

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Appeal D-1290-DB of 2014
Date of Decision: October 30, 2015**

SumanAppellant

Versus

Ram Mehar and others
..... Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE GURMIT RAM**

Present : Mr. K.D.S.Hooda, Advocate
for the appellant.

T.P.S.MANN, J.

Appellant-Suman wife of deceased Jagbir, has filed the present appeal for challenging the judgment dated 6.12.2013 passed by the learned Sessions Judge, Karnal, whereby, respondents Ram Mehar and Dalsher stand acquitted of the charges under Sections 302, 201 read with Section 34 IPC.

Briefly, put the case of prosecution is that on 28.6.2012 at about 10.00 a.m., Jagbir left his house on a motor-cycle. At about 6.00 p.m., his brother Kuldeep learnt that accused Ram Mehar and Dalsher were with him and after taking liquor, they had gone to Rehar Kalan where they purchased eight bottles of liquor and consumed the same at canal bridge, Ballaha. All three of them then took bath in the canal. Dalsher later on, told Kuldeep that his brother Jagbir had drowned in the canal. Kuldeep, accordingly, went to police post Ballaha on 29.6.2012 and lodged a DDR. On 30.6.2012, ASI Ranbir Singh recovered

the dead body of Jagbir, which was entangled in Ram Kali Head. The dead body was subjected to inquest and later on sent for postmortem. On 10.7.2002, Kuldeep submitted an application to Inspector Subhash Chand and on its basis, FIR No. 246 dated 10.7.2012 under Sections 302, 201 read with Section 34 IPC was registered at Police Station Assandh. Both accused Ram Mehar and Dalsher were produced in Court by Inspector Mohammad Jamal, who moved an application for polygraph test. Both the accused consented to undergo the said test. The said test was conducted on 30.10.2012. Accused Dalsher was, once again, subjected to polygraph test.

The trial Court, after going through the evidence brought on record, came to the conclusion that the prosecution had failed to bring home the guilt of the accused and, accordingly, acquitted them of the charges against them.

After hearing learned counsel for the appellant and on going through the impugned judgment, this Court finds that the prosecution case rests entirely upon the testimony of PW1 Kuldeep, who is the brother of the deceased. He deposed that on 28.6.2012, accused Dalsher and Ram Mehar had come to his house and Ram Mehar stated that as he was blessed with a grand son, he was to throw a party. Accordingly, at about 10.00 a.m., Jagbir (deceased) left in the company of the two accused

on the motor-cycle of Jagbir. However, during his cross-examination, he was successfully confronted with the DDR got recorded by him on 29.6.2012 at 7.30 p.m., wherein, he had not stated that the two accused had come to his house or that both the accused left with the deceased at his motor-cycle. On the other hand, the DDR proved that on 28.6.2012, the deceased alone had left the house on his motor-cycle and, thereafter, PW1 Kuldeep had come to know that the deceased was sitting with Ram Mehar and Dalsher and taking liquor. Furthermore, there is another statement Ex.P1 made by Kuldeep before the police on 30.6.2012, wherein, he had stated that the deceased left the house on 28.6.2012 at 8.00 a.m. As such, there is a material contradiction in the evidence of the prosecution as to at what time, the deceased had left his house. Even otherwise, the prosecution did not produce any witness, who had seen the deceased and the two accused going together or taking liquor together. PW1 Kuldeep testified that one person of village Mor Mazra had told him that the accused had purchased 4/5 bottles of liquor but the said person has not been examined nor his name was disclosed by the complainant. According to the prosecution, the deceased, on the one hand, and both the accused on the other, had taken sufficient quantity of liquor. However, as is apparent from the report of the Forensic Science Laboratory, no

alcohol was found in the viscera of the deceased.

As regards the motive that there was a quarrel between the accused and the deceased, no such mention was made by complainant-Kuldeep while reporting the matter to the police. Coming to the polygraph test, it may be noticed that only accused Dalsher was subjected to the same. As per the report, Ex.P14, accused Dalsher had answered 'No' on all the ten issues. His response appeared to be deceptive on five of those issues and inconclusive qua the remaining issues. As such, no definite opinion with regard to the involvement of the accused in the commission of the crime has come on the record. Even the scientist who had conducted the test was not produced for the purpose of cross-examination, more-so when the polygraph test is not a substantive evidence and it cannot be used to prove the guilt of the accused.

In view of the above, this Court finds no reasons to upset the finding of acquittal recorded by the trial Court. The appeal is devoid of any merit and, accordingly, dismissed.

**(T.P.S. MANN)
JUDGE**

**October 30, 2015
amit rana**

**(GURMIT RAM)
JUDGE**