



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

CRA-AD-208-2024 (O&M)

Date of Decision:-3.9.2025

Roshan Lal @ Pappu ... Appellant

Versus

State of Haryana and another ... Respondents

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE DEEPINDER SINGH NALWA**

Present:- Mr. Sanjay Verma, Advocate for the appellant.

Ms. Sheenu Sura, DAG, Haryana.

GURVINDER SINGH GILL, J.

1. The appellant – Roshan Lal @ Pappu (father of deceased) assails judgment dated 29.5.2024 passed by learned Sessions Judge, Palwal vide which respondent No.2 – Balvinder @ Kallu has been acquitted of the charges framed against him for offence punishable under Section 302 of Indian Penal Code.
2. The matter arises out of FIR No.1104, dated 23.11.2022, Police Station Camp Palwal, under Sections 323 and 302 of Indian Penal Code (Ex.P-20) lodged at the instance of Yogender. The Translated gist of his statement is reproduced herein-under:

“On 23.11.2022 at about 1:30 P.M. when I alongwith Avtar and Rinku was present in the area of Super Market, Palwal, then in the meantime Kallu @ Balvinder came there on his scooty alongwith Surender and



started abusing and hitting him (Surender). Balvinder thereafter lifted Surender and hit his head against a stone as a result of which blood started oozing out from the nose and ear of Surender and he became unconscious. Kallu thereafter fled away from the spot on his scooty. I alongwith Dal Chand took Surender to General Hospital, but Surender succumbed to his injuries after about 20-25 minutes.

3. The matter was investigated by the police during the course of which the police conducted inquest proceedings and also visited the place of occurrence and prepared a rough site plan. The dead-body was also got subjected to post-mortem examination. Statements of witnesses were recorded in terms of provisions of Section 161 Cr.P.C. The accused was arrested on 25.11.2022. Upon completion of investigation, challan was presented against the accused in the Court of learned Chief Judicial Magistrate, Palwal, who committed the case to the Court of learned Sessions Judge, Palwal vide commitment order dated 4.3.2023. Learned Sessions Judge, Palwal framed charges against the accused for offence under Section 302 of Indian Penal Code on 21.3.2023 to which the accused pleaded not guilty and claimed trial.
4. The prosecution, in order to establish the charges framed against the accused, examined as many as 17 witnesses. The gist of statements of prosecution witnesses is briefly referred to hereinunder:

PW-1 Ravinder Singh Dahiya, Draftsman, District Court Premises, Palwal stated that he had prepared a scaled site plan of the place of occurrence and proved the same as Ex.P-1.

PW-2 Yogender (complainant) while in the witness box completely resiled from his statement and stated that on 23.11.2022 at about 1:30 P.M. when he alongwith Avtar was present at Super Market Camp, Palwal then the accused Kallu came there alongwith Surender on his scooty and that Surender, while



getting off from the scooty, fell on the road and got injured and that it appeared that he was under the influence of liquor. PW-2 further stated that Surender stood up, but again fell down and he noticed that blood was oozing out from his nose and ear. PW-2 was declared hostile and the prosecution was permitted to cross-examine him.

PW-3 Rinku stated that on 23.11.2022 at about 1:30 P.M. he alongwith Avtar and Yogender was present at Laxmi Super Market, Palwal, then Balvinder @ Kallu came there on his scooty alongwith Surender and that immediately after stopping the scooty, Kallu started abusing Surender and pushed him and thereafter lifted Surender and threw him on the road made of “interlocking” tiles and consequently blood started oozing from nose and ear of Surender and he became unconscious. PW-3 further stated that Yogender and Dal Chand took Surender to Civil Hospital, Palwal and that later he came to know that Surender had succumbed to his injuries.

PW-4 Roshan @ Pappu (father of deceased Surender) stated that on 23.11.2022 while he was present at his home he received a telephonic information from his daughter Reshma that his son Surender had been murdered by Kallu.

PW-5 Dal Chand stated that on 23.11.2022 when he was present at his house, then Rinku came there and informed him that Balvinder @ Kallu was abusing his brother-in-law Surender and was giving beatings to him. PW-5 further stated that Rinku, Yogender and Avtar informed him that Surender was hit against a stone by Balvinder @ Kallu, as a result of which he started bleeding from his head and became unconscious. PW-5 further stated that upon getting the said information he reached at the place of occurrence and then he alongwith Yogender took Surender to Civil Hospital, Palwal where he was declared dead after a shortwhile.



PW-6 Dr. Arindam Ghosh, Medical Officer, General Hospital, Palwal stated that on 23.11.2022 he was posted as Medical Officer in Civil Hospital, Palwal and on the same day he had medico-legally examined Surender son of Roshan. PW-6 stated that due to serious condition of the patient, he was referred to Safdarjung Hospital, Delhi. PW-6 proved the MLR as Ex.P-8.

PW-7 Dr. Vinod Kumar Singh, Senior Scientific Officer, Scene of Crime, FSL, Madhuban, Karnal and was posted as Incharge of the MFSU, S.P. Office, Palwal, stated that on 24.11.2020 upon receipt of a telephonic message from Sub Inspector Sanjay Kumar, he reached the scene of crime at about 10:00 A.M. PW-7 observed it for scientific evidence and directed the Investigating Officer to take the photograph of the place of occurrence and took into possession the blood stained evidence so as to recover the weapon used in the commission of crime. He proved the report as Ex.P-9.

PW-8 EHC Satpal stated that on 23.11.2022 he alongwith Sub Inspector Sanjay Kumar went to Civil Hospital, Palwal where statement of complainant Yogender was recorded on the basis of which FIR was lodged. He further stated that on the same day he alongwith investigating officer went to the place of occurrence from where blood stained earth was lifted and prepared into a parcel. He further stated that Balvinder @ Kallu was arrested on 25.11.2022 and that he suffered a disclosure statement (Ex.P-9) pursuant to which he got demarcated the place of occurrence and also got recovered his scooty.

PW-9 Sanjay Kumar, Photographer, Piyush Digital Studio, Palwal stated that he had developed the photographs from mobile phone of Sub Inspector Sanjay Kumar and proved the same as Exs.P-14 to P-17 and his certificate under Section 65-B of Indian Evidence Act as Ex.P-18.



PW-10 Dr. Shiv Shankar, Medical Officer, General Hospital, Palwal, who had conducted post-mortem examination on the dead-body of Surender, proved the post-mortem report as Ex.P-19. PW-10 - Dr. Shiv Shankar opined that the cause of death was head injury and its complications.

PW-11 Sub Inspector Laxmi Narain stated that on 23.11.2022 he was posted as Duty Officer Police Station Camp Palwal and upon receipt of a written '*tehrir*' from Sub Inspector Sanjay Kumar he had registered the formal FIR (Ex.P-20) and that special reports were sent to the Area Magistrate and to other higher police officers through Lady Constable Somwati on the same day.

PW-12 Lady Constable Somwati stated that on 23.11.2022 she had delivered special reports to the Area Magistrate and to other higher police officials.

PW-13 Head Constable Pawan Kumar, who is a formal witness, tendered his affidavit Ex.PW-13/A in evidence.

PW-14 Sub Inspector Sanjay Kumar, who is the Investigating Officer in the present case, stated in detail with regard to the investigation conducted by him in the case and proved various documents and memos, which were prepared during the course of investigation including the disclosure statement made by the accused.

PW-15 ESI Jagbir Singh, who is another formal witness, tendered his affidavit Ex.PW-15/A in evidence.

PW-16 Deepak, Nodal Officer, Vodafone Idea Limited, Mohali, Punjab proved the call-details record pertaining to mobile phone No.98121-19065.

PW-17 Dr. Anju Bala, SSO (Serology RFSL Bhondsi), Gurugram stated that on 19.12.2022 she had examined one sealed parcel having seal 'SK' containing



dirty cotton wool swab. PW-17 stated that upon examination, human blood was detected on Ex.1 (dirty cotton wool swab). PW-17 – Dr. Anju Bala stated that on 24.7.2023 also she had examined one sealed parcel having five seals of ‘SK’ containing Ex.1 i.e. one dirty cemented locking tile with brown stains. PW-17 stated that upon examination the human blood was detected on Ex.1. PW-17 Dr. Anju Bala proved the reports Exs.PX and PY.

5. Upon conclusion of evidence of the prosecution, statements of accused in terms of provisions of Section 313 Cr.P.C. were recorded. The entire evidence also put to the accused to enable him to explain the same, who denied the same in *toto* and pleaded false implication. The accused Balvinder @ Kallu, however, took a stand that as a matter of fact Surender had fallen down on the road while getting off from the scooty and that when Surender tried to get up, he again fell down on the road and had sustained injuries leading to his death. The accused, however, did not lead any evidence in his defence.
6. Learned Trial Court, upon marshalling the evidence on record, held that the prosecution had failed to establish its case particularly since its star witness i.e. the complainant had resiled from his statement and consequently acquitted respondent No.2 – Balvinder @ Kallu of the charges framed against him.
7. Aggrieved by acquittal of respondent No.2 – Balvinder @ Kallu under Section 302 of Indian Penal Code, the appellant – Roshan Lal @ Pappu (father of deceased) has filed the instant appeal.
8. Learned counsel representing the appellant (father of the deceased) vehemently argued that it is a case of homicidal death, wherein the deceased was found to be having sustained injuries on his head, which could not possibly have been a result of a fall on the road as asserted by accused. Learned counsel



submitted that although the complainant had apparently been won over by the accused, but given the fact that the other witness i.e. PW-3 Rinku had supported the case of the prosecution, the complicity of respondent No.2 – Balvinder @ Kallu was clearly evident. Learned counsel submitted that the Trial Court fell in error in acquitting the accused for offence under Section 302 of Indian Penal Code and thus prayed for setting aside the impugned judgment and for conviction of respondent No.2.

9. We have considered the aforesaid submissions and have also gone through the impugned judgment as well as record of the case.
10. Before proceeding further it is apposite to refer to the broad principles to be borne in mind while examining findings of acquittal as recorded by trial Court. Hon'ble Apex Court in Mallappa & Ors. vs. State of Karnataka, 2024(3)SCC 544, held as under:

“24. We may firstly discuss the position of law regarding the scope of intervention in a criminal appeal. For, that is the foundation of this challenge. It is the cardinal principle of criminal jurisprudence that there is a presumption of innocence in favour of the accused, unless proven guilty. The presumption continues at all stages of the trial and finally culminates into a fact when the case ends in acquittal. The presumption of innocence gets concretized when the case ends in acquittal. It is so because once the Trial Court, on appreciation of the evidence on record, finds that the accused was not guilty, the presumption gets strengthened and a higher threshold is expected to rebut the same in appeal.

25. No doubt, an order of acquittal is open to appeal and there is no quarrel about that. It is also beyond doubt that in the exercise of appellate powers, there is no inhibition on the High Court to re-appreciate or re-visit the evidence on record. However, the power of the High Court to re-appreciate the evidence is a qualified power, especially when the order under challenge is of acquittal. The first



and foremost question to be asked is whether the Trial Court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence. The second point for consideration is whether the finding of the Trial Court is illegal or affected by an error of law or fact. If not, the third consideration is whether the view taken by the Trial Court is a fairly possible view. A decision of acquittal is not meant to be reversed on a mere difference of opinion. What is required is an illegality or perversity.

26. It may be noted that the possibility of two views in a criminal case is not an extraordinary phenomenon. The 'two-views theory' has been judicially recognized by the Courts and it comes into play when the appreciation of evidence results into two equally plausible views. However, the controversy is to be resolved in favour of the accused. For, the very existence of an equally plausible view in favour of innocence of the accused is in itself a reasonable doubt in the case of the prosecution. Moreover, it reinforces the presumption of innocence. And therefore, when two views are possible, following the one in favour of innocence of the accused is the safest course of action. Furthermore, it is also settled that if the view of the Trial Court, in a case of acquittal, is a plausible view, it is not open for the High Court to convict the accused by reappreciating the evidence. If such a course is permissible, it would make it practically impossible to settle the rights and liabilities in the eyes of law.....”

15. It was further held as under:

“36. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:

- (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive - inclusive of all evidence, oral or documentary;
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;



- (iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;
- (iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;
- (v) If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;
- (vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court.”

16. In yet another recent case, Constable 907 Surendra Singh and anr. vs. 2025(5) SCC 433, Hon,ble Supreme Court reiterated the settled position of law while observing as under:

“12. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

11. In the present case, PW-10 Dr. Shiv Shankar, who had conducted the post mortem examination on the dead body of Surender, recorded the following injuries found on the dead-body:

“A stitched wound of length 1 cm. with one stitch in situ present over right parietal region of scalp situated 8 cms. above right mastoid, 10 cms. lateral to midline and 15 cms. above lateral end of right eyebrow. On dissection underlying soft tissue were ecchymosed. On futher dissection skull and dura was intact. On further exploration



subdural haemorrhage present over left temporoparietal region over an area of 8 X 4 cms. and diffuse subarachnoid haemorrhage present over bilateral cerebral hemisphere. Intraparenchymal bleed with organised clots was present inside the temporoparietal lobes of both cerebral hemisphere. On cut section multiple petechial haemorrhages were present in all lobes of both cerebral hemisphere.”

12. PW-10 Dr. Shiv Shankar further opined the cause of death to be as a result of injury on the head of the deceased. There is no evidence to the contrary as regards the cause of death. As such, it could safely be inferred that it is a case of homicidal death. However, in order to connect the accused with the alleged offence, the prosecution is required to lead cogent and convincing evidence. Interestingly, the star eye-witness i.e. PW-2 Yogender (complainant) did not support the case of the prosecution at all when he was examined in the Court and completely resiled from his statement. Although, PW-3 Rinku has stated in support of the case of the prosecution, but given the fact that the prime witness i.e. PW-2 Yogender (complainant) was declared hostile, his testimony has to be examined cautiously.
13. Admittedly, PW-3 Rinku is related to the deceased and to the complainant. Although he has stated that he had witnessed the occurrence wherein the deceased was hit by the accused leading to his profuse bleeding, but it remains unexplained as to why despite being related he did not take the injured to the hospital. Further when the investigating officer Sub Inspector Sanjay Kumar (PW-14) was examined and was specifically asked a question about the presence of the eye-witnesses at the spot, he stated that while Yogender and Avtar were present, Rinku was not present at the spot. Although PW-3 Rinku claimed that he had reached the hospital within 15-20 minutes of the occurrence, but his statement is not found to be recorded during inquest



proceedings. The said facts do create serious doubt regarding the presence of Rinku at the spot as has been rightly held by learned Trial Court.

14. As far as PW-5 Dal Chand is concerned, he in any case even as per the case of prosecution was not present at the spot and was allegedly informed about the occurrence by Rinku, Yogender and Avtar. While in the FIR, the presence of Avtar at the spot is also reflected, but he was never cited as a witness. Under these circumstances, it is certainly not safe to rely upon the testimony of PW-3 Rinku when the star witness of the prosecution i.e. PW-2 Yogender (complainant) has totally resiled. Examining the aforesaid factual position in light of the principles enunciated in Mallappa's case (supra) and Constable 907 Surendra Singh's case (supra), we find that the acquittal as recorded by learned Trial Court, which is based on marshalling of facts and evidence, does not deserve to be interfered with. Further, although motive in a case of direct evidence may not really be required, but given the fact that the ocular version is inconsistent, the absence of motive would also assume importance. The findings cannot be said to be as a result of any misreading of evidence or could be termed as perverse so as to warrant any interference in the same.
15. No other point has been raised or urged before this Court. Consequently, we do not find any infirmity in the findings of acquittal of respondent No.2 – Balvinder @ Kallu as recorded by the Trial Court and the same are hereby upheld. Finding no merit in the instant appeal and the same is hereby dismissed.

(GURVINDER SINGH GILL)
JUDGE

3.9.2025

Pankaj

Whether speaking /reasoned
Whether Reportable

(DEEPINDER SINGH NALWA)
JUDGE

Yes/No
Yes/No