



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-520-DB-2011

Date of Decision:-21.10.2024

BALWANT SINGH

.....Appellant

VERSUS

STATE OF HARYANA & OTHERS

.....Respondents

**CORAM:- HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Jitender Dhanda, Advocate
for the appellant.

Mr. A.S. Chaudhary, Addl. A.G., Haryana.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of acquittal dated 06.09.2010 passed by the Sessions Judge, Kurukshetra.

2. The FIR was registered on 15.02.2008, the judgment of acquittal passed by the Sessions Judge, Kurukshetra is dated 06.09.2010, the appeal was filed on 08.11.2010 and the matter is being taken up for hearing now after 16 years of the registration of the FIR.

3. As per the prosecution case deceased Rishi Pal was a student of B.com final through correspondence course, Kurukshetra University, Kurukshetra. He started residing with Gurnam Singh, a student of M.A. Public Administration for preparation of his examination in room No.E-19 Narhari Hostel, Kurukshetra University, Kurukshetra which was allotted to

Gurnam Singh. In the night intervening 2nd and 3rd October, 2007, a birthday party was arranged by Ajay Kumar, another student of Kurukshetra University, Kurukshetra in room No. 19-E on the occasion of his birthday. Ashok Kumar, Ajay, Gurnam Singh, Parvinder, Parveen, Vikas, Rakesh, Jaswant alias Meenu etc. i.e. 10-12 boys consumed liquor till late night at the birthday party. In the morning, the dead body of Rishi Pal was found lying in room No.E-19 Narhari Hostel, Kurukshetra University, Kurukshetra.

4. On 3.10.2007 at about 9.00 a.m.. Raj Kumar, cousin of Rishi Pal, son of Mange Ram received a telephonic message from Gurnam Singh that Rishi Pal was lying in Room No.E-19 Narhari Hostel, Kurukshetra University, Kurukshetra and was seriously ill. Raj Kumar was asked to visit Narhari Hostel with other family members to look after him at the earliest. Raj Kumar, along with his grandfather Lali Ram and Balbir Singh, maternal uncle of Rishi Pal reached Room No.E-19 Narhari Hostel, Kurukshetra University, Kurukshetra and found Rishi Pal lying dead in that room. Balwant Singh father of Rishi Pal also reached on 03.10.2007 later after receiving a telephonic message regarding the death of his son. Raj Kumar was told by Gurnam Singh and other students that liquor was served and consumed at the birthday party of Ajay Kumar during the night and after taking liquor they slept. It was suspected that Rishi Pal died due to excess consumption of liquor. In this situation, the postmortem on the dead body of Rishi Pal was conducted at L.N.J.P. Hospital, Kurukshetra on 04.10.2007. The dead body was identified by Raj Kumar and Lali Ram. Viscera was sent to FSL, Madhuban. In the FSL Report dated 13.12.2007, Organophosphorous pesticide and ethyl alcohol were detected from stomach,

lungs, liver, spleen, kidneys, blood and urine shown as 1a, 1b, 1c and 1d in the FSL, Madhuban report, Ethyl alcohol was detected in one glass bottle labeled as Royal Stag. No organophosphorous pesticide could be detected on the T-shirt and pant belonging to the accused. No common poison could be detected in the saline preservative. After receiving the FSL report, intimation regarding detection of a poisonous substance was sent to the complainant.

5. Initially when the post mortem examination of Rishi Pal deceased was conducted, no suspicion was expressed by the family members or friends of deceased Rishi Pal on anyone. It was suspected that the death was caused due to excessive consumption of liquor. After receiving the report of FSL, Madhuban, an opinion was given by Dr. Vivek Aggarwal, who earlier conducted post mortem examination of the deceased, that the cause of death in this case was due to Organophosphorous poisoning. On 15.2.2008 after receiving information regarding the result given in the FSL report, a complaint was filed by Balwant Singh, father of the deceased before Station House Officer, Police Station, Kurukshetra University, Kurukshetra mentioning that he had suspicion that out of those 10 or 12 boys who were present at the birthday party of Ajay Kumar someone had committed murder of Rishi Pal by mixing poison in the wine consumed by Rishi Pal.

6. During investigation, Jaswant alias Meenu accused was arrested in this case through production warrants on 07.04.2008. The accused Jaswant alias Meenu recorded his disclosure statement on the same date that about 7 or 8 months earlier, Rishi Pal, who was his close friend, had come to his house had in his village and during night hours, Rishi Pal had teased his sister Suman. In order to take revenge from Rishi Pal on 02.10.2007, he

purchased poison from a person at Hisar and came to Narhari Hostel, Kurukshetra University, Kurukshetra. At that time the birthday party of Ajay Kumar, resident of village at Kheri Sher Khan was being celebrated at Room No.E-19, Narhari Hostel, Kurukshetra University, Kurukshetra. He along with other boys Gurnam Singh etc. consumed liquor and when all others left the room and only Rishi Pal was present, he mixed poison in the wine in a glass to be consumed. The accused disclosed that the empty bottle which was earlier containing poison had been hidden by him under the ground beneath a box lying in his house at village Rakhi Khas. Jaswant accused was taken to village Rakhi Khas by Sheetal Singh Inspector for effecting recovery on the basis of the disclosure statement.

7. When the accused was taken to village Rakshi Khas, he recorded another disclosure statement on 08.4.2008 stating that his earlier disclosure statement was false and, in fact, he had kept a Dibbi and a small size bottle which was having poison earlier under the ground near a tube well near 3rd gate, Kurukshetra University, Kurukshetra. On the basis of that disclosure statement, accused Jaswant got recovered from near a tube well near 3rd Gate of Kurukshetra University, Kurukshetra on the same date, a plastic Dibbi and a small size bottle having few drops of some liquid smelling like medicine which were sealed with seal SS and were taken in police possession. The Dibbi and small size bottle were also sent to Director, FSL Madhuban for examination. During investigation, it was found that at the time of the birthday party Rakesh and Parveen were sent by Ajay Kumar handing over his ATM card to withdraw an amount of Rs.1,000/- from his SBI Account No.65020810270 to purchase wine bottles. An amount of Rs.1,000/- was withdrawn by Rakesh and Parveen and they brought two

alcohol bottles make Royal Stag and also a few eggs for the birthday party.

8. As per the prosecution version the other boys left Room No.E-19 Narhari Hostel, Kurukshetra University, Kurukshetra and in the late hours only Rishi Pal and Jaswant alias Meenu remained present in that room. Both of them consumed liquor till late hours upto 2.00 or 2.30 a.m. In the morning, the dead body of Rishi Pal was found lying in the room and Jaswant alias Meenu was lying on the other bed and he had vomited on the pillow cover, on a cloth piece as well as on the floor of the room. The pillow cover and another cloth piece stained with vomiting material were taken in police possession. Vomiting material with blood was also lifted from the floor for examination. As per the prosecution case, thereafter Jaswant alias Meenu went to Dr. Pawal Goyal, Hospital, Kurukshetra for his treatment. Jaswant got his name mentioned as Naveen alias Minu in the hospital record. However, Jaswant was an outdoor patient. During investigation, Jaswant was produced before the Investigating officer by Vijay accused and both of them disclosed his name as Naveen alias Meenu. Vijay gave assurance to the investigating officer that he would produce Jaswant before the police as and when needed. Later on Vijay gave shelter to accused Jaswant and helped him to avoid his arrest in this case. On the basis of these allegations, accused Vijay, who is the real brother of Ajay Kumar, was also arrested in the case.

9. As per the allegations of the prosecution and as per the statement of Balwant Singh, father of the deceased, the murder of Rishi Pal was committed by accused Jaswant due to previous enmity also. It is alleged that Ram Sarup, father-in-law of two daughters of Balwant Singh purchased agricultural land situated at village Rahtjal, District Hisar from Balwant

Singh. There arose a family dispute regarding this sale of the land in between Balwant Singh, his wife and daughter. The wife and daughter of Balwant Singh did not allow the purchaser to obtain possession of the land purchased. Accused Jaswant and other boys helped Suman at that time in not allowing the purchaser to take possession of the land. Several panchayats were also convened in this regard. Thereafter, Balwant Singh stated that he helped Ram Sarup to obtain possession of the land in dispute and the offence had been committed by Jaswant Singh due to this previous enmity and rivalry with their family.

10. Further, as per allegations of the prosecution, another motive behind the murder of Rishi Pal by accused Jaswant was that about 7 or 8 months prior to the date of incident, Suman real sister of accused Jaswant was teased by Rishi Pal. Apart from it, Balwant Singh, father of Rishi Pal helped Ram Sarup to obtain possession of the land purchased by him from Suman and her mother, as both of them were opposing delivery of possession of the land purchased by Ram Sarup.

11. Based on these allegations, a criminal case under Sections 302 and 120-B IPC was registered on 15.2.2008 at Police Station, Kurukshetra University, Kurukshetra under FIR No.23. After recording statements of prosecution witnesses, preparing site plan, receiving report FSL, Madhuban and completion of necessary investigation, challan was filed against accused Jaswant on 03.7.2008 under Sections 302 and 120-B IPC.

12. On commitment, the accused Jaswant was charge-sheeted under Section 302 IPC. The accused pleaded not guilty and claimed trial and the case was fixed for recording prosecution evidence.

13. Later, a supplementary challan was filed on 06.12.2008 under

Sections 302, 309, 328, 419, 420, 120-B and 216 read with section 34 IPC against accused Vijay. The copies of challan and documents were supplied to accused Vijay and thereafter the supplementary challan case was also committed for trial.

14. Vide order dated 27.2.2009 both the above mentioned police challans filed in case FIR No.23 dated 15.2.2008 were ordered to be consolidated.

15. On 27.2.2009, Jaswant alias Meenu was served a charge-sheet under sections 120-B, 302, 309 and 328 IPC and accused Vijay was served a charge-sheet under Sections 120-B, 419 and 216 IPC. Both the accused pleaded not guilty and claimed trial.

16. During trial Dr. Vivek Aggarwal as PW1, Rishi Pal draftsman as PW2, ASI Prem Dass as PW3, EHC Pawan Kumar as PW4, Constable Parabh Dayal as PW5, Constable Ram Pal as PW6, HC Labh Singh as PW7, ASI Shingara Ram as PW8, Raj Kumar as PW9, Balwant Singh as PW10, Constable Subhash Chander as PW11, Inspector Sheetal Singh as PW12, SI Mahavir Singh as PW13, Dr. Pawal Goyal as PW14, Jagmohan Bhatia as PW15, Parkash Chand Mehendiratta as PW16, Roshan Lal as PW17, ASI Shiv Kumar as PW18, Constable Rashpal Singh as PW19, ASI Darbara Singh as PW20, Karam Singh Assistant as PW21, Constable Laxman Singh as PW22, Om Parkash Panch as PW23, Channo Devi as PW24, Aman Kumar Inspector as PW25, Karambir Singh Inspector as PW26, Rakesh as PW27, Vikash as PW28, Satbir Singh as PW29, Jasbir Singh as PW30, SI Ram Parkash as PW31, Ravinder Singh as PW32, Karam Singh as PW33, Hoshiar Singh Head Constable as PW34, Dr. Sanjay Kumar as PW35 and Nasib Singh as PW36 appeared in the witness box to support the case of the

prosecution. ASI Rajinder Parshad was given up being unnecessary and thereafter the prosecution evidence was closed.

17. The statements of the accused under section 313 Cr.P.C. were recorded wherein they denied the allegations of the prosecution and pleaded innocence. The accused Jaswant Singh stated that he did not know Suman and he had never met her. He did not know Balwant Singh. He had seen him in the Court for the first-time. The accused Vijay stated that his brother Ajay had been arrested in this case but later on he was discharged by the police. He was put in illegal confinement by the police of Police Station Kurukshetra University, Kurukshetru. Vijay further stated that he had filed a writ petition before this Punjab and Haryana High Court regarding the illegal confinement of his brother Ajay. A warrant officer was sent by this High Court to conduct a raid in the Police Station for search of Ajay had and due to this reason, he had been falsely implicated in the case by the police. The accused examined Gurnam Singh as DW-1 in their defence evidence and thereafter closed their defence evidence.

18. The gist of the prosecution evidence is as under:-

PW2 Rishi Pal draftsman prepared the scaled site plan of the place of occurrence Ex.P7. PW3 Prem Dass took 15 photographs of the place of occurrence room No.E-19 Narhari Hostel, Kurukshetra University, Kurukshetra Ex.P8 to Ex. P22 and Ex. P23 to Ex.P37 are the negatives. PW5 Parabh Dayal appeared in the witness box and stated that on 15.2.2008, a copy of the FIR of this case was delivered by him to the Illaqa Magistrate as well as higher police officers on the same day well within time. PW11 Subhash Chander constable appeared in the witness box and stated that an entry in the daily diary register of the police station Ex.P44 dated 03.10.2007

was recorded by him on the statement of Raj Kumar Ex. P42, PW17 Roshan Lal Assistant Narhari Hostel, Kurukshetra University, Kurukshetra appeared in the witness box and stated that Room No. 19-E was allotted to Gurnam Singh son of Daya Nand student of Public Administration M.A. (Previous). The form submitted for admission in hostel was Ex.P62 and undertaking is Ex.P63. On 09.10.2007, Dr. M.S. Malik, Warden of the Hostel submitted his report regarding consuming liquor by Gurnam Singh and regarding breaking windowpanes of Room no.19-E and that one Rishi Pal was found dead in that room. The hostel record mentioned above was taken in police possession through recovery memo Ex.P64. Application Ex.P65 bore signatures of Dr. M.S. Malik, Warden of the hostel. Apparently, it stands proved that at the time of occurrence Room No.19-E Narhari Hostel, Kurukshetra was allotted to Gurnam Singh and was in his occupation.

Constable Rashpal Singh PW19 appeared in the witness box and stated that an application Ex.P67 was filed by Balwant Singh and on the basis of that application, the investigation of this case was transferred from Police Station Adarsh Kurukshetra to State Crime Branch vide transfer order dated 26.2.2008 Ex.P68, PW20 Darbara Singh ASI stated that on 11.9.2008, he went to School Education Board, Bhiwani and recorded the statement of Karam Singh, Assistant, Secondary Branch, Haryana State Education Board, Bhiwani regarding the date of birth of Ajay Kumar son of Ram Kishan. PW21 Karam Singh Assistant stated that he received an application Ex.P69 filed by the investigating officer seeking verification about the date of birth of Ajay son of Ram Kishan bearing Roll No.630131 who appeared in the matriculation examination in the month of April, 2003. Photostat copy of D.M.C. was Ex.P70. A letter was issued to the Inspector Crime Branch

Ex.P71 and the date of birth was confirmed vide gazette record Ex.P72. The date of birth of Ajay was confirmed as 2.10.1987.

From the statement of HC Labh Singh PW7, his affidavit Ex.P41, statement of Pawan Kumar EHC, his affidavit Ex. P38, statement of constable Ram Pal PW6, his affidavit Ex.P40 and statement of ASI Shingara Ram PW8 apparently one parcel containing viscera of deceased Rishi Pal, one parcel containing Royal Stag whisky bottle, one parcel containing pillow cover, one parcel containing CD stained with blood, one parcel containing blood lifted from the spot alongwith sample seal, and one parcel containing jar were handed over to HC Lab Singh by ASI Shingara Ram on 05.10.2007 and the same were sent to FSL Madhuban on 15.10.2007 through constable Pawan Kumar for examination. It is further evident from the statement of ASI Shiv Raj PW18, his affidavit Ex. P66, constable Lachman Singh PW22, his affidavit Ex.P73 that on 15.7.2008 one parcel containing disposable glass along with one envelope was deposited with HC Labh Singh and the same was sent to FSL, Madhuban on 25.8.2008 through constable Lachhman Singh for examination. Apart from it one parcel containing Dibbi plastic and one parcel containing a vial were deposited with HC Labh Singh on 08.4.2007 and the same were sent to FSL Madhuban on 11.4.2007 through constable Ram Pal for examination and nobody tampered with the sample parcels during this period.

19. Based on the evidence led by the prosecution, accused/respondent Nos.2 and 3 were acquitted by the Court of Sessions Judge, Kurukshetra vide judgment dated 06.09.2010.

20. It is the aforementioned judgment which is under challenge in the present case.

21. The learned counsel for the appellant/complainant contends that the impugned judgment of acquittal had been passed on the basis of conjectures and surmises without proper appreciation of the evidence on record. It was established beyond doubt that the private respondents had committed the offences in question and the FSL report was corroborating the prosecution version. There was no evidence to suggest that accused Jaswant Singh alias Meenu himself had consumed any poison. He, therefore, contends that the judgment of acquittal of accused/respondents no.2 and 3 be set aside and the accused be convicted of the offence for which they have been charge-sheeted.

22. The learned counsel for the State while supporting the case of the appellant/complainant contends that the impugned judgment was not based on proper appreciation of the evidence on record and, therefore, the judgment of acquittal was liable to be set aside.

23. We have heard counsel for the parties and have gone through the lower Court record.

24. It is evident from the report of FSL, Madhuban that organophosphorous pesticide and ethyl alcohol were detected in the stomach, lungs, liver, spleen, kidneys, blood and urine. Ethyl alcohol was detected in one glass bottle labelled as Royal Stag. No organophosphorous pesticide could be detected on the T-shirt and pant belonging to the accused. No common poison could be detected in the saline preservative

25. PW1 Dr. Vivek Aggarwal was a member of the board of doctors when the post mortem examination of deceased Rishi Pal was conducted on 04.10.2007 in L.N.J.P. Hospital, Kurukshetra. PW1 stated that after post mortem examination two sealed jars containing viscera, a sealed

vial containing blood from the heart another sealed vial containing urine, another sealed vial containing sample of preservative and copy of the post mortem report were handed over to the investigating officer for examination at FSL Madhuban. The copy of post mortem report was Ex.P2. Copy of inquest report running in 24 pages was Ex.P3. Dr. Vivek Aggarwal after receiving an application Ex.P4 from investigating officer along with report FSL Ex.P5 opined the cause of death in this cases was Organophosphorous pesticide. In the report FSL Ex.P5 Organophosphorous pesticide and ethyl alcohol was detected in the stomach, parts of small and large intestines, lungs, liver, spleen, kidneys, blood, urine, ethyl alcohol, T-shirt and gent's pant. Apparently, the opinion given in report FSL Ex.P5 and the opinion given by Dr. Vivek Aggarwal regarding cause of death on the basis of post mortem report Ex.P2 and report FSL Ex.P5 cannot be doubted.

26. Therefore, it stood proved that the cause of death of Rishi Pal was due to consumption of poison. As per the FSL report, in the glass bottle labeled as Royal Stag recovered from the place of occurrence, poison was detected in 2 ml. of yellow coloured liquid. Poison was detected in the vomiting material, on a piece of cloth, grey coloured pant and T-shirt and some clothes recovered from Room No.19-E. In this way, as per report FSL, Organophosphorous pesticide from the small quantity of liquor contained in one glass bottle labeled as Royal Stag whisky and some poisonous substance was detected upon piece of cloth and above mentioned wearing clothes recovered from the place of occurrence. In this way. it stands proved that Organophosphorous pesticide was found in the remaining liquor contained in Royal Stag Whisky and the vomiting material upon the clothes and floor of the room. These circumstances indicate that poison was found mixed in

the bottle containing Royal Stag Whisky also. Apparently, it cannot be said that poison was found mixed only in the glass, which was used by Rishi Pal for consuming wine at the time of occurrence.

27. As per the prosecution case Rishi Pal did not vomit and the vomiting material taken in police possession from the place of occurrence pertains to Jaswant alias Meenu. If the prosecution was able to prove that had Jaswant Singh attended the birthday party and he remained present till late night upto 2.00 or 2.30 a.m. with Rishi Pal and he consumed liquor there, in that eventuality it can be said that poison was mixed in the wine consumed by Jaswant alias Meenu accused as well.

28. Regarding the presence of the accused at the birthday party, the prosecution examined Rakesh as PW27, Vikas alias Vikki as PW28 and Jasbir Singh as PW30. PW27 Rakesh, PW28 Vikas alias Vikki and PW30 Jasbir Singh turned hostile and did not support the case of the prosecution. The prosecution witnesses stated in their statements as well as in their cross-examination that Jaswant alias Meenu had not attended the birthday party of Ajay in the night intervening 2nd and 3rd October, 2007 at Room No.19-E Narhari Hostel, Kurukshetra.

29. As per the prosecution version, Room No.19-E was allotted to Gurnam Singh and Rishi Pal (deceased) resided in that room for preparation of his studies. Rishi Pal was a close friend of Gurnam Singh but Gurnam Singh when appeared as DW1 clearly stated that neither Jaswant alias Meenu nor Vijay Kumar had attended the birthday party of Ajay Kumar. Gurnam Singh stated that he had seen both the accused Jaswant Singh alias Meenu and Vijay for the first time in Court. He has also stated that at the time of celebration of the birthday party of Ajay, Ashok, Vikram, Upender,

Rakesh and many other friends were present and they participated in the birthday party. Gurnam Singh stated that Ajay, Rakesh etc. and other boys had been present in Room No.19-E in the morning next day after they came to know about the death of Rishi Pal. Thus, none of the prosecution witnesses who attended the birthday party stated that Jaswant Singh alias Meenu was present at the birthday party.

30. From the evidence on record, it could not be proved that accused Jaswant Singh alias Meenu attended the birthday party and thereafter came to the clinic of Dr. Pawal Goyal, PW14 to take treatment for poisoning masquerading as Naveen alias Minu. It was also not proved that Jaswant Singh alias Meenu was a habitual offender.

31. PW15 Jagmohan Bhatia Deputy Manager, State Bank of India, Kurukshetra appeared in the witness box to prove statement of ATM Ex. P58 bearing No. SI CCN 00160001. Endorsement upon the statement made by Jagmohan Bhatia was Ex. P59. PW16 Parkash Chand Mehendiratta, Deputy Manager, State Bank of Patiala, Safidon Gate, Jind appeared in the witness box to prove that an amount of Rs.1,000/- was withdrawn on 02.10.2007 from Account No.65020810270 belonging to Ajay Kumar from A.T.M situated at Kurukshetra University, Kurukshetra. A perusal of the statements of PW15 and PW16 shows that an amount of Rs.1,000/- was withdrawn from bank account of Ajay Kumar on 02.10.2007.

32. Balwant Singh son of Lali Ram, father of the deceased Rishi pal appeared as PW10 and stated that on 03.10.2007 he received a telephone message from Gurnam Singh when he was at Kumeytur in Tamil Nadu. From there, he came to Narhari Bhawan Hostel, Kurukshetra by air and car. He stated that his father Lali Ram, nephew Raj Kumar and Balbir Singh

were also present at that time. He was told that Rishi Pal had vomited. It was also told that Jaswant had also vomited but on search he was not found admitted in the hospital. On 04.10.2007, Jaswant came to Police Station Kurukshetra University Kurukshetra alongwith two police officials and one person and when specifically asked at that time Jaswant stated that he had no problem of any type. PW10 stated that he had asked the police officials not to allow Jaswant to leave that place. On 15.2.2008 Sheetal Singh Inspector informed that cause of death of his son was poisoning. The statement of PW10 Ex.P46 was recorded and FIR was lodged. PW10 stated that he made his statement before the police that 10 or 12 students namely Jaswant, Gurnam Singh, Upender Kumar, Ashok, Ajay, Vikram etc. attended the birthday party, served and consumed liquor. The above mentioned boys in had connivance with each other had intentionally killed his son by mixing poison in the liquor.

33. PW10 further stated that the motive behind the committing of this offence was that Ram Sarup, father-in-law of his daughter Usha and Parveen had purchased 5 ½ acres agricultural land at village Rajthal, District Hisar. Wife of Balwant Singh and his daughter Suman were not happy due to this sale transaction. They did not allow the purchaser of the land to obtain possession. Jaswant and other boys were helping Suman in this regard. Panchayat was also convened in this regard and later on PW10 helped Ram Sarup in obtaining possession of the land. PW10 stated that his son was murdered due to this reason. The transaction of the land had taken place in the year 2004. In his cross-examination, PW10 stated that he did not know if Suman had any relation with Jaswant. PW10 also stated had that he had not brought the sale deed executed in favour of Ram Sarup.

34. The motive behind the commission of the offence as mentioned in the statement of PW10, could not be proved. There is no evidence on the file to show the connection between Suman and Jaswant and the prosecution is silent in this regard as to why Jaswant had been helping Suman in connection with the land transaction between Ram Sarup and Balwant Singh. Further, copy of the sale deed has not been adduced in evidence.

35. Aman Kumar Inspector appeared in the witness box as PW25 and stated that on 13.10.2007 after receiving information regarding commission of the offence, he reached Room No.19-E, Narhari Bhawan Hostel, Kurukshetra University, Kurukshetra along with SI Ram Parkash and Additional S.P. Mohinder Singh. PW25 stated that he found the dead body of Rishi Pal lying there and another boy disclosed his name as Naveen alias Meenu, who was present in the Court as accused Jaswant. He was asked to go to Civil Hospital, Kurukshetra. PW25 also stated that Room No.19-E was allotted to Gurnam Singh and birthday party was organized in this room by Ajay Kumar son of Ram Kishan on 02.10.2007. PW25 also stated that later on it was clarified that the person who disclosed his name as Meenu alias Naveen was in fact Jaswant son of Ram Phal, resident of village Rakhi Khas, District Hisar. PW25 stated that the boys present there had stated that Jaswant participated in the birthday party. He stated that when he reached Room No.19-E, accused Naveen was lying on the bed in a semi conscious condition. Aman Kumar in his cross-examination stated that he came to know the actual identity of Naveen as Jaswant after registration of the FIR. This statement of PW25-Aman Kumar is doubtful in light of the statement of Ram Parkash SI who accompanied Aman Kumar Inspector at the time of

visit to Narhari Bhawan Hostel, Kurukshetra University, Kurukshetra who stated that when he visited the hostel room, Naveen alias Meenu had been shifted to L.N.J.P. Hospital, Kurukshetra.

36. Therefore, apparently, none of the boys of the birthday party spoke about the presence of Jaswant Singh alias Meenu at the party or that he had served liquor to the deceased. The deposition of some police officials of the presence of Jaswant Singh alias Meenu is only to further the case of the prosecution.

37. As per the prosecution version itself, Rishi Pal did not vomit and accused Jaswant who was present there vomited on the pillow cover, on another piece of there vomited cloth and on the floor of the room as well as on his worn clothes. Vomiting material was lifted from the floor, pillow cover, one cloth piece smeared with vomiting. They were all converted into sealed parcels and were got examined from the Director, FSL Madhuban. Poison was detected in the remaining 2 ml. Liquor in Royal Stag Whisky bottle taken in police possession. From all these circumstances, it does not appear that poison was mixed only in the glass of Rishi Pal. If the poison was mixed, then it was mixed in the wine served to Jaswant Singh alias Meenu also and the poison was there in the liquor contained in the Royal Stag Whisky bottle because poison was detected in the remaining 2 ml. liquor lying in the bottle also.

38. Moreover, if Jaswant Singh alias Meenu had indeed poisoned the deceased, he would not have consumed the same alcohol and stayed in the room itself after committing the offence in question which is the case of the prosecution.

39. As to how an appeal against a judgment of acquittal is to be

dealt with, the Hon’ble Supreme Court in *Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427* has held as under:-

“ 8.While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

40. In view of the aforementioned discussion and keeping in view the law laid down in *Kallu @ Masih & Ors. Case (supra)*, we find no reason to interfere with the well-reasoned judgment of acquittal passed by the Sessions Judge, Kurukshetra. Therefore, the appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

October 21, 2024
Jitesh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No