

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

**CRA-D-705-DBA of 2003 (O&M)
Date of Decision: 25.11.2019**

STATE OF PUNJAB

.....Appellant

VS.

PARGAT SINGH

.....Respondent

**CORAM : Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mr. Justice H.S. Madaan.**

**Present : Mr. A.A. Pathak, DAG Punjab
for the appellant-State.**

**Ms. Puja Chopra, Advocate,
for the respondent-accused.**

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment dated 29.01.2003 passed by Additional Sessions Judge, Patiala, vide which the accused/respondent was acquitted of the charges in FIR No.52 dated 22.03.2000 registered under Sections 307, 324 and 323 IPC at Police Station Kotwalia, Nabha.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No. 2 is reproduced as under:-

“2. Briefly, the story put forth by the prosecution is that on 19.03.2000 on receipt of medical chit No.115 dated 19.03.2000 from E.M.O., Civil Hospital, Nabha, pertaining to the admission of Mohni Kumar son of Dev Raj, ASI Thura Ram along with his police companions

reached Civil Hospital, Nabha. However, the concerned doctor opined the injured to be unfit to give statement. No other person was found there, who could state about the occurrence. Then, again on 20.07.2000, ASI Thura Ram along with his companions had gone to Civil Hospital, Nabha. The concerned doctor reported that injured has been referred to Rajindra Hospital, Patiala. Then, on 21.03.2000, ASI Thura Ram along with his companions had gone Rajindra Hospital, Patiala, where again, the concerned doctor opined the injured to be unfit to give statement. Mother of injured was present there and she was enquired about the occurrence. But, however, she stated that only her husband Dev Raj knows about the same, who has gone to make arrangement for the money and that she will send him as soon as he comes, but however, Dev Raj did not come. On 23.03.2000, ASI Thura Ram along with his police companions again reached Rajindra Hospital, Patiala. Concerned doctor opined injured Mohini Kumar, to be fit to make the statement and thereafter, ASI Thura Ram recorded statement of Mohini Kumar injured to the effect that "He is running shop, opposite Mata Rani Mandir. ON 19.03.2000 at about 4.30 p.m., he was doing lighting work in the courtyard of the Mandir, there Pargat Singh son of Jangir Singh came. He was under the influence of liquor and complainant told him as to why he had come to the Mandir in drunkard condition. Pargat Singh accused abused him and complainant tried to stop him and then Pargat Singh gave two blows with the knife, which he was holding. One blow was given on the left shoulder of the complainant and the other blow was given on the left side of his stomach. He raised raulla and then, his father, who was working in the

Mandir came running and rescued the complainant and people had collected there and then Pargat Singh ran away. Whole occurrence was seen by his father and Surinder Kumar, son of Anant Ram. His father got him (complainant) admitted in Civil Hospital, Nabha. On 20.03.2000, on account of his serious condition, he (complainant) was referred to Rajindra Hospital, Patiala where he is undergoing treatment.”

After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court. As the offence under Section 307 IPC is triable by Court of Session, the case was committed to the said Court.

Charge under Section 307 IPC was framed against the accused to which he did not plead guilty and claimed trial.

In order to prove its case, the prosecution had examined PW-1, Dr. H.P.S. Sandhu, S.M.O. Civil Hospital, Nabha, PW-2 Dr. Sanjiv Kumar, PW-3 Bhupinder Singh, PW-4 Surjit Kaur, PW-5 Amar Singh, PW-6 Mohni Kumar, PW-7 Dev Raj, PW-8 Constable Rajinder Singh, PW-9 Surinder Kumar, PW-9/1 Dr. Mohinder Singh, PW-10 ASI Tohra Ram and closed the evidence.

The statement of the accused under Section 313 Cr.P.C was recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to him to which the accused denied and pleaded false implication.

No witness in defence was examined by the accused.

After appraisal of evidence, the learned trial court vide impugned judgment acquitted the accused/respondent of the charges framed against him.

Feeling dissatisfied with the impugned judgment, the present appeal has been filed by the State of Punjab.

It is contended by the learned State counsel that the prosecution had successfully established its case against the accused. Complainant Mohni Kumar while appearing as PW-6 deposed in verbatim to his earlier statement which stands corroborated by the testimony of his father PW-7 Dev Raj who had witnessed the occurrence. The ocular evidence is in sync with the medical evidence. The injuries inflicted on the person of the complainant were declared to be dangerous to life.

We have heard the learned counsel for the parties and have gone through the case file.

The learned trial Court has acquitted the accused/respondent on the following grounds:-

“1. There is long delay in lodging the FIR. The occurrence took place on 19.03.2000 at 4.30 p.m. The ruqa was sent to the SHO at 5.30 pm vide Ex.PL. However, the FIR was recorded on 22.03.2000. Though injured Mohni Kumar remained in fit condition but his statement was recorded on 22.03.2000 at 4.00. PW-2 Dr. Sanjiv Kumar deposed that the patient was conscious and his pulse rate was 100 per minute, BP was 130/80 mm hg. It was further stated by PW-9/1 Dr. Mohinder Singh that the general condition of

the patient was stable throughout the time he remained admitted in Rajindra Hospital, Patiala. The delay in lodging of the FIR has not been explained.

2. PW-7 Dev Raj father of the injured had admitted the previous litigation with Jangir Singh father of the accused. It establishes clear motive for false implication of the accused.

3. The prosecution had nowhere pleaded the necessary mens rea on the part of the accused nor was it established from the testimony of the injured/complainant and the eye witnesses. Only two injuries were caused to the injured. Had there been intention to kill, more blows would have been inflicted and the attack would have been made in isolated place.

4. PW-2 alleged eye witness to the occurrence had not supported the prosecution version.

5. There are material contradictions in the statements of injured Mohni Kumar and eye witness Dev Raj which also raised eye brows for considering the prosecution version. In the statement Ex.PG, Mohni Kumar had stated that he was got admitted in Civil Hospital by his father but in his cross-examination, he stated that his younger brother after hiring the rickshaw took him to Civil Hospital and his father had accompanied them. PW-7 Dev Raj in his examination-in-chief stated that after the occurrence, he arranged a car and took his son to Civil Hospital, Nabha but in his cross examination he stated that he directly took Mohni Kumar to the hospital in a rickshaw.

6. The weapon of offence i.e. knife is stated to have been got recovered by the accused in pursuance of his statement Ex.,PW-8/A but Mohni Kumar PW-6 had stated that his father Dev Raj had rescued him and immediately Pargat

Singh ran away after throwing a chura there.”

We are in complete agreement with the view taken by the learned trial Court. There is no perversity or illegality in the impugned judgment. There is no flaw at all. The finding of acquittal is based on correct appreciation of the evidence and material placed on record.

It is a settled law as has been held in ***C. Antony Vs. K.G. Raghavan Nair***, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused unless the judgment suffers from any perversity. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

In **Anil Kumar Gupta vs. State of U.P. 2001(2) RCR (Criminal) 292 SC** it was held as under:-

“This Court held that "the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence, cannot constitute a valid and sufficient ground to interfere an order of acquittal unless it comes to the conclusion that the en approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in 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 pal ably wrote, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons 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- reappraise the evidence to arrive at its own conclusions".

(emphasis supplied)

11. This Court following the decision in Ramesh Babulal Doshi, further observed that 'there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a 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 view of the above, the present appeal filed by the State

of Punjab is dismissed and the impugned judgment passed by the trial Court is upheld.

(JITENDRA CHAUHAN)
JUDGE

(H.S.MADAAN)
JUDGE

25.11.2019
SN

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No