

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CRA-D-886-DB of 2011
Date of decision: March 14, 2018**

Idrish

.....Appellant

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. Harmandeep S. Brar, Advocate for the appellant..

Mr. Kuldeep Tewari, Addl. A.G., Haryana.

Ms. Sarbhjeet Kaur, Advocate for
Mr. Gautam Dutt, Advocate for respondents No.2 to 6.

A.B. CHAUDHARI, J.

The present appeal has been filed by the appellant/complainant against the judgment of acquittal dated 23.07.2011, passed by the learned Additional Sessions Judge, Nuh, whereby, private respondents No.2 to 6 were acquitted of the charge framed against them.

Heard learned counsel for the rival parties.

Learned counsel for the appellant vehemently contended that the ruqua as well as FIR itself clearly shows the overt act on the part of private respondents in catching hold of the deceased and thereafter, the main accused making an assault on the deceased.

According to the learned counsel for the appellant, the trial Court therefore, committed an error in acquitting the private respondents who were charged under Section 302 Indian Penal Code read with Section

149 of Indian Penal Code in the crime as they had formed an unlawful assembly. He therefore submitted that the order of acquittal against private respondents be converted into one of the conviction.

Learned senior counsel for respondents No.2 to 6 opposed the appeal against acquittal and submitted the parameters laid down by the Apex Court in the case of Darshan Singh versus State of Punjab and another (2010)SCC 333 in Para 61 which is as under:-

“61. In a case of acquittal, if the trial court's view is a possible or plausible view, then the appellate court or the High Court would not be justified in interfering with it. It is the settled legal position that there is presumption of innocence and that presumption is further fortified with the acquittal of the accused by the trial court. The appellate court or the High Court would not be justified in reversing the judgment of acquittal unless it comes to a clear conclusion that the judgment of the trial court is utterly perverse and, on the basis of the evidence on record, no other view is plausible or possible than the one taken by the appellate court or the High Court.”

He further submitted that this Court would not interfere with the order of acquittal. According to him, trial Court has given sound reasons for recording the order of acquittal of respondents No.2 to 6.

After hearing learned counsel for the rival parties we find that the overt act attributed is only to the Naseem that he had injured the deceased by a dangerous weapon.

We have already decided the appeal No.CRA-D-731-DB of

2011 preferred by Naseem vide order of even date.

We have carefully considered the submissions made by learned counsel for the parties so also reasons recorded by the trial court for recording the acquittal of the respondents. We have perused the trial Court judgment and the reasons for acquittal in Paras 40, 41, 42 & 43 which are as under:-

“40. A perusal of statement of PW4 complainant Idrish would go to show that with regard to participation of five accused Ali Mohd., Nasru, Yakub, Jaina, Jamila his statement is not worthy of credence. Before proceeding further in the matter, it will be worthwhile to refer to his statement Ex.PE made by him for the first time before ASI Balwan Singh PW5, wherein he attributed the overt act against the said accused by stating that all the said accused including accused Nasim suddenly came on the way, when he alongwith his deceased son Hakam was walking away to the plot of PW9 and said accused pounced upon them. Accused Yakub and Jaina gave a lalkara not to spare Hakam and accused Ali Mohd. and Nasru were also saying that they be secured with the help of hands and thereafter Yakub and Jamila caught hold his son Hakam from behind and further accused Jamila caught hold both the hands of his son and in the meantime accused Nasim dealt a knife blow on the head of Hakam, which hit him on the back portion of neck, which resulted into the fall of deceased on the ground, who fell unconscious and thereafter accused Ali Mohd. and Nasru gave fist and slap blows to deceased, while he was lying on the ground. Now the said version is to be tested as to what he has stated in the court on oath as PW4. In his examination in chief,

he has simply stated that accused Yakub and Jaina gave a lalkara that Hakam should not be allowed to go. However, in his statement Ex-PE, he stated that Hakam should not be spared. From both the assertions, it is clear that there was no exhortation to commit murder of deceased Hakam. Matter goes a step further. He has further stated that accused Ali Mohd. and Nasru raised Lalkara to encircle Hakam and he should not be spared, wherein in his statement Ex-PE before the police, there is no specific reference of encircling Hakam rather it is attributed to both the complainant and Hakam. There is further no use of word that they should not be spared rather it is stated that the victim should not go out of the clutches. In the statement Ex-PE of PW4 before the police as well as statement made in the court, there is no reference as regards the said accused also exhorting a lalkara to commit murder of deceased Hakam. As per his own version, all the said five accused Nasru, Ali Mohd., Yakub, Jamila and Jaina were unarmed. There is further nothing in his statement that said accused knew that accused Nasim was having screw driver in his hand. It is further nothing in his statement that accused Nasim was brandishing screw driver openly proclaiming to kill deceased Hakam.

41. Therefore, in my considered opinion, this court is not inclined to place implicit reliance on the statement of PW4 as regards the participation of aforesaid five accused. No overt act has been attributed to them and the falsity of the involvement of said accused came to fore when PW4 Idrish in his examination in chief did not utter even a single word as regards accused Ali Mohd. and Nasru giving fist

and kick blows to deceased Hakam, while he was lying on the ground after receipt of initial blow on the back of his head by accused Nasim. However, in Ex.PE, the said acts of fist and kick blows have been attributed to said accused. Moreover, from a perusal of MLR Ex.PD of the deceased, there is not even complaint of pain on any other part of his body. The said MLR nowhere shows that deceased Hakam was unconscious at the time of his admission though he was drowsy. Had he received injuries by fist and kick blows by Ali Mohd. and Nasru accused then obviously reference of complaint of pain ought to have been recorded in his MLR.

A perusal of cross examination of PW4 would further go to show that as per him, occurrence lasted for about five minutes but as per scaled site plan Ex.PC, the distance between place of occurrence mark A is at a far distance from point B where PW9 Jamil is alleged to have seen the occurrence. Though in site plan Ex.PC Sat Parkash Patwari has not shown the distance between two places yet the statement of complainant PW4 is required to be scanned to get the confirmation as regards the location of PW9 and further to actually get the clarification as regards the actual presence of PW9 at the spot. PW4 in his cross examination has stated that Jamil PW9 came at the spot after the injury had already been given to Hakam. PW4 further stated in his cross examination that Jamil reached at the spot after 4-5 minutes on hearing the noise, who at that time was busy in digging the bore in his plot. However, there is no reference in his statement as regards the presence of children of Jamil reaching the spot after attracting the hue and cry,

whereas a perusal of statement of PW9 Jamila would go to show that house of Idrish was at a distance of 2 acre from his plot and the place of occurrence was at a distance of half acre from his plot. He further states that he rushed to the spot alongwith his three children and at that time he was empty handed, whereas PW4 has stated that Jamil at that time was armed with a spade. He further nowhere stated that children of Jamila also reached at the spot, which creates reasonable doubt in the mind of this court regarding the presence of PW9 at the spot.

42. There is force in the contention of learned defence counsel that had the accused Yakub and Jamila secured the person of deceased Hakam from behind then the injury to deceased Hakam on the back side of his head near the neck could not have been possible. It appears to me from the evidence that five accused Nasru etc. have been roped in falsely by PW4 in order to exaggerate that occurrence in as much as no overt act has been attributed to them. It has come in the cross examination of PW4 Idrish that Abdul Karim Lamberdar was allotted certain land by his grand father and said Abdul Karim was his nephew. It has come that the said land was allotted to him by his grand father to enable him to become Lamberdar. In the statement of DW4 Abdul Aziz Lamberdar, it has come that because of the said allotment of land by the grand father of accused party and the complainant, the parties were nursing a grudge and there were strained relations between them as Abdul Karim Lamberdar was not giving back the land. From the cross examination of PW4, it has further come that all the accused and the complainant are from the lineage of

common grand father.

43. Thus from the above scenario, a reasonable doubt has emerged in the mind of this court as regards the involvement of said five accused in the commission of crime. This doubt becomes more consolidated when PW5 Balwan Singh SI in his cross examination categorically stated that during the course of investigation it came that accused and complainant party belong to one family and both the families had given their land to Abdul Karim to make him a Lamberdar. This is a reason why the said accused were not challaned by the police and were found innocent and were subsequently summoned by the court under Section 319 Cr.P.C.”

We agree with the aforesaid finding of the trial Court. Finding of the trial Court shows that there was delay of four days in reporting the incident, insofar as the private respondents are concerned. In the absence of any specific overt act on their part, we do not think that trial Court committed any error in recording the order of acquittal of respondents.

In that view of the matter, we find no merit in the present appeal and the same is dismissed.

(A.B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

March 14, 2018
anju rani

Whether speaking/ reasoned: Yes/No
Whether Reportable: Yes/No