

2025:PHHC-017703-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRA-D-164-DBA-2005
Date of decision : 06.02.2025**

STATE OF HARYANA

... Appellant

Versus

BAHADUR SINGH AND OTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Munish Sharma, D.A.G., Haryana
for the appellant.

Mr. Arnav Sood, Advocate as Amicus Curiae
for respondent No.3.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of acquittal dated 26.07.2004 passed by the Additional Sessions Judge, Fast Track Court, Hisar.

2. The FIR was registered on 22.09.2001, the judgment of acquittal passed by the Addl. Session Judge, Fast Track Court, Hisar is dated 26.07.2004, the appeal was filed on 07.10.2004 and the matter is being taken up for hearing now after 23 years of the registration of the FIR.

3. The appeal qua respondent Nos.1 and 2 stand abated since they have passed away and survives against respondent No.3 namely Bimla W/o Bahadur Singh.

4. Briefly, the case of the prosecution is that ASI Balbir Singh recorded the statement of Ram Dulari widow of Manphool Singh, caste Kumhar resident of Khan Bahadur, Police Station, Barwala, aged 42 years to the effect that she was a resident of the aforesaid address and a widow. She had three daughters and one son. The eldest daughter was married and the son who was younger to her was studying at village Kirtan. Daughters Sunita aged 13 years and Shakuntala aged 11 years resided with her in the village. Her father-in-law owned 9 acres of land but nothing had been given to her and she worked as a labourer. Her father-in-law and jeth wanted to disposses her from her house. An earlier litigation against her jeth Bahadur etc. was also pending in which she was a witness. On 21.09.2001 at about 4.00 p.m., when she was preparing cow dung cake in her house, Bahadur Singh son of Moman Ram armed with a Kulhari, Moman Ram son of Sukh Ram armed with lathi, Luxmi wife of Moman Ram armed with a lathi and Bimla wife of Bahadur armed with a lathi, came there and asked whether she would appear as a witness against them. She stated that she would give a true statement in the court. At that time, her daughters Sunita and Shakuntala were also present there and her 'Samdhi' (father-in-law of her daughter) Amar Singh had come to their house. On refusing to back out as a witness in court, Bahadur gave a kulhari blow on her head, Moman gave a lathi blow on her back, Luxmi gave two lathi blows, one on her left thigh and lower part of her leg below the knee, whereas Bimla gave a lathi blow on her right shoulder. Then she fell down on the ground and her daughters and samadhi Amar Singh cried for help and several persons came to the spot. Bahadur Singh etc. left the place of occurrence with their weapons stating that she had been saved by the

villagers and in future she would be killed. She was taken to her house by her samdhi, daughters and other women folk of the village and Amar Singh informed her brother Rohtash, who admitted her in Civil Hospital, Hisar.

5. On the basis of aforesaid statement of the complainant, FIR No. 230 at Police Station, Barwala dated 22.09.2001 under Sections 323/324/506 IPC was registered. After completion of the investigation, challan U/Ss 323/324/506/307 IPC read with Section 34 of the IPC was filed in the court.

6. After committal of the case, on finding a prima facie case against the accused, charge under Sections 307/323/506/34 IPC was framed against all the accused on 20.12.2001 to which all the accused pleaded not guilty and claimed trial.

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

<u>No. of PW</u>	<u>Name of the PW</u>	<u>Purpose</u>
1.	Jagbir Singh S.H.O	He prepared report U/S 173 Cr.P.C.
2.	C. Raju	He prepared the scaled site plan of the place of occurrence.
3.	ASI Dharam Raj	He recorded the FIR Ex. PC.
4.	ASI Jai Bhagwan	He recorded the statement of Raju Draftsman and MHC Sadhu Ram U/S 161 Cr.P.C..
5.	HC Sadhu Ram	He produced the record of FIR No. 41 of another case as Ex.PD
6.	Ram Dulari	She is complainant in this case.
7.	Amar Singh	He is an eye witness to the occurrence.
8.	ASI Balbir Singh	He is the I.O. in this case.
9.	Dr. Sandeep Makan	He conducted the C.T.Scan of Ram Dulari injured.
10.	Dr. Jaibir Sharma	He medico legally examined Ram Dulari

8. PWs namely Constable Santosh Devi, Constable Nirmala Devi, Constable Ram Kishan and Rohtash were given up as unnecessary by the PP,

whereas PWs namely Shakuntala and Sunita were given up on the police request mark A as having been won over by the accused persons.

9. The prosecution in order to prove its case tendered the following documents:-

- 1. Ex. PA Scaled site plan*
- 2. Ex. PB Rukka*
- 3. Ex. PB/1 Police proceedings.*
- 4. Ex. PC Copy of FIR No. 230 dated 22.9.2001.*
- 5. Ex. PD Photocopy of FIR No. 41 dated 10.2.2001.*
- 6. Ex. PE Rukka Doctor.*
- 7. Ex. PF Rough site plan of the place of occurrence prepared by I.O.*
- 8. Ex. PG Application for opinion of doctor.*
- 9. Ex. PG/1 Opinion of doctor.*
- 10. Ex. PH Sketch of lathi(stick)*
- 11. Ex. PJ Sketch of lathi(stick)*
- 12. Ex.PK Sketch of lathi(stick)*
- 13. Ex. PL Recovery memo of lathis (sticks).*
- 14. Ex. PM Disclosure statement of accused Bahadur.*
- 15. Ex. PN Kulhari(axe)*
- 16. Ex. PO Recovery memo of kulhari (axe)*
- 17. Ex.PQ Rough site plan of place of recovery of kulhari (axe)*
- 18. Ex. PR C.T. Head (plain) report of Radiologist dated 24.9.01.*
- 19. Ex.PS MLR*
- 20. Ex.PT Application for Opinion of doctor.*
- 21. Ex. PT/1 Opinion of the doctor.*
- 22. Mark A Application for giving up the witnesses Shakuntala & Sunita.*

10. After closure of the prosecution evidence, the accused were examined U/s 313 Cr. P.C. All the incriminating material appearing against them was put to them. The accused denied the prosecution evidence and pleaded innocence.

They stated that the case was registered with the collusion of one Roshan as Ram Dulari (complainant) was having illicit relations with him.

11. In defence, the accused tendered copies or orders Ex. D- 1, Ex. D-2, Ex. D-3 and Ex. D-4, affidavit of Amar Singh mark A and affidavit of Ram Dulari mark B.

12. Based on the evidence led, accused/respondent Nos.1 to 3 and Lichmi were acquitted by the Court of Additional Sessions Judge, Fast Track Court, Hisar vide judgment dated 26.07.2004.

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

14. The learned counsel for the appellant-State contends that the Trial Court erroneously came to the conclusion that there was a delay of 20 hours between the occurrence and the lodging of FIR. In fact, the delay had been satisfactorily explained by the complainant. The occurrence had taken place on 21.09.2001 at about 04.00 PM. After receiving injuries the complainant had become unconscious and she was taken to Civil Hospital, Hisar at around 10.00 PM where she was examined by the Medical Officer on duty. She remained in that place throughout the night and thereafter at about 8/9 AM on 22.01.2001 the police came to her and recorded her statement which formed the basis of the FIR. Considering these facts, it could not be said that there was unexplained delay in lodging the FIR. He contends that the Trial Court had not appreciated the fact that the motive was very much apparent for the attack on Smt. Ram Dulari since there was previous litigation pending between the parties. FIR No.41 dated 10.02.2001 had been registered against Bahadur Singh and others. The present complainant was the witness in that case and was being pressurized by Bahadur Singh and others not to give evidence in that case. When she refused to toe their line,

the present occurrence had taken place and the accused attacked Smt. Ram Dulari. Thus, motive was established beyond reasonable doubt. The medical evidence fully supported the eye-witness account. As per the MLR as also the statement of PW10-Jaiveer Sharma, the complainant suffered as many as 8 injuries upon her person and injury No.1 had been declared dangerous to life after receiving the report of C.T. Scan. Thus, the case under Section 307 IPC was clearly made out against the accused persons. He, therefore contends that the appeal be allowed, the judgment of acquittal be set aside and the accused/respondent No.3 be convicted for the offences in question.

15. The learned Amicus Curiae for respondent No.3, on the other hand, contends that the offence has not been established beyond reasonable doubt. There is a considerable delay in the registration of the FIR. Material witnesses were not examined by the prosecution for reasons best known to them. The medical evidence did not establish conclusively that the injury caused on the person of the complainant was dangerous to life. PW7-Amar Singh, the father-in-law of Suman daughter of the complainant is a chance witness. His presence at the spot was doubtful. He chose not to take the injured complainant to the hospital which makes his presence doubtful. This witness however has admitted that complainant had illicit relations with Roshan Lal S/o Inder. He, therefore contends that the present appeal was liable to be dismissed.

16. We have heard the learned counsel for the parties and gone through the record.

17. The occurrence is said to have taken place at 4.00 p.m. on 21.09.2001 and the case was registered with a delay of 20 hours at 12.15 p.m.

on 22.09.2001. It is natural that if the complainant had received serious injuries at the hands of the accused party, the villagers and PW7-Amar Singh would have approached the police or at least would have sought medical assistance and would not have waited for the coming of Rohtash, the brother of the complainant from 60/70 kilometers away to take the complainant to the Hospital. There is nothing on record to show that PW7-Amar Singh etc. could not seek medical assistance and thereafter lodge a report with the police earlier. The delay in lodging the report with the police has certainly created a doubt in the prosecution case.

18. It is on record that there was on going litigation between the parties such as proceedings under Sections 107/151 of the Cr.P.C. initiated by the complainant against the accused Bahadur etc., a suit for declaration against the accused Moman, a maintenance application by the complainant against her father-in-law Moman and similarly the proceedings U/S 145 of the Cr.P.C. were also initiated by the complainant against her father-in-law etc. Ex. D-4 is the certified copy of the orders in case State Vs. Roshan Lal, which was got registered by the present complainant Ram Dulari U/s 451 of the Indian Penal Code but in this case, the complainant Ram Dulari and her daughter Sunita did not support the prosecution case and resultantly Roshan Lal was acquitted. The defence of the accused that the present case was got registered in connivance with Roshan Lal and SI Balbir Singh get support from Ex.D-4 and the statement of the complainant as PW-6 in this case wherein she had stated that she did not know Roshan Lal and SI Balbir Singh earlier. PW7-Amar Singh, father-in-law of Sunita daughter of the

complainant admits that the complainant was having illicit relations with Roshan Lal S/o Inder.

19. Further, the alleged eye witnesses Shakuntala and Sunita, who are the daughters of the complainant were not examined by the prosecution and were given up by moving an application mark A on 02.01.2003. Similarly, Rohtash the real brother of the complainant, who has been stated to have taken the complainant to Government Hospital, Hisar has not been examined as a witness in this case.

20. PW7-Amar Singh is the father-in-law of Suman daughter of the complainant. He is a chance witness being a resident of another village. Firstly, he did not take the injured complainant to the hospital and therefore his presence at the spot is doubtful. Secondly, he has admitted that the complainant had illicit relations with Roshan Lal S/o Inder and it is a case of the defence that the FIR had been registered at the instance of the said Roshan Lal.

21. The doctor, who has given the opinion as to the injury being dangerous to life has not produced the original record and there is nothing in the evidence of the doctor that as to when the complainant was admitted in the hospital and when discharged.

22. Surprisingly, there is no independent prosecution witness of the occurrence. Both the witnesses, the complainant-PW6 and Amar Singh-PW7 and even the Investigating Officer could not name any of the villagers who came to the spot at the time of occurrence. The statement of the complainant that she did not know Roshan Lal and ASI Balbir Singh earlier is also falsified from the record as well as the testimony of Amar Singh (PW7). The

real brother of the complainant who seems to be a star witness in this case has not been cited as a witness by the prosecution. The daughters of the complainant namely Shakuntla and Sunita have been given up by the prosecution as having been won over which goes to show that they did not depose in support of the case of their mother and favoured their grandfather Moman, grandmother Lichmi, Tau Bahadur and Tai Bimla. There is also unexplained delay of about twenty hours in lodging the FIR. The medical evidence is also not reliable. It is also on the record that there is on going litigation between the parties, admittedly initiated by the complainant and the accused. Therefore, the Trial Court has rightly held that the testimony of the prosecution witnesses does not inspire confidence leading to the acquittal of the accused.

23. 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.”

24. 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 Additional Sessions Judge, Fast Track Court, Hissar. Therefore, the appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

06.02.2025

JITESH

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No