(2018)2 SCeJ 1112

SUPREME COURT OF INDIA

Present: Justice J. Chelameswar and Justice Sanjay Kishan Kaul, JJ.

Rupinder Singh Sandhu

Versus

State of Punjab & Others

Criminal Appeal No.58 of 2007 with Criminal Appeal No. 59 of 2007, Criminal Appeal No. 60 of 2007

15 May, 2018

(i) IPC Section 299 , 34 - To hold either of the accused guilty for an offence under Section 299 IPC either simpliciter or vicariously with the aid of Section 34 IPC, it is required to be proved that each of the two accused was present and participated in the incident and caused injuries which resulted in the death. [Para 21]

(ii) Criminal Trial – Related witnesses - The fact that PWs are related to the deceased is not in dispute - The existence of such relationship by itself does not render the evidence of PWs untrustworthy - This Court has repeatedly held so and also held that the related witnesses are less likely to implicate innocent persons exonerating the real culprits - Admittedly, the incident took place in broad daylight in a busy area - Obviously, the incident would have been witnessed by many others - Submission of the accused that the non-examination of any person other than PWs renders the evidence of PWs untrustworthy cannot be accepted - The mere fact that some more witnesses, who would have witnessed the occurrence, were not examined does not render the evidence of related PWs untrustworthy - In fact, in a matter like this, examining any other witness who was supposed to have witnessed the offence would increase the burden of the prosecution to establish that such a witness is not a chance witness.

[Para 38, 39]

(iii) Criminal trial -- Corroboration is not required for every fact sought to be proved by the prosecution - If a fact is proved by some credible evidence, to insist upon further corroborating material would only make the enforcement of criminal law an absurdity. [Para 40]

Held,

Coming to the submission that the relevant records of Hospital to which Deceased was taken immediately after the incident were not proved to establish that PWs were the persons who carried Deceased to the hospital need not necessarily lead to the conclusions that PWs were not trustworthy witnesses. No doubt, the production of such record would have gone to corroborate the fact that PWs were accompanying Deceased at the time of the incident and immediately thereafter. Corroboration is not required for every fact sought to be proved by the prosecution. If a fact is proved by some credible evidence, to insist upon further corroborating material would only make the enforcement of criminal law an absurdity.

(iv) Criminal Trial – Planted witnesses - Incident occurred at 12.30 PM - From the facts , it follows at least by 3 p.m. PWs were present and actively associated with the above-mentioned events- If they were to be planted as eye-witnesses, it must have happened between 12.30 and 3.00 p.m. - That means in a gap of two and a half hours between 12.30 p.m. to 3.00 p.m., the investigating officer must have identified PWs to be witnesses who would act to the dictation of the investigating agency and support the version of the prosecution and plant them - Such a theory in our opinion would be a fantastic piece of fiction and it pre-supposes that PW-5 for some unknown reasons bore an enmity to A1 to plan such a deep plot to implicate A-1 in the crime- In the process, we must not forget that A-1, even by the date of the occurrence, was some kind of a celebrity - We would find it difficult to believe such a version - The general tendency – if we do not take leave of common sense – is to turn a blind eye to the violations of law committed by celebrities. [Para 41]

(v) Criminal trial - Death - Medical board - "the head injury in itself could be sufficient to cause death in the ordinary course of nature" - The statements made in (Ex PA) and the evidence of PW1 that the head injury itself could be sufficient to cause the death in the ordinary course of nature are mere *ipse dixit* - Neither any specific details regarding the volume of

the subdural hemorrhage are available on record, nor any medical opinion that the subdural hemorrhage caused the compression of the brain that caused the death - There is no evidence of any concomitant brain injury - The post-mortem report and the evidence of PW2 are silent in this regard - The pathologist's report is clear about the absence of any pathology in brain - Such being the evidence on record, the conclusion of the High Court that death is caused by subdural hemorrhage but not cardiac arrest, in our opinion, is not based on any evidence on record and is a pure conjecture - Because to find a man guilty of culpable homicide, the basic fact required to be established is that the accused caused the death - But, as noticed above, the medical evidence is absolutely uncertain regarding the cause of death. [Para 56]

Held,

Though, it is the evidence of PWs that A-1 inflicted fist blows on the deceased, the post-mortem report indicates only two external injuries – one on the temporal region and another on the left knee of the deceased – both are abrasions - The 2nd injury, i.e. abrasion on the knee, according to PW-2 could be the result of the fall - Notwithstanding the narration of PWs 3 and 4 that A-1 inflicted fist blows (multiple blows), it is most unlikely that a person would simultaneously aim at the head and also the knees of the victim while giving fist blows - Of course, it is possible that A-1 delivered more than one fist blow but only one of them landed on the head of Deceased and the others missed the target - That leaves us with the position that A-1 inflicted a single injury on the head of the deceased and we can safely conclude that the 2nd injury on the knee of the deceased occurred due to a fall at any road - It is not the suggestion of the prosecution that Deceased died of the injury on his knee - When Exhibit PA says that death in the case is "attributed to the effects of head injury and cardiac condition", to conclude that the cause of death is only hemorrhage and not cardiac arrest is contrary to the evidence on record. On the other hand it must be remembered the pathologist reported that he did not notice any pathology on the brain either on *"gross or microscopic examination"*. PW-2, who conducted the post-mortem examination, did not give any description of the hemorrhage except to state that subdural hemorrhage existed in the parietal region. He admitted in the cross examination that he did not mention the magnitude or size of the hemorrhage. [Para 44, 51]

(vi) Criminal trial - CD - Complainant moved application praying that the content of a CD be received as additional evidence, containing some interview given by the accused to some TV channel - The said CD is said to contain certain statements which would go in the opinion of the *de facto* complainant to prove the guilt of the accused - For receiving such material on record at this stage, in our opinion, requires the examination of too many questions of law including questions of the interpretation of some of the provisions of the Constitution - Assuming for the sake of argument that this Court in exercise of its extra-ordinary jurisdiction can receive such evidence, necessarily such an exercise requires the giving of an opportunity to the first accused before such evidence is taken on record - In our opinion, all that is avoidable for the reason: even if it is assumed that the first accused admitted to his participation in the occurrence, (a fact which we have already concluded independent of his own confession alleged in the TV show) in the light of the medical evidence on record, he cannot be held guilty of causing the death - We, therefore, see no reason to entertain the application - Such admissions, if any do not help improve the case of the *de facto* complainant. [Para 64, 65]

(vii) IPC, Section 323 - Punishment - Section 323 IPC stipulates a punishment of imprisonment of either description for a term which may extend to one year or with fine which may extend to Rs.1000/- or with both - In the circumstances of the case having regard to the facts that (i) the incident is 30 years old; (ii) there is no past enmity between the accused and the deceased; (iii) no weapon was used by the accused; and (iv) the background in which it happened, we are of the opinion, a punishment of imposition of fine of Rs.1000/- would meet the ends of justice in this case. [Para 64]

JUDGMENT

Chelameswar, J. - Around 1.45 pm on 27.12.1988, First Information Report No.244 came to be registered by Sub-Inspector Kaka Singh (PW5) of Police Station "Kotwali" of Patiala District of the State of Punjab on the basis of information given by one Shri Jaswinder Singh (PW3). From the narration in the FIR, it appears that the incident which eventually culminated in the death of Gurnam Singh could have simply passed off as yet another incident of road rage but for the death

of Gurnam Singh. According to the FIR, around 12.30 p.m., an incident occurred at the traffic light of Battian Wala Chowk in front of the State Bank of Patiala, Patiala City. Jaswinder Singh (PW3), Avtar Singh (PW4) and the deceased Gurnam Singh were travelling in Maruti Car No.CH I 8422 driven by the deceased. Both the accused herein were travelling by vehicle No.PAD 6030. A dispute arose on the right of way between the accused and the deceased. In the process the first accused who is a cricketer of some fame got out of his vehicle, pulled the deceased out of his vehicle and inflicted fist blows. When PW3 tried to intervene, the second[11] accused herein got out of the vehicle and gave fist blows to PW3. Thereafter, they removed the keys of the car of the deceased and fled away from the scene of occurrence. PW3 and PW4 took Gurnam Singh who was "in a state of unconsciousness" by a rickshaw to a hospital, known as Rajendra Hospital where the doctors announced that Gurnam Singh was dead.

2. Thereafter, PW3 went to the police station (leaving PW4 in the hospital) and lodged the FIR.

3. Case was registered under Sections 304/34 of the Indian Penal Code, 1860 (hereafter referred to as "IPC") against the first accused and un-named second accused.

4. Around 3'O Clock, PW5 reached Rajendra Hospital along with PW3. PW5 prepared the inquest report, which was attested by PW3 and PW4. The dead body of Gurnam Singh was sent for post-mortem examination. At about 3.30 p.m., PW3 to PW5 went to the scene of occurrence where PW5 prepared rough site plan. At 4.30 p.m., post-mortem examination over the dead body was conducted by PW2. A copy of the FIR was received by the concerned Magistrate admittedly around 5.30 p.m.

5. PW2 Dr. Jatinder Kumar Sadana, who conducted the post- mortem examination, recorded two external and one internal injuries:

1) 0.75 cm x 0.5 cm abrasion present over left temporal region at the injunction of upper part of pinna.

2) 0.5 cm x 0.5 cm abrasion over the front of left knee, and

Subdural hemorrhage present over the left temporal region.

PW2 recorded that the injuries are ante-mortem in nature and caused by 'blunt weapon'. He opined that the cause of death of Gurnam Singh could be given only after receiving the report of the pathologist. The pathologist's report dated 09.01.1989 was received in due course by PW2. Inspite of the pathologist's report, PW2 was not able to give any definite opinion regarding the cause of death of Gurnam Singh. He, therefore, addressed a letter dated 11.1.1989 to the Civil Surgeon, Patiala requesting him to refer the case to the Forensic Expert of Government Medical College, Patiala. In response to the said request, a Medical Board comprising six members, which included PW1 Dr. Krishan Vij and PW2, came to be constituted by an office order dated 13.01.1989 of Principal, Government Medical College, Patiala. PW1 was described therein to be Convener of the Board.

6. Thereafter, some correspondence took place between SHO Police Station "Kotwali" and PW2. The SHO made an attempt to secure a more precise medical opinion regarding the cause of death of Gurnam Singh. PW2 declined to give any further opinion maintaining that

"regarding the opinion whether the injury could be because of fist blow, any such clarification would be given in the Court."

7. In the background of the abovementioned facts, a final report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (hereafter referred to as "CrPC") dated 06.03.1989 came to be filed on 14.07.1989, (i.e. 4 months after its preparation) under Section 304 IPC, only against the second accused exonerating the first accused. On 13 October 1989, the case was committed to Sessions Court, Patiala by Additional Chief Judicial Magistrate, Patiala resulting in the registration of Sessions Case No.79/89. A charge against A2 under Section 304 Part-I IPC was framed on 25.09.1990 in Sessions Case No.79. During the course of the trial, the Sessions Court after recording the evidence of PW3 thought it fit by its order dated 30.08.1993 to summon the first accused also to stand trial exercising its power under Section 319 CrPC.

8. In the meanwhile, on 22.07.1989, PW3 filed a private complaint against both the accused for commission of offences under Section 302/324/323 read with Section 34 IPC. A1 was

[1] It must be mentioned here that though the FIR clearly mentioned the name of first accused, the name of second accused was not mentioned. He was only described as a clean shaven man.

summoned in the said case by an order dated 03.09.1993. After repeated adjournments, [the reasons for which are not necessary at present], both the cases were consolidated by an order dated 20.08.1994.

9. On 20.08.1994, charges were framed against both the accused. Charges under Section 304 Part-I IPC were framed against both the accused in case arising out of the FIR No.244. Charges under Section 302 IPC against first accused and charges under Section 302/34 IPC against second accused were framed respectively in complaint case for causing the death of Gurnam Singh. Charges under Section 323/34 IPC were framed against both the accused for causing hurt to PW3. Both the cases were consolidated vide order dated 20.08.1994.

10. In order to establish the guilt of the accused, the prosecution examined five witnesses and exhibited various documents.[2] PW3 and PW4 are said to be eye-witnesses to the offence. PW1and PW2 are doctors connected with the post- mortem examination of the dead body of Gurnam Singh. PW5 is the Sub-Inspector who registered FIR.

11. The accused examined one witness in their defence i.e. DW1 Raghbir Singh.

12. The Trial Court recorded[3]:

That, death of Gurnam Singh was not caused by subdural hemorrhage but it was a case of sudden cardiac death;

That, Gurnam Singh suffered sudden cardiac attack because of which he fell to the ground and received injury on left temporal region which caused subdural hemorrhage;

That, it is not certain at what point Gurnam Singh died, but his death was not due to violence;

Neither Jaswinder Singh (PW3) nor Avtar Singh (PW4) are truthful witnesses because there appears to be no corroboration of their presence with Gurnam Singh.

and, therefore, concluded that the prosecution has failed to establish the case beyond reasonable doubt and acquitted both the accused herein.

13. The matter was carried in two appeals to the High Court by the State and also by the complainant. The High Court reversed the acquittal and found both the accused guilty under Section 304 Part-II and 304 Part-II read with Section 34 IPC respectively for causing the death of Gurnam Singh. Apart from the above, A- 2 was also found guilty for an offence under Section 323 IPC for causing injuries to PW3.

14. Hence, these three appeals – Criminal Appeal No.58 of 2007 filed by Rupinder Singh Sandhu (A-2); Criminal Appeal No.59 of 2007 filed by Navjot Singh Sidhu (A-1); and Criminal Appeal No.60 of 2007 filed by Shri Jaswinder Singh (PW3).

15. Shri R.S. Cheema and Shri R. Basant, learned senior counsel appeared for A-1 and A-2 respectively. Shri Siddhartha Luthra and Shri Ranjit Kumar, learned senior counsel, appeared for the *de facto* complainant (PW3 Jaswinder Singh). Shri Nidhesh Gupta, learned senior counsel, appeared for A-1 in the appeal filed by PW3 Jaswinder Singh. Shri Sangram S. Saron, Advocate appeared for the State.

16. Enormous submissions are made before us by each of the learned senior counsel mentioned above.

17. Some of the submissions made by the three learned senior counsel for the accused are common. Briefly stated they are:-

i. the conclusion of acquittal recorded by the Trial Court is not to be interfered with by the

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[2] Inquest Report as Ex.PH, Site Plan as Ex.PT; recovery memo of certain articles as Ex.PU; application to collect the result of Pathologist as Ex.PV; FIR Ex.PQ; Statement of PW3 Jaswinder Singh as Ex.DC; Statements of PW4 Avtar Singh as Ex.DG, Ex.DD, Ex.DE; report under Section 173 CrPC as Ex.DH.

[3] *See* Judgment of Sessions Judge, Patiala in C.S. No.79/18.8.94/20.8.94 dated 22.9.1999 para 41

> "Therefore the medical evidence provides no corroboration whatsoever, to the eye-witness account.

Furthermore, the death of Gurnam Singh was not caused by the subdural hemorrhage, but it was a case of sudden cardiac death as confirmed by the Cardiologist. When Gurnam Singh suffered sudden cardiac attack he fell to the ground and received abrasions on left temporal region and left knee the former injury gave rise to subdural hemorrhage. It is not certain at what point Gurnam Singh died, but his death was not due to violence. Neither Jaswinder Singh nor Avtar Singh are truthful witnesses because there appears to be no corroboration of their presence with Gurnam Singh."

appellate Court unless there are compelling reasons warranting interference;

ii. there are no such circumstances in the case on hand which warranted interference by the High Court with the conclusion of acquittal recorded by the Trial Court;

iii. merely because a second view is possible to be taken on the material on record, the Appellate Court is not justified in reversing the conclusion of acquittal and in this case that is exactly what happened; and

iv. the conclusion of the Trial Court that PW3 and PW4 are not truthful witnesses is based on cogent reasoning. The High Court has not recorded any tenable reasons to demonstrate that the conclusion of the Trial Court is manifestly illegal;

18. Apart from the abovementioned submissions made in common on behalf of both the accused it was submitted on behalf of A-1:-

i. the medical evidence on record does not corroborate the evidence of PW3 and PW4, a factor which has been strongly relied upon by the Trial Court to disbelieve PW3 and PW4. The High Court did not record any cogent reasons for reversing the Trial Court's opinion; and

ii. the medical opinion on record does not clearly establish the exact cause of death of Gurnam Singh. In the absence of clear medical opinion regarding the cause of death, one of the essential elements of the offence of culpable homicide under Section 299 IPC, it cannot be said that the bodily injury alleged to have been caused by A-1 resulted in the death of Gurnam Singh.

19. On behalf of the second accused, it is additionally argued that the prosecution is required to prove by credible evidence **(i)** that A-2 was present along with A-1 and participated in the incident, and **(ii)** the exact nature of his participation, and **(iii)** he shared a common intention with A-1 to commit an offence under Section 299 IPC.

20. There is absolutely no credible evidence on record to establish the above. The High Court neither examined any one of the above mentioned questions nor gave any reason whatsoever to reverse the conclusion of the Trial Court insofar as it relates to A-2.

"Before a man can be convicted of a crime, it is usually necessary for the prosecution to prove that a certain event or a certain state of affairs which is forbidden by the criminal law has been caused by his conduct and that this conduct was accompanied by a prescribed state of mind. The event or state of affairs is usually called the *actus reus* and the state of mind, the *mens rea* of the crime. Both these elements must be proved beyond reasonable doubt by the prosecution." (Smith J.C. & Hogan Brian, *The Elements of a Crime* in CRIMINAL LAW (5th ed. ELBS 1983) p.29)

21. Both the accused are convicted for the offence prescribed under Section 299 IPC while A-1 was found guilty of the offence simpliciter, A-2 was found vicariously guilty (See AIR 1963 SC 174 para 13 - Mohan Singh and Another Vs. State of Punjab) of that offence with the aid of Section 34 IPC. The accusation being that they caused the death of Gurnam Singh by their conduct accompanied by the requisite *mens rea* and such conduct constitutes the offence prescribed under Section 299 IPC.

22. The question is whether the High Court is right in holding that all the requisite elements to find the accused guilty of the offences for which they were tried are proved beyond reasonable doubt? To hold either of the accused guilty for an offence under Section 299 IPC either simpliciter or vicariously with the aid of Section 34 IPC, it is required to be proved that each of the two accused was present and participated in the incident and caused injuries which resulted in the death of Gurnam Singh.

23. The undisputed fact is that Gurnam Singh was declared to have been brought dead to the Rajendra Hospital around 12.45 pm on the fateful day. According to the prosecution (FIR), Gurnam Singh received fist blows from A-1 around 12.30 pm and became unconscious. The FIR is conspicuously silent about any physical attack by A-2 on Gurnam Singh.

To find either of the two accused guilty of the offence under Section 299 IPC, it must be proved that Gurnam Singh died as a consequence of the physical attack and the resulting injuries therefrom. We shall defer the examination of the medical evidence regarding the cause of death of Gurnam Singh for the time being and proceed on the basis that the death was homicidal as a consequence of the injuries received by him. The question is - who caused the injuries?

24. Prosecution sought to prove the presence, identity and participation of both the accused in the crime by the evidence of PWs 3 and 4 - cited as eye-witnesses to the offence. They as-

serted in their evidence that they were travelling on the fateful day along with the deceased and witnessed the occurrence.

However, the Trial Court recorded a conclusion that neither of them is a "truthful witness" because "there appears to be no corroboration of their presence with Gurnam Singh". The conclusion of the Trial Court is based on the following factors:

i. both the witnesses (PW3 and PW4) are related to each other and the deceased;

ii. though the incident took place at a very busy location in the city of Patiala in broad day light, no independent witness was examined by the prosecution to corroborate the evidence of PW3 and PW4;

iii. police did not either seize the vehicle in which the deceased and PWs 3 & 4 were said to be travelling at the time of the incident nor the site plan of the scene of occurrence prepared by the police indicate the presence of the car;

iv. there were inconsistencies in the evidence of both PWs 3 & 4 regarding the number of the vehicle in which the accused were travelling at the time of the occurrence and also regarding the fact as to which one of the accused was driving the said vehicle. The number and the driver's name given by them in evidence is not the same as the number and the name of the driver given in the FIR;

v. the version of the prosecution that PW3 was the injured witness is not believable. It is only an attempt to create evidence that PW3 too had been present and attacked by the accused; and

vi. though the witnesses deposed that they accompanied the deceased Gurnam Singh on the fateful day and were proceeding to the bank to withdraw some cash, no corroborating material, such as, cheque book etc. has been placed on record to substantiate the version of the witnesses.

25. On the other hand, the High Court held -

(i) both PW3 and PW4 deposed consistently regarding the incident,

(ii) that they had no past enmity with the accused to falsely implicate the accused, not even a suggestion of the existence of any such motive was made to PWs 3 and 4 in the cross-examination; and,

(iii) the inconsistencies with regard to the number of vehicle by which the accused were travelling and which one of the accused was driving the vehicle are immaterial. Therefore, the High Court opined that they are trustworthy witnesses.

26. It is argued before us on behalf of the accused that; according to the prosecution case, Gurnam Singh was carried from the scene of occurrence to the hospital in Rickshaw by PW3 and PW4. Neither the Rickshaw puller was examined nor any record of the hospital is proved to establish that PW3 and PW4 accompanied Gurnam Singh to Rajendra Hospital. The said facts coupled with various other discrepancies noticed by the Trial Court in assessing truthfulness of the evidence of PW3 and PW4, make it highly unsafe to convict the accused on the basis of such evidence.

27. Having regard to the material on record and the submissions made, we are of the opinion that the case of each of the two accused are to be considered separately.

28. We shall first deal with the case of the second accused Rupinder Singh Sandhu because, in our opinion, his case can be decided without examining any one of the common submissions made on behalf of the accused.

29. In the entire judgment of the High Court, there are only two sentences which mention the name of the second accused. There is no discussion in the judgment of the High Court as to at what point of time during the course of investigation, A-2 was identified to be the other clean shaven person travelling with A-1 on the fateful day and what is the evidence on the basis of which the prosecution reached such conclusion except the statements (made after 7 years after the event) of PW-3 and PW-4 made at the time of the trial. It is unfortunate that the High Court thought it fit to reverse the acquittal recorded by the Sessions Court and to convict A-2 for an offence under Section 304 Part II read with Section 34 IPC on the basis of such frivolous analysis.[4]

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[4] (a) In the meantime, Navjot Singh Sidhu accused came out from the Gypsy. Jaswinder Singh PW-3 knew him as he was a famous player of Cricket. Navjot Singh Sidhu started reprimanding them

30. For the purpose of deciding the case of A2, we presume that PWs 3 and 4 were accompanying Gurnam Singh on the fateful day and witnessed the incident. The interesting feature of the case is that the FIR mentioned the name of only A1 and the second participant in the incident is said to be a "clean shaven man". The FIR does not mention that the clean shaven man either attacked or inflicted any injury on the body of Gurnam Singh. It only mentions that he inflicted fist blows on PW3. The material on record is absolutely bereft of the information regarding the fact as to at which point of time A-2 was identified to be that 'clean shaven man' who participated in the incident along with A-1 by the investigating agency. Nor is there any material on record to indicate the basis on which the prosecution came to the conclusion that A-2 is that clean shaven man.

PW3 and PW4 were examined at the time of inquest over the dead body of Gurnam Singh, which took place according to the prosecution at 3.30 p.m. on the date of occurrence. Even those statements of PW3 and PW4 do not mention the name or identifiable description of A-2.

Admittedly, at no point of time a test identification parade was held to establish the identity of the clean shaven man to be A-2. The only material on record to connect A-2 with the offences is the evidence of PW3 and PW4 at the trial where they deposed that A-2 is that clean shaven person who was present along with A-1 on the date of the incident.

The evidence of PW-3 was recorded on two occasions, initially on 9.7.1993 in the Sessions case arising out of the police report at which point of time only A-2 was put to trial for various offences in connection with the incident which resulted in the death of Gurnam Singh.

PW-3 deposed at that point of time as follows:-

> "The accused present in Court Rupinder Singh was not known to me prior to the occurrence."

Again, he was examined on 16.8.1995 at the joint trial of both the sessions cases against both the accused herein. In the chief examination, he stated;

> "I observed that one clean shaven person whose name was Rupinder Singh Sandhu was found sitting on the driver seat. The witness has pointed out towards Rupinder Singh Sandhu accused now present in the Court.

And further as follows:-

> "Thereafter Rupinder Singh (Sandhu) accused came out from the Gypsy and he **started causing me injuries with fist blows.** Rupinder Singh (Sandhu) gave fist blows on the left inside of my chest and on the left side of my forehead."

The relevant portion of the cross examination reads as follows:-

> "I stated in Ex. PQ that thereafter Rupinder Singh (Sandhu) came out from the Gypsy. Attention of the witness has been drawn to Ex. PQ where name of Rupinder Singh (Sandhu) has not been mentioned. The narration of that the clean shaven man came out of the vehicle. I stated in Ex. PQ that Rupinder Singh (Sandhu) gave fist **blows on the left side of my chest** and on **the left side of my forehead**. Attention of the witness has been drawn to Ex. PQ where the portion 'attacked' by Rupinder Singh (Sandhu) have not been mentioned. Narration is that Rupinder Singh (Sandhu) gave fist blows to him.

31. From our analysis of the above material, the following conclusions emerge:

i. Neither PW3 nor PW4 knew the second accused prior to the date of the offence;

ii. Even on the date of the offence they did not know his name or other particulars which

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and used objectionable language. Jaswinder Singh PW-3 and others asked him not to use objectionable language and thereafter Navjot Singh Sidhu caught hold of Gurnam Singh from the collar and took him out of the Maruti car. Thereafter he gave fist blow on the person of Gurnam Singh. One blow landed on the temporal region above the left ear. **Rupinder Singh Sandhu also came out of the Gypsy and gave injuries to Jaswinder Singh PW-3**.

(b) We cannot overlook this fact that Navjot Singh Sidhu has conceded that he came to the place of occurrence after hearing a commotion. **Rupinder Singh Sandhu has denied his presence and has stated that he has been falsely implicated**. The best defence witness would have been the co-employee of Navjot Singh Sidhu, but strangely none has come forward to state that at that moment of time when the occurrence had taken place, Navjot Singh Sidhu was in the Bank premises and after hearing a commotion, he went out.

could lead to his identification;

iii. The prosecution did not bring on record any material to establish as to how they came to the conclusion that the person accompanying the first accused is Rupinder Singh Sandhu (A-2);

iv. The only evidence to connect A-2 with the crime is the statements of PWs 3 and 4 made at the time of the trial (some 7 years after the incident) that A-1 was the other person accompanying A-1 on the fateful day;

v. There is nothing either in the deposition of PW3 or PW4 that A2 ever attacked the deceased; and

vi. There is no other evidence on record to show that A-2 attacked the deceased.

These aspects are not considered by the Trial Court obviously because the Trial Court opined that PW3 and PW4 are not truthful witnesses. Nor did the High Court examine these aspects while reversing the acquittal order of the Trial Court. In the impugned judgment of the High Court, there is no discussion regarding the identity of A-2 or the role played by him in the incident. Without any discussion whatsoever regarding the evidence either to prove the presence of A-2 along with A-1 at the time of the occurrence or the role played by A-2 in the incident insofar as it pertained to the death of Gurnam Singh, the High Court chose to record a finding of guilt against A-2 under Section 304 Part-II read with Section 34 IPC. It must be remembered that the evidence of PW3 and PW4 was recorded some 7 years after the incident. The first time PW3 ever identified the other clean shaven man accompanying A-1 on the fateful day to be A-2 was on 9.7.1993 at the trial of the Sessions Case in Crime No.244. Even by then some 5 years had elapsed from the date of offence.

32. The High Court abruptly recorded a conclusion that A-2 is guilty of an offence of Section 304 Part-II read with Section 34 IPC. Such a conclusion in our view is wholly unsustainable. Even if we believe for the sake of argument (we emphasise only for the sake of argument) that A-2 was present with A-1 at the time of the incident, there is nothing on record to prove that he attacked Gurnam Singh or that he shared a common intention with A-1 to commit the offence of culpable homicide not amounting to murder.

The conclusion of the High Court that A-2 is also guilty of the offence under Section 323 IPC is equally unsustainable in view of our discussion above, especially in view of the fact that there is no trustworthy evidence regarding his presence along with A-1 at the time of the offence. It is not safe to convict A-2 on the basis of the evidence of PWs 3 and 4.

We therefore, set aside the Judgment of the High Court insofar as A2 is concerned.

33. We shall now deal with the case of first accused. Once again it is necessary to examine whether the death of Gurnam Singh is caused by A-1 as alleged by the prosecution. For recording any conclusion against A-1 in this regard, *first,* it is necessary to know exactly what is the cause of death of Gurnam Singh, and *second,* that the conduct of A-1 in inflicting the fist blows on Gurnam Singh resulted in the death of Gurnam Singh. Even if both the above-mentioned factors are established beyond reasonable doubt, it must further be proved that A-1 had the requisite *mens rea* to commit the crime defined under either Section 299 or Section 300, IPC.

34. We now examine each one of the above questions.

To hold A-1 guilty of causing the death of Gurnam Singh, it must be proved that (i) he inflicted fist blows on Gurnam Singh as alleged by the prosecution; and (ii) the injuries resulting from the fist blows caused the death of Gurnam Singh.

35. In order to establish the fact that A-1 inflicted fist blows on Gurnam Singh, prosecution relied upon the evidence of PWs 3 and 4 who claimed that they were travelling along with Gurnam Singh at the time of the occurrence in the car driven by Gurnam Singh and, therefore, witnessed the occurrence.

The Sessions Court disbelieved the evidence of PWs 3 and 4 principally on two grounds, firstly that the evidence of PW3 and PW4 was not consistent and kept varying from time to time and secondly, the medical evidence does not corroborate the testimonies of PWs 3 and 4. On the other hand, as already noticed by us (at para 25), the High Court disagreed with the conclusion of the Sessions Court regarding the trustworthiness of the evidence of PWs 3 and 4.

36. The submission of the A-1 is that PWs 3 and 4 are planted witnesses and the circumstances appearing from the record create any amount of doubt regarding the fact that:

PWs 3 and 4 were in fact travelling with Gurnam Singh and witnessed the offence,

According to A-1, the circumstances are:

i. PWs 3 and 4 were related to the deceased and therefore they are interested witnesses.

ii. The failure of the prosecution to examine any independent witness (i.e. witness unconnected with the deceased) though a good number of people must have witnessed the occurrence as it occurred in broad day light in the city of Patiala.

iii. Non-production of the records of the hospital[5] to indicate that Gurnam Singh was taken to the hospital by PWs 3 and 4.

iv. The fact that the FIR which is said to have been registered by PW5 at 1.45 pm at the instance of PW3 reached the concerned Magistrate only at 5.30 pm that evening (i.e. approximately after a lapse of 4 hours) though the distance between the police station and the Magistrate is only two kilometers leads to a doubt that the timing of the registration of the FIR is manipulated to give the impression that the incident was promptly reported. The purpose being to plant PWs 3 and 4 as eye-witnesses to the occurrence.

v. That the prosecution did not seize the vehicle by which deceased, PW3 and PW4 were said to have been traveling.

37. We shall now examine the tenability of the above submissions.

38. The fact that PWs 3 and 4 are related to the deceased Gurnam Singh is not in dispute. The existence of such relationship by itself does not render the evidence of PWs 3 and 4 untrustworthy. This Court has repeatedly held so and also held that the related witnesses are less likely to implicate innocent persons exonerating the real culprits.[6]

39. Admittedly, the incident took place in broad daylight in a busy area of Patiala city. Obviously, the incident would have been witnessed by many others. It is, therefore, the submission of the accused that the non-examination of any person other than PWs 3 and 4 renders the evidence of PWs 3 and 4 untrustworthy.

We find it difficult to accept the submission. The mere fact that some more witnesses, who would have witnessed the occurrence, were not examined does not render the evidence of PWs 3 and 4 untrustworthy. In fact, in a matter like this, examining any other witness who was supposed to have witnessed the offence would increase the burden of the prosecution to establish that such a witness is not a chance witness.

40. Coming to the submission that the relevant records of Rajendra Hospital to which Gurnam Singh was taken immediately after the incident were not proved to establish that PWs 3 and 4 were the persons who carried Gurnam Singh to the hospital need not necessarily lead to the conclusions that PWs 3 and 4 were not trustworthy witnesses. No doubt, the production of such record would have gone to corroborate the fact that PWs 3 and 4 were accompanying Gurnam Singh at the time of the incident and immediately thereafter. Corroboration is not required for every fact sought to be proved by the prosecution. If a fact is proved by some credible evidence,

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[5] It is submitted that as a matter of general practice, whenever a patient is taken to a hospital, the hospital records the details of the persons who brought the patients to the hospital more particularly in cases having medico-legal implication.

[6] See *Rizan* v. *State of Chhattisgarh*, (2003) 2 SCC 661, para 6

> 6. We shall first deal with the contention regarding interestedness of the witnesses for furthering the prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

Also see, *Dalip Singh* v. *State of Punjab,* AIR 1953 SC 364, para 26

> 26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.

to insist upon further corroborating material would only make the enforcement of criminal law an absurdity.

41. Another submission of the defence is that PWs 3 and 4 are planted witnesses by the prosecution, though they did not actually witness the occurrence of the crime. The accused seek to raise a doubt regarding the fact that FIR is registered at 1.45 p.m. because the FIR reached the Magistrate around 5.30 p.m.

The concerned court, admittedly, is only at a distance of 2 to 3 kilometers from the police station. It is, therefore, argued that the prosecution manipulated the time of the registration of the FIR though it was recorded at a much later point of time after procuring the presence of PWs 3 and 4 to figure as eye-witnesses.

In our opinion, the logic adopted by the accused suggesting the possibility of the PWs 3 and 4 being planted witnesses is untenable.

Admittedly, the post-mortem was conducted by PW2 on the dead body of Gurnam Singh at 4.30 p.m. on the date of the occurrence. PW2 in his deposition stated that body was identified by PWs 3 and 4. The post-mortem report also mentions the fact that body was identified by PWs 3 and 4. It, therefore, follows that PWs 3 and 4 were present by 4.30 p.m. i.e., at the time of the post mortem. No submission is made that PW2 is not a trustworthy witness or that the post-mortem report is not a reliable document.

The post-mortem was preceded by an inquest conducted by PW5 (sub-Inspector Kaka Singh). He deposed that on receipt of the report of PW3 around 1.45 p.m. after completing the formalities of registration of the FIR, he proceeded to Rajendra Hospital at 3.00 p.m. Thereafter, he prepared the inquest report (Ex. PH) in the presence of PWs 3 and 4 who attested the inquest report. After completion of the inquest, PW5 entrusted the dead body to two police constables namely Bahadur Singh and Gurpal Singh with a requisition for post mortem (Ex. PG).

Obviously, it takes some time to conduct inquest. If PW5 reached the Rajendra Hospital at 3.00 p.m., the time gap of one and half hours between the commencement of the inquest and the commencement of the post-mortem cannot be said to be an unreasonable period for conducting the inquest and making appropriate arrangement for the post-mortem examination.[7] Both from the inquest report and the post mortem report, it can be noticed that PWs 3 and 4 presence was mentioned. Under Section 174 CrPC, an officer in charge of police station receiving information of the death of a person under the circumstances specified in the said section is required to proceed to the place where the dead body is, draw up a report of the apparent cause

of death and then forward the dead body for (post mortem) examination to the nearest Civil Surgeon. Therefore, neither the inquest could have taken place without the registration of the crime nor the post mortem examination could be undertaken without a requisition from the investigating officer. There is nothing in the examination of PW5 (SI) to suggest that he did not follow the procedure prescribed under Section 174, CrPC.

From the above, it follows at least by 3 p.m. PWs 3 and 4 were present and actively associated with the above-mentioned events. If they were to be planted as eye-witnesses, it must have happened between 12.30 and 3.00 p.m. That means in a gap of two and a half hours between 12.30 p.m. to 3.00 p.m., the investigating officer must have identified PWs 3 and 4 to be witnesses who would act to the dictation of the investigating agency and support the version of the prosecution and plant them. Such a theory in our opinion would be a fantastic piece of fiction and it pre-supposes that PW-5 for some unknown reasons bore an enmity to A1 to plan such a deep plot to implicate A-1 in the crime. In the process, we must not forget that A-1, even by the date of the occurrence, was some kind of a celebrity. We would find it difficult to believe such a version. The general tendency – if we do not take leave of common sense – is to turn a blind eye to the violations of law committed by celebrities.

42. Another aspect of the matter which was vehemently argued by the learned counsel for the accused is that the non-seizure of the vehicle by which the deceased and the PWs 3 and 4 were said to have been travelling at the time of the occurrence throws doubt about the presence of PWs 3 and 4 along with the deceased at the time of the occurrence. We fail to understand the

[7] PW2 stated in the cross-examination – "The post-mortem was started 4.30 p.m. on 27.12.1988. I must have received the police papers few minutes earlier to 4.30 p.m."

submission. Even if the vehicle were to be seized, we do not understand how it would go to prove the fact that PWs 3 and 4 were also travelling by that vehicle.

43. Therefore, we are of the opinion that the Sessions Court was wrong and the High Court was right (though the reasons are not well articulated) in believing the presence of PWs 3 and 4 at the time of the commission of the offence along with deceased Gurnam Singh. We must hasten to add that from the above finding it does not follow that their entire evidence is unimpeachable.

44. Then it becomes necessary to examine as to what extent the evidence of PWs 3 and 4 is credible. Both the witnesses in their evidence before the Sessions Court stated that they travelled with the deceased on the fateful day in a Maruti car driven by Gurnam Singh. Both of them stated that there was an altercation between A-1 and the deceased regarding the right of way which resulted in the 1st accused giving fist blows to Gurnam Singh. They did not make any allegation in their evidence that A-2 attacked Gurnam Singh. Their version is that when they tried to intervene to rescue Gurnam Singh, the 2nd accused attacked PW- 3 by giving fist blows.

Though, it is the evidence of PWs 3 and 4 that A-1 inflicted fist blows on Gurnam Singh, the post-mortem report indicates only two external injuries – one on the temporal region and another on the left knee of the deceased – both are abrasions. The 2nd injury, i.e. abrasion on the knee, according to PW-2 could be the result of the fall. Notwithstanding the narration of PWs 3 and 4 that A-1 inflicted **fist blows** (multiple blows), it is most unlikely that a person would simultaneously aim at the head and also the knees of the victim while giving fist blows. Of course, it is possible that A-1 delivered more than one fist blow but only one of them landed on the head of Gurnam Singh and the others missed the target. That leaves us with the position that A-1 inflicted a single injury on the head of the deceased and we can safely conclude that the 2nd injury on the knee of the deceased occurred due to a fall at any road. It is not the suggestion of the prosecution that Gurnam Singh died of the injury on his knee.

45. The injury on the head of Gurnam Singh, as already noticed, is an abrasion admeasuring 0.75 cm x 0.5 cm over the left temporal region at the junction of upper part of pinna. There is a corresponding subdural hemorrhage present over the left temporal region of Gurnam Singh. But the question is whether that single injury caused the death of Gurnam Singh.

46. PW-2 in the post-mortem report did not give any opinion regarding the cause of the death of Gurnam Singh. On the other hand, he recorded as follows:

> "The cause of death in this case will be given after receiving the report from the Pathologist, Government Medical College, Patiala. Both the injuries are ante-mortem in nature and caused by blunt weapon."

It is significant to note that PW2 was of the opinion that the injuries were ante-mortem in nature and caused by **a blunt weapon**.

47. The pathologist gave a report dated 9.1.89 (Ex.PJ). He noticed a large number of abnormalities in the condition of the heart of Gurnam Singh.

> "Heart weighed 430 gm and measured 12x8x6 cm. Epicardial fat was increased, especially over right ventricle. Both the branches of left coronary artery i.e. anterior descending branch and circumflex branch and right coronary artery showed atherosclerosis with calcification and narrowing of the lumen. Maximum thickness of left ventricular wall was increased to 1.8 cm. Myocardium showed stromal fat infiltration, especially of right ventricle and multiple focus areas of fibrosis in the wall of left ventricle. Cusps and chambers of the ears showed no Pathology. No evidence of myocardial infarction was seen.
>
> Root of aorta showed atherosclerosis with focal areas of calcification."

Insofar as the brain is concerned, the pathology report reads as follows:

> "Four pieces of brain, covered with Pia Meter, together weighed 550 gms and measured 11x11x5 cm. No pathology was seen on gross or Microscopic examination."

It is relevant to note that the pathologist did not notice any pathology either on the gross or microscopic examination. On receipt of the pathology report, PW-2 opined that it is necessary to obtain a further opinion of forensic expert. He, therefore, wrote to the Civil Surgeon, Patiala on 11.1.89 requesting that the case be referred to forensic expert, Government Medical College, Patiala.

48. On 13.1.89, the Principal, Government Medical College, Patiala, acting on the abovemen-

tioned letter dated 11.1.89, constituted a Board consisting of 6 members of whom two were examined as PWs 1 and 2 in the trial of the case. PW-1 was designated as the Convener of the said Medical Board. PW-1 gave a very cryptic opinion (Ex.PA) on 17.1.89, as follows:

> "Death in this case is attributed to the effects of head injury and cardiac condition. However, the head injury in itself could be sufficient to cause death in the ordinary course of nature".

49. In view of the lack of clarity in the opinion, the prosecution time and again sought for a clarification of the opinion. On two occasions, i.e. on 31.1.89 and 3.2.89, PW-1 declined to give any further clarification and communicated as follows:

> "In this context, it is for your kind information that the opinion expressed earlier stands as such."
>
> "This is for your kind information that the facts regarding the case have already been stated and need not be asked over and again. If any clarification is needed, that will be submitted in the Court."

The Sessions Court analysed the evidence of PWs 1 and 2 and the above mentioned correspondence between the investigating officer and the doctors from paras 33 to 36 and recorded:-

> "… That there was a very minor abrasion over the left temporal region, there was no fracture of the skull, the sub-dural hemorrhage seen by Dr. Jatinder Kumar Sadana (PW-2) had not been measured as its magnitude and size was not indicated in the post mortem report. The witness in cross-examination admitted that a sub-dural hemorrhage is not fatal in all the cases.
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> xxx xxx xxx
>
> Dr. Gurpreet Singh[8], Head of the Cardiology Department was of the view that the cardiac condition as reported by the Pathologist could also result in sudden cardiac death under stress. This means that Gurnam Singh could well have suddenly died without any external injury on account of a Neurogenic or vasovagal shock and the post mortem examination would not have revealed this fact. It was only after the pathologist examined xx the heart of the patient and reported various medical defects therein that the Cardiologist formed the opinion that it was a case of sudden cardiac death.
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> xxx xxx xxx
>
> In any case, the Board has not stated that death was the result of the head injury or death was the result of cardiac condition or death was the result of head injury coupled with the cardiac condition or death was the result of head injury which led to the cardiac condition."

and finally held:

> "Conclusion on the basis of the medical evidence is that the deceased died on account of sudden cardiac death under stress, fell and received the two abrasions including the subdural hemorrhage in question. This conclusion is quite consistent with the medical opinion expressed by the Pathologist and by Dr. Krishan Vij and Dr. Jatinder Kumar Sadana."

51. On the other hand, the High Court recorded a conclusion, as follows:

> "…….None of the doctors i.e. Dr. Krishan Vij PW-1 and Dr. Jatinder Kumar Sadana PW-2 have stated in their testimony that the mode of death of Gurnam Singh was cardiac failure. All they have stated is that by going through the report of the Pathologist, the cardiac condition of heart of Gurnam Singh was very weak. We cannot be oblivious of the fact that on the opening of the skull, subdural hemorrhage was present over the left parietal region and brain as spelt out by Dr Jatinder Kumar Sadana PW-2. It is in fact this hemorrhage which caused the death of Gurnam Singh, and not a cardiac arrest."

52. It is submitted by the accused that the above conclusion of the High Court is not based on any evidence and is a pure conjecture.

53. We have already noticed that PW2, who conducted the post- mortem, did not identify the cause of death of Gurnam Singh. He only forwarded the opinion of the Medical Board to the Police.[9] PW1, who headed the Board, simply repeated the statement PW-1, who headed the

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[8] He was one of the Members of the Medical Board

[9] Deposition of PW 2: After the receipt of the report of the Pathologist Ex. PJ the case was forwarded to the Professor and Head of the Department of Forensic Medicines, Medical College, Patiala for expert opinion through Civil Surgeon, Patiala. After this board was constituted by the Princi-

Board, simply repeated the statement made in Exhibit PA.

> "Deposition of PW 1: After perusal of the record and the discussions held, opinion was given which is Ex. PA. According to Ex. PA the death in this case was attributed to the effects of the head injury and cardiac arrest. However, the head injury in itself could be sufficient to cause death in the ordinary course of nature."

On the face of the above evidence, the High Court came to the conclusion that it is the subdural hemorrhage which caused the death of Gurnam Singh and not cardiac arrest.

54. As rightly pointed out by the accused, we find no basis in the evidence on record for such a conclusion. When Exhibit PA says that death in the case is "attributed to the effects of head injury and cardiac condition", to conclude that the cause of death is only hemorrhage and not cardiac arrest is contrary to the evidence on record. On the other hand it must be remembered the pathologist reported **that he did not notice any** pathology on the brain either on *"gross or microscopic examination"*. PW-2, who conducted the post-mortem examination, did not give any description of the hemorrhage except to state that subdural hemorrhage existed in the parietal region. He admitted in the cross examination that he did not mention the magnitude or size of the hemorrhage.[10]

55. PW-1 is also the author of a textbook on Forensic Medicine and Toxicology. In the Sixth Edition of his book he stated as follows:

> "On most occasions, bleeding is slight but fatal compression of the brain by a large subdural haemorrhage can occur within a few hours. It has been suggested that about 100-150 ml is usually the minimum associated with fatalities. Fatality is frequently associated with some concomitant brain injury. If there is no primary brain damage, the mortality from the subdural haemorrhage is usually related to the victim's age, neurological status and delay from the time of trauma to the surgical evacuation of the haematoma."[11]

It can be noticed from the above statement – (i) subdural hemorrhage by itself does not cause death but it is the compression of brain caused by a large subdural hemorrhage which causes the death; and (ii) about 100-150 ml of hemorrhage is usually the minimum associated with fatalities.

56. We shall assess the evidence on record in the instant case in light of the above analysis. The statements made in (Ex PA) and the evidence of PW1 that the head injury itself could be sufficient to cause the death in the ordinary course of nature are mere *ipse dixit.* Neither any specific details regarding the volume of the subdural hemorrhage are available on record, nor any medical opinion that the subdural hemorrhage caused the compression of the brain that caused the death of Gurnam Singh. There is no evidence of any concomitant brain injury. The post-mortem report and the evidence of PW2 are silent in this regard. The pathologist's report is clear about the absence of any pathology in brain. Such being the evidence on record, the conclusion of the High Court that Gurnam Singh's death is caused by subdural hemorrhage but not cardiac arrest, in our opinion, is not based on any evidence on record and is a pure conjecture. We, therefore, find it difficult to sustain the conviction of the first accused and set-aside the same. Because to find a man guilty of culpable homicide, the basic fact required to be established is that the accused caused the death. But, as noticed above, the medical evidence is absolutely uncertain regarding the cause of death of Gurnam Singh.

57. The only fact established on evidence is that A-1 gave a single fist blow on the head of the deceased Gurnam Singh. No weapon was used, nor was there any past enmity between the accused and the deceased. It all started with a dispute regarding the right of way resulting in a brawl between them, a very common sight in this country.

58. Apparently, some verbal exchange took place between the accused and the deceased. It is not clear from the record as to what exactly are the words spoken by them except a vague indica-

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pal, Medical College, Patiala and cause of death was given. This was forwarded in original to the SHO, P.S. Kotwali, on 17.1.1989. It is Ex. PK which is signed by me.

[10] Deposition of PW 2: Though I mentioned in the post-mortem report that there was subdural hemorrhage on the left temporal region, but I Have not mentioned its magnitude or size, whether it was 1 cm or it was 10 cms.

[11] Textbook of Forensic Medicine & Toxicology Principles & Practice, 6th Ed, Krishan Vij, Elsevier, pp 267-268

tion that some intemperate language was employed by both of them, nor is it clear who initiated the exchange.

59. In view of our above conclusion, we do not see any reason to discuss the various submissions made in Criminal Appeal No.60 of 2007 filed by the *de facto* complainant. Their entire case is sought to be built up on the lapses in the investigation process and the conduct of the accused in securing the anticipatory bail within few days of the incident and the decision of the State initially not to prosecute A-1. Various other factors sought to be relied upon by the *de facto* complainant pertain to certain deficiencies in the process of the investigation (such as the non-seizure of the vehicle by which deceased and PWs 3 and 4 were travelling and the disinclination of the State to array the first accused herein as the accused in the Sessions Case No.79/18.8.94/20.8.94 either by design or otherwise) make no difference to the conclusion that the first accused cannot be held to be responsible for the death of Gurnam Singh in view of the medical evidence. The *de facto* complainant also calls upon this Court to believe that in view of the celebrity status of the first accused, the State went out of its way to shield his crime. Therefore, the first accused must be held to have caused the death of Gurnam Singh.

60. No doubt that there are lapses in the investigation. We cannot hazard a guess whether such lapses occurred because of the general inefficiency of the system or as a consequence of a concerted effort made to protect the accused. The law of this country is not that people are convicted of offences on the basis of doubts.

61. We must also mention here that the *de facto* complainant moved an I.A. No. 50523 of 2018 praying that the content of a CD be received as additional evidence, along with the CD allegedly containing some interview given by the first accused to some TV channel. The said CD is said to contain certain statements which would go in the opinion of the *de facto* complainant to prove the guilt of the accused.

62. For receiving such material on record at this stage, in our opinion, requires the examination of too many questions of law including questions of the interpretation of some of the provisions of the Constitution. Assuming for the sake of argument that this Court in exercise of its extra-ordinary jurisdiction can receive such evidence, necessarily such an exercise requires the giving of an opportunity to the first accused before such evidence is taken on record.

In our opinion, all that is avoidable for the reason: even if it is assumed that the first accused admitted to his participation in the occurrence, (a fact which we have already concluded independent of his own confession alleged in the TV show) in the light of the medical evidence on record, he cannot be held guilty of causing the death of Gurnam Singh. We, therefore, see no reason to entertain the application. Such admissions, if any do not help improve the case of the *de facto* complainant.

63. The net result of all the above discussion is that the first accused cannot be held to be responsible for causing the death of Gurnam Singh. Therefore, the judgment under appeal is required to be set aside and is accordingly set aside. The material on record leads us to the only possible conclusion that we can reach that the first accused voluntarily caused hurt to Gurnam Singh punishable under Section 323 IPC.

64. The next question is what would be the appropriate punishment for such an offence. Section 323 IPC stipulates a punishment of imprisonment of either description for a term which may extend to one year or with fine which may extend to Rs.1000/- or with both. In the circumstances of the case having regard to the facts that (i) the incident is 30 years old; (ii) there is no past enmity between the accused and the deceased; (iii) no weapon was used by the accused; and (iv) the background in which it happened, we are of the opinion, a punishment of imposition of fine of Rs.1000/- would meet the ends of justice in this case.

65. In view of the foregoing, we allow the appeals of the accused as indicated above and dismiss the appeal of the complainant.

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