

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRA-D-1013-DB-2014

Date of decision : 20.08.2015

Ram Murti

... Appellant

Versus

Subhash and others

... Respondents

***CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MRS. JUSTICE REKHA MITTAL***

Present: Mr.G.S.Sidhu, Advocate
for the appellant.

Mr.J.S.Duhan, Advocate
for respondents No.1 & 2.

Mr.Naveen Kaushik, Addl.A.G.Haryana
for respondent No.3.

REKHA MITTAL J.

The present appeal lays challenge to judgment and order dated 18.03.2014/20.03.2014 respectively to the extent, the respondents Subhash and Pardeep (respondents No.1 & 2) have been acquitted of the offence charged against them punishable under Sections 302, 323 read with Section 34 of the Indian Penal Code ('IPC' in short) while their co-accused namely Ram Singh, Om Parkash and Rohtash have been convicted and sentenced for the aforesaid offences.

As per case of the prosecution, on 11.05.2011 Arun Kumar Inspector along with a police party went to PGIMS, Rohtak after receipt of information that Ram Murti and Vikram received injuries in a fight. Ram

Murti PW1 got recorded his statement Ex.PA that on 10.05.2011, he along with his son Vikram, Rai Singh (his brother), Bal Chand (his father) was going towards their fields for irrigation purpose. At about 9.30 PM, when they reached near the water works, Vikram was little ahead of them. In the meantime, accused Om Paraksh, Subhash, Ram Singh sons of Bhoop Singh and Pardeep son of Ram Chander came there armed with lathies and raised lalkara to teach a lesson to the complainant party for irrigating the fields. Ram Singh gave a lathi blow on the head of Vikram and also said that he would kill him. Om Parkash and Rohtash also gave lathi blows to Vikram. Then accused Pardeep and Subhash raised lalkara that complainant party should not be allowed to escape. When Ram Murti tried to save Vikram, Subhash and Pardeep gave lathies blows on head, arm and chest of Ram Murti. He raised hue and cry and his father Bal Chand who was carrying licensed gun came to him. Accused Om Parkash gave a lathi blow which hit the gun and as a result the gun was broken and its butt was separated from the body and fell on the ground. Rai Singh also raised alarm and the assailants ran away from the spot along with their respective weapons and also took away butt of the gun. The motive for the occurrence was that there was a dispute between the parties in respect of common land. Vikram and Ram Murti were shifted to the General Hospital, Sirsa and they were medico-legally examined. Vikram was referred to PGIMS, Rohtak for further treatment and succumb to injuries in the said hospital.

Formal FIR Ex.PW4/A was registered in the Police Station Nathusari Chopta. Inquest proceedings were conducted on the dead body of Vikram. The dead body was got post-mortem examined from PGIMS, Rohtak.

Rough site plan of the place of occurrence on demarcation of Ram Murti was

prepared. Blood stained earth was lifted from the spot and taken into police possession vide memo Ex.PB. Om Parkash and Ram Singh were arrested on 13.05.2011. Rohtash accused was arrested on 21.05.2011. During investigation, accused Subhash and Pardeep were declared innocent. On completion of investigation, challan was presented against accused Om Parkash, Rohtash and Ram Singh for committing offence punishable under Sections 302, 323 read with Section 34 IPC whereas accused Sandeep was charged for committing offence under Section 216 IPC. Later, accused Subhash and Pardeep were summoned as additional accused in terms of Section 319 of the Code of Criminal Procedure ('Cr.P.C.' in short).

Accused Om Parkash, Rohtash, Ram Singh, Subhash and Pardeep were charged for committing punishable offence under Sections 148, 302, 323 read with Section 149 IPC, whereas co-accused namely Sandeep Kumar was charged for committing offence punishable under Section 216 IPC.

To prove its case, the prosecution examined as many as 15 witnesses namely Ram Murti complainant PW1, Rai Singh, brother of the complainant PW2, Dr.Neelu Chugh PW3, ASI Atma Ram PW4, ASI Satbir Singh PW5, Mohan Lal draftsman PW6, HC Rajender Singh PW7, Dharam Singh PW8, Constable Mukesh PW9, HC Sita Ram PW10, Dr.Pawan Mittal PW11, Inspector Arun Kumar PW12, Inspector/SHO Suresh Pal PW13, Rattan Singh PW14 and Inspector Hira Singh PW15.

On conclusion of prosecution evidence, statements of the accused under Section 313 Cr.P.C. were recorded. Accused Subhash and Pardeep pleaded their innocence and that they have been wrongly summoned by the Court.

On appreciation of evidence adduced by the prosecution and

defence plea raised by the accused, the learned trial Court recorded its findings against accused Ram Singh, Om Parkash and Rohtash for committing offence punishable under Sections 302, 323 read with Section 34 IPC. However, Subhash and Pardeep respondents No.1 & 2 and their co-accused Sandeep were acquitted of the offence charged against them.

Counsel for the appellant would submit that the learned trial Court has committed a serious error in holding that the prosecution has failed to prove its case against respondents Subhash and Pardeep when actually it was proved beyond shadow of reasonable doubt that Subhash and Pardeep came to the spot along with co-accused namely Ram Singh, Om Parkash and Rohtash and they (Subhash and Pardeep) caused injuries to Ram Murti PW1. It is further submitted that due to acquittal of Subhash and Pardeep, Ram Singh, Om Parkash and Rohtash have also been acquitted of the offence punishable under Section 148 IPC.

Counsel for respondents No.1 & 2, on the contrary, would urge that Subhash and Pardeep have been falsely implicated in the crime to make the net wider as Subhash is the real brother of Ram Singh and others, convicted in the case. It is further argued that during investigation, the private respondents have been declared innocent and they were summoned by the trial Court in exercise of jurisdiction under Section 319 Cr.P.C. No injury sustained by deceased Vikram has been attributed to the respondents. The learned trial Court, on a detailed consideration of the evidence on record and submissions made by counsel for the parties, has rightly held in favour of the respondents. It is argued that even if two views are possible in the light of materials on record, the appellate Court would refrain to interfere in the judgment of acquittal passed by the trial Court which reinforces the presumption of innocence

available in favour of the accused.

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

Before proceeding to analysis the materials on record and submissions made by counsel for the parties, it is pertinent to recapitulate that different yardsticks are applied to examine an appeal against judgment of acquittal and conviction. There is no gainsaying that in case of acquittal, there is double presumption in favour of the accused. Firstly, presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court. Equally settled is that if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

This brings the Court to the facts and circumstances of the present case wherein Om Parkash, Ram Singh and Rohtash sons of Bhoop Singh have been convicted for committing murder of Vikram son of Ram Murti complainant whereas Subhash brother of convicts Om Parkash and others and another accused namely Pardeep have been acquitted of the offence of committing murder of Vikram with the aid of Section 149 IPC.

Concededly, no role or injury has been attributed to the private respondents to deceased Vikram. They were declared innocent during investigation and were summoned as additional accused by the Court in exercise of jurisdiction under Section 319 Cr.P.C. The respondents have been attributed to have caused injuries to Ram Murti complainant when he tried to save Vikram. Ram Murti in his statement on oath after giving an eye witness

account in respect of injuries caused to Vikram at the behest of Ram Singh, OM Parkash and Rohtash has deposed in the following terms:-

“..... then Pardeep and Subhash also gave a lalkara that they should not be allowed to escape. When I tried to save Vikram, Subhash and Pardeep caused lathies blows on my head, arm and chest. I raised hue and cry “mar diya mar diya”.

During cross-examination of Ram Murti, the accused admitted presence of Om Parkash and Ram Singh on the spot. They have raised a plea of self defence by stating that Om Parkash and Ram Singh were given injuries by the complainant party and in order to save themselves, Om Parkash and Ram Singh caused injuries to Vikram and Ram Murti. It has been proved on record that Om Parkash and Ram Singh were admitted in the General Hospital, Sarsa and they were medico legally examined by Dr. Neetu Chugh PW3. On the person of Om Parkash and Ram Singh injuries were found including incised wound. On the contrary, three injuries found on the person of Vikram were lacerated wounds.

There was only one injury on the person of complainant Ram Murti. As per medico legal report of complainant Ram Murti, following injuries were noticed :-

“1. A lacerated wound of size 3.5 x 0.5 cm on frontal region, middle, fresh and clotted blood was present. Kind of weapon blunt, duration within 6 hours.

2. C/o pain right chest, no external injuries seen. Kind of weapon blunt, if any, duration cannot be ascertained.

Both injuries were kept under observation. Both injuries X-ray and surgeon opinion advised. In injury No.1 NCCT HEAD advised.”

There was no injury found on the chest or arm of Ram Murti

which was attributed to respondents Subhash and Pardeep and, therefore, version given by Ram Murti that he sustained injuries on his arm and chest at the hands of Subhash and Pardeep does not find corroboration from the medical evidence and becomes doubtful.

As has been noticed hereinbefore, Subhash and Pardeep were found innocent during investigation. A large number of persons submitted their affidavits during investigation, as noticed by the learned trial Court, deposing that Subhash and Pardeep were not present at the spot and they were present at some other place at the time of occurrence. The learned trial Court had held that Subhash and Pardeep were found innocent during investigation and had been summoned in exercise of power under section 319 Cr.P.C., and as there is no foolproof evidence available on record in regard to their presence at the spot and thus they are entitled to be acquitted of the charges levelled against them. In view of the facts and circumstances discussed hereinbefore, when examined in the light of legal position stated above, we do not find any reason to differ with the findings recorded by the learned trial Court.

For the reasons aforestated, finding no merit, the appeal is hereby dismissed. However, nothing stated in this order shall cause prejudice to either of the parties in the appeal filed by the convicts against the same judgment and order dated 18.03.2014/20.03.2014.

(REKHA MITTAL)
JUDGE

(S.S.SARON)
JUDGE

August 20, 2015.
Davinder Kumar