

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

CRA-S No.1572-SB of 2016 (O&M)

Date of decision: 23.09.2017

Jalam Rishi

... Appellant

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms. Aditi Girdhar, Advocate
for the appellant.

Mr. C.L. Pawar, Sr. DAG, Punjab.

RAMESHWAR SINGH MALIK, J.

The appellant, having been convicted by the learned trial Court, for an offence under Section 304 Part I of the Indian Penal Code ('IPC' for short) vide impugned judgment of conviction and having been awarded the sentence of rigorous imprisonment for 10 years and fine of Rs.5,000/- vide order of sentence dated 13.04.2015, has approached this Court by way of present criminal appeal through legal aid counsel.

Case of the prosecution, as noticed by the learned trial Court in paras 1 and 2 of the impugned judgment, was that various migrant labourers hailing from Bihar, namely, deceased Mohinder Sau, accused Jalam Rishi, his son Deepak Rishi and PW3 Domi Rishi had been staying in a small room in the area of Jalandhar. They were natives of the same Village Khokha in State of Bihar. All of them were working as labourers for construction of various roads

under a labour contractor named Dharma Nand.

On 18.10.2013 at about 10.00 p.m., said labour contractor Dharma Nand was also present in their room, where accused Jalam Rishi and deceased Mohinder Sau were consuming alcohol and were indulged in abusive talking with each other. Deepak Rishi son of Jalam Rishi was also sitting near them. Jalam Rishi was cursing Mohinder Sau that the latter had been wrongly accusing him for stealing Rs.1500/- and due to this accused Jalam Rishi felt insulted. However, Dharma Nand thought it better to leave that place and went to his house. Both accused Jalam Rishi and deceased Mohinder Sau had an altercation at night which resulted into scuffle. Deepak Rishi also intervened to help his father and accused Jalam Rishi was having an iron 'sabbal' in his hands and Deepak Rishi caught hold Mohinder Sau from his arms. Then accused Jalam Rishi gave 'sabbal' blow on the head above the left eye of Mohinder Sau due to which blood started oozing out from his head. PW3 Domi Rishi had witnessed all this. However, he was frightened, therefore, he went to sleep or was posing to be in sleep. At about 4.00 a.m., when PW3 stood up for the purpose of urinating, he saw that both Jalam Rishi and his son Deepak Rishi had been taking the dead body of Mohinder Sau in the street and they threw the same in the sewerage gutter in front of the house in the street. PW3 Domi Rishi kept silent due to the fear. When in the afternoon, his contractor Dharma Nand came he disclosed all this to him. FIR was lodged by Dharma Nand who suffered statement Ex.P1 before the investigating officer. The police made endorsement Ex.P2 which was completed at 8.30 p.m. on 19.10.2013 and on its basis formal FIR Ex.P3 was registered between 8.50 p.m to 10.10 p.m on 19.10.2013. After registration of the FIR, the police swung into action. It visited

the spot and prepared the rough site plan of the place of occurrence. The blood stained soil along with blood stained quilt were taken into possession from the spot vide memo Ex.P9. It took into possession the dead body of deceased and prepared the inquest report Ex.P4 thereof. Thereafter, the dead body was sent for post-mortem examination. Accused Jalam Rishi and Deepak Rishi were arrested on 19.10.2013. However, accused Jalam Rishi suffered disclosure statement Ex.P19 and got recovered the iron 'sabbal' vide memo Ex.P20. Its sketch Ex.P21 was prepared. The rough site plan Ex.P22 of the place of recovery of 'sabbal' was also prepared. The police recorded the statements of the witnesses concerning with this case.

Investigating agency carried out the investigation. On conclusion of the investigation, police report under Section 173 of the Code of Criminal Procedure ('Cr.P.C.' for short) was presented before the learned Illaqa Magistrate. After complying with the provisions of Section 207 Cr.P.C., the learned Illaqa Magistrate committed the case to the learned Sessions Court for its trial, vide order dated 28.01.2014. Accused Deepak Rishi was found to be under 18 years of age and he was declared juvenile. He was separately tried by the Juvenile Justice Board. After hearing the accused on charge, a prima facie case was found to be made out against the accused under Sections 302 and 201 IPC and the charge was framed accordingly. Accused pleaded not guilty and claimed trial.

The prosecution, in order to prove its case, examined as many as 11 PWs, including SI Mangal Singh, who was investigating officer of the case as PW1, Dharma Nand complainant was examined as PW2 and the sole eye-witness Domi Rishi was examined as PW3. Raj Kumar was examined as PW4

and Dalip Singh draftsman was examined as PW5. ASI Jaswant Singh was examined as PW6, whereas SI Mohinder Singh was examined as PW7. Constable Manpreet Singh was examined as PW8 and Dr. (Mrs.) Sanjeev Lochan was examined as PW9. Head Constable Sushil Kumar was examined as PW10 and Head Constable Malkiat Singh was examined as PW11. After conclusion of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. All the incriminating evidence was put to the accused. The accused denied the charge framed against him, making the following statement under Section 313 Cr.P.C.: -

“I am innocent and I have committed no offence and I have been falsely implicated in this case for the death of Mohinder Sau. There was no enmity between Mohinder Sau and me or my family. There was no dispute of any kind with the deceased Mohinder Sau. The death of the deceased was due to unknown reasons and is from unknown persons during the midnight. The witnesses have been falsely introduced by the police by way of plantation to trace the blind murder case”

After going through the prosecution evidence brought on record and hearing learned counsel for the parties, learned trial Court came to the conclusion that so far as the charge framed under Section 201 IPC against the accused was concerned, prosecution failed to prove its case. Accordingly, as per the findings recorded by the learned trial Court in para 34 of the impugned judgment, at page 32 of the paper book, accused was found entitled for benefit of doubt qua the offence under Section 201 IPC.

Similarly, as per the discussion and findings recorded by the

learned trial Court in paras 21 to 26 of the impugned judgment, at pages 24 to 26 of the paper book, the learned trial Court came to the definite conclusion that it was not a case of Section 302 IPC, because pre-meditation and mens-rea to cause the murder of the deceased was conspicuously missing. Accordingly, it was held by the learned trial Court in para 26 of the impugned judgment that intention to commit murder cannot be attributed to the accused.

Finally, the learned trial Court found it to be a case under Section 304 Part I IPC. Accordingly, accused was convicted for an offence under Section 304 Part I IPC vide impugned judgment of conviction and was awarded the sentence vide impugned order of sentence dated 13.04.2015 to undergo rigorous imprisonment for 10 years and fine of Rs.5,000/-. In default of payment of fine, the accused was ordered to undergo further imprisonment for three months. Period already undergone by the convict, while in police custody during investigation or during trial, was ordered to be set off towards the substantive sentence, as per the provisions contained in Section 428 Cr.P.C.

Since the convict was a migrant labourer from Bihar and was not having sufficient means at his disposal, instant appeal was filed through legal aid counsel. Delay in filing the appeal was condoned. Appeal was admitted and recovery of fine was stayed by this Court vide order dated 25.04.2016.

When the case came up for suspension of sentence vide CRM No.38862 of 2016 on 16.05.2017, learned counsel for the appellant submitted that instead of pressing the application for suspension of sentence, he would like to argue the main appeal itself on merits. On his request, case was adjourned to 12.07.2017.

Learned counsel for the parties are ad idem that Sh. Navdeep

Chhabra, Advocate who filed the present appeal, as legal aid counsel, was appointed as Deputy Advocate General, Punjab and he returned the record of this case to the High Court Legal Services Committee. Later on, Ms. Aditi Girdhar, Advocate came to be appointed as legal aid counsel in the instant appeal. In the interregnum, roster of specially constituted Division/Single Benches for taking up criminal appeals/jails appeals, in which legal aid has been provided at the State expenses, on every Saturday w.e.f. 23.09.2017, came to be constituted by Hon'ble the Chief Justice, pursuant to the letter dated 04.09.2017 of Hon'ble the Chief Justice of India and accordingly, the instant appeal has been listed for regular hearing. This is how, this Court is seized of the matter.

Learned counsel for the appellant submits that there are very many serious contradictions and discrepancies in the case set up by the prosecution, which have gone totally unexplained and would prove fatal to the case of prosecution. In this regard, while referring to the statement of PW2 complainant Dharma Nand, who was author of the FIR, at page 81 of the lower Court record ('LCR' for short) and statement of PW3 Domi Rishi, only alleged eye-witness of the occurrence, at page 85 of the LCR, she submits that both these material witnesses have specifically deposed before the Court that the dead body was taken out from the gutter by the police. She places reliance on the statements of PW1 SI Mangal Singh, investigating officer of the case and PW10 HC Sushil Kumar, at pages 67 and 111 of the LCR, to contend that both these witnesses have specifically deposed before the Court that the dead body of the deceased had already been taken out by the complainant party from the gutter. She contends that this serious contradiction has gone completely unexplained on the

part of the prosecution, creating a serious doubt in the prosecution story. Learned counsel for the appellant submits that it was a blind case and there was no eye-witness to the occurrence, including PW3 Domi Rishi. Since the learned trial Court miserably failed to appreciate true import of the evidence available on record, impugned judgment of conviction and order of sentence have resulted in serious miscarriage of justice. She submits that the conduct of alleged eye-witness as well as the complainant was totally unnatural. No reliance could have been placed on the statements of such witnesses. Finally, she prays for setting aside the impugned judgment of conviction and order of sentence, by allowing the present appeal.

Per contra, learned counsel for the State, while strongly opposing the contentions raised by learned counsel for the appellant, submits that barring some minor and natural discrepancies in the case of the prosecution, guilt was brought home against the accused and he was rightly convicted by the learned trial Court. He further submits that the impugned judgment of conviction does not suffer from any patent illegality and the same deserves to be upheld. He prays for dismissal of the appeal.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that after re-appreciating the factual as well as legal aspect of the matter, particularly the evidence brought on record by the prosecution, it is found that the prosecution has miserably failed to prove its case for want of cogent and sufficient evidence. The learned trial Court could not appreciate true facts of the case as well as the evidence available on record in the correct perspective,

before recording its impugned findings for the purpose of recording conviction of the appellant. The appellant is entitled for acquittal and the instant appeal deserves to be allowed, for the following more than one reasons.

The prosecution story started with the fact that the deceased Mohinder Sau and appellant Jalam Rishi were consuming liquor in the room, where they have been residing together. Second accused Deepak Rishi was also sitting there. It was further stated by the complainant-author of FIR, PW2 Dharma Nand that altercation took place between Mohinder Sau and Jalam Rishi, as the appellant Jalam Rishi was alleging and was asking Mohinder Sau that he had falsely named the appellant for stealing Rs.1500/- and Jalam Rishi further alleged that Mohinder Sau has defamed him.

When the altercation between appellant Jalam Rishi and Mohinder Sau, deceased was going on, complainant left the place of occurrence and went to his home. The time was about 10.00 PM. Deceased and appellant were doing the labour work and complainant PW2 Dharma Nand was doing the work of supplying labourers to contractors. Room of the labourers namely Mohinder Sau deceased, Jalam Rishi and Deepak Rishi, appellant as well as PW3 Domi Rishi was situated in village Mithapur. All these persons were permanent residents of same village in State of Bihar. As per the version of the complainant given in the FIR, he came to the room of appellant next day about 4.45 AM and then he was told by PW3 Domi Rishi that Jalam Rishi and Deepak Rishi have caused the death of Mohinder Sau by causing injuries with a *sabhal* (iron rod).

First of all, conduct of author of FIR-complainant himself was very unnatural that he left the place of occurrence, when altercation between the

deceased and appellant was going on, particularly when all were known to each other and Dharma Nand-complainant was the labour contractor of deceased as well as appellant. This conduct of author of the FIR was very much surprising and unnatural which does not inspire confidence. However, the learned trial Judge failed to appreciate this material aspect of the matter, while recording conviction of the appellant.

Similarly, the only alleged eye-witness PW3 Domi Rishi conducted himself in such a manner, which does not appeal to reason at all. Conduct of this alleged eye-witness was so unnatural that he claimed to have gone to sleep in the same room, where the deceased and appellant were consuming liquor and quarreling with each other, whereas son of the appellant was also sitting with them. Further, this alleged eye-witness PW3 Domi Rishi contradicted himself to such an extent that it cannot be reconciled under any circumstances. The prosecution story put forth in the FIR and statement of this eye-witness PW3 Domi Rishi are not going hand in hand.

It is so said because in the FIR, it was got recorded by the complainant that PW3 Domi Rishi told the complainant that when the deceased Mohinder Sau and appellant Jalam Rishi were consuming liquor in the room at about 10.00 PM and altercation took place between them, Jalam Rishi caused injury on the head of the deceased with *sabhal* and thereafter, PW3 Domi Rishi got frightened and went to sleep. On the other hand, PW3 Domi Rishi, while deposing in the Court, stated that when Jalam Rishi, his son Deepak Rishi and deceased Mohinder Sau were exchanging hot words, PW3 Domi Rishi went to sleep in the same room.

He further deposed before the Court that when he woke up next

early morning at about 4.00 AM, he saw that Jalam Rishi was armed with *sabhal* and Deepak Rishi caught deceased Mohinder Sau with his arms and Jalam Rishi gave a *sabhal* blow on the head of deceased Mohinder Sau. Thus, as per the prosecution version recorded in the FIR, injury was caused on the head of the deceased by the appellant at about 10.00 PM, whereas as per the statement of PW3 Domi Rishi, the only alleged eye-witness, said fatal injury was caused by the appellant at about 4.00 AM i.e. early morning next day, meaning thereby, there was a totally unexplained gap of six hours. The learned trial Court has altogether ignored this very serious, material and unexplained contradiction in the prosecution story, because of which the prosecution case becomes highly doubtful.

The abovesaid view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **Abdul Razak and others Vs. State of Karnataka Rep. by SHO, Hutti PS, 2015 (6) SCC 282.**

Learned counsel for the appellant has been found well justified in contending that it was a blind murder. Then comes the equally material issue of recovery of dead body. As noticed hereinabove, PW1 SI Mangal Singh, who was investigating officer of the case and PW10 HC Sushil Kumar have specially deposed in their respective statements before the Court that the dead body had already been taken out of the gutter by the complainant party before the police reached at the site. Seriously contradicting the common statement of these two material police officers, PW1 and PW10, alleged eye-witness Domi Rishi PW3 as well as complainant Dharma Nand PW2 have specially deposed before the Court in one voice that the dead body was taken out of the gutter by the police.

This kind of serious contradiction cannot be said to be a minor discrepancy. Similarly, so far as the charge under Section 201 IPC was concerned, the learned trial Court itself has found that prosecution miserably failed to prove its case qua the charge under Section 201 IPC. This finding was recorded by the learned trial Court in para 34 of the impugned judgment. Again, prosecution has failed to prove the charge against the accused under Section 302 IPC, as per the categoric findings recorded by the learned trial Judge in paras 22 to 26 of the impugned judgment. In this view of the matter, it can be safely concluded that from the statements of PW1, PW2, PW3 and PW10, a serious doubt has been created in the prosecution story, even qua the charge under Section 304 Part I IPC and the appeal of the appellant deserves to be accepted, for this reason also.

Coming to the medical evidence, there was no trace of liquor found by the doctor, while conducting the post-mortem. Bare perusal of post-mortem Ex.P25, available from pages 121 to 128 of the LCR, will make it crystal clear that on examination of the abdomen, in the column of stomach and its contents, the doctor found it to be healthy and semi-digested food material. Urinary bladder was found healthy and empty. There was no trace of any intoxicant material, including liquor, which was allegedly consumed by the appellant as well as deceased.

The learned Court below has completely ignored this material piece of evidence as well, in spite of the fact that it goes a long way to completely dislodge the case of the prosecution. Nothing in this regard was stated by Dr. (Mrs.) Sanjeev Lochan PW9. Neither the prosecution story, as put forth in the FIR, came to be supported either by the ocular evidence or the

medical evidence. Thus, testing it from any angle, this Court feels no hesitation to conclude that the prosecution has miserably failed to prove its case and the learned trial Judge fell in serious error of law, while passing the impugned judgment of conviction and same the cannot be upheld, for this reason as well.

The view that has been taken by this Court also finds support from the judgments of the Hon'ble Supreme Court in **Mahavir Singh Vs. State of Madhya Pradesh, 2016 (10) SCC 220** and **Ajikumar @ Aji and others Vs. State of Kerala, 2017 AIR (SC) 695**.

Further, recovery of weapon of offence is again highly doubtful, for the reason that PW1 SI Mangal Singh, investigating officer has deposed that *sabhal* was got recovered from the fields and he called fingerprints expert and sniffer dog at the spot, whereas PW10 HC Sushil Kumar has deposed before the Court that no dog squad or fingerprints expert were called at the spot. PW6 ASI Jaswant Singh also stated before the Court that dog squad or fingerprints expert were not called at the spot. Regarding recovery of the *sabhal*-weapon of offence, PW6 ASI Jaswant Singh stated that it was recovered from backside of the room of the appellant, wrapped in a piece of cloth and was under the earth in the area of Universal Enclave, thus, these official witnesses PW1, PW6 and PW10 have contradicted themselves to such an extent that the recovery of weapon of offence also becomes doubtful. However, the learned trial Court ignored this important aspect of the matter, while recording the conviction of the appellant.

In view of what has been discussed hereinabove, putting together all the abovesaid material aspects of the matter and examining the same from every possible angle, this Court is of the considered view that the occurrence

did not take place in the manner suggested by the prosecution. Guilt against the accused could not be brought home by the prosecution for want of cogent and convincing evidence, therefore, accused is entitled for acquittal and his appeal deserves to be allowed.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered opinion that since the impugned judgment of conviction and order of sentence have been found suffering from patent illegality, the same cannot be sustained. Accordingly, impugned judgment of conviction and order of sentence dated 13.04.2015 are hereby set aside. Instant appeal deserves to be accepted and the same is accordingly allowed.

Since the appellant is inside the jail and has undergone actual sentence for 03 years, 08 months and 22 days as on 11.07.2017, in view of the custody certified furnished by way of affidavit dated 11.07.2017 of Lalit Kumar Kohli, PPS, Deputy Superintendent, Central Jail, Jalandhar at Kapurthala, the appellant is directed to be released forthwith, if he is not required in any other case.

Resultantly, with the abovesaid observations made and directions issued, instant appeal stands allowed, in the abovesaid terms.

[RAMESHWAR SINGH MALIK]
JUDGE

23.09.2017
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No