Court convicted Jasbir Kaur A-1, the appellant before us under Section 302, I.P.C. and sentenced her to undergo imprisonment for life and to pay a fine of Rs. 10,000/- with a direction that the fine, if realised, shall be paid to the son and daughter of the deceased. The prosecution case is as follows:

2. Amar Kaur the deceased was the sister of P.W. 11. She was given in marriage to Amarjit Singh. P.W. 11 used to treat the deceased as his daughter and spent considerable amount at the time of her marriage in December, 1959. A day prior to the occurrence the deceased sent one Dayal Singh, a farm worker to P.W. 11 with a request that he should visit her house. P.W.11 went there and found that the deceased and the accused persons were altercating among themselves. The deceased told P.W. 11 that she had been advising her husband Amarjit Singh against drinking and gambling but A-1 and A-2 instead of stopping him from indulging in these nefarious activities used to encourage him and took sides with him in quarrels between wife and the husband. P.W. 11 suggested to the deceased that she and her children should leave the village and accompany him to his village to live with him. But the deceased was not prepared. On the following day i.e. May 31, 1973 at about 5.30 P.M. information was sent to P.W. 11 that the deceased had passed away. P.W. 11 was taken aback and went to the village of the accused followed by P.W. 8. The then Executive Officer of the Municipal Committee, Ludhiana. Along with P.W. 11 his daughter Smt. Baljit Kaur and his son Rajinder Singh P.W. 10 also went. There P.W. 11 found the deceased lying on a cot covered with a chaddar. The appellant (A-1) and her mother A-2 were sitting by the side of her bed. P.W. 11 enquired from them as to what was the cause of death. He was informed by Amarjit Singh, husband of the deceased that she died because of hysteria. P.W. 11 did not believe this and he suspected some

foul play as the accused were not weeping as is usual with the ladies when a member of the family passes away. P.W. 11 deputed P.W. 10 to go to the Police Post, Goraya to lodge a report. P.W. 10 accompanied with P.W. 8 went to the Police Post where a report was lodged which was recorded by P.W. 13 A.S.I. who left for the house of the deceased. There he found only the appellant and her mother A-2 being present. The two children of the deceased, P.W. 12 Bhupinder Singh, a boy aged about 12 years and daughter Maninder Kaur were also not present. The A.S.I. did not find any injuries on, the dead body. He, however, prepared the inquest report and sent the dead body for post-mortem which was conducted by Doctor. The Doctor, P.W.1 collected the viscera and pieces of liver, spleen and kidney of the deceased in two separate bottles and pieces of small and large intestines of the deceased in another bottle. They were sent to the Chemical Examiner, P.W. 2. The Chemical Examiner found the presence of organic phosphorus compound in the three bottles. P.W. 2 also opined that organic phosphorus was a poisonous matter and had the capacity to kill human beings if administered in the quantity of 25 miligrams or more. P.W. 1 on receipt of the report of the Chemical Examiner forwarded the same with his opinion to the Station House Officer, Police Station Phillaur on the basis of which a criminal case was registered under Section 302, I. P.C. The A.S.I. found accused persons missing. He recorded the statements of P.Ws. 10 and 11. On 12 July 1973, Inspector Harbhajan Singh, D.W. 1 took over the investigation. P.W.11 apprehending that the case was not being properly investigated, sent representations to the Superintendent of Police and Inspector General of Police. D.W. 1 who was investigating the case submitted a cancellation report with a request to cancel the case. Thereafter P.W. 11 made a representation to the Chief Minister and he got a reply that the matter was being inquired into. P.W. 11, however, filed a detailed complaint in the Court on the basis of which the committal proceedings were initiated and on committal the trial commenced before the Sessions Court. 16 witnesses were examined. The case rested mainly on the evidence of P.W. 12 the son of the deceased aged about 12 years. He deposed that on the day of occurrence he came to the house from the school during the recess at 10.30 A.M. He found his mother knitting the sweater and he asked for the money which has been given by his maternal uncle. In the meanwhile A-2 asked him to go and take the food. He went into the kitchen where he found A-1 and A-2 sitting. A-1, the appellant gave him a glass of tea and asked him to deliver the same to the deceased. Accordingly P.W. 12 gave the glass of tea and the deceased started taking the tea. P.W. 12 collected Rs. 15/- from the suit case and delivered the key to his mother and left the house. Before going he also washed the glass in which tea was served to his mother. He returned from the school at about 1.30 P.M. and found the deceased lying on the cot. He went upstairs to finish his home work and after one hour he came down. He still found his mother lying on the cot covered with a chaddar. He called for her but she did not speak. Then he started weeping. At about sunset time P.W. 11 came. 2-3 days later he and others went to Ludhiana. There he told P.W. 11 about serving of the tea etc. On the basis of this information it was suspected that the accused administered poison to the deceased in the tea. The accused denied the offence.

3. The learned Sessions Judge held that there was inordinate delay in giving the report and that P.W. 12 was not a reliable witness and that he and P.W. 11 improved their respective versions from stage to stage and the possibility of suicide by the deceased could not be ruled out. The High Court disagreed with the findings of the trial Court. The learned Judges, however, held that the evidence of P.W. 12 established that the appellant gave a glass of tea to P.W. 12 and asked him to give the same to his mother and therefore she must be held responsible for having administered poison.

4. In this appeal, learned counsel for the appellant submitted that the case rests entirely on circumstantial evidence which is wholly insufficient to bring home the guilt of the accused and that the High Court on mere suspicion has convicted the appellant. Learned counsel also submitted that the Chemical Examiner, P.W. 2 did not find sufficient quantity of organic phosphorus and therefore

it cannot be said that the death was due to said poisoning.

5. We have gone through the records and the evidence of P.Ws. 11 and 12 and also the evidence of the Doctors P.Ws. 1 and 2 carefully. From the evidence of P.W. 2 it appears that the death was due to poisoning. But the most important question is whether the circumstantial evidence fully establishes the guilt of the appellant. P.W. 12 is the main witness in this case. He is a young boy aged about 12 years. His evidence as extracted above, even if accepted, goes to show that he came to the house from the school at about 10.30 A.M. during the recess and he found his mother knitting the sweater and A- 1 and A-2 were in the kitchen. A-2 called him to take his food and he went inside the kitchen. A-1 handed over a glass of tea asking him to give the same to his mother, the deceased. He accordingly gave the tea and thereafter he left for the school. He deposed in his chief examination that the working hours of the school were from 7.50 A.M. to 1.30 P.M. and there was a recess from 10.30 A.M. to 11.00 A.M. and during that time he came to the house and gave the tea to his mother at the instance of A- 1, the appellant herein. Then he returned at 1.30 P.M. and found the deceased lying on the cot. Then he went upstairs as instructed by the accused and finished his home work and came down an hour thereafter. He found his mother still lying on the cot. At about sunset P.W. 11 and others came having got the information about the death. In the first instance it is difficult to hold that the deceased died because of drinking of the tea which was served to her by P.W. 12 at the instance of the appellant. Even assuming that version to be true, P.W. 12 does not say anything about the deceased having developed any symptoms after taking the tea. The possibility of her having consumed something later i.e. after P.W. 12 left cannot definitely be ruled out. P.W. 1 the Doctor, who conducted the post-mortem found that the stomach of the deceased contained 6 ozs. of milky fluid. He opined that if a fatal dose is given, the death will occur between 30 minutes to 3 hours. He also admitted that organic phosphorus is an irritant one and gives mild to strong odour of garlic. If that is so, the deceased could not have swallowed the tea without any signs of distaste. P.W. 12 does not say anything about having noticed any such gestures from her mother. As a matter of fact he stated that while her mother was taking tea, he started taking his food and thereafter he left. However, he added that his mother asked him to bring a glass of water as her throat was getting dried. He took the glass and filled it with some water and gave the same to her. One other suspicious feature about his evidence is that it is only after 2-3 days that he has come forward with this version. No doubt, it can be said that at the earlier stages, he being a young boy, would not have suspected any foul play. But when the case rests entirely on circumstantial evidence the Court must be fully satisfied about the veracity of the witnesses and truthfulness of the version. In the cross-examination he admitted that his maternal uncle informed him that his mother died as a result of giving tea to her by him. To a Court question, P.W. 12 answered that he had seen his mother taking tea from the glass and he had not heard her declaring that the tea was bitter. There is yet another big gap in the prosecution case. Admittedly both A-1 and A-2 were in the kitchen. There is no evidence as to who prepared the tea. It could as well be that A-2 prepared the tea and A- 1 innocently put the same in a glass and handed it over to P.W. 12. We are only pointing out these possibilities since this is a case of circumstantial evidence. The Courts have held that all the circumstances in the chain should be independently established and when taken together they must form a complete chain without giving room to any other hypothesis and should be consistent with the guilt and inconsistent with the innocence.

6. Learned Sessions Judge has considered all these aspects and has given convincing reasons for not relying on the evidence of P.W. 12. The view taken by him cannot be said to be unsound or perverse, That apart, it must be borne in mind that even a senior investigating officer D.W.1 wrote for cancellation of the case since everybody was convinced that it was a case of suicide which theory cannot be ruled out. The version as spoken to by P.W. 12, even if accepted, namely that the

appellant handed over a glass of tea to him to be given to the deceased and that the deceased took the same, it is difficult to conclude that a deadly dose of poison was mixed in the tea. The deceased would not have consumed the entire tea if poison was present in the same since it would have been bitter and emitting unpleasant smell. That gives scope for a possibility of the deceased having consumed something later. Therefore the cause of death cannot directly be the result of consuming the tea. Thus there are many missing links in the prosecution case seeking to establish that it was a case of murder. Accordingly the appeal is allowed. The conviction and sentence passed against the appellant are set aside. If she is on ball, her bail bonds shall stand cancelled.

Appeal allowed.

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