



**IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH.**

**CRA-AD-385-2023**

**Date of Decision:-04.09.2024**

**Jagdish Kumar.**

.....Appellant.

Vs.

**State of Punjab & Ors.**

.....Respondents.

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

Present:- Mr. Ashok Kumar Sama, Advocate, for the Appellant.

Mr. Mohit Kapoor, Senior DAG Punjab.

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**JASJIT SINGH, J.**

The present appeal has been filed against the judgment of acquittal dated 16.06.2020 passed by the Sessions Judge, Fazilka.

2. The brief facts of the case are that the FIR in this case was got registered on 26.04.2018 by Jagdish Kumar father of deceased Nabi Kumar by stating that he was a Commission Agent. Nabi Kumar was his 25 years old un-married son. For the past two years, his son was maintaining relations with his sister's son Ajay Kumar Bhateja @ Sunny son of Varinder Kumar. The above said Ajay Kumar @ Sunny was a drug addict. Ajay Kumar also pushed his son into bad habits and had been compelling his son to bring money. He had come to know that in this way, his Bhanja Ajay Kumar had fleeced his son of a huge amount. In January, 2018, he complained to Ajay



Kumar, upon which, Ajay Kumar started scuffling with him. The said Ajay Kumar was involved in a murder case. He had moved an application in the Court of Shri Lachhman Singh, the then Additional Sessions Judge, Fazilka withdrawing his surety, due to which, Ajay Kumar started keeping a grudge against him and threatened that he would teach him a lesson. On 23.04.2018 at 11.30 am, Ajay Kumar visited his house accompanied by another young man. whose name was Jagsir Singh @ Babbu in his absence and took his son Nabi Kumar upon his motor cycle with an intention to kill him and after taking his son to an uninhabited place, both of them killed his son and destroyed his dead body.

On his above said statement, FIR No.31 dated 26.04.2018 under Sections 302, 201, 506 read with Section 34 IPC was registered.

On the same day i.e. on 26.04.2018. both Ajay Kumar Sunny and Jagsir Singh @ Babbu were arrested. On the basis of a disclosure statement made by them, the dead body of Nabi Kumar was retrieved. Further investigations were conducted and after completion of investigations, challan was presented.

3. The case was committed to the court of Sessions and charges were framed after which evidence came to be recorded.

4. When the dead body of Nabi Kumar was recovered, it was in a highly decomposed state. Initially, the dead body was taken to Civil Hospital, Fazilka, where a Board of Doctors comprising of Dr. Navdeep Kumar, Dr. Aseem Maini and Dr. Vikas Gandhi conducted its postmortem. Dr. Rajesh Sharma (PW1) and Dr. Navdeep Kamboj (PW2) deposed that as the dead body was mutilated and as there was no forensic expert available at the Civil Hospital, Fazilka to ascertain the cause of death, hence the dead body was referred to G.G.S. Medical College, Faridkot for PMR.



The Prosecution examined Dr. Ashwani Kumar, Associate Professor (Forensic Medicine Department) of G.G.S. Medical College as PW8, who deposed that on 27.04.2018, he conducted, the postmortem examination on the dead body of Nabi Kumar son of Jagdish Kumar to find a foul smell emanating from the dead body. Peeling of skin was present along with bloating of facial features. The scalp hair were easily pluckable and maggots were crawling over the clothes and body. Upon dissection, a loud hissing noise was found. Penis and scrotum had distended due to putrefactive gases. Skin and soft tissues of the back of the right thigh in its lower 1/3rd as well as right leg were missing exposing underlying bones. Dr. Ashwani Kumar further deposed that both the feet, right thumb, right ring finger and right little finger were missing and it appeared as if these organs had been gnawed. It was further opined that there was no external antemortem injury on the body. Upon dissection. left lung, liver and gall bladder of the dead body were found lacerated. It was opined that the cause of death was haemorrhage and shock, as a result of injury to the left lung and liver consequent upon blunt force impact to the body, which was sufficient to cause death in the ordinary course of nature. In this regard, Dr. Ashwani Kumar proved the computer generated postmortem report Ex. PW8/A.

PW3 complainant Jagdish Kumar, reiterated his police statement Ex. P5 and deposed that his son was murdered by Ajay Kumar and Jagsir Singh. He identified both the accused in the Court. He further deposed that on 09.04.2018 his son had undergone a drug abuse screening test, in which, he was found 'Negative'.

PW4 Asha Rani wife of Jagdish Kumar (mother of deceased Nabi Kumar) also deposed the above said facts as stated by her husband to the police by further affirming that on 23.04.2018 at about 11.30 am,



accused Sunny was accompanied by an unidentified person, whose name was found to be Jagsir Singh @ Babbu. She also identified Ajay Kumar in the Court, but failed to identify his co-accused Jagsir Singh by stating that when both of them took her son away, he had seen the other accused from the backside only.

PW5 Vijay Kumar, identified the dead body and pot signatures upon the inquest proceedings.

PW6 ASI Mohinder Singh, got the postmortem examination on the dead body of Nabi Kumar conducted.

Investigations in this case were conducted by Inspector Gurmeet Singh, who appeared as PW7 and deposed regarding various aspects of the investigation. He also proved the disclosure statements made by the accused.

PW9 Patwari Paramjit Kaur, prepared a scaled map of the place from where the dead body was recovered vide memo Ex. PWOA.

PW10 ASI Jugraj Singh, accompanied SI Gurmeet Singh and helped him in conducting of investigations.

PW11 ASI Balkar Singh, proved FIR no. 68 dated 28.04.2018 registered against Jagsir Singh @ Babbu under Section 21 of NDPS Act on recovery of 260 grams of heroin vide memo Ex. PW11/A.

PW12 MHC Chanan Singh (now ASI) with whom both the recovered mobile phones of the deceased were deposited by the IO, further affirmed that on 27.04.2018, belongings of the dead body were also deposited with him by the IO. He also produced all the parcels in the Court for their material exhibition as MO1 to MO3.

PW13 Record Keeper Rajnish Kaushal, brought the summoned file titled "Hari Krishan versus Varinder Kumar etc under Sections 302, 148,



149 IPC registered at police station City, Farilka, which was decided on 09.10.2019 and deposed that the file contained an application dated 21.03.2018 moved by Jagdish Kumar seeking withdrawal of surety and he proved copy of the said application Ex PW13/A.

5. Once the prosecution concluded its evidence, all the incriminating evidence appearing in the testimonies of various witnesses was put to the accused, but both the accused refuted all the allegations claiming false implication.

6. In their defence evidence, the accused examined Draftsman Parkash Singh as DW1, who prepared the site plan of the house of accused Jagsir Singh on 10.01.2018 Ex. D1.

7. Based on the evidence led, the accused/respondents no.2 & 3 were acquitted by the court of by the court of Sessions Judge, Fazilka vide judgment dated 16.06.2020.

8. It is the aforementioned judgment of acquittal which is under challenge in the present appeal.

9. The Counsel for the appellant contends that the offence stood established beyond reasonable doubt. All the material witnesses had supported the case of the prosecution. The medical evidence was totally in consonance with the ocular account. The judgment of acquittal had been passed on conjectures and surmises. The motive had been established beyond reasonable doubt. He, therefore, contends that the impugned judgment of acquittal was liable to be set aside and the accused ought to be convicted in accordance with law.

10. The Counsel for the State has supported the case of the appellant and contends that there was sufficient evidence on record to convict the accused/respondent nos.2 & 3 and, therefore, the judgment of



acquittal was liable to be set aside.

11. We have heard counsel for the parties and have examined the lower court record.

12. While setting the police machinery into motion, on 26.04.2018 vide Ex. P5, Jagdish Kumar himself stated that Ajay Kumar, his nephew had made his only son Nabi Kumar a friend, but as Ajay Kumar himself was a drug addict, hence Ajay Kumar pushed his son as well into bad habits'.

When Jagdish Kumar came to depose before this Court, he reiterated the above said statement by refuting a suggestion that his son was a drug addict or that he died due to drug over-dose and rather in his examination-in-chief, he mentioned that on 09.04.2018, his son Nabi Kumar had undergone a drug abuse screening test', in which he was found 'negative'.

If his above said testimony refuting allegations that his son was a drug addict is superimposed with the testimony of his wife Asha Rani, it would transpire that Jagdish Kumar was falsely trying to refute all such suggestions regarding addiction of his deceased son. Consequently, reference in his police statement Ex. P5 that Ajay Kumar had pushed his son as well into 'bad habits' contains an admission that Nabi Kumar was a drug addict. Reference of the fact that Nabi Kumar had undergone a "drug abuse screening test' in itself indicates that he might have undergone drug de-addiction.

As compared to the cautious statement made by Jagdish Kumar, his wife Asha Rani was more explicit when she agreed in her cross-examination that her son was addicted to drugs, though she qualified her said statement by affirming that she came to know about the drug addiction of her son merely 04 months prior to his death. However, Asha Rani added



that she got her son treated for drug addiction as well.

The above said discussion make it amply clear that deceased Nabi Kumar was a drug addict, though he may have been pushed into drugs by his cousin Ajay Kumar.

13. As regards the cause of death of Nabi Kumar, deposed by his father Jagdish Kumar, Nabi Kumar went away at 11.30 am on 23.04.2018 and his dead body was retrieved from 'Semnala' situated in the area of village Kirianwali on 26.04.2018.

Within 03 days, the dead body of Nabi Kumar had undergone decomposition and putrefaction changes. The extremities, i.e. fingers of his hands as well as both the feet were gnawed away by wild animals by nibbling the soft tissues. Skin and soft tissues on the back of the right thigh as well as right leg had also been gnawed away exposing the underlying bones.

In the postmortem report Ex. PW8/A, Dr. Ashwani Kumar ruled out any external antemortem injury upon the dead body. At the same time, he replied in the cross-examination that he did not send the viscera samples for forensic examination. Once it was suspected that, the deceased Nabi Kumar was a drug addict, examination of his viscera by the FSL was essential before furnishing an opinion regarding the cause of death. Though Dr. Ashwani Kumar has opined that the death had occurred due to laceration of his left lung and liver consequent upon blunt force impact to the body, but all such observations/opinion are to be viewed with scepticism once he himself reports absence of any external antemortem injury corresponding to the above said organs. As such, the said opinion of Dr. Ashwani Kumar not being based upon a scientific confirmation, cannot be taken as the gospel truth. Rather it appears that no confirmation regarding the drug addiction of



deceased was sought, though it stands established that deceased Nabi Kumar was a drug addict. Proper scientific investigation including sending the viscera for analysis ought to have been undertaken to rule out the possibility of drug abuse. Therefore, it was quite possible that Nabi Kumar might have taken an over-dose of drugs, due to which, he fell unconscious and died. Subsequently, his dead body was eaten by wild animals and he died without any act on the part of anybody including the accused. In fact, in the absence of corresponding external injuries, it is quite impossible to puncture the lung as well as the liver. This further indicates that the lung and liver of the deceased might have been impacted when the dead body was picked up and reached firstly at Civil Hospital, Fazilka and thereafter was dispatched to G.G.S. Medical College, Faridkot for postmortem.

14. Further, complainant Jagdish Kumar himself had not seen either Ajay Kumar or his co-accused Jagsir Singh taking his son Nabi Kumar away on the morning of 23.04.2018. It was his wife Asha Rani, who saw Ajay Kumar @ Sunny taking away her son, but she was not sure about identity of Jagsir Singh @ Babbu. As such, nobody had seen accused Jagsir Singh @ Babbu visiting the house of the complainant so as to take his son away. Be that as it may, neither the complainant nor his wife had seen any of the accused causing injuries to their son so as to kill him. The entire prosecution evidence is based upon circumstantial evidence, more particularly on the 'last seen theory'. In this case taking the prosecution case to be believable the accused were last seen with the deceased on 23.04.2018 but the dead body was recovered on 26.04.2018. Therefore, there was a considerable gap between the evidence of 'last seen' and the recovery of the body. Therefore, this evidence of 'last seen' is not sufficient to establish the guilt of the accused.



15. As per the complainant Jagdish Kumar, his son Nabi Kumar was using two mobile phones. Both these phones were allegedly recovered from the possession of Jagsir Singh @ Babbu, when he allegedly made a disclosure statement Ex. PW7/M disclosing that he had kept concealed both these mobile phones in the almirah of his house. One such phone was an Apple i-phone while the other mobile phone was Samsung make. Both these mobile phones were taken into police possession vide recovery memo Ex. PW7/M. For the reasons best known to the I.O., no attempt was made by him to know the mobile numbers, which were working in these mobile phones. It was strangely deposed by Inspector Gurmeet Singh (I.O.) that he procured the tower location of the mobile phones of deceased Nabi Kumar, but in the same breath, he deposed that he did not produce the documents regarding tower location on the file. This fact also causes a doubt in the prosecution case.

Be that as it may, mobile phones of none of the accused were recovered. Consequently CDRs and tower locations of the mobile phones of the accused were also not collected so as to match the tower locations with the tower locations of the mobile phones of the deceased. If tower locations of both the accused as well as the deceased would have matched, it could have been presumed to an extent that all the three were together near the *Semnala* of village Kirianwala, where ultimately the dead body of Nabi Kumar was found.

16. Still further the alleged weapon of offence was not recovered from the accused pursuant to their arrest. Similarly, the evidence of motive is sketchy to say the least and the investigation has also not been conducted in a proper manner.

17. 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.”

18. 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 court of Sessions Judge, Fazilka. Therefore, the appeal stands dismissed.

( JASJIT SINGH BEDI )  
JUDGE

( SUDHIR SINGH )  
JUDGE

September 04, 2024  
Vinay

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |