

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

**Crl. Appeal No.D-951-DB of 2003
Date of Decision: December 13, 2019**

Kishna

...Appellant

VERSUS

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Ms.Upasna Rana, Amicus Curiae
for the appellant.

Mr.Vikrant Pamboo, Deputy Advocate General, Haryana
for the respondent-State.

ARCHANA PURI, J.

Challenge in the present appeal, is to the judgment of conviction dated 21.08.2003 and order of sentence dated 22.08.2003 passed by learned Sessions Judge, Faridabad, vide which appellant was held guilty and convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay fine of ₹250/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.

The background facts in nutshell are, as follows:-

That, complainant Jaggu is hawker and indulge in selling plastic chakla-belan, after purchasing the same from Delhi. He has three sons and two daughters. At present, he was residing along with his family

was also residing in a nearby jhuggi. In their community, all males and females consume liquor. On the previous night, at about 9.00 p.m., accused Kishna had demanded money from complainant's elder son Bhagirath, as he wanted to consume liquor but however, his son had refused to pay money, upon which, Kishna became furious and gave knife blow to his son on his left side and thereafter, he fled away. At that time, complainant Jaggu as well as Bhoom Singh, son of complainant's father's sister, tried to chase Kishna but failed. Thereafter, Bhagirath was shifted to Government Hospital and he was declared dead by the doctor.

The proceedings in the present case were initiated, on the basis of statement got recorded by Jaggu to ASI Ramesh Chand on 30.07.2001. During the course of investigation, ASI Ramesh Chand had prepared inquest report. He also facilitated conducting post-mortem, on the dead body of Bhagirath. Then, Investigating Officer visited the spot and prepared rough site plan of spot of occurrence. He lifted blood-stained earth and after converting into parcel, he had taken the same into possession vide separate memo. The accused was arrested, on that very day. During the course of interrogation, accused Kishna had made disclosure statement, with regard to having concealed the knife, used in the occurrence and on the basis of said disclosure statement, knife was recovered from the disclosed spot. Rough sketch of the same was prepared and thereafter, it was taken into possession. Site plan of the spot of recovery was also prepared. Even, site plan of the place of occurrence was also got prepared. Statements of the witnesses were got recorded.

On completion of the investigation, accused Kishna was sent up to face trial. On presentation of challan, compliance of Section 207 Cr.P.C.

was made and thereupon, case was committed to the Court of Session.

In pursuance of the commitment proceedings, on the basis of material coming forth, prima facie, charge was framed against the accused Kishna under Section 302 IPC, which was read over to him, to which he pleaded not guilty and claimed trial.

In an endeavour to establish its case, the prosecution examined as many as 8 witnesses, besides adducing documentary evidence.

PW-1 Ravi Dutt, SI deposed about presentation of report under Section 173 Cr.P.C. **PW-2 ASI Vijay Singh** deposed about recording of FIR Ex.PA/2, on the basis of receipt of ruqa Ex.PA. **PW-3 Dr.Sanjeev Bhagat**, Medical Officer, deposed about having examined dead body of Bhagirath and he had dispatched ruqa Ex.PB to the police.

PW-4 Dr.Anju Verma has deposed about conducting of the post-mortem examination on the dead body of Bhagirath. She has deposed about the detail of the injuries found on the dead body, which are reproduced, as herein given:-

“1. Stab wound 3 cm medial to left nipple, olliptical in shape. 4 x .2cm x 7 cm deep, direction downward laterally, margins clean cut, thoracic cavity filled with blood. In continuation with injury No.1 a stab wound 3 x .2cm and 2 cm deep, direction downward laterally at the left ventricle of heart. Pericardial breeched in 4th intercoastal space. Pleura breeched in continuation with external wound. Thoracic cavity filled with blood. A wound 1 x 1 cm medial border of lower lobe of left lung. Injuries were ante-mortem in nature.”

She also opined that the cause of death in this case was due to haemorrhage and shock, as a result of injury No.1, which was sufficient to cause death in ordinary course of nature. She proved the copy of post-mortem report Ex.PE, inquest report Ex.PE/1 and police request Ex.PE/2.

PW-5 Khazan Singh, Patwari has deposed about preparation of scaled site plan Ex.PF, at the instance of Jaggu.

PW-6 Jaggu, is the complainant, at whose instance, the proceedings were initiated. He has deposed about himself along with his family to be living in make-shift hut near Railway Station, Palwal. Further, he deposed about accused Kishna to be also having his jhuggi near their jhuggi. He also deposed about the manner of inflicting of injuries by accused Kishna to his son, which proved fatal and his deposition is in consonance with the prosecution version. He further deposed about recording of his statement to the police, which is Ex.PA.

PW-7 ASI Ramesh Chand, is the Investigating Officer of the present case. He deposed about the manner of receipt of information about the dispute among the kanjar community, having taken place on 29.07.2001 at about 11.00 p.m. and then he had reached Civil Hospital, Palwal, where he received ruqa **Ex.PB**. He further deposed that he had gone near the dead house but none was present there. He also deposed about recording of statement of the complainant Jaggu, on the next day at about 6.15 a.m., which is **Ex.PA** and his endorsement upon the same is **Ex.PA/1**, on the basis whereof, FIR was registered. He further deposed about preparation of inquest report **Ex.PE/1** and he facilitated the conducting of the post-mortem on the dead body vide application **Ex.PE/2**. He also deposed about having visited the spot of occurrence along with Jaggu and prepared the rough site plan, which is **Ex.PG**. He lifted blood-stained earth and converted the same into parcel and took the same into possession vide memo **Ex.PH**. He also deposed about having effected arrest of accused on the same day. He further deposed about making of disclosure statement by the accused, which is

Ex.PI, on the basis whereof, he had got recovered the knife from the disclosed spot, qua which, rough sketch was prepared, which is Ex.PI/1 and thereafter, it was taken into possession vide memo Ex.PI/2. He also deposed about preparation of rough site plan of the spot of recovery, which is Ex.PI/3. He recorded statements of the witnesses and on completion of investigation, the challan was prepared by SI/SHO Ravi Dutt.

PW-8 Head Constable Kanhaya Lal has deposed about the detail of the proceedings conducted by SI Ramesh Chand, at the spot of occurrence on 30.07.2001 and further also deposed about arrest of accused having been effected by the Investigating Officer in his presence. He also deposed about making of the disclosure statement by the accused in his presence and thereupon, having got recovered knife from the disclosed spot, in his presence. He further deposed about various memos, to have been prepared in his presence, which have been attested by him and Jaggu, complainant.

Thereafter, learned Public Prosecutor had also tendered into evidence, affidavits Ex.PC and Ex.PD of Head Constable Om Parkash and MHC Raghbir, respectively and also tendered into evidence, report of the FSL, Ex.PJ and thereafter, the evidence was closed.

On closure of the prosecution evidence, all the incriminating circumstances, appearing in the prosecution evidence were put to the accused Kishna in his statement under Section 313 Cr.P.C. However, the accused denied those allegations and pleaded innocence. He further took the plea that Bhagirath was killed by 2/3 unknown persons in the house, while he was consuming liquor with them. He also took the plea that he was

In defence, accused examined **DW-1 Baga Ram**, who has deposed that on 29.07.2001, at about 8.00-9.00 p.m., he reached the place of occurrence, on hearing some noise but he stated that many persons were present there but he does not know their names. He also stated that he does not recollect the names of the persons, who were present there and quarreling. Kishna accused was not present at the time of occurrence. Even Jaggu was not present at that time.

DW-2 Bedu has deposed that about two years ago at about 9.00 p.m., he was present in his hut. On hearing noise, he reached the hut of Jaggu. Bhagirath was quarreling with 3-4 unknown persons. They were consuming liquor while quarreling. After the quarrel, those persons started grappling with Bhagirath. He did not see anyone causing injuries to Bhagirath. He also deposed that hut of Kishna is at a distance of 50 feet from the spot. None came from the hut of Kishna accused. Accused Kishna was not present there on that day as he had gone outside for begging.

Thereafter, defence evidence was closed.

After hearing learned Public Prosecutor, learned defence counsel and on appraisal of the evidence brought on record, vide judgment of conviction dated 21.08.2003 and order of sentence dated 22.08.2003, accused-appellant was held guilty, convicted and sentenced, as already detailed aforesaid.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, the appellant-convict has filed the present appeal.

In pursuance of notice issued by the Court, learned State counsel made appearance on behalf of the State. Even the lower Court

record was requisitioned.

We have heard learned counsel for the appellant as well as learned State counsel and have perused the record.

At the very outset, learned counsel for the appellant-convict has refuted the claim of the prosecution, tooth and nail. It is submitted that when the stringent punishment is provided, then stricter should be the onus of proof. It is submitted that the eye witness set up by the prosecution namely Jaggu is the father of the deceased and therefore, he is an interested witness. His role has been padded by the prosecution, only to gain strength. The entire prosecution version is based on the singular testimony of Jaggu, which becomes highly unreliable, more so, when Kishna accused is established to be not present at the spot at the relevant time, as evident from the testimonies of DW-1 and DW-2. Moreover, it is submitted that another witness Bhoom Singh, who was claimed to have witnessed the occurrence, has not been examined by the prosecution and non-examination of said witness, also gives a fatal blow to the prosecution version. Besides the same, also it is submitted that there are discrepancies coming forth in the testimony of singular witness, so examined by the prosecution. Even, recovery of weapon, on the basis of disclosure statement, is highly doubtful.

Thus, summing up his arguments, learned counsel for the appellant prayed for acceptance of appeal and to acquit the appellant-convict.

On the contrary, learned State counsel has refuted the claim of the appellant. He assiduously submitted that there is direct evidence coming forth in the present case. Jaggu, the father of the deceased, had given clear and specific eye witness account of the manner of causing of the occurrence by accused Kishna, which further finds corroboration from the

medical evidence brought on record. It is also submitted that additional credence is coming forth from the recovery of weapon of offence. It is pointed out that there are no such discrepancies, which gives fatal knock to the prosecution version. In fact, it is submitted that the defence, so set up, in the form of DW-1 and DW-2, does not stand established. Rather, cross-examination of said witnesses, demolish the claim of the appellant. It is submitted that learned lower Court had appraised the evidence in correct perspective and rightly convicted the accused of the charge levelled against him. As such, a prayer has been made for the dismissal of the appeal.

So far as, the fact of death of Bhagirath, is concerned, the same stands amply established from the medical evidence, brought on record. PW-4 Dr.Anju Verma, had conducted post-mortem on the dead body of Bhagirath on 30.07.2001. She has deposed about the detail of the injuries, found on the dead body, which has already been reproduced, in the earlier portion of the judgment. The doctor has categorically deposed that as per her opinion, the cause of death in this case was due to haemorrhage and shock, as a result of injury No.1, which was sufficient to cause death in ordinary course of nature. She has proved the post-mortem report, which is Ex.PE. Thus, from the testimony of this witness, the fact of death of Bhagirath, stands amply established.

Now, to establish the incriminating role of accused Kishna, the prosecution relies upon the testimony of PW-6 Jaggu, at whose instance, the proceedings were initiated in the present case. He is solitary eye witness to the occurrence in question. He has deposed, in consonance with the prosecution version, vis-a-vis the occurrence caused by Kishna. He has

categorically deposed that Kishna became infuriated and gave one knife

blow on the left side of chest of his son. He further deposed about the presence of Bhoom Singh, who is son of his father's sister, to be present at that time. Throughout the arguments, much emphasis has been laid upon the testimony of PW-6 Jaggu, to be unreliable as he interested witness being father of the deceased. However, in this regard, suffice to make reference to the decision of the Hon'ble Apex Court as rendered in ***State of Himachal Pradesh Vs. Mast Ram, 2004(4) RCR (Criminal) 401***, wherein, it was observed, as herein given:-

“The law on the point is well settled that the testimony of the relative witnesses cannot be disbelieved on the ground of relationship. The only main requirement is to examine their testimony with caution. Their testimony was thrown out at the threshold on the ground of animosity and relationship. This is not the requirement of law”.

Keeping in view the aforesaid case law, it is pertinent to mention that each case is required to be adjudicated, in the backdrop of its own factual position and the Courts have to adopt a careful approach and analyze the evidence, whether it is cogent and reliable. However, no hard and fast rule can be laid down for the mechanical rejection of such evidence on the sole ground that a witness is related to the victim or otherwise also, interested in the prosecution version. Judicial approach has to be cautious in dealing with such evidence, but the plea that evidence should be rejected in entirety is not acceptable. Only it cautions the Court to scrutinize the statements of related/interested witnesses, more cautiously. Moreover, it has to be kept in mind that the relative of the victim, who deposes in Court about the incriminating role of the accused, would be last person, to falsely implicate the accused, while substituting the name of the wrong doer, more

particularly, when animosity or bitterness between the accused and

complainant party, as such, is not made out. Considering the same, it is pertinent to mention that in the present case, there is nothing, as such, coming forth about the complainant, having any bitterness or nursing grievance against accused Kishna. In the light of the same, there is no reason, as to why, the said witness would suppress the name of the wrong doer and would falsely implicate the accused. In fact, it is pertinent to mention that testimony of PW-6 Jaggu, is most natural one, though some discrepancies, as such, are pointed out in his testimony but however, it is pertinent to mention that discrepancies, so pointed out, are very insignificant. It is settled that general tone and tenor of the testimony of prosecution witnesses, as such, has to be considered. Throughout, learned counsel for the appellant has placed reliance on the contradiction, coming forth, with regard to the motive of causing of the injury. It has been pointed out that even though, at the first instance, as per the statement of the complainant, which forms basis of the present case, accused Kishna had demanded money from Bhagirath and on his refusal, he had given a knife blow to the victim, but however, while in the witness box, it has been pointed out that in fact, the complainant had stated that accused Kishna asked his son to take liquor but his son refused to consume liquor. Even though, this contradiction does exist but however, this contradiction does not carry much weight to dislodge the version of causing of the occurrence, so put forth, by the prosecution. It is essential to note that the contradiction, so pointed out, relates only with regard to the motive of causing of the injury but the fact that accused Kishna caused injury to Bhagirath, as such, is not disputed. In the light of there being direct evidence, coming forth

eye witness account of taking place of the occurrence, the question of contradiction being there, vis-a-vis the motive, as such also pales into insignificance. Even though, learned counsel for the appellant has also submitted that the presence of Jaggu has been padded later on, but however, the same does not stand established. Jaggu qua being an eye witness to the occurrence in question, has been cross-examined at length by learned counsel for the accused but however nothing material has been elicited out to dislodge the version, so put forth by him. Furthermore, it is necessary to point out that in fact, it was Jaggu, who had taken Bhagirath to the hospital, soon after causing of the occurrence. It is so evident from the ruqa Ex.PB, where the concerned doctor i.e. PW-3 Dr.Sanjeev Bhagat, had made observation in writing about the patient to have been brought by Jaggu and even his relationship with the injured is also mentioned, as father. This recital in the ruqa Ex.PB, categorically establish about Jaggu to have facilitated the taking of his son to the hospital, which also probablises his presence, as deposed by him.

Learned counsel for the appellant has also laid much emphasis upon the another so called eye witness Bhoom Singh, to have not been examined by the prosecution and on basis thereof, it is submitted that prosecution version also stands belied. However, the aforesaid submission is not tenable. No doubt, from the statement Ex.PA of the complainant, it is evident that even Bhoom Singh, his cousin was also present at the spot and both he and said companion of the complainant tried to chase accused but he had successfully fled away, but however, the said witness has not been examined. Solely on account of non-examination of said witness, no doubt,

pertinent to mention that Court file reveals about the efforts so made by the prosecution to examine the said witness. It was only on the report Mark-X, submitted to the Court, by the serving Head Constable, learned Public Prosecutor stated that it was not possible to get Bhoom Singh served and in these circumstances, he had given up the said witness and closed the prosecution evidence. It is, thus, established that it was due to the constraints of non-service of said witness that he was given up by the Public Prosecutor. Precisely, on this account, no inference of the said witness to have been intentionally suppressed by the prosecution, as such, can be drawn and therefore, no benefit, on this count, can be availed by the appellant.

As already observed aforesaid, the ocular version stands corroborated from the medical evidence, as proved by PW-4 Dr.Anju Verma. Besides the same, even additional credence is lent to the prosecution version, from the fact of recovery of weapon of offence, in pursuance of the disclosure statement made by the accused. The Investigating Officer PW-7 has categorically deposed about the accused, during the course of interrogation, to have made the disclosure statement, of having kept concealed the knife and on the basis of said statement, even knife from the disclosed spot has been got recovered, which was also taken into possession. Besides the Investigating Officer, even PW-8 Head Constable Kanhaya Lal, who is witness to the disclosure statement and the recovery memo, has also deposed about the same. Though, it is stated by learned counsel for the appellant that there is discrepancy, coming forth, about time as to when the disclosure statement was made and recovery was

the discrepancy relating to the time, so coming forth, is not such a grave discrepancy, which raises doubt about the recovery so having been effected. In view of the same, submission so made, qua this discrepancy of timing, as such, does not carry much significance.

Besides the same, also it is pertinent to mention that accused-appellant had taken plea of false implication in the statement under Section 313 Cr.P.C. He had taken specific plea that Bhagirath was killed by 2-3 unknown persons in his house, while he was consuming liquor with them. To so substantiate this plea, the accused has examined DW-1 Baga Ram and DW-2 Bedu, who have deposed about having reached the place of occurrence on hearing some noise of altercation. However, it is pertinent to mention that DW-1 Baga Ram while in examination-in-chief, only had stated that he does not recollect the names of the person, who were present there and were quarreling and he specifically stated in the cross-examination that he did not see anybody causing injury to deceased Bhagirath. Rather, in further cross-examination, he had also not categorically denied but stated that he does not know that if Bhagirath had died on 29.07.2000 after receiving knife injuries. Thus, his testimony proves to be of no assistance to the appellant, to establish his defence. Likewise, even DW-2 Bedu, though had stated about having reached the hut of Jaggu on hearing noise, about two years ago and saw Bhagirath quarreling with 3-4 unknown persons and they were consuming liquor but he also categorically stated that he has not seen anyone causing injuries to Bhagirath. In the light of the same, the plea of defence, as such, does not stand established. Moreover, even though, the accused had taken plea of quarrel, having taken place during the intake of liquor but traces of liquor

intake were not found at the time of post-mortem examination. This also belies the defence version, so set up by the appellant.

Thus, from the aforesaid discussion, it stands amply established that accused-appellant Kishna had inflicted knife injury on the person of Bhagirath, which proved fatal. However, said injury was caused without any premeditation at the spur of the moment, when altercation had taken place between the appellant and deceased Bhagirath. Thus, it stands established that guilt of the accused Kishna was proved beyond doubt, but however, looking at the circumstances, relating to the manner of inflicting of the injury and also the kind of injury so caused, knowledge that it is likely to cause death but without any intention to cause death, stands established and therefore, the conviction of the appellant is altered from Section 302 IPC to that under Section 304-II IPC and he is sentenced to undergo rigorous imprisonment for a period of ten years. The sentence of fine, so imposed, is upheld.

Resultantly, CRA No.D-951-DB-2003 stands partly allowed with the above-said modification.

Accused-appellant namely Kishna, is stated to be on bail. A copy of the judgment be sent to concerned Chief Judicial Magistrate, to get the accused-appellant arrested, so as to serve the remaining part of the sentence.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

December 13, 2019

Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No