

CRA-D-665-DB-2011

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-665-DB-2011 (O & M)
Date of decision: 26.03.2018

Godar Singh and another
.....Appellants

Versus

State of Haryana
....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms. Ruchi Sekhri, Advocate,
for appellant No.1 and
legal aid counsel for appellant No.2.

Mr. Kuldeep Tiwari, Addl. A. G. Haryana.

INDERJIT SINGH , J

None has appeared on behalf of appellant No.2. Ms. Ruchi Sekhri, Advocate, who is appearing for appellant No.1, is appointed as legal aid counsel on behalf of appellant No.2 also.

The present appeal has been filed by appellants-Godar Singh and Lakhi Ram challenging the judgment of conviction dated 13.06.2011 and order of sentence dated 15.06.2011 passed by learned Sessions Judge, Fatehabad whereby they were convicted and sentenced as under:

<i>Under Section</i>	<i>Sentence</i>	<i>In default of payment of Fine</i>
302 read with Section 34 IPC	To undergo imprisonment for life and to pay a fine of ₹21,000/- each.	To further undergo rigorous imprisonment for a period of one year each.
307 read with Section 34 IPC	To undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹11,000/- each.	To further undergo rigorous imprisonment for a period of six months each.

Both the sentences have been ordered to run consecutively.

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Brief facts of the present case are that FIR has been registered on the statement of Kulwinder Singh, which was given to SHO/Inspector Bimla Rani, on 08.10.2009. In his statement, he stated as under:

“Statement of Kulwinder Kumar son of Mukhtiar Singh, caste Saini, resident of village Jamal Pur Shekha, aged 30 years. Stated that I am resident of abovesaid address and practising as an Advocate at Civil Courts, Tohana. Today on 07.10.2009, at about 7.30 p.m. I alongwith Roop Singh son of Sucha Singh, Banarsi son of Mukand Ram, caste Saini, residents of village Jamal Pur was standing at bus stand in front of shop of Giana son of Naraina Ram and talking with them, while at some distance Anil son of Jarnail Singh, Bansi and Binda Ram sons of Labh Singh, caste Saini, residents of village Jamal Pur Skekhan were also present in front of an adjoining shop and talking with each other. In the meantime, a Tractor bearing registration No.HR 23-B/3157 make HMT of yellow colour came from the side of village Akanwali, which was being driven by Godar son of Modan, caste Chamar, resident of village Jamal Pur Shekhan while Lakhi son of Santu, caste Chamar of same village was sitting by his side. Godar and Lakhi exhorted that a lesson be taught to Anil for insulting on that day and they would kill him. On this, Godar turned his tractor with trolley towards shop of Chander Bhan and ran it over Anil and Bansi standing there, who died at the spot and when Binda Ram son of Labh Singh tried to run away, then

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they tried to run over him but he jumped in the side because of which he sustained injuries. Motive is that about 10 days back, Godar asked Anil for lifting earth through JCB machine, but Anil did not find any profit in that proposal and on this Anil said he will not gain anything in that proposal, so he will not do the work with his machine. Godar said he had promised and you will do this work. On this, an altercation took place between them and Godar gave fist blows and slaps to Anil and stated that by way of refusal, he had insulted me and if you do in future I will kill you. Because of this grudge, today Godar and Lakhi ran over his tractor on Anil, Bansi and Binda with intention to kill.”

On the basis of this statement, FIR No.247 dated 08.10.2009, under Sections 304/34 IPC was registered at Police Station Sadar Tohana. Thereafter, Inspector Bimla Devi conducted the inquest proceedings regarding dead bodies of Anil and Bansi and post-mortem examination was got conducted. She thereafter inspected the spot and got the place of occurrence photographed. The blood stained earth lying at the spot was also lifted. Tractor bearing registration No.HR 23-B-3157 was also taken into possession vide recovery memo. Rough site plan was also prepared. Statements of witnesses were recorded. After necessary investigation, challan was presented against the accused-appellants.

On presentation of challan, copies of same and other documents were supplied to the accused-appellants under Section 207 Cr.P.C. Finding *prima facie* case, the appellants were charge-sheeted under Sections 302 and

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307 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW 1 Dr. H.S.Sagoo, who medico-legally examined Binda alias Balwinder and found following injuries:

1. There was a stitched wound of size 5 cm x .5 cm. horizontally placed over left sub-mandibular region with clotted blood.
2. Reddish abrasion size 2 x 2 cm. over right lower leg medial surface just above ankle joint.

This witness also stated that both these injuries were found simple in nature.

PW 2 Head Constable Sadhu Ram mainly deposed that he joined the investigating officer, Inspector Bimla Devi, who inspected the spot and blood stained earth was lifted from the place of occurrence. He also deposed that after the post-mortem, the doctor handed over him one sealed parcel containing blood stained clothes of deceased-Anil and one another parcel containing blood stained clothes of deceased-Bansi, which were handed over by him to Inspector Bimla Devi.

PW 3 Ramesh Kumar is the witness, who identified the dead body of Bansi Lal in General Hospital.

PW 4 EASI Madan Lal is a formal witness, who tendered in evidence his affidavit Ex.P10 regarding safe custody of the sealed parcels till these remained in his possession.

PW 5 Hari Singh, Halqa Patwari mainly proved the scaled site plan of the place of occurrence, Ex.P11.

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PW 6 EHC Kulbir Singh mainly deposed regarding delivery of special report to the Illaqa Magistrate etc.

PW 7 Constable Anil Kumar mainly proved the photographs of the place of occurrence and tractor, as clicked by him and handed over the same to the investigating officer.

PW 8 ASI Jagdish Ram is a formal witness, who tendered in evidence his affidavit regarding safe custody of the sealed parcels.

PW 9 Kulwinder Kumar is the complainant. He mainly deposed the same facts as narrated by him in the FIR.

PW 10 Balwinder alias Binda is an injured/eye-witness. He has also consistently deposed regarding the prosecution version.

PW 11 Dr. Asha Kiran Bhutani deposed that on 08.10.2009, she conducted the post-mortem examination on the dead body of Anil and found following injuries on his dead body:

1. Lacerated wound on right side of junction of occipital temporal bone 5 cm. long bone deep but bone not fractured.
2. Reddish abrasion on top of left shoulder.
3. Abrasion on bridge of nose.
4. Cut above both ear lobules with fresh bleeding.
5. Abrasion posteriorly on right side of abdomen.
6. Abrasion on right forearm and abrasion and contusion on right upper arm with fracture of right upper arm. There were tyre marks on lower abdomen with contusion on lower abdomen. On cut section below all injuries had

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subcutaneous hemorrhage.

This witness further stated that liver was ruptured on right side and spleen was NAD, right kidney was ruptured and left was NAD. She further stated that the death in her opinion was due to shock and haemorrhage because of the injuries which were ante mortem in nature and sufficient to cause death. She also stated that on the same day, she also conducted the post-mortem examination on the dead body of Bansi and found following injuries:

1. Abrasion reddish on whole of forehead. Neck was deviated to right side. Abrasion on right cheek. Reddish abrasion on right shoulder, abrasion on left forearm and left hand and left upper arm and skin peeled off. Abrasion on right thigh and anteriorly on right hip joint. Abrasion on left knee joint anteriorly. Fracture of right humerus at junction of upper 1/3rd and lower 2/3rd. There was fracture of right thigh, shortening of right leg i.e. right femur bone with abrasions and contusions around it. On cut section blow all abrasions and contusion, subcutaneous bleeding was present i.e. all injuries were ante mortem in nature. There was white tyre marks causing contusion anteriorly on abdomen. On cut section subcutaneous bleeding was present in muscles, skin and fat.

PW 12 Dr. Joginder Singh, Incharge Scene of Crime mainly
deposed in respect of visiting Police Station Sadar Tohana and examination

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of HMT Tractor No.HR 23-B/3157. He further stated that he advised the investigating officer to collect blood swab from the right side rear tyre of the tractor and to send the same to FSL Madhuban for further examination.

PW 13 Sub Inspector (Retd.) Hukam Chand mainly deposed in respect of recording formal FIR Ex.P 32.

PW 14 Inspector Bimla Devi mainly deposed in respect of the investigation conducted by her in the present case.

At the close of prosecution evidence, the accused-appellants were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves as innocent. They further pleaded that they have been falsely implicated in the present case. It was a road side accident and has been falsely converted into murder case.

However, no witness was examined in defence.

Learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellants as stated above.

Aggrieved from the abovesaid judgment of conviction and order of sentence, the present appeal has been filed.

At the time of arguments, learned counsel for the appellants argued that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. It was only a road side accident which has been converted into a murder case. She further argued that even as per the case of prosecution, accused-appellant No.2 Lakhi Ram had no motive to cause the occurrence, nor he was driving the tractor. Only *lalkara* has been attributed to him and he has been shown sitting on the tractor. She further

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argued that in the document i.e. *ruqa*, which was sent by the doctor to the S.H.O., history of the case has been given as road side accident. Similarly, in another document, the doctor has stated it as a road side accident. Therefore, it is clear from the record that it was a road side accident and the accused have been falsely implicated in the present case.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by bringing cogent evidence on record. The injured/eye-witnesses are reliable witnesses and they have consistently deposed regarding the prosecution version. No material contradictions or improvements have been pointed out in their statements. He further argued that as the death was caused by tractor by running it over the deceased, therefore, the doctor might have stated it is a road side accident, but it is to be seen from the evidence of the prosecution witnesses whether it is a road side accident or murder. From the statements of prosecution witnesses, it is to be seen whether it is an accident or intentional act. He further argued that in view of the motive on the part of accused-appellant No.1 Godar Singh, he committed the murders of Anil and Bansi and hit Balwinder alias Binda and caused injuries to him. He further argued that oral statements are dully supported by the medical evidence as well as the investigation of this case. He further argued that the accused-appellants have been rightly convicted and sentenced by learned trial Court.

After hearing learned counsel for the appellants, learned State counsel and going through the evidence on record, we find that as per the prosecution version, the occurrence took place on 07.10.2009 at 7.30 P.M and the FIR was registered at 12.30 A.M. i.e. within 5 hours and the version

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has been given at the earliest. As per the prosecution version as well as statements of prosecution witnesses, Godar Singh was having a motive to commit the occurrence as he had enmity with Anil. At about 7-8 days prior to the present occurrence, an altercation took place between Anil and Godar about contract of lifting earth by JCB machine by Anil, who showed his inability to do so because of no profit in the contract. At that time, accused-Godar Singh gave fist blows to Anil and also threatened him of dire consequences. We have gone through the statements of complainant-Kulwinder Kumar (PW 9) and injured-Balwinder @ Binda (PW 10). There was no cross-examination on this point and the statements of the witnesses remained unchallenged qua the motive. No material discrepancy or improvement has been pointed out by learned counsel for the appellants at the time of arguments which may go to the root of the case. The time and place of occurrence are the admitted facts.

The only arguments of learned counsel for the appellants is that it is a road side accident. However, from the statements of prosecution witnesses especially the complainant and injured/eye-witnesses, it is not an accident, rather accused-Godar Singh while driving the tractor ran it over Anil and Bansi causing their death and also hit Balwinder alias Binda and caused injuries to him. No defence evidence has been produced by the accused to prove that it was an accident only.

Further in the statement under Section 313 Cr.P.C. also, it is nowhere the case of accused-Godar Singh that he was driving the tractor rashly or negligently or due to some mechanism defect in the tractor, this accident had taken place. As per the evidence, the deceased and injured

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were standing and talking on the *kacha* road, when accused-Godar Singh ran his tractor over Anil and Bansi and hit Balwinder alias Binda and caused injuries to him. The shops were there on the spot. As per the evidence, the tractor was at a reasonable speed and the accused were raising *lalkara* also. All this evidence shows that it was not a road side accident, rather an intentional act of accused-Godar Singh to drive the tractor in such a way to run over Anil and Bansi intentionally and hit Balwinder alias Binda. The prosecution witnesses are reliable witnesses and there is nothing in their cross-examinations which may make their statements unreliable. In no way, it can be held as the case under Section 304-A IPC and not under Section 302 IPC. Therefore, judgment of conviction and order of sentence passed against accused-Godar Singh by the trial Court are correct, as per evidence and law and the same are upheld qua him.

So far as accused-Lakhi Ram is concerned, we find that he has no enmity with the deceased as well as the injured. He was not driving the tractor, rather simply sitting on it. As per the prosecution version, only *lalkara* has been attributed to him. In the facts and circumstances of the present case, we find that no overt act has been alleged against accused-Lakhi Ram nor he has any enmity with the victims. Therefore, a reasonable doubt exists regarding the involvement of accused-Lakhi Ram in the present case. Therefore, by giving the benefit of doubt to accused-Lakhi Ram, we accept the appeal qua him and he is acquitted of the charges framed against him.

In view of the above discussion, the present appeal is partly allowed. The appeal filed by accused-appellant No.1 Godar Singh is

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dismissed and impugned judgment of conviction dated 13.06.2011 and order of sentence dated 15.06.2011 passed by learned Sessions Judge, Fatehabad are upheld qua him. However, the appeal filed by accused-appellant No.2-Lakhi Ram is accepted; the impugned judgment of conviction dated 13.06.2011 and order of sentence dated 15.06.2011 passed against him are set aside and he is acquitted of the charges framed against him. His bail/surety bonds also stand discharged.

As appellant-Godar Singh is on bail, his bail bonds stand cancelled and he is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

26.03.2018

parveen kumar

(A.B. CHAUDHARI) (INDERJIT SINGH)
JUDGE JUDGE

Note: Whether speaking/reasoned : Yes
Whether reportable : No