

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

CRM-A No. 2162 of 2019(O&M)

Date of Decision: April 11, 2023.

Allah Bax APPLICANT/APPELLANT
Versus
State of Haryana and others RESPONDENTS

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MRS.JUSTICE RITU TAGORE**

Present: Mr. Karan Pathak, Advocate
for the applicant/appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Applicant/appellant seeks leave to appeal against judgment dated 14.02.2019 passed by learned Additional Sessions Judge, Nuh whereby respondents No.2 to 5 have been acquitted of charges against them under Sections 148 and 302 read with Section 149 IPC.

Brief facts of the case, as per prosecution version, are that on 04.06.2016 telephonic information was received at about 5.00 p.m. at Police Station, Nagina regarding admission of one Sahid due to injuries received by him in a fight. Pursuant thereto, police party headed by SI Samsuddin (PW7) reached Government Hospital, Mandikhera where it was found that injured-Sahid stood referred to Nallhar but on the way to the hospital, he succumbed to his injuries.

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FIR No. No.104 (Ex.P29) dated 04.06.2016 under Sections 148/149/302 IPC and Section 25 of the Arms Act was registered on the type written complaint of present applicant, Allah Bax (PW15). It was stated therein that on 04.06.2016 at about 4.00 p.m. nephew of the complainant, namely, Sahid was playing cards in village Balai when accused Emla, Rasheed, Sabbu, Farukh, Wahid, Sagoon, Jafu, Hanif, Gautam, Tofik, Aslam, Tahir and Kallu who were duly armed with lathies, dandas (sticks), rifles, iron rods etc. arrived at the spot and attacked Sahid. Emla is stated to have hit Sahid on his legs with a lathi. Rasheed allegedly hit Sahid on his legs with an iron rod. Sabbu hit Sahid on his neck with a lathi and Farukh also hit him with a lathi, whereas Wahid @ Mulli hit Sahid on his stomach allegedly with the butt of a gun carried by him. Sagoon, it was stated, hit on the feet of Sahid with a lathi. Remaining persons are also stated to have inflicted injuries upon Sahid with lathies and dandas (sticks). As a result thereof, Sahid collapsed on the ground and was taken to the hospital where he was declared dead. It was alleged that on an earlier occasion, said accused persons had abducted Sahid and fractured his feet. A criminal case was stated to be pending against the culprits, therefore, they had killed Sahid.

Inquest proceedings were carried out. As per post-mortem report (Ex.P3), cause of death was multiple injuries by blunt object. Injuries were stated to be anti-mortem in nature, sufficient to cause death in the ordinary course of nature. During investigation, blood stained soil was lifted from the spot. Statements of witnesses under Section 161 Cr.P.C.were recorded. Site was inspected by the crime team. Statements of alleged eye-witnesses, namely,

Jaikam son of Isha and Jamil son of Rustam were recorded on 06.06.2016. It is

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to be noticed that all the accused persons, except respondents No.2 to 5 were found innocent during investigation. Final report under Section 173 Cr.P.C. was presented only qua the said respondents. Case was committed to the court of Sessions and charge under Sections 148/302 read with Section 149 IPC was framed to which accused-respondents pleaded not guilty and claimed trial.

Prosecution examined as many as fifteen (15) witnesses to substantiate its case. Accused while denying the incriminating material/evidence put to them, pleaded innocence and false implication in their statements under Section 313 Cr.P.C. However, no evidence was led by them in their defence.

Learned trial court on considering the evidence on record, facts and circumstances concluded that the prosecution has failed to prove its case against the accused beyond a reasonable shadow of doubt. It is observed that complainant was not an eye-witness and presence of alleged eye-witness PW14 Jaikam at the spot and time of occurrence was found to be doubtful. Respondents-accused were, thus, acquitted of the charges framed against them. Aggrieved therefrom, applicant/appellant has filed the present application seeking leave to appeal.

Learned counsel for the applicant/appellant vehemently argues that learned trial court has proceeded merely on the basis of surmises and conjectures to acquit respondents No.2 to 5 of the charges against them while ignoring material evidence on record. It is argued that medical evidence on record reveals as many as ten injuries on the person of the deceased. This fact in itself duly substantiates the prosecution version that Sahid was done to death by the accused by causing multiple injuries. All the injuries, it is submitted, are with blunt

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weapons. It is submitted that much stress has been laid by the learned trial court on the factum that it is not specified in the complaint from where the complainant acquired knowledge of the incident. It is contended that complainant duly clarified at a subsequent stage that facts in the FIR were those as had been revealed by Sahid (deceased) himself to complainant, Allah Bax, when he was being taken to the hospital for treatment. It is further contended that the manner of occurrence and role attributed to all accused was revealed by Sahid himself while being taken to the hospital. It is, thus, prayed that leave to appeal be granted and the impugned judgment be set aside. Consequently, accused-respondents No.2 to 5 be convicted for the offences as charged and punished accordingly.

We have heard learned counsel for the applicant/appellant and have gone through the file as well as requisitioned record with his able assistance.

It is a matter of record that the FIR (Ex.P29) was registered on the basis of typed complaint (Ex.PW15/A) submitted by the complainant at about 9.00 p.m. on 04.06.2016. It is however not explained as to how and by whom the complaint was got typed at Tehsil at about 8.15 p.m. which is admittedly beyond working hours. Version put forth by the complainant at the initial and first stage in his complaint is that he came to know that his nephew was done to death by as many as thirteen (13) persons as named in the FIR/complaint. Specific role to a number of accused-persons named therein, as has been detailed in the foregoing paras, has been assigned. Learned counsel for the applicant/appellant is however unable to deny that there is indeed no mention in the complaint regarding the persons/source from which the complainant, Allah

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Bax got information about the incident and as to from where he got to know about the minute details as are mentioned in the FIR. Complainant, Allah Bax while testifying as PW15 deposed that entire incident was disclosed to him by Sahid when he was taken to the hospital. We have perused the testimony of PW15 Allah Bax. Incident in question statedly took place at about 4.00 p.m. with police proceedings being conducted at 9.00 p.m. In his cross-examination PW15 Allah Bax stated that he received information about the fight at about 3.45 p.m. from some children, upon which he alongwith one Deena reached at the spot at 4.00 p.m. No detail regarding children who informed him about the incident is forthcoming and neither has Deena been cited as a witness in this case. Learned trial court has correctly observed in this respect that a telephonic message was received at the police station at 5.00 p.m. regarding admission of Sahid in General Hospital, Mandikhera after receiving injuries in a fight. Incident had taken place in an isolated place at village Bilai with the complainant being resident of village Jhimrawat situated at a distance about 3-4 kilometers from village Bilai. General Hospital, Mandikhera is at a distance of about 5-6 kilometers from village Bilai. The Bolero vehicle in which Sahid was allegedly taken to the General Hospital, Mandikhera is stated to be belonging to Isra, resident of village Jhimrawat, however, Isra was given up by the prosecution. As per the statement of Isra recorded by the Investigating Officer under Section 161 Cr.P.C. on 05.06.2016 itself, Isra has not stated that Sahid was taken to the hospital in his vehicle. Isra stated that Sahid was taken to the hospital in a private vehicle, which was arranged by them. It is also to be noted that alleged eye-witness, Jaikam (PW14) son of Isha and Jamil son of Rustam are not

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mentioned in the FIR. Their statements under Section 161 Cr.P.C. were recorded on 06.06.2016. The account of the alleged incident as revealed by the complainant is beset with infirmities and does not come across as truthful and credible in the facts and circumstances of the case.

Furthermore, much reliance cannot be placed on the testimony of PW14 Jaikam, who is alleged to be an eye-witness of the occurrence. PW14 Jaikam stated that on 04.06.2016 marriage of daughter of one Hassan Mohd. was to be solemnized at village Jhimrawat. PW14 Jaikam alongwith Sahid, it was stated, went to attend the said marriage. They had lunch there. At about 1.30 p.m. Sahid (deceased) allegedly received a telephonic call from card players asking him to join them. Sahid asked PW14 Jaikam to accompany him and they both reached at Maroda chowk on a motorcycle where Jamil was found present. Jamil also joined them and they reached the jungles of village Balai. It is stated that 5-7 persons were standing there outside the room (Kothra) of Azad, who is a resident of village Balai. All of them entered the room and started playing cards and they were playing upto 3.30 p.m. when one TATASafari and 2-3 motorcycles arrived at the spot and they surrounded the room. PW14 Jaikam stated that Tayyub @ MLA and Rashid son of Himma, Farukh son of Illiyas, Sabbu son of Fajjar, Wahid @ Mule son of Moji, Tofik son of Majid, Tahir son of Atru, Aslam son of Rutstam, Sahun son of Ajmal, Jafu son of Ajmat, Hanif son of Ghosi @ Jagru, Rajjak son of Chaw Khan, Safi son of Gaura, Munfed son of Rajjak, all residents of village Jhimrawat and Kallu son of Najir resident of village Pingawan came present at the spot. They were stated to be duly armed. Specific injuries have been attributed to the accused named by him. He further stated that

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information was sent to family members of Sahid pursuant to which Allah Bax reached at the spot. However, it is not forth-coming as to how information was sent and through whom as PW14 Jaikam admitted in his cross-examination that neither he nor Sahid possessed any mobile phone while they were present at the room of Azad. Furthermore, there is no explanation as to on which phone Sahid had received a call from the card players after which both of them had allegedly proceeded to village Bilai. In case there was such a mobile phone, it was never tendered in evidence and neither were the call detail records obtained, which could have thrown light on the genesis of the occurrence. None of the alleged card players were examined and neither was Azad, owner of the room (Kothra) where all of them were playing cards, examined. Statement of PW14 Jaikam, nephew of complainant Allah Bax, was not recorded promptly on 04.06.2016 itself. Admittedly, his statement was recorded on 06.06.2016. Apart from the fact that there is no explanation for the same, it is to be noted that as per the Investigating Officer, PW7 SI Samsuddin, Jaikam son of Isha was also questioned on 05.06.2016 at about 6-7 p.m. alongwith several other persons. PW7 SI Samsuddin further stated in his cross-examination that all the said persons including Jaikam stated that they were not present at the spot and had not witnessed the occurrence. Credibility of PW14 Jaikam is, thus, clearly suspect and not worthy of credence.

PW14 Jaikam and PW15 Allah Bax admitted that their clothes were not stained with blood neither were there any blood stains on the Bolero vehicle in which the deceased was taken to the hospital by them. Much stress has been

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the parties. PW14 Jaikam stated that FIR No.127/2014 was registered at Police Station Nagina on the complaint of Sahid in which complainant Allah Bax was cited as a witness. It is matter of record that in the said FIR registered on the complaint of Sahid, Tayyub @ MLA, Iqbal and Tofiq were acquitted vide judgment dated 06.06.2017, which was duly produced in defence. Version of abduction of the deceased as well as any injury caused to him was found doubtful by the learned trial court while making reference to election rivalry between the parties. Reference to the litigation in question is a double edged sword and in the given circumstances it is of no avail to the complainant. Nine (9) of the thirteen (13) persons as named in the complaint (Ex.PW15/A) and by PW14 Jaikam were found to be innocent in the course of investigation. It is correctly observed by the learned trial court that material and considerable improvement has been made in the testimony of PW15 Allah Bax in order to create an impression that he was informed about the incident by the deceased-Sahid himself. A serious dent is caused in the prosecution version. Injuries detected on the person of the deceased read as under:-

I. A lacerated wound of size 2x1 cm present over the paterio lateral aspect of right elbow joint. It was bone deep margins of the wound were ecchymosed. On dissection the adjoining area of the size 10x8 cm were ecchymosed.

II. A redish contusion of tram track type circular in shape of diameter 3 cm, present over the right forearm over the dorsal aspect. It was 8 cm below the right elbow joint. On dissection the underlying tissues were ecchymosed.

III. A reddish contusion of size 4x2 cm present over the right middle finger over its dorsal aspect and there was a fracture on the distal interphalangeal joint. The fracture ends showed infiltration of blood.

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IV A reddish contusion of size 15x10 cm present over the right foot. On dissection the underlying tissues were ecchymosed and another reddish contusion of size 20x18 cm present over the right shin anteriorly. On dissection the underlying tissues were ecchymosed.

V. A reddish contusion of size 28x13 cm present over the left forearm over its posterior aspect. On dissection the underlying tissues were ecchymosed and on further dissection there was fracture on both radius and ulna over its upper one third region with fracture ends showing infiltration of blood. Further there was multiple abrasions of size 3 to 4 x 2 to 1 cm present over the posterior aspect of the middle index and right finger and there was lacerated wound of size 3x2 cm present over the distal interphalangeal joint of the left middle finger.

VI. A reddish contusion of size 6x4 cm present over the back present, 8 cm superior to the posterior iliac spine. On dissection the underlying tissues were ecchymosed.

VII. A reddish contusion 4x3 cm present over the occipital area of the skull. On dissection the underlying tissues were ecchymosed. On further dissection there was subarachnoid hemorrhage over the occipital area of the brain of size 6x4 cm.

VIII. A reddish contusion of size 5x4 cm over the anterior aspect of the right arm, present 8 cm superior to the right elbow joint. On dissection the underlying tissues were ecchymosed.

IX. A reddish contusion of tram track type Horizontal in shape present over the right forearm over the ventral aspect of size 5x3 cm present 6 cm below the elbow joint. On dissection the underlying tissues were ecchymosed.

X. A lacerated wound of size 24x18 cm present over the left shin anteriorly, it was bone deep and margins of the wound were ecchymosed and on dissection the underlying tissues were ecchymosed. On further dissection there was fracture of upper one third and lower two third of the fibula. The fracture ends showed infiltration of blood. The area adjoining the wound of size 43x18 cm showed ecchymosis.”

Allegation raised by the complainant that injury was caused on the

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neck and stomach is not borne out from the record as such with the persons (Sabba and Wahid @ Mulli) alleged to have inflicted said injuries also found innocent. Moreover, genesis of the occurrence has not been revealed. There is no clear and cogent evidence on record to prove complicity of respondents No.2 to 5 in the commission of offence as charged. Suspicion however strong can never take the place of proof and cannot form the basis of conviction. In considering the evidence on record, facts and circumstances of the case as narrated above, we find that prosecution has indeed miserably failed to prove its case beyond reasonable shadow of doubt against the accused persons. Accused-respondents No.2 to 5 have been correctly acquitted of the charges against them by the learned trial court.

Learned counsel for the applicant/appellant is unable to point out any evidence on record, which calls for interference in the impugned judgment dated 14.02.2019 passed by the learned Additional Sessions Judge, Nuh, acquitting respondents No.2 to 5.

It is a settled position that there have to be strong, compelling and substantial reasons to set aside acquittal of the accused. Simply because another view may be possible, cannot be a ground for reversing a judgment of acquittal.

Hon'ble Supreme Court in Arulvelu v. State represented by the Public Prosecutor, 2009(10) SCC 206 held that :-

“Unquestionably, the Appellate Court has power to review and reappreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by

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aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court."

Reference in this regard can also be made to judgment of Hon'ble Supreme Court in **State of Rajasthan v. Kistoora Ram, 2022(4) RCR (Criminal) 324**, wherein it is held that it is not permissible to interfere with finding of acquittal unless it is found that the view taken by Court is impossible or perverse. It is settled position of law that acquittal of an accused is not to be set aside only if another view may be possible under the given facts and circumstances. In the present case, we do not find the possibility of any other view.

No other argument has been raised.

Leave to appeal is, thus, declined and application is accordingly dismissed.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

April 11, 2023.
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No