

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. CRA-S-1041-SB-2015 (O&M)
Date of decision : 27.08.2019

Manoj Kumar Jindal

...Appellant

Versus

State of Punjab and others

...Respondents

2. CRA-S-1247-SB-2015 (O&M)
Date of decision : 27.08.2019

Manoj Kumar Jindal

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Sherry K. Singla, Advocate for the appellant
(In both the appeals)

Mr. Sandeep Kumar, Deputy Advocate General, Punjab.

Mr. R.S. Bains, Advocate for private respondents.

ANIL KSHETARPAL, J.

By this common order, two criminal appeals bearing CRA-S-1041-SB-2015 and CRA-S-1247-SB-2015, filed by the victim/injured shall stand disposed of.

It is debatable as to whether appeal would be maintainable where trial Court, in a case arising from the FIR, orders conviction and the appellate Court in the appeal filed by the accused, orders acquittal under Section 378 read with proviso to Section 372 (added w.e.f. 31.12.2009) or not?. However, without going into the aforesaid issue, this Court has heard learned counsel for the parties at length and with their able assistance gone through the common judgment passed by the First Appellate Court (Additional Sessions Judge, Sangrur).

Some facts are required to be noticed.

As per the case of the prosecution, a message was received at Police Station Malerkotla from Civil Hospital Malerkotla on 13.10.2009 regarding admission of appellant/victim/injured Manoj Kumar Jindal. ASI Harnek Singh alongwith other police officials visited the Civil Hospital Malerkotla from where they learnt that injured was referred to Rajindra Hospital, Patiala. On 14.10.2009 a telephonic message from mobile no. 90236152 was received regarding readmission of injured in Civil Hospital, Malerkotla. Whereupon ASI Harnek Singh proceeded to record the statement of the injured/complainant after getting note from the Doctor. Victim stated that he is resident of Samson colony, Malekrotla, shopkeeper by profession. On 12.10.2009 at about 08:00 PM when he was going back to his home after closing his shop on his motorcycle and had reached near Sabzi Mandi gate of college, a white car make Zen came from behind and obstructed his passage. Five occupants of the car namely Ashok Jain S/o Qamit Rai Jain, Ajay Jain, Krishna @ Daddi, Ajay and Karampal came out of the car at which point 3 young people who were riding came there. Ajay

Jain while making gestures towards the complainant indicated to them that victim is the same person and he should not be left alive. One of the occupant of the motorcycle who was holding an iron Parkhi (an implement used for taking samples from the jute bags) measuring 2-2.5 feet gave 3 blows to him-2 blows were given on the back of his head and one blow was given in the front of his head. Thereafter another occupant of the motorcycle who was also holding an iron Parkhi gave 4 blows on the body of the victim, out of which one blow was on the back, another on the finger and another one on the left wrist of the victim. The third occupant of the motorcycle, who was wearing a punch in his hand, gave punch blow on the face of the victim which resulted in injury on the upper portion of the right eye and cheeks. All the persons who had alighted from the car exhorted the assailants. However, in the meantime, servant of the victim, Mohd. Ashraf and Ashwini Sharma came at the spot and raised alarm. Some passerby on hearing the cries of the victim and alarm raised by Mohd. Ashraf and Ashwini Sharma, gathered on the spot and on which all the accused fled away from the spot alongwith their respective weapons. Thereafter servant of the victim, Mohd. Ashraf arranged a vehicle and got him admitted in the Civil Hospital, Malerkotla, where after giving first aid treatment, the doctor referred him to Rajindra Hospital, Patiala. The motive behind the occurrence is that sister-in-law of the victim is a teacher in Jain Sabha School and there is a dispute between the managing committee of the school and the school staff.

Prosecution examined victim Manoj Kumar as PW1, Ashwani

Kumar as PW2, Dr. Mohinder Singh as PW3, HC Parveen Kumar as PW4,

Shashikant as PW-5, HC Mukhtiar Singh as PW6, ASI Harnek Singh as PW7. Statements of the accused were recorded under Section 313 Cr.P.C. wherein accused denied of the circumstances appearing against them in prosecution evidence and pleaded false implication. However, no ocular evidence in defence was led but the documentary evidence i.e. certified copy of order dated 28.02.2013 Ex.DA, certified copy of application dated 22.09.2009 Ex.DB, calendra under Section 107/151 Cr.P.C. Ex.DC, copy of DDR Ex.DD, certified copy of order of High Court Ex.DE and certified copy of judgment and decree dated 15.04.2014 Ex.DF, were produced.

Learned trial Court convicted Ashok Kumar, Ajay Jain, Krishan Chand Jain, Karampal and Ajay Jain with rigorous imprisonment for a period of 2 years with a fine under various provisions of the Indian Penal Code.

Two appeals were preferred. One appeal was filed by Ashok Kumar, Krishan Chand Jain and Karampal whereas other by Ajay Kumar Jain, Ajay Jain. Both the appeals were disposed of by a common judgment dated 19.01.2015 setting aside the judgment of conviction and consequently order of sentence, that is how these two appeals have been preferred.

Learned First Appellate Court has found following reasons to accept the appeals:-

- 1). Prosecution has failed to prove that the respondent persons, who are not attributed to have caused any injury to the victim, has failed to prove their common object. Respondents were sought to be made liable on the basis of common object as provided in Section 149 of the Indian Penal Code. The Court found that the prosecution has

failed to prove common object due to which every member of the lawful assembly shall be guilty of the offence committed.

- 2). Medical evidence produced by the prosecution creates a reasonable doubt on the correctness of the case set up by the prosecution. PW3 Dr. Mohinder Singh has categorically deposed that he had examined Manoj Kumar Jindal, appellant/victim on 12.10.2009 at 10.00 PM when patient was conscious, cooperative and well-oriented to time, space and stable. He noticed the injuries Nos.6 and 7, were already stitched wounds on the right eyebrow and right cheek. This witness when cross-examined, stated that he had asked the patient victim whether he had been previously medically examined or not on which victim had stated that he had not been previously examined. Doctor also stated that he is not in a position to comment, whether injury Nos.6 and 7 may have been caused due to fall on the hard surface because wounds were already stitched.
- 3). When victim appeared in the Court as PW1, he deposed that he was initially treated by Dr. Gurmeet Singh Sodhi in a private clinic but he is not in possession of any record of the said treatment.
- 4). The Court also noticed that as per the statement of the victim, which was the basis of FIR Ex.P1 dated 12.10.2009, his servant Mohd. Ashraf and his friend Ashwini Sharma after arranging vehicle got him admitted in Civil Hospital, Malerkotla where after giving first aid, Doctor referred him to Rajindra Hospital, Patiala. At Rajindra Hospital, Patiala, his treatment and tests were conducted and he was sent back on 13.10.2009. Hence, the Court found that there is no

evidence with regard to treatment from Dr. Gurmeet Singh Sodhi and the victim has made improvement.

- 5). Still further, the Court found that from the perusal of various documents produced by the defence, as also admission of the victim, it is proved on file that there were hostilities between the parties which further aggravates the doubt regarding the version of the victim.

Learned counsel for the appellant while referring to the judgment passed by the learned trial Court, has submitted that learned trial Court has convicted respondents on appreciation of evidence. Hence, he submitted that the judgment passed by the learned First Appellate Court is not sustainable.

No doubt, learned trial Court had convicted the respondents, however, learned First Appellate Court, on re-appreciation of evidence, has found that the prosecution has failed to bring home the guilt of the respondents-accused beyond the shadow of reasonable doubt. It is well settled that before the Court orders conviction, the prosecution is required to prove its case beyond shadow of reasonable doubt. The standard of proof required in criminal case is high. If on examination of the evidence led, it is established that the prosecution has failed to remove all reasonable doubts or some link is missing, the Court would not convict the accused on the basis of insufficient evidence. It is admitted fact that Mohd. Ashraf, servant has not been examined. Appellant-injured was examined by Dr. Gurmeet Singh Sodhi, first of all who had stitched wounds i.e. injury Nos.6 and 7 but this fact is not part of the statement of the victim which resulted in

registration of the FIR. No evidence of treatment from Dr. Gurmeet Singh Sodhi has been produced. Still further, the statement of Dr. Mohinder Singh in cross-examination creates a doubt as to how the victim suffered injuries. Still further, the hostilities between the parties is admitted by the victim and stands established from various documents produced.

It is also well settled that while deciding appeal against the acquittal, the Appellate Court should not interfere if the view taken by the Court against which appeal has been filed is reasonable and probable.

Learned counsel for the appellant failed to point out as to how the view of the learned First Appellate Court was neither reasonable nor probable.

In view thereof, this Court does not find any ground to interfere.

Accordingly, both the appeals are dismissed.

27.08.2019

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**