

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRR No.4563 of 2015 (O&M)****Date of Decision: November 28, 2015**

Sukhdev Singh

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rishu Mahajan, Advocate
for the petitioner.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Suhdev Singh against State of Punjab under Section 401 Cr.P.C., challenging the impugned judgment of conviction and order of sentence dated 16.02.2015 passed by learned Judicial Magistrate Ist Class, Jalandhar, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹500/- and in default of payment to undergo simple imprisonment for a period of one month under Section 452 IPC and to further undergo rigorous imprisonment for a period of one year and to pay a fine of ₹200/- and in default of payment to undergo simple imprisonment for a period of fifteen days under Section 324 read with Section 149 IPC and also challenging the judgment dated 30.10.2015 passed by learned Addl. Sessions Judge, Jalandhar, vide

which appeal filed by petitioner was dismissed.

I have heard learned counsel for the petitioner and have gone through the record.

The brief facts of the case are that on 07.10.2006, Head Constable Som Lal received two MLRs of Sukhdev Singh S/o Darshan Singh and Gorkhi Ram and he went to Civil Hospital, Jalandhar where Sukhdev Singh S/o Darshan Singh got recorded his statement to the effect that on 06.10.2006 at 7.00 P.M., he was going to his house on motorcycle and when he reached near Balmiki Mandir, he saw Gorkhi Ram, who raised *lalkara* and due to fear, he entered his house along with his motorcycle. In the meantime, Sodhi armed with Sword, Amrik Singh, Gullu, Bagga and Laddi also entered his house. Amrik Singh caught hold him and Sodhi gave *kirpan* blow on left side of his mouth and other accused also caused injuries on his person, due to which he became unconscious and fell down on the ground. He was got admitted in the hospital. The motive for causing the injuries was stated to be previous dispute between the parties.

During the course of the trial, Sukhdev Singh S/o Jeet Ram and Amrik Singh absented themselves from the proceedings and they were declared proclaimed offender vide order dated 04.08.2009 by the then learned Addl. Sessions Judge, Jalandhar. The trial of other accused namely Gorkhi Ram, Balwinder Singh and Mohan @ Sodhi commenced and ultimately vide judgment dated 15.01.2010, they were convicted and sentenced under Sections 452, 324 and 149 IPC. Thereafter, accused Amrik Singh and Sukhdev Singh (present

petitioner) were arrested and supplementary challan was presented against both of them. The case was committed to learned Sessions Judge, Jalandhar but it was sent back to Illaqa Magistrate since additional charge under Section 452 IPC in place of Section 450 IPC was framed. During the trial, accused Amrik Singh again absented from the proceedings and he was declared proclaimed offender.

The prosecution, to prove its case examined PW-1 Doctor Alfred, Medical Officer, PW-2 ASI Som Lal, Investigating Officer and PW-3 ASI Jatinder Kumar. As per the record, the complainant and eye witness have died and could not be produced.

At the time of arguments, learned counsel for the petitioner argued only on one point that as complainant and eye witness did not appear against the present petitioner in supplementary challan, therefore, their statements recorded in the earlier trial cannot be read into evidence. He also argued that when the supplementary challan was presented, they were alive. The complainant has died on 07.02.2012 whereas eye witness died on 29.08.2011.

Learned counsel for the petitioner cited judgment passed by the Hon'ble Supreme Court in ***Central Bureau of Investigation vs. Abu Salem Ansari and another, 2011(4) SCC 426***. I have gone through this cited judgment. It is held that prosecution may rely on evidence recorded in the earlier trial against the first respondent subject to establishment of existence of any of the conditions precedent as described in Section 299(1) Cr.P.C.

Section 299 Cr.P.C. reads as under:-

"299. Record of evidence in absence of accused.-(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of, may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits on India."

It is also held in the above-cited judgment as under:-

"5. As regards the first respondent, sub-section (1) of Section 299 would apply as he, an accused person, was absconding, his case is already split up and has to undergo the trial. Obviously, the evidence adduced in the earlier trial cannot be used against the first respondent except as provided in sub-section (1) of Section 299 Cr.P.C. In the circumstances of the absconding accused appears again, the prosecution witnesses have to be examined afresh. But, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience, the prosecution would be justified in relying on the evidence already on record taken in the earlier trial in the absence of the absconding accused."

I have gone through the judgment cited by learned counsel for the petitioner but as stated in this cited judgment, the prosecution can rely upon the evidence recorded in the earlier trial under Section

299(1) Cr.P.C. Even this cited judgment does not support the argument of learned counsel for the petitioner. Rather, it states that the evidence recorded in the earlier trial can be relied upon. The mere fact that eye witnesses have died after some time, is no ground that their statements cannot be read. Nobody was knowing that complainant and eye witness would die after some time. Otherwise also, till the evidence of the prosecution concluded, they could have been examined at any time but they could not be produced due to their death. Therefore, the Courts below have correctly relied upon the statements of complainant and eye witness, which were recorded in the earlier case. So, the argument of learned counsel for the petitioner has no merit. No other point has been argued.

Otherwise also, I have gone through the judgments passed by the Courts below. In no way, these can be held as perverse or against the evidence or law. Nothing has been pointed out as to which material evidence has been misread or which evidence has not been considered by the Courts below.

Therefore, finding no merit in the present revision petition, the same is dismissed.

November 28, 2015
Vgulati

(INDERJIT SINGH)
JUDGE