

In the High Court of Punjab and Haryana at Chandigarh

CRR-513 of 2003

Date of Decision:28.1.2015

Amrit Pal Singh

---Petitioner

versus

State of Punjab and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.D.S.Brar, Advocate
for the petitioner

Mr.S.K.Bansal, AAG, Punjab
for the respondent -State

Mr. Amarinder Singh, Advocate
for respondents No. 2 to 8, 11 and 12

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

REKHA MITTAL, J.

The present petition has been directed against the judgment dated 18.11.2002 passed by the Additional Sessions Judge, Sangrur whereby the private respondents/accused have been acquitted of the offence charged against them under Sections 307, 148 of the Indian Penal Code (in short “IPC”).

The facts relevant for disposal of the present petition are that on 29.8.1997, a wireless message was received from the Station House Officer, Sangrur regarding admission of Jaspal Singh son of Hakam Singh, Raghbir

Singh son of Kaku Singh, Amrit Pal Singh son of Raghbir Singh (petitioner herein), Sukhpal Singh son of Kirpal Singh, Sarabjit Singh son of Jaswant Singh, Jagtar Singh son of Harbant Singh, (injured), in Civil Hospital, Sangrur. Tarlochan Singh ASI alongwith other police officials reached Civil Hospital, Sangrur, sought opinion of the doctor regarding fitness of Jagtar Singh to make statement. The doctor opined Jagtar Singh fit to make statement and his statement was recorded. As per allegations set up in the first information report lodged by Jagtar Singh, he was working as a Secretary in the Village Development and Panchayat Department. On 28.8.1997, he alongwith Raghbir Singh, Amrit Pal Singh, Sukhpal Singh, Sarabjit Singh residents of Ramgarh and Jaspal Singh resident of Kapial was coming from fields and they were going to their houses. When they reached near house of Kartar Singh son of Santa Singh at about 7-00 p.m., Lachhman Singh son of Jangir Singh armed with soti, Bhupinder Singh son of Lachhman Singh armed with .12 bore gun, Gurjit Singh son of Amar Singh armed with soti, Harjit Singh son of Amar Singh armed with .12 bore gun, Inderjit Singh son of Pritam Singh armed with kirpan, Pritam Singh son of Dalip Singh armed with gandasa, Sukhwinder Singh son of Nirdokh Singh armed with gun, Baljinder Singh son of Nirdokh Singh armed with soti, Nirdokh Singh son of Dalip Singh armed with gandasa, Harjinder Singh son of Hamir Singh armed with soti and Jaspal Singh son of Gurbachan Singh armed with gun came from the opposite side. Lachhman Singh raised lalkara that they all had come together and should not be spared and killed. Bhupinder Singh fired a shot from his gun which hit below his left ear and left shoulder and they all retreated and ran away to

some distance. Harjit Singh fired a gun shot which hit on his chest on right side. Sukhwinder Singh also fired a gun shot which hit on his person. Jaspal Singh fired a gun shot which hit his left hip and right arm. Jaspal Singh, Raghbir Singh, Sukhpal Singh and Sarabjit Singh also received gun shot injuries on their bodies. Satya Devi wife of Mela Singh who happened to pass by the place of occurrence also received injuries in the firing. They all ran away and entered their house and Gurjit Singh kept raising alarm saying that they would not have spared them had they not entered the house.

Sat Kartar Singh, brother of the complainant arranged vehicle and brought the injured to Civil Hospital for treatment. The motive for the crime is that there was dispute with regard to mustarka Malkan property. On the basis of statement of complainant Jaspal Singh, formal FIR was registered. The site plan of the place of occurrence was prepared, statements of the witnesses were recorded, the accused were arrested, weapons of offence were recovered and on completion of investigation, challan was presented for commencement of trial.

Copies of the documents in compliance with the provisions of Section 207 of the Code of Criminal Procedure (in short "Cr.P.C.") were supplied to the accused. The case was committed to the Court of Sessions as offence under Section 307 IPC being exclusively triable by the said court.

On consideration of report under Section 173 Cr.P.C. and the documents relied upon by the prosecution, the accused were charged for commission of offence punishable under Sections 148, 307 read with Section 149 IPC to which they pleaded not guilty and claimed trial.

To prove the charge, the prosecution examined as many as 19 witnessed namely, HC Karamjit Singh PW1, Dr. Suresh Kumar Singla PW2, Jagtar Singh, complainant PW3, Sukhpal Singh, injured PW4, Sarabjit Singh, injured PW4, Jaspal Singh, injured, PW6, ASI Tarlochan Singh PW7, Prem Kumar, Patwari Halqa PW8, HC Balbir Singh PW9, Satya Devi, injured PW10, Amrit Pal Singh, injured PW11, Raghbir Singh, injured PW12 ASI Gurjit Singh PW13, HC Paramjit Singh PW14, SI Gulzar Singh PW15, Parminder Kaur, dealing Clerk o/o District Magistrate PW16, SI Harjinder Singh PW17, HC Darshan Singh PW18 and Nachhattar Singh PW19.

On evidence of the prosecution being closed, statements of the accused under Section 313 Cr.P.C. were recorded through which they denied incriminating circumstances appearing in evidence against them and pleaded their innocence and false implication. However, they did not examine any witness in defence.

The learned trial court, in view of its observations recorded in paras 33 and 34 came to record its conclusion in para 35 that it is not a fit case to record conviction so the benefit of doubt has become privilege of the accused and eventually, the accused were ordered to be acquitted of the offence charged against them.

Feeling aggrieved by the verdict of the learned trial court, the present petition has been preferred by injured Amrit Pal Singh.

Counsel for the petitioner contends that Jaspal Singh, Raghbir Singh, Amrit Pal Singh, Sukhpal Singh, Sarabjit Singh, Jagtar Singh and Satya Devi sustained gun shot injuries at the hands of assailants owing to

dispute in regard to mustarka malkan land. The injuries sustained by the victims except Satya Devi, a passerby have been duly proved. Dr. Suresh Kumar Singla PW2 conducted medico legal examination of the injured victims and as per X-ray examination, in most of the injuries sustained by the victims, opaque shadow (pallets) were seen. Jagtar Singh, the complainant-injured supported the prosecution case during his examination in chief on 17.5.2001 and detailed cross examination conducted on 20.11.2001 but unfortunately, later was one over by the accused and refused to connect the accused with the crime in his remaining short cross examination conducted after about six months on 2.4.2002. It is further argued that Amrit Pal Singh and Raghbir Singh who sustained injuries in the occurrence stuck to their stand taken during investigation, supported cause of the prosecution. The learned trial court without recording any reason much less a tangible one to discard testimony of Amrit Pal Singh and Raghbir Singh rejected the entire case in slipshod manner, therefore, the judgment passed by the trial court cannot be allowed to sustain. It is further argued that conviction can be recorded on the statement of a single witness if the same is credible and inspires confidence in mind of the court. In the case at hand, the prosecution story finds corroboration from testimony of Amrit Pal Singh, Raghbir Singh (both injured) as well as medical evidence in view of testimony of Dr. Suresh Kumar Singla. Even testimony of a hostile witness can be used against the accused to the extent it supports case of the prosecution.

Counsel for the petitioner is at pains to contend that during investigation, the investigating agency did not conduct fair investigation

with an intent to help the accused. The empties lifted from the spot and weapons of offence recovered from the accused were not sent to forensic science laboratory for analysis. Unfortunately, during course of trial, the prosecution failed to conclude its evidence expeditiously and in the process, the accused could buy time and were successful in winning over certain witnesses including the complainant who initially supported cause of the prosecution but later changed his stand. It is argued with vehemence that the learned trial court did not appreciate evidence of Amrit Pal Singh and Raghbir Singh duly corroborated by medical evidence and testimony of Jagtar Singh in right perspective, therefore, fell into a grave error in holding that it is a fit case for acquittal of the accused. It is prayed that the judgment of the trial court may be set aside and the matter may be remitted to the said court for consideration afresh.

Counsel for the private respondents-accused has supported the judgment of the trial court with the submissions that as the occurrence took place in late evening, the injured had no occasion to identify the assailants as has been deposed by Jaspal Singh PW3. Due to dispute in regard to mustarka malkan land, the respondents have been falsely indicted in the crime at the hands of Jaspal Singh and others, members of one group having dispute with the other group formed by Pritam Singh and others. Amrit Pal Singh intentionally concealed certain facts and gave vague reply in respect of earlier litigation between the parties and this conduct of Amritpal Singh has been discussed in detail by the learned trial court in paras No. 18 and 19 of the judgment. It is further argued that failure of the injured to inform the police for more than 12 hours has also been taken seriously to hold that the

accused have been implicated in the case after due deliberations and consultations to vindicate grievance of the injured due to land dispute. It is vehemently argued that keeping in view the provisions of Section 401(3) Cr.P.C., no interference in the judgment passed by the trial court is warranted which reinforces the presumption of innocence available in favour of the accused in the criminal jurisprudence.

I have heard counsel for the parties and perused the records.

Before advertng to the rival submission made by counsel for the parties in the light of evidence on record, it is appropriate to extract paras No. 33 and 34 from the judgment of the trial court, which read as follows:-

“33.In criminal cases heavy burden lies upon the prosecution to prove its case beyond all reasonable doubts, and evidence should be such that it should lead to no other hypothesis except to the guilt of the accused but in the case in hand, as discussed above, the evidence is estitude of such material, more especially when, a number of the injured, while appearing in the witness box, did not support the prosecution.

34. The allied principle of criminal jurisprudence is “STRICTER THE PENALTY, STRICTER THE PROOF.”

Section 401(3) Cr.P.C. prohibits conversion of a finding of acquittal into one of conviction in a petition filed by a private person. The Hon'ble Supreme Court of India in ***Sheetala Prasad and others v. Sri Kant and another, AIR 2010 Supreme Court 1140*** has dealt with the scope of intervention in a judgment of acquittal in exercise of power under Section

401(3) Cr.P.C. and noticed the principles on which such revisional jurisdiction can be exercised. A relevant extract from para 09 is quoted thus:-

“The High Court was exercising the revisional jurisdiction at the instance of a private complainant and, therefore, it is necessary to notice the principles on which such revisional jurisdiction can be exercised. Sub-Section (3) of Section 401 of Code of Criminal Procedure prohibits conversion of a finding of acquittal into one of conviction. Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of private complainant (1) where the trial court has wrongly shut out evidence which the prosecution wished to produce, (2) where the admissible evidence is wrongly brushed aside as inadmissible, (3) where the trial court has no jurisdiction to try the case and has still acquitted the accused, (4) where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence and (5) where the acquittal is based on the compounding of the offence which is invalid under the law. By now, it is well settled that the revisional jurisdiction, when invoked by a private complainant against an order of acquittal, cannot be exercised lightly and that it can be exercised only in exceptional cases where the interest of public justice require interference for correction of manifest illegality or the prevention of gross miscarriage of justice. In these cases, or cases of similar nature,

retrial or rehearing of the appeal may be ordered.”

The Hon'ble Supreme Court has laid down five exigencies wherein revisional jurisdiction can be exercised by the High Court. In the case at hand, we are concerned with two situations (i) where admissible evidence is wrongly brushed aside as inadmissible; (ii) where the material evidence has been over looked by considering irrelevant evidence. Applying abovestated principles to the facts of the case in hand, the learned trial court as a matter of fact has not at all adverted to the question of admissibility of testimony of Amrit Pal Singh and Raghbir Singh, injured victims in the light of medical evidence. In paras 18 and 19 of the judgment, there is only reference to the submissions made by the defence counsel to assail credibility and veracity of Amrit Pal Singh and in para 21, the submissions in regard to evidentiary value of statement of Raghbir Singh are stated. The trial court did not bother to say even a word as to why the statements of Amrit Pal Singh and Raghbir Singh coupled with medical evidence on record cannot form basis of conviction even if certain injured persons failed to support the prosecution case. The court also did not bother to examine that Jaspal Singh complainant corroborated his version given to the police during course of his examination in chief on 17.5.2001 and cross examination at length on 20.11.2001 but later the witness appears to have been won over by the accused taking advantage of a long time gap between his earlier cross examination conducted on 20.11.2001 and short cross examination held on 2.4.2002.

Amrit Pal Singh was statedly 26-27 years of age at the time of occurrence. He was not in a position to state about earlier litigation

between the parties. There is nothing on record to suggest as to when litigation in regard to mustarka malkan land started or was decided by the consolidation authorities. If such litigation remained pending at the time when Amrit Pal Singh was quite small or during his early childhood, how can his failure to depose about the said litigation be taken as a ground to doubt his veracity. This apart, there is no material on record suggestive of the fact that Amrit Pal Singh actually knew about the said litigation and intentionally evaded giving answers to the questions put by defence counsel.

The injured victims were shifted to Civil Hospital, Sangrur few hours after the occurrence on 28.8.1997. Dr. Suresh Kumar Singla has deposed that an intimation was sent to the police in regard to admission of the injured in the hospital on that day itself. If the police, for the reasons best known, did not visit hospital immediately after receipt of information to record version of the injured, the injured cannot be condemned for inaction of the police. It further appears to the court that the police conducted shoddy investigation with a view to help the accused party. They did not send weapons recovered from the accused and the empties recovered from the spot for forensic analysis. As per settled position of law, in the case of a defective investigation, the court has to be circumspect in evaluating the evidence but it may not be right in acquitting the accused solely on account of the defect. To do so would tantamount to play into the hands of the investigating officer if the investigation is designedly defective. If primacy is given to a designed or negligent investigation, to the omissions and lapses by perfunctory investigations, the faith and confidence of the people would

be shaken not only in the law enforceable agency but also in the administration of justice.

When the facts and circumstances of the present case are examined in the light of reasoning adopted by the trial court and the aforesaid discussion, I am of the considered opinion that it is expedient in the interest of justice to interfere in the judgment of acquittal for correction of manifest illegality and prevention of gross miscarriage of justice.

However, it is clarified that this Court has not dealt in detail the evidentiary value of the statements of Amrit Pal Singh and Raghbir Singh so that it may not cause prejudice to either of the parties at the time of re-hearing of the case by the trial court.

For the reasons aforesaid, the petition is allowed, the judgment passed by the trial court is set aside and the matter is remitted to the Additional Sessions Judge, Sangrur for consideration of the case afresh after providing opportunity of hearing to the parties.

The aforesaid observations would be confined to disposal of the instant petition, therefore, would not cause any prejudice to either of the parties at the time of hearing by the trial court.

(REKHA MITTAL)
JUDGE

28.1.2015
PARAMJIT