

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2797-2014 (O&M)

Date of decision: 27.11.2017

Paramjit Kumar

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Inderjit Sharma, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the judgment dated 14.09.2007 passed by the trial Court acquitting the respondents-accused as well as the order dated 21.11.2013 passed by the revisional Court, dismissing the revision petition filed by the State of Haryana.

Brief facts of the case are that the complainant HC Paramjit Kumar got registered FIR No.118 dated 11.12.2001 under Sections 353, 332, 186, 356, 295-A, 342, 148, 149 of the Indian Penal Code ('IPC' for short) at Police Station Dinanagar against the respondents-accused with the allegations that on 11.12.2001, he had gone to the village of accused persons on receiving a complaint filed by Rani Devi and during the inquiry, Diwan Chand became furious and slapped co-official HC Baldev Singh and caught them from their uniform. The other co-accused gave slaps, chappal blows and torn the uniform.

It was also alleged that the co-accused took away the belt, gold ring and identity card. After registration of FIR, the challan was presented and charges were framed against all the respondents-accused persons under Sections 332, 342, 353, 148, 149 IPC.

The prosecution, in order to prove its case, examined five witnesses i.e. PW1 Dr. Ramesh Mahajan, who medico-legally examined HC Baldev Singh vide MLR Ex.RW-1/4, PW2 HC Baldev Singh appeared and deposed on the line of the Fir. Similarly, PW3 HC Sulakhan Singh and PW4 HC Paramjit Kumar, an eye witness also deposed on the line of the version given in the FIR. PW5 SI Surjit Singh, who conducted the investigation, deposed about the same. Thereafter, the statement of accused persons under Section 313 Cr.P.C. was recorded in which they denied all the incriminating evidence against them and pleaded false implication.

The trial Court vide its impugned judgment dated 14.09.2007 acquitted the respondents-accused. Thereafter, State of Punjab filed appeal before the lower appellate Court, which was also dismissed. The operative part of the judgment passed by the lower appellate Court is reproduced as under: -

“I have examined the record and proceed in the context of submissions made before this Court. However, this Court would like to notice the cardinal rules to be applied while dealing with an appeal against acquittal reiterated by the Hon’ble Apex Court in a judgment reported at 2011 (3) SC, 529 as under: -

“There cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal against the acquittal or conviction stands ought to be very

comprehensive and wide, but if two views are reasonably plausible on the state of evidence, one supporting the acquittal and the other indication conviction, then in that event, the Hon'ble Court would not be justified in interfering with the order of acquittal, merely because it feels that it, sitting as trial Court would have taken the other view. While re-appreciating the evidence, the rule of prudence requires that High Court should give proper weightage and consideration to the views of the trial Court's judgment. But if the judgment of the Sessions Judge was absolutely perverse legally erroneous and based on wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge as otherwise there would be gross miscarriage of justice."

In judgment reported at (1996) 9 SC, 225, the Hon'ble Supreme Court held as follows:

"While sitting on judgment over an acquittal, the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstratively unsustainable. If, the appellate Court's answer the above question in negative, the order of the acquittal is not to be disturbed. Conversely, if the appellate Court holds, for the reason to be recorded that the order of acquittal cannot, at all, be sustained in

view of any of the above infirmities, it can then and then only re-appreciate the evidence to arrive at its own conclusion.”

Keeping in mind the above dictum, this Court proceeds to examine as to whether there is any perversity in the impugned judgment. As noticed already, the respondent was tried on the allegations that on 11.12.2001 at about 6:00 pm, in the area of Singhowal, they formed an unlawful assembly with the common object to commit offence of rioting. The prosecution also alleged that respondents, on the same date time and place, in furtherance of common intention, caused voluntarily hurt to HC Baldev Singh, a public servant, in order to prevent him from discharging his official duty. The prosecution also alleged that respondents, on the same date, time and place, in furtherance of common intention wrongfully confined HC Baldev Singh. The prosecution also alleged that the respondents, on the same date, time and place, in furtherance of common intention, assaulted or used criminal force against HC Baldev Singh, a public servant with intent to prevent him from discharging his official duty. The prosecution also alleged that the respondents, on the same date, time and place, in furtherance of common intention, assaulted or used criminal force against HC Baldev Singh, a public servant attempting to snatch certain property i.e. belt, golden ring, ID card and wrist watch mark citizen, which are worn by him. In order to prove its case, the prosecution has examined as many as six witnesses including

injured HC Baldev Singh (PW-2) and alleged eye witness/complainant Paramjit Kumar (PW-5). The trial Court held that in view of the factual circumstances and from the evidence produced on record by the prosecution, it has failed to prove its case against the accused beyond shadow of reasonable doubt.

The prosecution has, though examined as many as six witnesses including injured HC Baldev Singh (PW-2) and alleged eye witness/complainant Paramjit Kumar (PW-5), however, it has failed to prove its case against the respondents/accused beyond any shadow of reasonable doubt. The contention of the learned Additional Public Prosecutor for the State that prosecution has proved its case against all the respondents/accused beyond any shadow of reasonable doubt through the testimonies of PW-2 and PW-5 but this contention does not cut any ice. No reliance can be placed upon the deposition of PW-2 and PW-5 being do not inspire confidence. It is admitted by the witnesses that the first complaint of Rani resulted in proceedings under Section 107/151 Cr.P.C. against Nirmal Kumar who was attested at 5:55 PM. The proceedings u/s 107/151 Cr.P.C. Ex.DA bears the signature of HC Baldev Singh and HC Paramjit Kumar. It means that HC Baldev Singh and Paramjit Kumar were busy in the arrest of Nirmal Singh on the complaint of Rani u/s 107/151 Cr.P.C. on 11.12.2001. Nirmal Kumar was admitted at 5:55 PM. If Baldev Singh and HC Paramjit Kumar were busy in the arrest of Nirmal Kumar at 5:55 PM as to how they could be dealing with the

second application at 4:00 PM in the village and questioning the accused. Admittedly, the second application was received by the police after the first application, the second application was received by the police after the first application and till 5:55 PM, they were engaged in the first application itself. As per the prosecution case, the police raided the village at 4:30 PM on the second application. Since HC Baldev Singh and HC Paramjit Kumar were busy in the arrest of Nirmal Kumar on the first application of Rani till 5:55 PM, therefore the version of the prosecution that they raided the village at 4:30 PM on the second application and called that the accused for questioning appears to be unbelievable. So, in the given circumstances, no reliance can be placed on the deposition of PW-2 and PW-5. It may also be added that the alleged application of Rani, on the basis of which, police party went to the village for investigation, has not been proved on record. Meaning thereby the foundation of the prosecution case is lacking on record. So much so the prosecution has also failed to examine on record complainants Rani and Mangal to prove its version. Meaning thereby the prosecution has withheld the material and best available evidence, which could throw light on the controversy involved in the present case. No reason, what to cause of plausible reason, has been assigned on record by the prosecution for non examination of above named complainants namely Rani and Mangal. So in the given circumstances, adverse inference is liable to be drawn against the prosecution as it is well

settled proposition of law that if a party has failed to produce material and best available evidence, requires for jus adjudication of controversy, in that case adverse inference would be drawn against that party. It is also worth making mention that the handwriting of first application alleged to have been moved by Rani, do not tally with the handwriting of second application moved by Rani, which itself strengthen the contention of the accused that this application was actually written by MHC himself and handwriting of this application matches/tallies with the handwriting of memos proved on record Ex.PW-3/A to Ex.PW-3/C. It may also be added that the case property produced in the Court were not having any stamp nor it bears the signature of the IO. Due to these reasons, no sanctity can be attached to the case property and the case property produced in the Court cannot be connected with the present case as anything can be planted upon the accused at any time being case property produced in the Court was not duly sealed and having no signature of the IO.

As a sequel of my above discussion, no interference is called for which the impugned order. Accordingly this appeal fails and is hereby dismissed. Lower Court record be sent back forthwith along with a copy of this judgment. Appeal file be consigned to the record room, after due compilation.”

It is submitted on behalf of the petitioner that from the statement of complainant-injured HC Baldev Singh PW2 and eye witness HC Paramjit Kumar PW4, it has come on record that the accused persons have caused

injuries to the appellant, while he was on his official duty, threatened him and taken away his belt, gold ring and identity card. It is also submitted that when the first complaint of Rani Devi resulted into proceedings under Section 107/151 Cr.P.C. against Nirmal Kumar, which is Ex.DA, it bears signatures of HC Baldev Singh and PW5 Paramjit Kumar, which shows that the complainants were present at the spot regarding inquiry of the complaint made by Rani Devi. It is further submitted that the injuries are also proved from the statement of PW1 Dr. Ramesh Mahajan, who has proved MLR of injured HC Baldev Singh and therefore, the ocular version is corroborated by the medical version. It is also submitted that the Courts below have taken into consideration minor discrepancies, which are bound to occur due to lapse of time and has prayed for allowing the revision petition, as the testimony of PW2 and PW4 are sufficient to hold the respondents-accused guilty of offences.

It may be noticed that this revision petition was filed in the year 2014 and is pending since then and notice of motion has not been issued so far, as the petitioner was taking dates in the intervening period.

I have perused the lower Courts record with the assistance of learned counsel for the petitioner and have gone through the judgments passed by both the Courts below. I find no merit in the present revision on the basis of following findings: -

- (i) When the complainant had visited village of respondents-accused to enquire about the complaint made by Rani Devi, on 11.12.2001 at about 6:00 PM, the proceedings were initiated under Sections 107/151 Cr.P.C. against Nirmal Kumar and the proceedings Ex.DA, which bears signatures of HC Baldev Singh and HC

Paramjit Kumar, were attested at about 5:55 PM. The present complaint, on the basis of which, the petitioner has set up a case that he had gone for enquiry at 4:00 PM in the village. It is the case of the prosecution itself that the second application was received by the police after enquiry of the first application was done, however, the facts speak otherwise. Therefore, no reliance can be placed on the deposition of PW2 Baldev Singh and PW4 Paramjit Kumar, as the alleged application of Rani Devi, regarding which the police had already gone to the village for investigation, has not been produced on record and thus, it remained unexplained how PW2 and PW4 have gone to the village for the second time as per their own version. It is also a matter of record that neither complainant Rani Devi nor complainant Mangal were produced as prosecution witnesses to prove that any such complaint was moved before the police and both the oral as well as documentary evidence has been withheld by the prosecution.

- (ii) Both the Courts below have recorded a finding that on a bare perusal of the memos proved on record as Ex.PW-3/A to Ex.PW-3/C, if compared with the second application moved by Rani Devi, the handwriting do not tally and thus, a finding has been recorded by both the Courts below that this application has been written by the complainant himself as the handwriting on this application match/tally with the abovesaid memos. The Courts below have also recorded a finding that the case property was not having any stamp or signature of the Investigating Officer and therefore, no

sanctity can be attached with the same.

- (iii) It is also worth noticing here that the respondents-accused, who are 11 in number, are facing the agony of trial for the last about 16 years and the prosecution has failed to prove its case before both the Courts below in view of the judgment of the Hon'ble Supreme Court in case **Allarakha K. Mansuri Vs. State of Gujarat, 2002 (1) RCR (CrL.) 748**, wherein it has been held that where two views are possible, the view favouring the accused, be upheld by the appellate Court. In the instant case, both the Courts below have, on appreciation of evidence, found that the prosecution has failed to prove its case.

In view of the above, I find no merit in the present revision petition, as the impugned judgments do not suffer from any illegality.

Accordingly, present revision petition is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

27.11.2017
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No