

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. D-913-DB of 2015 (O&M)

Date of decision : 30.07.2015

Mohan Singh

.....Appellant

Versus

State of Haryana and others

....Respondent

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Ms. Sharmila Sharma, Advocate
for the appellant.

LISA GILL, J.

Mohan Singh has preferred the present appeal challenging the judgment dated 14.01.2015 passed by the learned Additional Sessions Judge, Palwal whereby respondents No. 2 to 5 have been acquitted of the charges under Sections 307, 427, 506, 120B IPC and sections 3/4/5 of Explosives Act.

Prosecution was set in motion on the statement of the complainant Mohan Singh PW4 to the effect that he was an employee of Co-operative Bank, Amarpur. His house was abutting the path in the village. He heard the noise of a blast at about 9.00 p.m. in the room abutting the path. He came out and discovered that a water pipe near the wall had burst and the wall was broken. Some unknown person had put explosives near the wall of the house and tried to cause loss to him but fortunately much loss was averted and

nobody was injured. He received a number of calls on his mobile using filthy language against his daughter-in-law Priyanka wife of his son Harkesh. He bore no grudge against anyone. Some unknown person had placed explosive substance near his house to cause him loss. He also noticed two bottles containing explosive substance on the wall near the path. Action was prayed for. Formal FIR under Section 506 and 427 IPC and sections 3/4/5 of Explosives Act. of the Explosives Act 1908 Act was registered.

Two bottles containing substance akin to explosives with fuse wire were recovered from the wall. Two burnt emptied cement bags as well as pieces of fuse wire were taken in custody. Two detonator, five splendor, two wooden pieces, fuse wire and other material was taken in custody.

Supplementary statement of Harkesh son of Mohan Singh was recorded on 24.03.2011 wherein he revealed that he was serving with Chandigarh Bank. He was married to Priyanka on 02.12.2010. Prior to his engagement some unknown person was calling his wife and using filthy language for which his father got registered FIR No. 222/2010 under Section 323, 294, 504, 506, 509 IPC at Police Station Chandhuti. He and his wife were sleeping in their house on 24.01.2011 when they heard a bomb like blast at about 9.00 p.m. in the room abutting the path. Dressing table fell down and a pipe burst. The wall was also broken. Material as detailed above was recovered. It was discovered that Sharafat son of Mubin – respondent No. 2 who had link with Bassi son of Mewa Ram used to make the calls and he alongwith other persons had a hand in

this blast. Therefore, action was prayed for against respondent – Sharafat.

Another statement of Harkesh on recorded on 17.04.2011 wherein he while supporting the contents of his earlier statement on 24.03.2011 added that when he and his wife were sleeping at about 8.30 p.m. electricity was cut. Thereafter, they heard a noise like a bomb blast. Electricity was restored at 8.45 p.m. He was satisfied that respondent - Sharafat was threatening his father and his family members and he had sent Sahid – respondent No. 3 with a bomb who had planted the same beside their house which did blast. Respondents Sahid and Sharafat had hatched the conspiracy alongwith other accused.

On investigation by the police, call details of mobile phones 9812790298 allegedly belonging to Sahid and 7877630351 from 22.11.2010 to 20.12.2010 were obtained. Call details of this period of mobile phone belonging to Sharafat were also obtained. Call details of the phone from which the accused had called the complainant Mohan Singh and threatened him were also obtained. A compact disc containing conversation between the complainant and the deceased was taken in the custody. On arrest of respondents Sharafat, Sahid and Niyamat, they suffered disclosure statements which were recorded. One motorcycle was recovered from Sahid. A compact disc recording the voice of respondent – Sharafat was taken in custody. Charge was framed against all the accused for the offences punishable under Sections 120-B, 307, 427, 506 IPC and 9 (B) of the Explosive Substance Act.

Prosecution examined 19 witnesses to prove its case. Accused while denying all incriminating evidence put to them pleaded innocence and false implication in their statements under Section 313 Cr.P.C. No evidence was led in defence.

Learned trial Court on appreciation of evidence on record concluded that the prosecution had failed to prove its case beyond reasonable doubt against the accused persons thereby acquitting them of the charges against them. Hence aggrieved present appeal has been preferred.

Learned counsel for the appellant submits that there is specific evidence on record which proves that a blast had taken place damaging the complainant's house. There is specific evidence on record to prove the same. Disclosure statements of the accused prove the culpability of the respondents. In such circumstances acquittal of the accused is not justified. She, therefore, prays that the impugned judgment be set aside and respondents No. 2, 3 and 4 be convicted for the offence as charged and punished accordingly.

We have heard learned counsel for the appellant and gone through the file.

Learned trial Court after examining the evidence threadbare has rightly concluded that prosecution has failed to prove the charges against the respondents beyond reasonable doubt.

We find no infirmity, illegality or perversity in the impugned judgment which would warrant interference by this Court.

It is a matter of record that at the initial stage complainant Mohan Singh, in his statement dated 24.01.2011 did not express

suspicion qua any person. It was simply stated that unknown persons were responsible for the blast which had caused damage to the water pipe and the wall of his house. Subsequently, on 24.03.2011 PW 2 Harkesh i.e. son of the complainant comes out with the version wherein he named respondent – Sharafat as an accused. In a still subsequent statement dated 17.04.2011 by Harkesh he mentions the name of respondent – Hasim as well.

This witness PW2 Harkesh has been declared hostile by the prosecution. He specifically states in his cross examination that he cannot identify the accused. He further revealed that the name of respondent – Sharafat was disclosed by one Bassi son of Mewa Ram. Said Bassi son of Mewa Singh has not been examined by the prosecution. He also admits that he did not receive any call from unknown persons regarding any threat to his family members. He admits that there is a party faction in the village. Bottles containing explosive allegedly recovered from the spot have never been seen by him. On hearing the blast, apart from his family members 15-20 persons immediately gathered and thereafter 300-400 persons gathered on the spot. However, not even one such person has been examined who would have given an independent account of the said occurrence.

Similarly, PW 4 complainant Mohan Singh is discrepant in his statement. He admits that he did not mention anything about vulgar calls received by him or his daughter-in-law. There is no explanation whatsoever as to why the accused were not named at the very first instance. Furthermore, the alleged compact disc, which

was got recorded at the instance of the prosecution, has not been placed on the file. Transcription of the same is also not on the record. It is noted by the trial Court that no record regarding FIR No. 222/2010 under Section 323, 294, 504, 506, 509 IPC allegedly registered at the behest of the complainant - Mohan Singh has been placed on record. It has been rightly recorded by the trial Court that apart from the abovesaid, the person who recorded/took the voice sample i.e. Roop Chand has neither been joined in the investigation nor examined as a witness. There is no voice identification. Voice sample was not even put to the accused and no opportunity was given to the accused persons to contradict the same. Otherwise also necessary requirements to prove the compact disc as primary evidence has not been met in this case.

An attempt has been made by the prosecution to project some relationship between Priyanka daughter-in-law of the complainant and respondent – Sharafat prior to her marriage with complainant's son Harkesh. However, there is no evidence on record to substantiate the same. Priyanka has not been examined in this case. Harkesh PW2, her husband has not supported the prosecution version but deposed that one Bassi son of Mewa Singh had revealed the name of Sharafat. Said Bassi has neither been joined with the investigation nor examined as a witness. PW2 Harkesh has admitted that he received no threat regarding his family members on his mobile phone. He has not identified the bottles containing explosives allegedly recovered from the spot. Thus, the alleged motive has not been proved on record, which even if present, can never be made

the sole ground for conviction of an accused in the absence of specific evidence to show the commission of offence.

There is not an iota of evidence on record to prove conspiracy between the accused persons. Learned trial Court in this respect has observed as under:-

“ The other most important fact which is regarding hatching conspiracy at the instance of accused persons, but not even a single witness has proved this fact that how conspiracy was hatched between accused persons in order to commit the offence. The prosecution has relied upon the call details allegedly received from the police, but there is no authenticity of the call details produced by the prosecution, because this record is not having any signatures or verification of the concerned department or any officer of the department. Even otherwise also, if there was any calls made by Sharafat to accused Hasam, it does not mean that they are talking about committing of offence in this case. Neither complainant nor any of his family members had seen the accused persons either visiting their house or putting explosive substance in order to destroy the house of complainant and in order to kill them at all. Mere conversation in the call details on the phones are not sufficient independently for arriving at a conclusion for forming criminal conspiracy.

It is, thus, clear that there is no evidence on record to prove conspiracy between the respondents.

No independent witness has been associated with the persons at the time of alleged recoveries. Recovery of motor cycle from Sahid and the mobile phones cannot in any manner connect the accused with commission of crime as alleged. There is nothing on

record to show that respondents No. 2 to 4 have conspired with each other for planting the explosive substance in the complainant's house or that any of them had infact planted the said substance in the house of the complainant and caused the blast.

Therefore, though it may be proved on record that there was indeed a blast on 24.01.2011 which rendered damage to a water pipe and the wall of the complainant's house but there is no evidence to prove that this blast was caused by the respondents in question. In a case resting on circumstantial evidence, the chain of events has to be complete in every manner leading to no other hypothesis but the guilt of the accused. In the present case, prosecution has failed to prove the said chain of circumstances and has been unable to prove the guilt of the accused persons beyond reasonable doubt.

A judgment of acquittal cannot be set aside in appeal until and unless there are 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.

Learned counsel for the appellant is unable to point out any substantial reason, infirmity, perversity or illegality in the impugned judgment, which would warrant interference by this Court.

Consequently, this appeal is dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

30.07.2015
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