

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-135-MA-2015
Date of Decision: 30.11.2015

Kishan Lal

...Appellant.

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Jasdeep Singh, Advocate
for the appellant.

RAJ RAHUL GARG, J.

The appellant has filed the application for grant of leave to appeal against the judgment of acquittal dated 19.11.2014 rendered by the learned Additional Sessions Judge, Palwal.

Vide the aforesaid judgment, the learned trial Court acquitted respondents-accused Dinesh son of Tara Chand, Ram Avtar son of Tara Chand, Dharambir son of Mehar Chand, Charan Singh son of Mukhi, Balram son of Khacheru, Meharchand son of Netram, Amichan son of Ram Swroop and Manohar son of Tarachand in a complaint moved by Kishan Lal father of Mahesh deceased, under Sections 302, 201, 120-B, 506 IPC, Police Station Chandhut, against the respondents-accused.

Brief facts of the case are like this; that complainant Kishan Lal son of Shri Med Singh moved a complaint against accused-respondents alleging that he was a labourer and his son, namely, Mahesh was doing labour work in the fields of accused-respondent Dinesh. On 5.7.2011, his son Mahesh before going to the fields of accused-respondent Dinesh for doing labour work, had told the

complainant that accused-respondent Dinesh was not giving him the amount of labour charges for the last so many days and that now he will work there only after receiving the previous labour charges. On the same day i.e. 5.7.2011, at 6.00 PM, accused-Mehar Chand @ Mehri came to the house of complainant and informed that his son Mahesh had met with an accident with a tractor in the fields. The complainant alongwith his family members went to the place of occurrence and found that his son Mahesh was lying dead under the tyre of the tractor bearing No.HR-30D-6216. The owner of the aforesaid tractor was accused-respondent Dinesh. About 20 people were already present at the spot before the complainant alongwith his family member reached there. The complainant alongwith his family members took out the dead body of Mahesh. As they tried to take away the dead body, the accused persons stopped them from doing so. The accused insisted that the dead body should be taken directly for cremation. Complainant resisted and said that after getting the postmortem of dead body done, the dead body will be cremated. At this, the accused persons threatened them. But the complainant alongwith his family members took the dead body to his house. The other son of the complainant, namely, Munesh went to the Police Post, Amarpur. The accused persons alongwith Mehar Chand, Sarpanch, Charan Singh, Dharambir and Balram also reached at the Police Post and informed Munesh that due to death of his son (Mahesh), his father has also expired, so he should go to the house immediately. As he came out of the Police Post, all the above said accused persons gave slaps and fist blows to Munesh and also used filthy language. Accused persons also threatened him of dire consequences, if postmortem of the dead body is got conducted. Thereafter, accused persons alongwith other villagers reached at the house of complainant and forcibly took the dead body of Mahesh and set it on fire by sprinkling kerosene oil and pouring 20 Kgs sugar. In this way, the remains of the dead body were also destroyed by the accused persons. Complainant has further asserted that son of the complainant did not know how to driver tractor and he was working as a labourer only. Accused-Dinesh did not

pay labour charges to him for the last some months. On the unfortunate day i.e. 5.7.2011 his son demanded labour charges from accused-Dinesh and asked him that if labour charges are not paid, he will not work in his fields. Therefore, as alleged by the complainant, his son Mahesh was run over by accused-Dinesh.

Complainant requested for sending the complaint to the Police Station under Section 156(3) Cr. P. C. for lodging the FIR. Instead of sending the complaint to police under section 156 (3) Cr. P. C., learned trial court ordered for recording preliminary evidence.

After considering the arguments addressed by learned counsel for the complainant and going through the entire material coming on record, the accused persons except accused Dinesh were summoned under Sections 201, 506, 120-B IPC and accused Dinesh was summoned under Section 302, 201, 506, 120-B IPC, the learned Area Magistrate vide his order dated 26.3.2012 committed the case to the Court of Sessions as the offence was triable by the Court of Session.

After hearing arguments advanced by learned Public Prosecutor assisted by learned counsel for the complainant and learned defence counsel, the accused were charge sheeted under Sections 364, 302 read with section 149 IPC by the learned trial Court vide order dated 5.7.2012. All the contents were read over and explained to the accused. They did not plead guilty and claimed trial. Fresh charge under Section 302 read with Section 149 IPC was framed in terms of order dated 20.11.2012 passed by this Court and all the contents were read over and explained to the accused, but they did not make confession and claimed trial.

After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded wherein accused denied each prosecution allegation and pleaded that they are innocent.

After hearing learned counsel for the parties and appraising the entire material coming on record, the learned trial Court held that it cannot be held that accused persons have committed murder of Mahesh, rather the

occurrence had taken place due to negligent driving by Mahesh himself, who was driving the tractor in a negligent manner in the fields, filled with water as the land was being prepared for sowing paddy crop and, accordingly, held that the case can not be said to be proved beyond reasonable doubt and acquitted the respondents-accused of the charge framed against them.

The aforesaid judgment of acquittal dated 19.11.2014 has been assailed by the complainant before this Court by seeking leave to appeal.

We have heard Mr. Jasdeep Singh, Advocate for the appellant and also appraised the entire material on record.

This is an appeal against acquittal. Interference in an appeal against acquittal is called for only if the judgment under appeal is perverse or based on misreading of the evidence. Merely because the Appellate Court is inclined to take a different view, is no reason calling for interference.

Mr. Jasdeep Singh, Advocate for the appellant argued that the respondents-accused have committed heinous crime of murder by hatching a conspiracy and forcibly cremated the dead body of Mahesh son of the complainant, by setting it on fire by sprinkling kerosene oil and pouring sugar on it.

Learned Counsel for the appellant-complainant contended that the learned trial court has failed to appreciate the oral as well as documentary evidence available on the file. Respondents-Accused intentionally cremated the dead body of Mahesh without allowing the complainant and his family members to get the post-mortem done and also threatened them of dire consequence if they approached the police in this regard. It was also contended by the learned counsel for the appellant that the learned trial Court has not taken into consideration the entire evidence in true perspective.

There is no fault in appraisal of oral as well as documentary evidence available on the file by the trial Court. If we take the evidence available on the file into consideration as it is, no criminal offence is said to be proved against the accused beyond reasonable doubt. In fact, the learned trial Court

has dealt with the matter in question carefully discussing each and every point minutely.

We find no illegality in the findings of the learned trial Court when it says that it cannot be held that accused persons have committed murder of Mahesh, rather the occurrence had taken place due to negligent driving by Mahesh himself, who was driving the tractor in a negligent manner in the fields, filled with water as the land was being prepared for sowing paddy crop. It was also observed by the learned trial Court that the cremation was performed by the relatives of Mahesh deceased and by the accused only as the cremation was attended by 100/150 persons of village. It was further observed by the learned trial Court that on the complaint made by the complainant, enquiry was conducted by the Deputy Superintendent of Police wherein he reported that the death of Mahesh was caused due to accident in the fields of accused Dinesh. Therefore, the offence under Sections 302, 201, 149, 120-B, 506 IPC can not be said to be made out.

Under the above discussed circumstances, *mens rea* of the accused is not established on the file to commit the murder of Mahesh son of the complainant. Therefore, the findings recorded by the learned trial Court that the prosecution has failed to prove that the respondents-accused have committed murder of Mahesh or that they set the dead body of Mahesh on fire by putting kerosene oil and sugar on it and destroyed the remains of dead body, cannot be said to be perverse or in any way misreading of evidence warranting interference of this Court.

For the reasons recorded above, finding no merit in this appeal, leave to appeal sought for by the appellant-complainant is declined.

Dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

30.11.2015
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