

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

212 (PROCEEDINGS THROUGH V.C.)

CRA-AD-839 of 2019

Date of Decision: March 3rd, 2022

Bhateri Devi

...Appellant

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

Present: Mr. S.S. Mor, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J.

This appeal has been preferred by the complainant questioning the acquittal of respondents No.2 to 12 by the learned Additional Sessions Judge, Jhajjar, vide judgment dated 14.08.2019.

2. Learned counsel for the appellant has submitted that the statement of complainant-Bhateri Devi PW-2, who is an eyewitness, has been relied upon by the trial Court for holding Vikas guilty of having committed the offence under Section 302 IPC and has sentenced him to rigorous imprisonment for life and to pay fine of Rs.20,000/-. In default of payment of fine, further imprisonment of six months has been ordered, while her statement qua the others has been disbelieved. This the counsel contends that the first illegality committed by the trial Court.

Referring to the facts, it is submitted that Ravidas @ Jella was the one who came to the house of the complainant and called her son Jagpal, who went with him and thereafter she saw Vikas, Sandeep, Aman and Amit accompanying them stating that Satyawar had come to give him money. They

reached the house of Ravidas @ Jaila and the complainant followed them, where on the ground floor, she heard mother of Ravidas namely Omal, wives of Vikas and Sandeep, Santosh wife of Jaibir, Bihari Guddu and Naseeb discussing about the plan to kill Jagpal, which conversation was heard by the complainant. Then she went on the first floor and saw Rasu, Sombir, Satyawar, Jaibir, Deepak, Sachin, Dhillu and other boys present, who had pulled down Jagpal on the ground and were nabbing him. Vikas son of Naresh was carrying a pistol in his hand, who fired from the pistol on Jagpal, her son. On seeing this, she got frightened and ran away from the spot. She disclosed this incident to Sunil son of Raj Singh, PW-2, who accompanied her back to the house of Ravidas @ Jaila, where they saw that Vikas, Sandeep, Aman, Amit, Rasu and Sombir were putting Jagpal, who had sustained gunshot injury, in a Maruti Ritz Car. Mother of Ravidas @ Jaila namely Omal after putting dupatta/chunni on Jagpal sat in the car and ran away from the place of occurrence. It is thereafter on inquiry that they came to know that the dead body of Jagpal was lying in General Hospital, Jhajjar. All these facts when seen in conjunction with the statement of Sunil son of Raj Singh, PW-3, who corroborated the said story, shows the clear involvement of the other accused in the commission of the offence.

In their disclosure statements, the accused have clearly indicated the involvement of all of them. Recoveries have also been effected on the basis of the said disclosure statements, which further points towards the participation of the private respondents in the commission of the offence. The FSL report also throws light with regard to the use of the weapons in the commission of the offence. On this basis, counsel for the appellant submits that the impugned judgment passed by the trial Court

cannot sustain and interference by the Appellate Court is called for.

3. We have considered the submissions made by the counsel for the appellant and with his assistance, have gone through the judgment.

4. The Court below has in detail dealt with the evidence, which has been recorded before it. It is apparent from the record that there are discrepancies in the statement of the witnesses. As far as the statement of PW-3 Sunil, his statement is a hearsay statement and, therefore, not admissible in law as it is an admitted position that he is not an eyewitness to the murder of Jagpal. Involvement of the Maruti Ritz Car has also not been established as nothing has been brought on record to bring home the point that the car belong to Vikas, as has been so projected. Statement of complainant PW-2 Bhateri as also PW-3 Sunil would not point any conspiracy under Section 120-B IPC as nothing has come on record, which would indicate planning regarding the committing of murder of Jagpal as it was stated that the ladies on the ground floor were discussing about putting to death Jagpal. Conveying of the same to the other accused person on the first floor of the house, where the incident had taken place is missing.

It appears that the complainant has tried to involve as many people as possible in the commission of the offence as no specific role has been said to have been attributed to any person. General statement with regard to the persons being there at the spot has been made. The only specific role which has been attributed is to Vikas, who had fired from the pistol on Jagpal at his chest, who has been convicted. It would not be out of way to mention here that the FIR in this case has been lodged after a delay of 22 hours, which creates doubt with regard to deliberations for falsely implicating the other persons, who have been acquitted i.e. the private

respondents.

5. Assertion has also been made that the firearm, which was used by Vikas for commission of the crime, was got recovered on the basis of the disclosure statement of co-accused Amit. As regards the role of Amit is concerned, on whose disclosure statement recovery of the pistol which was used by Vikas in the crime from the house of Vikas is concerned, the prosecution has not been able to establish his role in the commission of the offence as it is not the case of the prosecution that Amit used the pistol in the incident or that the said pistol was owned by him.

6. In view of the above, we do not find any illegality in the judgment passed by the trial Court, which would call for interference by this Court in the present appeal.

7. The present appeal, therefore, stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

March 3rd, 2022
Puneet

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No