

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-AD-677-2019 (O&M)

Reserved on: 23.01.2023

Date of Decision: 09.02.2023

Ravina

. . . . Appellant

Vs.

State of Haryana and another

. . . . Respondents

**CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS JUSTICE SUKHVINDER KAUR**

Present: - Ms. Sharmila Sharma, Advocate
for the appellant.

M.S. RAMACHANDRA RAO, J.

This Appeal is filed by the appellant aggrieved by the impugned judgment rendered on 30.05.2019 by the learned Sessions Judge, Sonapat in SC No.05 of 2019 acquitting the respondent of committing the offence punishable under Sections 302, 201 and 34 of IPC.

A complaint Ex.P6 was submitted to the police by the appellant, who is the wife of Surender alias Sunder, a resident of village Kathura, Sonapat, alleging that on 03.09.2018, her husband had gone away from the house at about 8 p.m. after asking her to prepare dinner, but he did not return back during that night. It was alleged that on the next day, there was news that a dead body of some person was lying on Sanghi road; later Rajender Singh, Panch, informed her that the said dead body was that of her husband and it was lying near a liquor vend on Sanghi road; and police had taken away the dead body to General

Hospital, Gohana. She alleged that she along with her brother-in-law Mahender reached the General Hospital, Gohana and identified the dead body of her husband. She further alleged that some unknown persons had committed the murder of her husband and she sought action against them.

On the basis of this information, Ruqa Ex.P11 was sent to the police station and a formal FIR Ex.P9 was registered by ASI Rajpal, who also made endorsement Ex.P10 on the ruqa regarding registration of the FIR.

The Investigating Officer commenced investigation, visited the place of occurrence and prepared a rough site plan Ex.P16.

Inquest proceedings Ex.P12 were also conducted and an FSL team reached the spot and prepared Crime Scene Visit Report Ex.P3.

Post-mortem of the dead body was got conducted and post-mortem report Ex.P1 (whose computer generated copies Ex.P2 were given by the General Hospital, Gohana) was obtained wherein the doctor opined that the cause of death was injury to skull and its complications.

The Investigating Officer visited the place of occurrence and lifted blood stained earth from the spot which was converted into a parcel and sealed with the seal 'BS' and taken into possession vide memo Ex.P8.

It was revealed, according to the prosecution, during investigation that on 03.09.2018 the respondent/accused along with the deceased and another person by name Ashok alias Soki and Parmod were present at the house of Maha Singh; that they were quarreling with each other under the influence of liquor and one prosecution witness heard the voice of someone falling from the stairs and it was found that the deceased Surender had fallen from the stairs and had died.

The respondent/accused was arrested and on interrogation, he suffered a disclosure statement Ex.P13 admitting to have committed the offence of murder. Pursuant thereto, he identified the place of occurrence vide a demarcation memo Ex.P14 and got recovered one blood stained *parna* from the house of his maternal grandmother from which blood stains had been cleaned, and the same was taken into possession vide a memo Ex.P15.

Rough site plan of the recovery of the blood stained *parna* Ex.P17 was prepared; scaled site plan Ex.P4 and *aks sizra* and Ex.P5 were got prepared of the case property; they were then deposited in the Malkhana; and the same was sent to FSL and report of FSL Ex.P7 was received. After recording statement of witnesses, final report under Section 173 Cr.P.C. was presented in the Court for trial of the respondent by the SHO of police station Barauda, Sonepat.

Copy of challan was supplied to the respondent as envisaged under Section 207 Cr.P.C.

The case was then committed to the Court of Sessions for trial vide order dt.21.12.2018 for 03.01.2019 by the court of Sub Divisional Judicial Magistrate, Gohana.

The accused was charged with the commission of an offence punishable under Sections 302 r.w.s. 34 IPC and Section 201 IPC.

The accused pleaded not guilty and claimed trial.

The prosecution examined 14 witnesses and also marked 17 documents.

Statement of the accused under Section 313 Cr.P.C. was also recorded, and though the entire incriminating material was put to him, he denied the same. He pleaded false implication and opted to lead evidence in defence.

But he did not lead any evidence in defence.

The Sessions Court acquitted the accused vide judgement dt.30.5.2019.

Challenging the same, this appeal has been preferred by the complainant/wife of the deceased.

Counsel for the complainant *inter alia* contended that the learned Sessions Judge had erroneously acquitted the respondent by ignoring facts and material evidence on record, and so, the judgment was liable to be set aside. She contended that there was sufficient evidence on record to prove the case of the prosecution against the respondent beyond reasonable doubt. According to the appellant, PW1 Dr. Reeta Goyal's evidence about the cause of death was not even challenged by the defence, but this testimony had been wrongly discarded in the impugned judgment. Reliance is also on the recovery of *parna* on the basis of disclosure statement of the respondent.

We have noted the contentions of the counsel for the appellant.

PW5, the wife of the deceased deposed that she is the author of the FIR and that on 03.09.2018 at about 7/8 p.m, her husband had gone to purchase milk. Ankit *alias* Makra came to her house and delivered milk to her, and after half an hour, Ankit *alias* Makra came to her house along with husband. After some time, her husband went outside as he usually used to go and thereafter, he did not return. She searched for him, but he did not return during the night. On the next day at about 10 a.m., Rajender Panch told her that the dead body of her husband was lying at Sanghi road near a liquor vend, and thereafter, she went there but the police had already taken away the dead body to the hospital. She went to the hospital thereafter and identified the dead body to be that of her

husband. She then gave a complaint Ex.P6 to the police and at that time, she had not suspected hand of anyone. She further deposed that on 05.09.2018, Seema (PW11) told her that on the night of 03.09.2018, deceased was consuming liquor at the liquor vend on Sanghi road along with 4/5 persons namely Sonu, Ashok, Shocky and Parmod. Those 4 persons were quarreling with each other after consuming alcohol and her husband was standing behind them. She further deposed that Seema had also told her that they had made her husband to drink a lot of alcohol and after he lost senses, he was beaten up and pushed from the stairs, and thus suffered injuries on his head.

PW11 Seema is the star witness for the prosecution as she was the one who claimed that she had allegedly witnessed the occurrence. She deposed that on 03.09.2018 at about 8:10 p.m., she was present at her house on the first floor. At that time, Sunder (since deceased), Sonu, Shocky and one more person namely Parmod were present at the house of Maha Singh and they were quarreling with each other under the influence of liquor and these persons were visible to her in the light of her house. She stated that she heard some noise (sound of *gad gad*) of falling of someone from the stairs and thereafter, one more noise of falling of someone was also heard by her and the person who fell from the stairs was Sunder i.e. the husband of Ravina (PW5). PW 11 stated that on 04.09.2018, she came to know that Sunder had died; that his dead body was lying in the fields, and since she had seen the accused with the deceased on the previous night, she told this fact to her husband. She stated that on 05.09.2018, she went to the house of deceased Sunder and informed his wife in this regard. She identified the respondent-Sonu in the Court as the person whom she had seen on that day with the deceased.

PW14 deposed that on 03.09.2018 at about 8:30 p.m., he had seen his brother Surender in the company of Parmod and Ashok when he returned to his house; that they were going on a motorcycle; and when he was returning to his house, he met respondent Sohan Lal *alias* Sonu. But during cross-examination, he admitted that he had not seen the accused in the company of his brother at any point of time.

The evidence of Dr. Reeta Goyal (PW1), who conducted post-mortem examination, was that the following injuries were found upon the person of the deceased:

- i. A lacerated wound of size 5x0.5cm bone deep present on occipital region of skull. On dissection underlying tissue were ecchymosed. On further dissection fracture of occipital bone present and subdural and subarachnoid haemorrhage present. Clotted blood present in cranial cavity approx. 200ml.
- ii. A laceration of size 2x0.2 cm skin deep present on chin. On dissection underlying tissue were ecchymosed.
- iii. A reddish blue contusion of size 6x4cm present on right side of upper chest. On dissection underlying tissue were ecchymosed and fracture clavicle right and first and second rib present in the middle.
- iv. Abrasion of right foot (great toe, 4th and 3rd finger present) on distal part. Clotted blood present.
- v. Abrasion of left middle finger of left foot present. Clotted blood present.

She stated that the cause of death of the deceased was due to injuries to skull and consequent complications, and that all injuries were ante-mortem in nature.

Thus from evidence of PW1, it is clear the deceased's death was a homicide.

No doubt, PW1 Dr. Reeta Goyal, who had conducted the post-mortem, had enumerated the injuries in the post-mortem report Ex.P1 and gave an opinion that the death of the deceased was on account of injuries caused to the skull and the injuries were ante-mortem in nature. It is also a fact that her testimony was not seriously challenged by the defence. But the same cannot be construed as a factor leading to a conclusion that it was the respondent/accused who caused the death of the deceased.

We have already referred to evidence of PW5. Since she had not witnessed the occurrence, her testimony has to be treated as being hearsay evidence and no weight can be attached to it regarding the occurrence.

PW5 has stated in her evidence that at the time when she gave the complaint Ex.P6 on 04.09.2018, she did not suspect the hand of anyone. According to her, on 05.09.2018 PW11 told her that on the night of 03.09.2018, the deceased was consuming liquor at the liquor vend on Sanghi road along with 4/5 persons namely Sonu, Ashok, Shocky and Parmod and these 4 persons were quarreling with each other after consuming alcohol and her husband was standing behind them. She deposed that PW11 also told her that these persons had made her husband to drink a lot of alcohol and after he lost senses, he was beaten up and pushed from the stairs, and thus suffered injuries on his head.

But the evidence of PW5 is not supported by PW11 because she deposed that on 03.09.2018 at about 8:10 p.m., PW11 was present at her house on the first floor, and at that time, the deceased along with the respondent and 2 other persons was present in the house of Maha Singh; that they were quarreling with each other under the influence of liquor and this was visible to her in the light of her house. She made no mention about seeing the deceased in the company of the accused at any liquor vend on Sanghi road along with others.

PW11 stated that she heard some noise (sound of *gad gad*) of falling of someone from the stairs, and thereafter one more sound of falling of someone was also heard by her, and the person who fell from the stairs was the husband of the complainant.

But the rough site plan of the place of occurrence Ex.P16 showed that there were houses of one Baljit and one Dheera in-between the house of PW11 and the house of Maha Singh. If so, it could not have been possible to her to see the accused in the company of the deceased in the house of Maha Singh.

She also deposed during cross-examination that she did not have any electricity connection in her house, and in the absence of electricity, it would not have been possible to her to see the deceased and the accused in the light of her house as deposed by her.

Though she also deposed that there was a window in her house, the existence of the same is not supported by the site plan Ex.P16 prepared by the Investigating Officer. Assuming that there was a window at point 'A' as shown in the site plan Ex.P16, that window was on western wall of the house of PW11 but the house of Maha Singh, where the deceased and accused were allegedly present, is on the southern side as per the site plan Ex.P16. The one window in the room

of the house of PW11 is stated as opening towards the house of Jora and the street, and so, PW11 could not have seen the accused and deceased standing on the roof of the house of Maha Singh, which house of Maha Singh was on the southern side of her house.

These circumstances were rightly taken note of by the trial Court to doubt the evidence of PW11.

Though the prosecution also contended that PW14, the brother of the deceased deposed that on 03.09.2018 at about 8:30 p.m., he had seen the deceased in the company of Parmod and Ashok when he was returning to his house on a motorcycle. He did not mention the presence of the respondent/Sohan Lal *alias* Sonu, or that he had seen the accused in the company of the deceased at any point of time.

The Sessions Court also referred to the recovery of the *parna* on the basis of the disclosure statement of the accused but held that there was no blood on it as per the FSL report Ex.P7, and such recovery would not help the prosecution case. We agree with the said finding.

In view of these circumstances, it cannot be said that prosecution had proved the guilt of the accused beyond reasonable doubt.

Therefore, we find no infirmity in the judgment of the Sessions Court impugned in this Appeal warranting interference by us in exercise of Appellate jurisdiction.

Admittedly, as per the judgment of the Supreme Court in ***Sadhu Saran Singh vs. State of U.P. and others***¹, generally appeal against acquittal has always been altogether on a different pedestal from that of an appeal against

¹ 2016(2) RCR(Criminal) 319

conviction. In an appeal against acquittal, where the presumption of innocence in favour of the accused is reinforced, the Appellate Court would interfere with the order of acquittal only when there is perversity of fact and law. However, the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence, and there is no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded. Only if the Appellate Court finds from scrutiny that the decision of the Court below is based on erroneous views and against settled position of law, should it interfere.

In the light of the above principles, after perusing the entire material on record, we are not satisfied that there is any perversity or error of fact and law in the judgment of the Sessions Court impugned in this Appeal warranting interference by us in this Appeal.

Therefore, the Appeal fails and is dismissed.

Pending application(s), if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

09.02.2023
Mohit Goyal

(SUKHVINDER KAUR)
JUDGE

<i>1. Whether speaking/reasoned?</i>	<i>Yes/No</i>
<i>2. Whether reportable?</i>	<i>Yes/No</i>