



**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRA-D-276-DBA-2003 (O&M)
Date of Decision:- 27.05.2024

State of Haryana ... Appellant

Versus

Rajesh Kumar and another ... Respondents

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present:- Ms. Sheenu Sura, DAG, Haryana.

Ms. Aparna Singhal, Advocate,
Amicus Curiae, for the respondents.

GURVINDER SINGH GILL, J.

1. Aggrieved by acquittal of respondents namely Rajesh Kumar and Mukesh Kumar, charged for offence punishable under Section 302 IPC, in a trial arising out of FIR No.90, dated 15.07.2000, Police Station Rajound, District Kaithal, under Section 302/34 IPC, the State of Haryana has preferred this



appeal challenging their acquittal vide judgment dated 20.09.2002 passed by learned Additional Sessions Judge, Kaithal.

2. The FIR (Ex.PC) was lodged at the instance of Raj Pal wherein he alleged that he is an agriculturist and had taken land on lease from Bhagu. On 15.7.2000 at about 5 pm when he along with Ishwar was going on a '*kutchha*' passage leading from village Bhana to village Sismore and were near the bridge of Rajwaha, they saw that Balbir, after parking his tractor on the passage, was grappling with Sat Narain, who had come there with his cart loaded with fertilizers to apply the same in his fields. Balbir inflicted a blow with knife on the chest of Sat Narain as a result of which he fell down. Immediately after giving the blow, Balbir ran away from the spot. Sat Narain, however, could not survive and succumbed to his injury.
3. The complainant, however, made a supplementary statement (Ex.DA) on 15.7.2000, wherein he stated that at the time of making earlier statement on the basis of which FIR was lodged, he was perturbed and could not make the statement correctly and as a matter of fact on the day of occurrence Balbir and his nephew Vikram had parked their tractor on the '*kutchha*' passage, as the passage was blocked due to heavy rains. Rajesh Kumar and Mukesh Kumar were also standing on the passage and at that time complainant's nephew Sat Narain was also proceeding on the passage with his '*buggi*' (cart) loaded with fertilizers and that Rajesh Kumar and Mukesh Kumar grappled with Sat Narain, who was sitting in his cart and Mukesh Kumar inflicted a blow with knife to Sat Narain on his left arm. The complainant further went on to state that during the process of grappling,



the knife fell down from the hand of Mukesh Kumar, which was picked by co-accused Rajesh Kumar and he inflicted a blow with knife on the chest of Sat Narain, as a result of which Sat Narain fell down and thereafter Rajesh Kumar and Mukesh Kumar fled away from the spot along with the knife.

4. Pursuant to lodging of FIR, the matter was investigated by the police. Inquest proceedings were conducted. The dead body was got subjected to post mortem examination. Other requisite proceedings of investigation including recording of statements, preparation of spot memos etc. were also conducted. It is further the case of prosecution that on 17.7.2001 both the accused were produced before Inspector Ram Chander by Banta Ram and Ramphal and that accused Rajesh also produced a knife before Inspector Ram Chander, which was taken into possession. Upon conclusion of investigation challan was presented against Rajesh Kumar and Mukesh Kumar in the Court of Area Magistrate, who committed the case to the Court of Sessions. Charges were framed against the accused for offence punishable under Sections 302/34 IPC by learned Additional Sessions Judge, Kaithal on 08.11.2000 to which accused pleaded not guilty and claimed trial.
5. The prosecution in order to establish its case examined PW-1 Dr. R.P.Goel, PW-2 ASI Gurnaib Singh, PW-3 Jagar Singh, PW-4 Pala Ram, PW-5 Head Constable Mohinder Singh, PW-6 Head Constable Ramphal, PW-7 Constable Jai Singh, PW-8 Head Constable Rajpal Singh, PW-9 Sub Inspector Maha Singh, PW-10 Rajpal, PW-11 Ishwar, PW-12 Ramphal, PW-



13 Sunil Kumar, PW-14 Inspector Ram Chander and PW-15 Sub Inspector Karam Singh.

6. Upon conclusion of prosecution evidence, statements of the accused were recorded in terms of Section 313 Cr.P.C. wherein they denied the case of prosecution in toto and pleaded innocence and that they had been implicated falsely due to caste faction in the village. The accused in their defence examined DW-1 Jagdeep Singh, Lecturer.
7. The trial Court upon considering the evidence on record held that the prosecution had failed to establish the charges framed against the accused and consequently acquitted the accused.
8. Learned State counsel while assailing the impugned judgment submitted that the trial Court fell in error in discarding the statements of complainant Raj Pal and also of the eye-witnesses while assigning frivolous reasons whereas the ocular version is fully corroborated by the medical evidence and as such the charges, as a matter of fact, stood fully established.
9. On the other hand, learned counsel representing the accused submitted that it is a case where the complainant cannot be believed at all inasmuch as while in the first instance at the time of lodging FIR, he named one Balbir Singh as the assailant, who had killed Sat Narain, but in the supplementary statement, he has not named said Balbir Singh and has named two other persons to be the assailants i.e. the respondents, namely, Rajesh Kumar and Mukesh Kumar. It has been submitted that although it is the case of complainant that Baljit and Vikram were also present at the spot, but the



said witnesses were never examined. It has, thus, been submitted that the impugned judgment is well reasoned wherein the trial Court has appreciated the entire evidence and thereafter reached at a conclusion regarding the falsity of the case.

10. This Court has considered the rival submissions addressed before this Court.
11. While the factum of the instant case being a case of homicidal death is not in dispute, the sole contentious issue in the instant case would be as regards the reliability upon the version given by the complainant. Interestingly, the complainant in the first instance had named Balbir Singh as the person who had murdered Sat Narain, but in the supplementary statement he substituted the name of said Balbir Singh with names of two other persons namely Rajesh Kumar and Mukesh Kumar i.e. the respondents. While justifying this *volte-face* the complainant stated that it was on account of the fact that he was perturbed when he got the FIR lodged on account of which a different version came to be recorded therein as regards name of the accused. It is, however, worth noticing that the evidence on record show that while the occurrence had taken place at 4.00 pm, his statement was recorded at about 7.15 pm i.e. after more than 2 hours. Such like period would ordinarily be sufficient to come out of the initial shock. In any case, there is no convincing evidence on record regarding the complainant having been perturbed. As a matter of fact, the statement on the basis of which FIR was lodged was read over to the complainant before he signed the same. Still further, although as per the complainant, there were two eye



witnesses namely Baljit and Vikram, but none of them has been examined by the prosecution, which further causes a serious dent in the case of prosecution.

12. In view of the aforestated position wherein the complainant himself has taken absolutely contradictory stand as regards naming the accused inasmuch as he had named one Balbir as an accused in the first instance, but later on substituted his name with two other persons, it is certainly not safe to rely upon the statement of such witness particularly when even the eye witnesses to the occurrence have not been examined. As such, the trial Court having acquitted the accused after having duly considering all the evidence on record, we do not find any perversity in the findings, as recorded by the trial Court and the same are hereby upheld.
13. Finding no merit in this appeal, the same is dismissed. Bail bonds/surety bonds shall stand discharged.

(GURVINDER SINGH GILL)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

27.05.2024
mohan

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No