

In the High Court of Punjab and Haryana at Chandigarh

CRR-1595 of 2003 (O&M)

Date of decision: 12.04.2016.

Paras Ram

..... Petitioner

Vs.

State of Haryana and others

..... Respondents

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

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?

Argued by: Ms. Divya Jerath, Advocate
for the petitioner.

Mr. Vikas Chopra, DAG, Haryana.

Mr. Sunil Panwar, Advocate
for respondents No.2,3 and 5.

Mr. Anmol Partap Singh Mann, Advocate
for respondents No.4,6 and 7.

RAJ RAHUL GARG.J.

This revision petition is directed against the judgment of acquittal rendered by learned Additional Sessions Judge (FTC), Gurgaon. This judgment is dated 26.02.2003.

Brief facts of the case are like this ; that on 01.10.2001, on the statement of Ahmad, Ex-Sarpanch of village Gurnawat, FIR of this case was registered. Ahmad informed the police on 01.10.2001 that the ladies and children had gone to the forest and noticed one dead body of young man. Wahid and Jakir were left at that place to watch the dead body. At this information, ASI Om Parkash, had gone to the spot, obtained photographs

from Basant Kumar, Photographer and also prepared rough site plan of the spot. He recovered blood-stained earth and after putting the same in a small box (*dibbi*), made into a parcel and sealed with the seal of 'OP'. One parna (safi Ex. P15) and a pair of *chappal* Ex. P13 and Ex. P14 lying near the dead body were also taken into possession. Parna was made into a parcel and sealed with the seal of 'OP'. All the sealed parcels as well as the pair of *chappal* were taken into police possession vide separate recovery memos. Inquest proceedings were completed. SI Anil Kumar, SHO of Police Station Tauru also came to the spot and verified the investigations.

On 02.10.2001, ASI Om Parkash, had gone to CHC, Nuh. Dharampal and Sita Ram PWs met the police party and identified the dead body as that of Rajender @ Pappu, son of Mangtu Ram, Pandit. The dead body of Rajender was got post-mortemed. Thereafter, dead body was handed over to Constable Devender Singh by the doctor. H.C. Devender produced the parcels of the clothes of deceased Rajender, sealed with the seal of 'MSR', to the police which was taken into police possession vide memo. Ex. PA/5. Later on, the dead body was handed over to family members of the deceased.

On 05.10.2001, SI Anil Kumar, arrested the accused Yunus and Alizan. Accused Alizan suffered disclosure statement Ex. PD to the effect that on 27.09.2001, he had gone to the shop of Babli @ Sanjay (accused) for pawning HANSLI with him. After doing the same, he received money from Babli @ Sanjay. In the meanwhile, Kava (accused), son of Jasvir, Jewelers, also reached there. Both of them were telling him that they were nursing a grudge against Rajender for the last many days. They were also having strained relations on the point of collection of money for Ram Leela.

Rajender had also given beatings to them. He (Alizan) was having good relations with Rajender, as such, he should kill him and for that, they will give him ₹1 lac. On account of greed for money, accused Alizan, in connivance with Lukki @ Yunus, son of Jumma, 'meo', Mehboob, son of Ali Mohd, 'meo' and Akhtar @ Banda, son of Juber, 'meo', hatched a plan for doing away with the life of Rajender. On 1.10.2001, all the aforesaid four persons had gone to the house of Rajender in the morning and brought him by telling that a person belonging to village Gurnawat was not paying back their money. As such, they are to bring his buffalo which they will give to him besides a sum of ₹1,000/-. Under these circumstances, when they reached, in between dense bushes of Kangarka stream near village Gurnawat, Alizan accused immediately put his 'safi' around the neck of Rajender and also pulled his neck, as a result of which, Rajender fell down on the ground immediately, thereafter, Mehboob pressed the feet of Rajender whereas Lukki @ Yunus sat on his chest and pressed his hands. Alizan disclosed that he tightened the noose of 'safi' around the neck of Rajender and Akhtar accused killed Rajender by cutting the neck of Rajender with knife. Thereafter, they dragged the dead body and put the same into the bushes. He also threw his 'safi' at some distance. Yunus had removed the wrist watch from the hand of Rajender whereas Mehboob removed the ring which Rajender was wearing. Alizan, further disclosed that he had taken out wallet from the pocket of Rajender in which the identity card of Rajender as well the hospital slips and ₹150/- currency notes were there and, thereafter, they had left that place. Alizan disclosed that he had kept hidden his blood-stained shirt and aforesaid purse into the pit after removing the earth in the standing *arhar* crop in the farm house of

Bittu, situated at Bavla. He further disclosed that he can get the same recovered by giving *nishandehi* and also can give *nishandehi* of the place where he killed Rajender. He can also get recovered the 'safi' by giving *nishandehi* of the place where he had thrown the same. Accused Lukki @ Yunus also suffered disclosure statement Ex. PE to the same effect. In addition, he disclosed that wrist watch removed from the dead body of Rajender was kept hidden by him after putting the same into a polythene bag under the ground in the standing *arhar* crop of Bittu farm, situated at Bavla. He can get the same recovered by giving *nishandehi*. He also disclosed that he can also give *nishandehi* of the place where he alongwith co-accused had committed murder of Rajender-deceased.

On 07.10.2001, Lukki @ Yunus led the police party to Bittu Farm, Bavla where *arhar* crop was standing and after digging the earth took out a polythene, wherein he had kept wrist watch, make HMT with white and Blue dial and steel chain. The name of Rajender Sharma was engraved at the back of aforesaid wrist watch. After taking out the same from the pit, the same was handed over to SI/SHO Anil Kumar. It was made into a parcel and sealed with the seal of 'OP' and then taken into police possession vide memo Ex PF. Sita Ram and Sanjay signed this memo as witnesses. Site plan of the place of recovery of aforesaid wrist watch was prepared.

On the same day, accused Alizan led the police party to the Bittu farm, Bavla, where, *arhar* crop was standing. He also dig out the earth from the disclosed place and took out his shirt, coloured, white, whereupon on the colour of which Modern Tailor Tauru was written and it was also blood-stained.

The aforesaid shirt (Ex.P8) was concealed after putting the

same into a ploythene. Alizan also took out purse (Ex.P9), colour Black, on which 'with best compliments from Cooper pharma, 27/8, Shakti Nagar, Delhi' was written. Identity card of deceased was also there in the aforesaid purse besides his colour photo (Ex.P10) and ₹150/- currency notes(Ex.P11). The aforesaid blood-stained shirt and purse were produced before the police. Blood-stained shirt was made into a separate parcel and sealed with the seal of 'OP' whereas purse was converted into a separate parcel and sealed with the seal of 'OP'. Both the parcels were taken into police possession vide memo Ex. PG. Seal after use was handed over to PW Sita Ram. Site plan of the place of recovery of aforesaid blood-stained shirt and purse was prepared as Ex. PG/1.

On 09.10.2001, accused Akhtar @ Banda also made disclosure statement on the same lines as made by his co-accused Alizan and Yunus. However, regarding concealment of knife, used by him in the commission of this crime, he disclosed that he had kept concealed knife in the bushes near Kapoor farm, Gurnawat, about which he alone knew and can get the same recovered by giving *nishandehi*. This disclosure statement is Ex. PH.

On 12.10.2001, he led the police party to the aforesaid disclosed place and got recovered knife after removing bushes. That knife was blood-stained and mud was also there on the knife. Rough sketch plan of knife was prepared as Ex. PH/1 and then the same made into a parcel and sealed with the seal of 'GR' and then taken into police possession vide memo Ex. PH/2. Seal after use was handed over to Head Constable Gobind Ram. Rough site plan of the place of recovery of knife was prepared as Ex. PH/3. On the same day, confessional statements of accused Babli @ Sanjay and that of Mahesh @ Kava were also recorded as Ex. PJ and Ex. PK.

However, both the statements were ordered to be excluded from the evidence vide order dated 02.08.2002 being confessional statements of accused recorded by the police. Nothing was recovered at the instance of accused Sanjay and Mahesh in pursuance with their aforementioned disclosure statements. Post-mortem report is Ex. PL. Photographs of the dead body are Ex. P4 to P6 whereas the negatives are Ex. P1 to Ex. P3.

Statements of witnesses were recorded. ASI Om Parkash arrested Mehboob on 10.11.2001, when he surrendered before the Court at Nuh. On interrogation, accused Mehboob suffered disclosure statement Ex. PA/6 to the same effect as was suffered by his co-accused. He also disclosed that the ring which he had removed from the hand of deceased, he had kept hidden in his residential house and can get the same recovered by giving *nishandehi* of the place where the life of Rajender was done away with. In pursuance with this disclosure statement, accused Mehboob led the police party to his residential house and got recovered silver ring at the back of which letters 'RS' were written, from above the main door of his residential house. The same was converted into a parcel and sealed with the seal of 'OP' and was taken into police possession vide memo Ex. PA/7. Site plan of the place of recovery of ring was prepared as Ex. PA/8. Scaled site plan of the spot was also got prepared which is Ex. PB. Report FSL Ex. PC/3 was obtained. After completion of necessary investigations, the challan was put in the Court against the accused.

Finding a *prima-facie* case against the accused for committing offence punishable under Sections 302 and 201 IPC, accused Alizan, Yunus, Akhtar and Mehboob were charge sheeted whereas accused Sanjay and Mahesh were charge sheeted under Section 120-B IPC, to which they

did not plead guilty but claimed trial. After taking entire prosecution evidence, statements of accused under Section 313 Cr.P.C. were recorded wherein they denied each prosecution allegation and pleaded their false implication. Accused also led the defence evidence by way of examining 4 witnesses.

After hearing both the counsel for the parties and appraising the entire evidence and material coming on record, the learned trial Court recorded the judgment of acquittal which is dated 26.02.2003, finding that the prosecution had failed to bring home guilt to the accused beyond any shadow of doubt.

I have heard learned counsel for the petitioners, learned State counsel as well learned counsel for the respondents besides going through the record of this case.

This revision petition was filed by Paras Ram (PW9), brother of deceased Rajender, against acquittal of all the accused. This revision petition was instituted in view of Sections 397 and 401 Cr. P.C..

The extent and ambit of the revisional jurisdiction of High Court to challenge acquittal is well settled by catena of decisions of Apex Court. One of such judgments is **Vankatesan Vs. Rani and another, 2014 (1), ACR 352 (SC)**. In this judgment, it was held that :-

“ The revisional jurisdiction of the High Courts while examining an order of acquittal is extremely narrow and ought to be exercised only in cases where the trial court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Re-appreciation of evidence is an exercise that the High Court must refrain from while examining an order of

acquittal in the exercise of its revisional jurisdiction under the Cr. P.C. Needless to say, if within the limited parameters, interference of the High Court is justified the only course of action that can be adopted is to order a re-trial after setting aside the acquittal. As the language of Section 401 of the Cr. P.C. makes it amply clear there is no power vested in the High court to convert a finding of acquittal into one of conviction.”

On this very point, paras 8 and 10 of the judgment in the case of **Akalu Ahir Vs, Ramdeo Ram, (1973) 2, SCC, 583**, may be usefully extracted below:-

“8. This Court, however, by way of illustration, indicated the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision:

(i)Where the trial Court has no jurisdiction to try the case, but has still acquitted the accused;

(ii)Where the trial Court has wrongly shut out evidence which the prosecution wished to produce;

(iii)Where the appellate Court has wrongly held the evidence which was admitted by the trial Court to be inadmissible;

(iv)Where the material evidence has been overlooked only (either) by the trial Court or by the appellate Court; and

(v)Where the acquittal is based on the compounding of the offence which is invalid under the law.

These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of acquittal”

10. *No doubt, the appraisal of evidence by the trial*

Judge in the case in hand is not perfect or free from flaw and a Court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to reappraise the evidence for itself as if it is acting as a Court of appeal and then order a retrial. It is unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village Mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court”

From the above, it is evident that re-appreciation of evidence is an exercise that the High Court must refrain from while examining an order of acquittal in the exercise of its revisional jurisdiction under the Code. Needless to say, if within the limited parameters, interference of the High Court is justified. The only course of action that can be adopted is to order a re-trial after setting aside the acquittal. As such, the language of Section 401 of the code makes it amply clear there is no power vested in the High Court to convert a finding of acquittal into one of conviction.

Mentioning about the scope of interference of the High Court in exercising its revisional jurisdiction, learned counsel for the respondents argued that in the absence of any legal infirmity either in procedure or in the conduct of trial, there was not justification for the High Court to interfere in exercise of its revisional jurisdiction. It was also argued that the High Court will not be justified in interfering with an order of acquittal merely because the trial Court has taken a wrong view of the law or has erred in appreciation of evidence. Learned counsel for respondents also cited judgment titled as **Bindeshwari Prasad Singh @ B.P. Singh and others Vs.**

State of Bihar (Now Jharkhand) and another, (2002) 3 BLJR 1983 and K. Ramachandran Vs. V.N.Rajan and another, 2009 (2) ACR, 2183(SC).

So far as above discussed proposition of law is concerned, there is no doubt about it. Keeping in view the aforementioned proposition of law, this case has to be decided.

Learned counsel for the revisionist contended that learned trial Court was not justified in rejecting the testimony of Paras Ram (PW9), brother of the deceased, who is the witness of last seen. Likewise, the trial Court has wrongly discarded the statement of Sanjay (PW10), who is also a witness of last seen. It was argued that Paras Ram (PW9) stated that on 01.10.2001, in the morning he had seen accused Mehboob, Akhtar, Alizan and Lukki @ Yunus at the house of his brother Rajender . They were saying to his brother that there was some amount due towards some person of village Gurnawat. As such, Rajender should accompany them as they would bring a buffalo of that persons and shall give the same to Rajender besides a sum of ₹1,000/-. At this, Rajender had gone with them. With this statement of Paras Ram, when Rajender had left in the company of accused and, thereafter, he was not seen but was murdered and his dead body was found later on; then the accused are the one who had done away with the life of Rajender and none else. Likewise, Sanjay (PW10), who is also relation of Rajender i.e nephew of Rajender. Sanjay also deposed that on 01.10.2001, at about 8:00 A.M. he was going to village Naharpur for purchasing a buffalo. At that time, all the accused alongwith Rajender, his uncle, met him at Bavla crossing. He asked his uncle Rajender as to where were they going, to which, he replied that they were going for some work at a short distance and, thereafter, he had gone away for his work. As per this

witness, he was a sales-man at the patrol pump. Not only this, he also deposed that he had seen accused Mehboob, Akhtar, Alizan and Lukki @ Yunus conspiring at the shop of Sanjay, where they were saying that Rajender had given beatings to them and they would take revenge from him. Thus, with this evidence of last seen coupled with the recoveries of wrist watch of deceased by accused Yunus; blood-stained shirt of Alizan (accused); purse containing identity card of Rajender, hospital slip and a sum of ₹150/- from accused Alizan; recovery of knife from accused Akhtar, which was used in the commission of this crime; and ring of deceased Rajender from the possession of accused Mehboob, established the guilt of accused in this case.

Recovery of blood-stained shirt of accused Alizan with the purse containing identity card, hospital slip etc. belonging to accused clearly shows the involvement of accused Alizan in this crime as otherwise there was no point as to how the shirt of Alizan was blood-stained and further as to why the same would be recovered alongwith the articles belonging to deceased. Thus, prosecution has succeeded in bringing home guilt against the accused.

The present case is based on circumstantial evidence. Before basing conviction on circumstantial evidence, certain parameters have been prescribed by Hon'ble Apex Court in Arvind @ Pappu Vs. State (Delhi Administration), 1999(2)R.C.R.(Criminal), 810. The following parameters have been given as:-

(i) Circumstances relied upon in support of conviction must be fully established and the chain of evidence furnished by those circumstances must be so complete as not to leave any reasonable ground for a

conclusion consistent with the innocence of accused.

(ii)The circumstances from which conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused and should not be capable of being explained by any other hypothesis except the guilt of the accused.

(iii)All the circumstances cumulatively taken together should lead to only irresistible conclusion that accused alone is the perpetrator of the crime.

Accused Sanjay and Mahesh have been charged for criminal conspiracy with the allegations that they agreed to pay a sum of ₹1 lac to co-accused for causing murder of Rajender. They hatched this conspiracy on 27.09.2001. In fact, there is no convincing evidence available on the record in this regard. Prosecution did not keep any witness to prove the factum of conspiracy. Of course, Sanjay, who is also a relation witness of deceased, as PW10 deposed that he had seen accused Mehboob, Akhtar, Alizan and Lukki @ Yunus conspiring at the shop of Sanjay regarding collection of donation money where Sanjay was given beatings. In fact, from this statement, nothing can be made out. He also deposed that they were saying that Rajender had given beatings to him and they would take revenge from him and that something wrong has been done to them. Again, from this statement, it is not made out that Mahesh was also present at the shop of Sanjay at the time of conspiracy. Also Sanjay (PW10) did not state as to what was conspired between Sanjay and accused. He did not state that accused ever agreed to give a sum of ₹1 lac to the accused for doing away with the life of Rajender; or had in fact gave that amount to them. This witness is the near relation of Rajender. During the course of his cross-

examination though in the first instance, he deposed that he cannot tell the exact day, date or time when he saw accused persons sitting in the shop of accused Sanjay yet in the next breath he deposed that he saw them some four or five days prior to 01.10.2001. He further deposed that he did not tell the police about it nor to anybody else before 02.10.2001. It is highly unbelievable that a close relation of deceased would not divulge the factum of conspiracy if at all hatched against his real uncle i.e. deceased Rajender. Under these circumstances, the finding recorded by the learned trial Court that the witnesses are the relation witnesses and further that there testimonies are not believable; cannot be said to be perverse or mis-reading of evidence.

Police, of course, recorded disclosure statements of accused Sanjay and Mahesh as Ex. PJ and Ex. PK yet during the course of recording of statement of Satish (PW11), the learned trial Court ordered, after hearing the objection of defence counsel, that the statements are inadmissible in evidence being in the form of confession; that the objection raised by the defence was ordered to sustain and as such the aforesaid statements were ordered to be excluded as a whole from the evidence of the prosecution. Likewise, the portion of the disclosure statements of co-accused Alizan Ex. PD, Lukki @ Yunus Ex. PE, Akhtar Ex. PH and Mehboob Ex. PA/6 whereby they confessed their guilt and factum of conspiracy between Sanjay, Mahesh and Alizan were ordered to be excluded from the evidence. Besides this there was not even an iota of evidence available on the file so as to prove the factum of conspiracy regarding commission of this crime between Sanjay, Mahesh and Alizan or any other accused. As such, acquittal of Sanjay and Mahesh recorded by the learned trial Court in no

way suffers from any illegality.

In fact, in a case, based on circumstantial evidence, prosecution has to establish that the chain of evidence furnished by the circumstances relied upon in support of conviction must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of accused. Even the circumstances so established should be consistent only with the hypothesis of the guilt of the accused and should not be capable of being explained by any other hypothesis except the guilt of the accused and further that all the circumstances so established, should be of a conclusive in nature. The circumstances of last seen cannot be said to be conclusive in nature which could be said to be consistent with the hypothesis of the guilt of the accused. Paras Ram (PW9) of course deposed that on 01.10.2001 in the morning, he had seen accused Mehboob, Akhtar, Alizan and Lukki @ Yunus at the house of his brother Rajender and further that some amount was due towards some persons of village Gurnawat and they would go to that person and bring his buffalo and requested his brother to accompany them and offered a sum of ₹1,000/- and a buffalo, if he accompanies them. At this, his brother accompanied them. This very statement does not justify the going of Rajender with the accused and there was no point for the accused to take Rajender alongwith for bringing buffalo and then to give the same to Rajender. If the accused wanted to realise their money out of the sale of buffalo then why would they give that buffalo to Rajender besides a sum of ₹1,000/-. In fact, there is no mention about the person belonging to Gurnawat who was oweing money to the accused. It is also there in the statements of PW9 and PW10 that accused were known to them. Under those circumstances, if Rajender did not return home for the whole day and

even during night, no effort was made by PW9 to locate Rajender is highly unbelievable. When Rajender was taken by the accused from his home by telling him to accompany them to village Gurnawat as they were to bring a buffalo of a person oweing money to them in order to realise their money; would not go to the accused or to village Gurnawat to know about whereabouts of Rajender when he did not return home. He even did not tell about it, to the police nor to anybody in the house before 02.10.2001. All these facts show that in fact Paras Ram (PW9) was not present in the house of Rajender at the relevant time. Likewise the statement of Sanjay (PW10) is not believable on the point of last seen evidence as he also did not disclose the factum of seeing deceased in the company of accused on 01.10.2001; before 02.10.2001. Deceased is the uncle of Sanjay (PW10). Had Sanjay seen the deceased in the company of accused on 01.10.2001, he would have at least told the family members about this fact but he did not tell, for the reasons best known to him. As such, the case of the prosecution cannot be said to be free from doubt.

Recoveries were allegedly got effected by the accused in pursuance with their disclosure statements, while appraising the statement of PW9 Paras Ram, the learned trial Court concluded that the statement of Paras Ram found to be contrary when compared with disclosure statements Ex. PD and Ex. PE. This finding of learned trial Court again cannot be termed to be mis-reading of evidence. Thus, if statement of Paras Ram (PW9) is not free from doubt on the point of recording of disclosure statements of accused Alizan and Yunus in his presence, the recoveries got effected by them in pursuance with their disclosure statements also cannot be said to be free from doubt. Under these circumstances, the finding of

learned trial Court that the prosecution did not join any independent witness and only kept relation witnesses in the case whose statements are not free from doubt also does not suffer from any illegality.

The learned trial Court further noted that the ring got recovered by accused Mehboob, in pursuance with his disclosure, was having alphabets 'RS'; written thereupon where as per SI Anil Kumar, alphabet 'R' was on the ring. Under these circumstances, statements of aforesaid two witnesses are not inconfirmity with each other even on the point of inscription on the recovered ring. As such, the recovery of ring from the possession of accused Mehboob cannot be said to be free from doubt as the prosecution could not prove on the file that the ring got recovered by accused Mehboob was the one actually belonging to deceased Rajender.

As a result, this case cannot be said to be a case where trial Court has wrongly admitted the inadmissible evidence or where the material evidence has been over-looked by the trial Court. However, keeping in view the settled proposition of law that on revision by a private complainant High Court cannot re-appraise the evidence as if it is acting as a Court of appeal, therefore, finding no ground to interfere in the impugned judgment of acquittal dated 26.02.2003 on the revisional side. It is ordered to be dismissed.

(RAJ RAHUL GARG)
JUDGE

12-4-16
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