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IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA
AT CHANDIGARH**CRA-D-11-DB-2005 (O&M)**

Date of Decision: 29.04.2025

Jarnail Singh

... Appellant

Versus

State of Punjab

... Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Viren Sibal, Advocate as Amicus Curiae, for the appellant.
Mr. Munish Sharma, DAG, Haryana.

GURVINDER SINGH GILL, J.

1. Jarnail Singh assails judgment dated 09.12.2004 passed by learned Additional Sessions Judge, Moga, vide which he has been held guilty of having committed offence under Section 302 IPC and has been sentenced to undergo imprisonment for life and also to pay a fine amounting to Rs.5000/-.
2. The matter arises out of FIR No.135 dated 22.06.2002 registered at Police Station Baghapurana, under Section 302 IPC (Ex.PG/2), at the instance of Manpreet Singh (Ex.PG). The translated gist of Manpreet Singh's statement (Ex.PG) on the basis of which FIR was lodged reads as under:

“Today i.e. 22.06.2002, I alongwith my father had gone to our fields to irrigate our land. On account of extreme hot weather, my father was sitting by the side of water tank (*chubacha*). In the meantime, my *Taya* (uncle) Jarnail Singh came there and raised an altercation with my father on account of turn for drawing water. My father told him (uncle) that since yesterday he (uncle) had drawn water with the help of motor, therefore, today it was his



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(father) turn to draw the water. However, my uncle got enraged and pushed my father into the water tank and by catching hold of him from his hair, forcibly immersed his head in water and sat on him. When I asked my uncle not to do the same, then my uncle threatened me and asked me to leave failing which he would kill me as well. Being scared, I ran towards village while raising alarm. While on the way, I met my mother Amar Kaur who had prepared tea and was taking it to the fields. I narrated the entire incident to her and thereafter we hastily rushed to the motor. Upon reaching there, we saw that my uncle had kept my father over-powered and had kept him immersed in the water tank. When we raised alarm '*Bachao - Bachao*' (save - save), my uncle ran away from the spot. We took out my father from the water tank and found that he was still alive. We arranged for a vehicle and took him to Civil Hospital, Baghapurana, but he breathed his last near village Jai Singh Wala. When we arrived in the Civil Hospital, Baghapurana, the doctor declared my father as dead. The motive for causing death of my father is that during the life time of my grand-father Hazura Singh, my father sold the share, which would have come to him upon my grand-father's death. Later upon insistence of my uncle, my father had made a statement in the Court that he would not claim any share from my grand-father's land. However, my uncle Jarnail Singh nursed a grudge on account of sale of share by my father and had killed him by drowning him in water. I left behind my mother to guard the dead body of my father and while I was proceeding to the Police Station, you met me. I have got my statement recorded, which is correct. Sd/- Manpreet Singh.”

3. Pursuant to recording of aforesaid statement, Inspector/SHO Jagjit Singh went to the hospital and conducted inquest proceedings. The dead body was subjected to post-mortem examination. Inspector/SHO Jagjit Singh thereafter went to the spot and prepared a rough site plan of the place of occurrence. A pair of *chappal* (slippers) recovered from the spot was taken into possession. Statements of the witnesses were recorded in terms of Section 161 Cr.P.C. Accused Jarnail Singh was arrested on 27.06.2002. Upon conclusion of investigation, challan was presented against the accused on 05.09.2002 in the



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Court of learned Judicial Magistrate Ist Class, Moga, who committed the case to the Court of Sessions vide order dated 18.09.2002. Learned Additional Sessions Judge, Moga framed charges against the accused on 18.10.2002 for offence punishable under Section 302 IPC, to which he pleaded not guilty and claimed trial.

4. The prosecution in order to establish its case examined as many as 8 PWs. The gist of their testimonies is being briefly referred to herein under:-

PW-1 Dr. Arvinder Singh Gill stated that on 22.06.2002, he had sent a ruqa (intimation) Ex.PA to the SHO, Police Station Baghapurana regarding arrival of dead body of Gurmail Singh, which had been brought to the hospital by his wife Amar Kaur.

PW-2 Dr. Naresh Kumar, Medical Officer, Civil Hospital, Moga, who had conducted post-mortem examination on the dead body of Gurmail Singh on 22.06.2002, proved the post-mortem report as Ex.PB. He stated that as per his opinion the cause of death was due to asphyxia on account of drowning, which was sufficient to cause death in ordinary course of nature.

PW-3 HC Gurdeep Singh, who is a formal witness, tendered into evidence his affidavit Ex.PE, wherein he deposed that on 22.06.2002 while he was posted on general duty at Police Station Baghapurana, Inspector/SHO Jagjit Singh had handed over to him and to Constable Kuldip Singh the dead body of Gurmail Singh for getting the post-mortem examination conducted and that he accordingly got the needful done.

PW-4 Constable Avtar Singh, who is another formal witness, tendered into evidence his affidavit Ex.PF, wherein he deposed that on 22.06.2002, he had delivered the special reports to the Illaqa Magistrate and to other higher officers.



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PW-5 Manpreet Singh (complainant) narrated the incident in the same manner, as had been stated by him to the police at the time of lodging of FIR. He specifically stated that his father had been forcibly drowned to death by his uncle by pushing him into the water tank and by forcibly keeping him immersed in water.

PW-6 Amar Kaur (wife of the deceased Gurmail Singh), who had also reached at the spot upon having been informed about the incident by her son i.e. the complainant Manpreet Singh, stated that when she reached at the spot alongwith her son, she saw that Jarnail Singh was sitting on Gurmail Singh in the water tank and that when they raised alarm, Jarnail Singh ran away from the spot leaving her husband in the water. She further stated that they took out Gurmail Singh out of water and took him to the hospital where he was declared dead.

PW-7 Gian Singh stated that he is Ex-Sarpanch of the village and was Sarpanch at the time of occurrence and that on 22.06.2022, Manpreet Singh had come to his house and had informed him that his father Gurmail Singh had been murdered by his uncle Jarnail Singh and that thereafter he alongwith Manpreet Singh went to the police station to lodge FIR. He further stated that on 26.06.2002 at about 9.00 PM, Jarnail Singh came to his house and confessed his guilt before him of having murdered Gurmail Singh on account of turn of water and that he had produced him (Jarnail Singh) before the police on 27.06.2002 in the afternoon.

PW-8 Inspector Jagjit Singh, who is the Investigating Officer of the present case, stated in detail in respect of the entire investigation conducted by him right from lodging of FIR to the filing of challan. He also proved various documents/memos prepared during the course of investigation.

5. Upon closure of the prosecution evidence, statements of the accused was recorded in terms of Section 313 Cr.P.C., wherein he denied the entire case of prosecution and pleaded false implication. In his defence, the accused



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examined DW-1 Baljit Kaur (wife of the accused), who stated that 2-3 days prior to the occurrence, the deceased Gurmail Singh had been beaten by his wife and brother-in-law (*sala*) Gulwant Singh @ Ganti and on account of which he might have consumed some poisonous substance, as some froth was noticed on the dead body.

6. The learned trial Court, upon marshalling the evidence brought on record, held that the prosecution had fully established the charges framed against the accused and consequently, held him guilty for having committed offence under Section 302 IPC vide impugned judgment, which is under challenge before this Court.
7. Learned counsel for the appellant, while assailing the impugned judgment, submitted that he has falsely been implicated in the present case and that instant case is a case where both PW-5 Manpreet Singh and PW-6 Amar Kaur i.e. the complainant and his mother, are interested witnesses being son and wife of Gurmail Singh (deceased) and had apparently deposed falsely on account of their enmity with the accused due to a land dispute. Learned counsel further submitted that as a matter of fact the deceased had apparently consumed some poison as froth was coming out from his mouth, as has also been noticed by the Doctor, who had conducted post-mortem examination and under these circumstances, the case of prosecution that the accused had drowned the deceased to death virtually stands demolished. Learned counsel, thus, submitted that the impugned judgment could not sustain and is liable to be set aside.



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8. Opposing the appeal, learned State counsel submitted that it is a case where both the eye-witnesses i.e. PW-5 Manpreet Singh and PW-6 Amar Kaur, are natural witnesses and had witnessed the incident and since the medical evidence is fully in tune with the case of prosecution regarding death by drowning, the findings to the said effect as recorded by the trial Court, do not call for any interference.
9. We have considered rival submissions addressed before this Court and with the assistance of learned counsel have also perused the record of the case.
10. In order to examine as to whether it is a case of death due to drowning, it is apposite to first of all refer to the medical evidence led by the prosecution in this regard. The prosecution has examined PW-2 Dr. Naresh Kumar, who had conducted post-mortem examination on the dead body of Gurmail Singh. The relevant extract from his examination-in-chief is reproduced herein under:

“On 22.6.2002, I conducted autopsy on the dead body of Gurmail Singh son of Hazura Singh, resident of Zaimal Wala, aged about 42 years. He was brought by HC Gurdip Singh and C.Kuldeep Raj and was identified by Manpreet Singh son of Gurmail Singh and Gian Singh son of Munder Singh and found the following :-

1. It was dead body of male measuring 5' 10", moderately built, wearing kameej and Kutcha and steel kara on right wrist. Rigour Mortis was present in all the four limbs. Post mortem staining was present on the back. Profuse white finefroth was present at the mouth and nostrils. Eyes were congested. Pupils were dilated. Lips and finger nails were cynosed. There was an abrasion 2.5 x 1.0 cm on the left knee on which gentian violet was applied. This injury looked 1/2 days earlier. Both the lungs were oedematous, pale grey in colour with reddish stoins, on cut sections, they, exuded large quantity of blood stained froth. Heart was healthy. Left side was empty and right side contained



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blood. Stomach was healthy and contained about 100 cc of water. All the other organs were healthy and congested.

In my opinion, the cause of death was due to asphyxia as a result of drowning which was sufficient to cause death in ordinary course of nature and ante mortem in nature.....”

11. The aforesaid witness was briefly cross-examined on behalf of the accused and his entire cross-examination reads as under:

“Both the lungs were oedematous i.e. the lungs were swollen and contained blood and water. If a person remained drowned in the water for 2/3 minutes, this condition can occurred. There were no marks of injury of rubbing against a wall on the dead body. The death in this case can occur if a person himself drowned in the water. It is incorrect that I have made a false statement.”

12. A perusal of the aforesaid statement clearly shows that PW-2 Dr. Naresh Kumar had found some abrasions on the dead body. He has specifically opined that the death was due to asphyxia as a result of drowning. Although the witness was briefly cross-examined on behalf of the accused, but nothing substantial could be elicited during the course of cross-examination so as to doubt his opinion as regards the cause of death. The mere fact that some froth was noticed at the mouth and nostrils, would not demolish the opinion of the Doctor, who has categorically stated during the course of cross-examination that both the lungs were swollen and contained blood and water, which is in fact a condition relatable to drowning. In the absence of any other contradictory evidence, opinion of the Doctor concerned regarding the cause of death to be on account of drowning cannot be doubted on any count.

13. The next material question would be as to whether it is the accused, who is responsible for drowning the deceased. It is the specific case of the



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prosecution that an altercation had taken place between the deceased and the accused with regard to turn of water and the accused being enraged had pushed the deceased into the water tank and held him down under water leading to his death. The entire occurrence happened in the presence of the son of the deceased i.e. PW-5 Manpreet Singh, who has fully supported the case of prosecution while in the witness-box, wherein he stated in tune with his statement recorded before the police at the time of lodging of FIR. Although the learned counsel for the accused attempted to assail his statement that his conduct in not making any attempt to save his father is unnatural, but this Court cannot lose sight of the fact that the complainant was aged barely 14 years at the time of occurrence and may not be physically or mentally strong enough to confront the accused and on account of which he being scared ran towards the village and came back with his mother, who had met him on the way. The complainant's mother i.e. PW-6 Amar Kaur has also stated that when she reached at the spot with her son, she saw that accused was sitting on top of her husband in the water tank, which lends corroboration to the case of prosecution. There is nothing on record to doubt their credibility in any manner. The aforesaid statements of the eye-witnesses i.e. PW-5 Manpreet Singh and PW-6 Amar Kaur, also find corroboration from the extra-judicial confession made by the accused before PW-7 Gian Singh. PW-7 Gian Singh is a respectable of the village, being an ex-Sarpanch, who knew the accused as well as the deceased, as both of them belong to his village. It is PW-7 Gian Singh, who had produced the accused before the police and since his statement could not be shattered on any count, the extra-



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judicial confession can also be safely taken into account for corroborating the statements of the eye-witnesses.

14. The statement of DW-1 Baljit Kaur is nothing, but a self-serving statement made by wife of accused, wherein she stated that the deceased had consumed some poisonous substance. However, the said proposition of death by poisoning is not substantiated by medical evidence and as such, the statement of DW-1 Baljit Kaur does not help the accused in any manner. Consequently, we have no hesitation in affirming that it is the accused Jarnail Singh, who had caused death of the deceased by forcibly drowning him.
15. The next question before this Court is as to whether it is a case which would attract offence punishable under Section 302 IPC or would be just an offence of culpable homicide. In this context, reference needs to be made to *Exceptions* to “murder” carved out under Section 300 IPC. Section 300 IPC is reproduced herein under:

“300. Murder. - Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or –

Secondly. - It is done with intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or –

Thirdly. - If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or –

Fourthly. - If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1. - When culpable homicide is not murder. - Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:-



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First. - That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly. - That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly. - That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation. - Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2. - Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3. - Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

Explanation. - It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5. - Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.”

16. It is not in dispute that the accused was not armed. Nor is there anything to suggest that there was any pre-meditation or any prior plan to kill the deceased. It appears that everything happened in the spur of moment when an altercation had taken place in the fields between two brothers on account of turn of drawing water and the accused being enraged threw the deceased into the water tank and sat on him leading to his death. In our opinion, it is a case which would in fact attract an offence under Section 304 Part-I IPC and not an offence of “murder”. As such, the accused/appellant is guilty of



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having committed offence punishable under Section 304 Part-I IPC. Consequently, the conviction of the appellant as recorded by the trial Court is altered from Section 302 IPC to Section 304 Part-I IPC. The sentence of imprisonment for life is also reduced to RI for 7 years. The fine, however, shall remain unaltered.

17. Accordingly, the appeal stands partly accepted to the extent indicated above.
18. A copy of this judgment be sent to the quarters concerned for necessary compliance.

(GURVINDER SINGH GILL)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

29.04.2025

Vimal

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No