

2024:PHHC:147389-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-AD-407-2023

Date of decision: 12.11.2024

Satto

.....Appellant

V/s

State of Haryana and ors.

...Respondents

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

Present: Mr. Anil Kumar Lamdharia, Advocate, for the appellant.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of acquittal dated 17.03.2023 passed by the Additional Sessions Judge, Palwal.

2. The FIR in the present case came to be registered on 16.10.2016. The judgment of acquittal was passed on 17.03.2023. This appeal dated 08.07.2023 has come up for final hearing now i.e. after a period of 08 years having elapsed from the date of the registration of the FIR.

3. The prosecution case is that on 16.10.2016 a telephonic call was received in the Police Station Sadar Palwal that Rajender had expired due to the injuries suffered by him in a scuffle. The police reached Government Hospital, Palwal, where complainant Satto met him and got recorded her statement to the effect that on 16.10.2016 her husband Rajender

and son Hemant were working in the fields. Her son brought tea in the

fields. Near their fields, Kishori and Bhupender were also working in the fields. At about 5.30 pm, when they were engaged in work, then Kishori, his son Bhupender and Harish interfered in their work. Kishori and Bhupender misbehaved with her. When her husband came to her rescue, the accused persons inflicted a blow of a tractor handle in his chest and also gave fist blows. Harish also gave injuries on the shoulder to her son Sonu. Thereafter, his sons brought their father to the hospital and her husband expired due to the injuries suffered by him in the scuffle. It was further alleged that Nirmal son of Babu Ram and Vinod son of Rattan abused and threatened her family members. Action was sought against them. Based on the complaint, the FIR came to be registered.

4. The investigation was conducted. A rough site plan of the place of the incident was prepared and statements of witnesses u/s 161 CrPC were recorded. Postmortem of the deceased was got conducted. After completion of the investigation, final report under Section 173 Cr.P.C against accused Kishori Lal and Bhupender was presented before the Court of the then Addl. Chief Judicial Magistrate, Palwal, who, vide order dated 23.01.2017 committed the case after compliance of provisions of Section 207 Cr.P.C.

5. Accused Harish, Nirmal and Vinod had not been arrested, therefore, the challan against them was not filed.

6. Both the accused Kishori Lal and Bhupender were charge-sheeted by the court of the then Addl. Sessions Judge, Palwal vide order dated 02.02.2017 under Sections 302 read with section 34 of IPC, to which they pleaded not guilty and claimed trial.

7. In order to prove its case, prosecution examined the following witnesses:

Sr. No.	Prosecution Witness(es)	Name of the Witnesses
1.	PW-1	Omdutt
2.	PW-2	EHC Inderpal
3.	PW-3	Smt. Satto
4.	PW-4	Jagdish
5.	PW-5	ASI Khem Chand
6.	PW-6	Sonu
7.	PW-7	Dr. Rahul Kumar, MO
8.	PW-8	Ravinder Singh Dahiya, Draftsman
9.	PW-9	SI Duli Chand
10.	PW-10	ESI Aman Prakash
11.	PW-11	SI Dharmender

and also proved the following documents:-

Sr. No.	Document(s)	Description of document(s)
1.	Ex.PW-2/A	Disclosure Statement of Bhupender dt.22.10.2016
2.	Ex.PW-2/B	Disclosure statement of Bhupender dt.22.10.2016
3.	Ex.PW-2/C	Sketch of Handle of Tractor
4.	Ex.PW-2/D	Recovery Memo of Handle of Tractor from Bhupender dt.22.10.2016
5.	Ex.PW-3/A	Asal Tehrir nby Satto dt.16.10.2016
6.	Ex.PW-4/A	Inquest report u/s 174 of CPC dt. 16.10.2016
7.	Ex.PW-4/B	Receipt of Dead body dt. 17.10.2016
8.	Ex.PW-5/A	FIR No.743 dt. 16.10.2016 u/s 302, 34, 506 IPC
9.	Ex.PW-5/B	Endorsement on tehrir
10.	Ex.PW-7/A	Affidavit of Dr. Rahul dt. 28.04.2022
11.	Ex.PW-7/B	MLR of Satto dt. 17.10.2016

12.	Ex.PW-7/C	PMR of Rajender @ Rajan dt.17.10.2016
13.	Ex.PW-8/A	Scaled site plan by draftsman dt. 30.12.2016
14.	Ex.PW-9/A	Endorsement on Asal Tehrir by ASI Duli Chand
15.	Ex.PW-9/B	Application to MO GH, Palwal for conducting post-mortem report dt. 17.10.2016
16.	Ex.PW-9/C	Rough Site plan by ASI Duli Chand dt. 17.10.2016
17.	Ex.PW-9/D	Disclosure statement of Kishori Lal dt. 19.10.2016
18.	Ex.PW-9/E	Disclosure statement of Kishori lal dt.19.10.2016
19.	Ex.PW-9/F	Demarcation place of occurrence by Kishori lal dt. 19.10.2016

8. After conclusion of prosecution evidence, the accused were examined under Section 313 Cr.P.C, in which the incriminating evidence was put to them. However, they pleaded innocence and false implication. While their statements under Section 313 of Cr.P.C. were recorded, they did not lead any evidence in defence.

9. The brief deposition of the relevant prosecution witnesses is as under:-

Smt. Satto, the complainant stepped into the witness box as PW3. She deposed that on 16.10.2016 at about 5.30 pm she along with her son Hemant and husband Rajender were working in her fields. Harish, Bhupender, Kishori, Nirmal and Vinod were also working in their fields. Her son Sonu brought tea to the fields from his house. They started putting jawar karbi in the company fields. The accused told them not to do so and started hurling dirty abuses to her. Her husband Rajender, who was working in the fields came there and Bhupender accused

inflicted a tractor handle blow on the chest of her husband. Resultantly, her husband fell down on the ground. They also gave kick and fist blows to her husband. Harish then inflicted a danda blow on the shoulder of her son Sonu. They brought her husband to Govt Hospital, Palwal, whereupon after examination the doctor declared her husband dead. Police officials reached the hospital

where her statement was recorded by them.

During cross-examination, she deposed that the occurrence took place in the field of the company. Her family owns about 1/1/2 killa of land. Their fields are situated at a distance of about half killa from the place of occurrence. They had brought karbi from their fields to the fields sold by the company. They were putting karbis for about two and half bighas of their land. The accused had employed labour to cut the jawar crop in their fields. She did not know whether Kishori had suffered any injury in this occurrence or not. They were dragged for a distance of about 50-60 feet from the field of the company to the fields of the accused. Accused Kishori inflicted a box blow on her chest and thereafter set on top of her and inflicted in multiple blows upon her. She had suffered injury on the third finger of her left hand and it had blood for many days. Her husband Rajender attracted to the spot when she cried for help. Thereafter, there was a scuffle between her husband and Kishori. The police reached the hospital after about 1, ½ hour, after they reached the hospital. The police officials recorded her statement after about 30 minutes. The statement made by her to the police was in question answer form on the basis of question put to her by the police and answers given by her. The threat given by the accused four days prior to the occurrence was given to her husband but not in her presence. Accused

Bhupender inflicted a blow with the tractor handle on her husband Kishori.

Jagdish stepped into the witness box as PW4 and deposed that on 16.10.2016 his brother Sonu, his mother Satto and his father Rajender @ Rajan had gone to the fields for agricultural work. He deposed on the same lines as deposed by PW3 Satto.

Sonu stepped into the witness box as PW6 and deposed on the same lines as deposed by PW3 Satto.

Dr. Rahul Kumar stepped into the witness box as PW7 and tendered into evidence his affidavit Ex. PW7/A. He proved copy of MLR Ex. PW7/B. He further deposed that on 16.10.2016, a medical board consisting of Dr. Yatendra Sadh, Dr. Shiv Shankar and himself conducted the post mortem of dead body of Rajender and prepared the post mortem examination report Ex. PW7/C. He identified his signatures and the signatures of other doctors. The cause of death was shock and hemorrhage due to the antemortem injuries described in the PMR.

During cross-examination, he deposed that no weapon of offence was shown to them seeking opinion regarding the same co-relating to the injuries mentioned in the post mortem report. Handwritten notes were prepared at the time of post mortem on the basis of which report Ex. PW7/C was prepared. Those handwritten notes are not a part or attachment of the post mortem report Ex. PW7/C. He admitted that PMR is digitally prepared report. He admitted that there is no certificate under section 65B of Indian Evidence Act accompanying the post mortem report.

Ravinder Singh Dahiya, draftsman examined as PW8 prepared scaled site plan Ex. PW8/A.

SI Duli Chand stepped into the witness box as PW9 and deposed that on 16.10.2016, a telephonic message was received

in the police station that one person Rajender @ Rajjan had been admitted in the hospital and had sustained injuries in a fight. He was deputed to look into the matter. He alongwith other police officials reached GH Palwal where he got to know that Rajender @ Rajjan had died due to the injuries sustained by him. His wife Smt. Satto met him in GH Palwal and gave application Ex.PW3/A on which he made his endorsement, which is Ex.PW9/A and sent the same through Ct. Surrender no. 800 to the police station Sadar Palwal for registration of case.

Thereafter, he moved an application Ex.PW9/B for conducting the postmortem of the deceased through a Board of Doctors. He conducted inquest proceedings u/s 174 Cr.P.C. Ex.PW4/A. After the postmortem of dead body of deceased was handed over to his family members vide receipt Ex.PW4/B. Thereafter, he visited the place of occurrence and prepared rough site plan Ex.PW9/C, which bears his signature.

On 18.10.2019, he arrested the accused Kishori. The accused suffered disclosure statement Ex.PW9/D under his signature and in the presence of ASI Aman Parkash and Ct. Surrender. On the basis of the disclosure statement police remand of the accused was obtained for one day. The accused suffered his second disclosure statement Ex.PW9/E on 19.10.2016 in the presence of ASI Aman Parkash and Ct. Surrender. The accused demarcated the place of occurrence vide memo Ex.PW9/F in the presence of ASI Aman Parkash and Ct. Surrender.

On 21.10.2016, accused Bhupender was arrested, who suffered his disclosure statement Ex.PW2/A dated 22.10.2016 in the presence of EHC Inderpal. On the basis of disclosure statement police remand of the accused was obtained. However, the accused retracted from his previous disclosure and again volunteered disclosure statement Ex.PW2/B quo his

involvement in the matter and offered to get the murder weapon recovered. On the basis of said disclosure statement the accused led the police party to the field of one Attar Singh and from the tied bundles of jawar he extracted a tractor handle and handed over the same to me. The sketch Ex.PW2/C of the recovered handle was prepared by him. Thereafter, the recovered handle was converted into sealed parcel bearing the seals of APM and took into police possession via memo Ex.PW2/D in the presence of EHC Inderpal. Recovery site plan Ex.PW9/G was also prepared by him.

During recording statement, a sealed parcel was produced before the court. The witness identify the same as the handle got recovered at the instance of accused Bhupender. The handle is Ex.MO/X.

The accused demarcated the place of occurrence vide demarcation memo Ex.PW2/E. On completion of the investigation in the case in the report u/s 173 Cr.P.C. prepared and signed by Inspector Sandeep Mor, the then SHO PS Sadar Palwal, whose signature he can identify.

During cross-examination, he stated that intimation was received about the occurrence at about 08/8.30 PM on 16.10.2016. He reached GH Palwal at about 09.00 PM. On inquires from the doctors he was told that patient had already expired. The complainant was present in the hospital and she presented the complaint Ex.PW3/A to him at about 09.30/09.45 PM. Many of her family members and relatives were present in the hospital at that time. The complaint Ex.PW3/A was prepared by complainant and her family members and presented to him. He visited the place of occurrence on the next day and prepared the rough site plan. He was accompanied by the complainant and her family members at that time. It was correct that in the rough site plan there is no

mentioned that it was prepared on the pointing out or demarcation of the complainant. The place of occurrence was surrounded by fields of other villagers but none came forward to become witness or make statement about the occurrence to me. There was no blood available at the place of occurrence. He noticed the crop of jawar, which was lying harvested at the place of occurrence. There was no sign of scuffle or drag marks at the place to point out the place of occurrence. He did not get the place of occurrence photographed.

He admitted that no recovery was effected in pursuance of the disclosure statement of accused Kishori. His co-accused was subsequently arrested and it is correct that no recovery was effected in pursuance of the first disclosure statement suffered by the accused. The recovery of murder weapon was effected from the field of Attar Singh. He was not joined in the investigations. He did not make any efforts to call the crime team to the spot, nor he lifted any fingerprints from the recovered handle. It is correct that such tractor handle are commonly available in the villages as tractors handle are used to start the engine of tractors. He did not show the handle to the doctor to take any opinion whether the injuries mentioned in the postmortem could have been possible, with such handle. He denied the suggestions put forward to him.

10. Based on the evidence led, the respondents No.2 and 3-accused came to be acquitted vide judgment dated 17.03.2023 passed by the Additional Sessions Judge, Palwal.

11. The aforementioned judgment is under challenge before this Court.

12. The learned counsel for the appellant contends that the medical evidence is in consonance with the ocular account. The offence of murder stood established beyond reasonable doubt. There was no evidence that the accused party acted in self-defence. In fact, the accused persons dragged the deceased into their own field after the occurrence started in the field of the complainant. He, therefore, contends that the impugned judgment dated 17.03.2023 was liable to be set aside and the accused-respondents No.2 and 3 ought to be convicted for having committed the offences in question.

13. We have heard the learned counsel for the appellant and perused the record.

14. In order to hold the accused guilty for commission of offence u/s 302 read with section 34 IPC, the prosecution is required to show that the accused in furtherance of their common intention or knowledge, committed the murder of Rajender @ Rajan.

15. From the bare perusal of the testimony of Satto, the complainant, it transpires that she herself admitted in her testimony before the court as well as in her complaint Ex.PW3/A that they were having fields nearby, though not reflected in the site plan. She along with her son Hemant and husband Rajender were working in the field. Her son Sonu also came at the spot to deliver tea. The accused persons were directing them not to put Jawar karbi in the land of the company, just adjoining to the land of the accused as evident from the site plan Ex.PW8/A and Ex.PW9/C. Thereafter, some altercation took place in the field of the company. Then it appears that the accused came back on their field. The complainant party also followed

them. Deceased Rajender also came there and had an altercation with Kishori. As per the investigating agency report accused Bhupender, who was armed with a tractor handle, gave one blow to Rajender and consequently he fell down. Thereafter, Jagdish PW4 was called. Jagdish, Sonu and Smt. Satto took Rajender to the hospital, where he was declared dead.

16. Thus, from the contents of the examination-in-chief, it is crystal clear that the place of incident is the field of the accused persons. It is alleged and claimed by PW3 and PW7, that they were dragged by the accused persons. However, on perusal of the MLR of Satto, Ex.PW7/B, it transpires that she had suffered two injuries i.e. left side lower chest and neck. It is pertinent that no visible injury was seen. There was no swelling. There was no mark of injury on her chest and neck. Had she been dragged as alleged in the examination-in-chief, then she would have suffered some injury on her legs.

Similarly on a perusal of the PMR of the deceased, it transpires that a 0.5 cm reddish contusion was present over the sternum and there was a 1.5 cm diameter circular shaped reddish contusion over 4 inches medial to the left nipple in the region of anterior just wall. Had Rajender also been dragged, then he would have also suffered injuries on his arms, legs or at least there would have been some abrasions. However, none of these persons suffered any such injury. Therefore, it can be safely concluded that they had gone on their own in the field of the accused persons.

Further, PW-9 SI Duli Chand also admitted that there were no drag marks at the place of occurrence.

Thus, the complainant party being the aggressor side cannot be ruled out.

As regards the intention or knowledge, it is admitted that there is no previous enmity between the parties. Thus, there was no reason or motive to cause the death of Rajender. Had the accused any intention to cause death, then they would have inflicted severe injuries on the person of Satto, Sonu and Hemant and even on Jagdish, who came subsequently on the spot. Furthermore, the blow of handle was not given on the vital part i.e. head, which also shows that they were not having any intention to cause death. Additionally, it may be mentioned that the purported weapon of offence (Tractor handle) was never produced before the doctor for an opinion as to whether, it could have used to inflict the injury in question. This is a significant lacuna in the prosecution case.

17. As per the prosecution case, only a single blow was given on the chest of the deceased by the accused with the handle of the tractor. Thus, the intention of the accused could not have been to commit murder. Further, accused-Bhupender could not be imputed with the knowledge that by giving one blow with the handle of the tractor on the chest, Rajender would expire. Therefore, the handle of the tractor, which was being carried by him, was used at the spur of moment and not with an intention to cause death or with the knowledge that such death would be caused. Further, as has already been mentioned hereinabove, the tractor handle was never produced before the doctor for his opinion regarding it being the weapon of offence.

18. From the testimony of all the witnesses as examined by the prosecution particularly of PW3, PW4, PW6 and PW7, apparently, the injury, if any, inflicted by the accused persons was not with an intention to cause death or with knowledge that by their act it would cause the death of Rajender. On the other hand, it appears that the complainant party was the aggressor, as they had entered in the field of the accused. Therefore, no offence is made out against the accused persons.

21. 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.”

22. 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 dated 17.03.2023 passed by the Additional Sessions Judge, Palwal, whereby the respondents No.2 and 3, namely, Kishori and Bhupender have been acquitted. Therefore, the present appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

November 12, 2024
sukhpreet

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