

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

CRR No. 4192 of 2012 (O&M)

Reserved on : 08.11.2019

Pronounced on : 19.11.2019

Resham Lal @ Resham Singh

...Petitioner

Versus

Shangara Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Ms. Amandeep Kaur, Advocate for
Mr. J. B. S. Gill, Advocate
for the petitioner.

None for respondent Nos. 1 to 9.

Mr. Jagmohan Ghuman, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in this revision petition is for setting aside the order dated 10.01.2011, passed by the trial Court, vide which private respondents/accused were acquitted of the charge framed against them in FIR No. 47 dated 23.03.2004, under Sections 323, 324, 148, 149 of the IPC, registered at Police Station Dasuya, District Hoshiarpur; as well as the judgment dated 25.09.2012 passed by the lower appellate Court dismissing the appeal preferred by the petitioner against the said judgment of acquittal.

Brief facts of the case are that on 22.03.2004, medico-legal examination of injured Resham Lal, Tarsem Lal and Sewa Dass was conducted and ASI Kulwinder Singh along with other police officials visited the Civil Hospital, Dasuya for recording their statements. The doctor on duty declared all the injured fit to make statement. Thereafter,

petitioner/complainant Resham Singh made statement to the effect that he is a tailor by profession and on 22.03.2004 at about 8.00 PM, he along with his elder brother Tarsem Singh and his son Sewa Dass were going from their house towards shop. When they reached near the fields of Harjinder Singh, the electric light of the tubewell of one Rachhpal Singh was on and he saw that Shangara Singh, armed with *Datar*, Laddi armed with *Dang*, Kishan Chand armed with *Sota*, Swarana Ram armed with *Sota*, Jagjit Singh armed with *Sota*, Laddi and Amarjit Singh armed with *Datar*, were present there. When the complainant and his brother and son reached near them, accused Shangara Singh raised a *lalkara* that the complainant party be taught a lesson for moving false application against them. Thereafter, accused Amarjit Singh gave a *datar* blow to Tarsem Singh which hit on his hand. Accused Bhag Mal gave a *dang* blow to Sewa Dass which hit him on his arm. Accused Shangara Singh gave a *datar* blow to complainant which hit him on his forehead. Accused Laddi gave a *dang* blow to complainant which hit on his head and when he fell down and accused Laddi, Palla and Swarna caused him injuries which hit him on his different parts of body. Then complainant raised hue and cry and his wife and other people came to the spot and the accused persons fled away. As per the complainant, the motive behind the occurrence was that an inquiry for fake allotment of some land was pending in the Court of SDM, Dasuya and for getting favour in the said inquiry, the complainant had paid Rs. 20,000/- to accused Shangara Singh, however, neither he could favour the complainant in inquiry nor returned the money. On the basis of the said statement of complainant, the FIR of the present case was registered and investigation was conducted.

After completion of the investigation, *challan* against the accused persons was presented for the offence punishable under Sections 323, 324, 148 and 149 of the IPC and charges were framed accordingly.

During trial, the prosecution examined Resham Lal/complainant/injured as PW1, Tarsem Lal as PW2, Sewa Dass as PW3, Dr. Naresh Kansara as PW4, MHC Tejinder Singh as PW5, Dr. Narinder Kaur as PW6, DSP Chhaju Ram as PW-7 and thereafter, evidence of the prosecution was closed by order.

After closure of the prosecution evidence, statements of the accused under Section 313 Cr.P.C. was recorded, wherein they denied all the incriminating prosecution evidence and pleaded their innocence and false implication.

In defence, the accused persons examined HC Paramjit Singh as DW1, Sukhwinder Singh, Clerk of the office of SDM, Dasuya, as DW2, Rajesh Kumar, Sales Clerk, Tehsil Complex, Dasuya as DW3, Inspector Cheta Singh as DW4 and thereafter, they closed their defence evidence.

Thereafter, vide impugned order dated 10.01.2011, the trial Court, after hearing both the parties and appreciating the evidence on record, discharged the accused persons/private respondents by making the following observations:

“14. The main allegations of the prosecution story are that on 22.03.2004 at 8.00 PM all the accused were members of unlawful assembly and were armed with deadly weapons and in furtherance of their common object caused simple as well as grievous injuries to Resham Lal, Tarsem Lal and Sewa Dass. But I agree with the contention of the learned defence counsel that the prosecution has failed to bring home guilt of the accused beyond any shadow of doubt. PW1 Resham Lal has deposed that on 22.03.2004, he along with his son

Sewa Dass and brother Taresem Lal were present near the school of their village when they found all the accused armed with weapon there. Accused Shangara Singh raised a lalkara and thereafter all the accused caused injuries to them. But in the cross examination, this witness has stated that he did not know that on 22.03.2004 at 8.00 PM there was electricity cut or not. He has further stated that the visual site plan in the case is correct. He has further stated that he cannot tell that all the accused were already present there. He could not tell the length of dater in the hand of Shangara Singh. PW2 Tarsem Lal has tried to support the case of the prosecution in his examination in chief and deposed that Shangara Singh and Amarjit Singh were having daters in their hands but he could not tell the size of the daters. Thus both the witnesses have not been able to tell the size of the daters and the prosecution story seems to be manipulated one. He has further stated that he could not tell that how many dang blows were given by Kishan Singh. More significantly, this witness has stated that the accused had already given blow to his brother Resham Lal who had become unconscious but the other witnesses have not stated so. There are material contradictions in the statements of prosecution witnesses PW2 further admitted that accused Shangara Singh had obtained Rs. 20,000/- from his brother Resham Lal but he could not tell the date or month of the said payment, although said payment was received in his presence. So this witness has failed to specifically to prove this fact that an amount of Rs. 20,000/- was obtained by accused Shangara Singh from Resham Lal. Thus the motive in the present case does not stand proved PW3. Sewa Dass has also admitted in his cross examination he cannot tell the distance between concerned village from the GT Road. Had this witness was present at the spot, he could have easily tell the distance between Bhatti Da Pind and the GT Road. Thus the presence of this witness is also doubtful at the spot. This witness has further stated that first blow was given by Shangara Singh and the second blow was given by son of Shangara Singh. On the other hand, Resham Lal PW1 has stated that first two blows were given by Shangara Singh which hit him on his forehead and head. PW3 has further admitted that Amarjit Singh gave a dater blow which hit Tarsem Lal whereas PW1 Resham Lal is silent on the said blow given by accused Amarjit Singh. Thus all these witnesses are discrepant of the nature of the injuries caused by the accused which is fatal to the prosecution story. PW4 Dr. Naresh Kansra has simply deposed that he conducted medico legally examination of injured

Resham Lal and Sewa Dass. PW5 MHC Tejinder Singh is formal witness who has stated nothing against the accused. PW6 Dr. Narinder Kaur is also formal witness who has only proved the X-ray report Ex.PW6/A, Ex. PW6/B and Ex. PW6/C and she has not stated anything against the accused. PW7 DSP Chanan Ram is also a formal witness who has simply proved statement of injured Resham Lal Ex. PA which was recorded by ASI Balwinder Singh, his endorsement Ex. PW7/A and formal FIR Ex.PW7/B and site plan Ex.PW7/C and endorsement made by the doctors regarding the fitness of the injured to make statement Ex.PW7/D to Ex.PW7/F, but he has not stated anything against the accused. On the other hand the learned defence counsel has examined four witnesses and produced the entire record to show that accused Shangara Singh was on duty. DW2 Sukhwinder has specifically stated that accused Shangara Singh was on election duty on the relevant day and he was on duty till 9.00 PM as per record Ex.D2/A. More significantly, this witness has further stated that on 22.03.2004, Shangara Singh remained on duty from 5.00 PM to 9.00 PM and performed his duty in the office of SDM and continuously remained present there. All the witnesses examined by the defence counsel pointed out that Shangara Singh was present on his duty and he could not reach at the spot and cause injuries to the complainant. All the witnesses examined by the learned defence counsel was cross examined at length but nothing merged out of their cross examination which could give any support to the prosecution. DW4 Cheta Singh has stated that during his inquiry, accused Jagjit Singh, Bhag Mal and Rachhpal were found innocent. Thus the presence of accused Shangara Singh as person who allegedly caused injuries to the complainant and other persons is doubtful. Therefore, it cannot be said that the prosecution has been able to prove its case against the accused beyond any shadow of doubt. The learned defence counsel has taken a specific plea that the present case has been got recorded by the complainant due to previous enmity with the accused. There is force in this contention of the learned counsel as the learned defence counsel has proved various documents to prove previous enmity between the complainant and the accused. I agree with the contention of the learned defence counsel that the prosecution has miserably failed to connect the accused with the alleged crime. The present case is a case of no evidence against the accused. Accordingly, the prosecution has failed to connect the accused with the alleged crime. It is well settled law that the

prosecution is duty bound to bring home the guilt of the accused beyond any shadow of doubt. It is also cardinal principle of criminal jurisprudence that benefit of doubt, if any, must go to the accused. Accordingly, I extent the benefit of doubt to the accused and acquit them from the charges framed against them.”

The petitioner/complainant, dissatisfied with the aforesaid order, preferred an appeal before the lower appellate Court, which was also dismissed, vide impugned judgment dated 25.09.2012. The operative part of the same reads as under:

“11. The learned counsel for the appellant/complainant pleaded that the learned trial Court has wrongly acquitted the respondents/accused. The prosecution has produced sufficient evidence on the file to prove guilt of accused beyond reasonable shadow of doubt. Respondents were having strong motive to cause injuries to the appellant, his brother Tarsem Lal and Sewa Dass, on 22.03.2004 at about 8.00 PM. As per prosecution version, Shangara Singh was armed with datar, Amarjit Singh was armed with datar and remaining accused were armed with dangs and sotas. They all formed unlawful assembly with object to cause injuries to the appellant and other injured with their respective weapons. Even the identity of accused is duly established on the file. Even the medical evidence has fully supported the prosecution case. As per MLRs, the complainant had received 11 injuries, Tarsem Lal had received 12 injuries and Sewa Singh had received 4 injuries. The trial Court has not appreciated the evidence adduced on the file by the prosecution. The findings given by the trial Court thereby acquitting the accused are based on conjectures and surmises. Hence, it is prayed that appeal may kindly be allowed and the accused/respondents be convicted as per settled provisions of law.

12. On the other hand, the learned counsel for the respondent/accused pleaded that there is no ground to interfere in the well reasoned judgment passed by the learned trial Court. It is alleged that entire case of the prosecution rests only on the interested witnesses and there is no independent corroboration to the same. Even identity of the accused is not established on the file. No occurrence has taken place as alleged and false case has been planted against the accused. There are material contradictions in the statements of prosecution witnesses and as such, these statements are not reliable.

Furthermore, during enquiry, conducted by Inspector Cheta Singh, accused Bhag Mal, Rachhpal, Jagjit Singh and Swarna Ram were found innocent. It is also proved on the file that Shingara Singh was on election duty on 22.03.2004 and thus question of his presence at the spot does not arise at all. Delay in lodging of present FIR is not explained on the file. Hence, it is prayed that appeal may kindly be dismissed.

13. Admittedly, the present appeal has been filed by the complainant/appellant against the judgment of acquittal passed by the learned lower Court. First of all, it is to be seen that what is the scope of the Appellate Court in dealing with judgment of lower Court of acquittal. In a latest judgment reported in **2008 (2) RCR (Criminal) 969, (SC)** in case titled as **Narayanmurthy vs. State of Karnatka & others**, the Hon'ble Apex Court has laid down the guidelines to be observed in appeal against acquittal. It was held that, (1) there is a presumption of innocence in favour of the accused. Presumption of innocence of the accused was further reinforced by his acquittal by the trial Court, and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence could be reversed only for very substantial and compelling reasons. (2) The principles to be followed by the appellate Court considering the appeal against judgment of acquittal is to interfere only where there are compelling and substantial reasons for doing so. (3) A miscarriage of justice which may arise from acquittal of the guilty is no less than the conviction of an innocent. Same view was taken by the Hon'ble Apex Court in **AIR 1952 (SC) 52, Surajpal Singh vs. State, AIR 1956 (SC) 217, Aher Raja Khima vs. State of Saurashtra and 1987 (2) RCR (Criminal) 35 (SC)** in case titled as **Tota Singh vs. State of Punjab**. In view of the law down in these citations, it is clear that where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the appellate Court cannot legally interfere with an order of acquittal even it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous.

14. I have perused the file of the trial Court with the assistance of Addl. P.P. for the State and the learned defence counsel very carefully. As per the case of the prosecution, the occurrence had taken place on 22.03.2004 at about 8.00 PM. The main contention of the learned defence counsel is that identity of the accused is not established on the file. The learned defence counsel has drawn attention of this Court towards the cross examination of PW1 Resham Lal, who has admitted in

his cross examination that he does not whether on 22.03.2004 at about 8.00 PM, there was electricity cut or not. If there was electricity cut on 22.03.2004 at about 8.00 PM, then it is not made clear by this witness that how he had identified the accused on the spot. PW2 Tarsem Lal has admitted in his cross examination that he along with Sewa Dass and Resham Lal are working as tailors at Dasuya. He further admitted that they had closed their shop at 7.00 PM and went to their houses. If they had gone to their houses after closing their shop at 7.00 PM, then how the occurrence had taken place on 22.03.2004 at about 8.00 PM. Similarly occurrence having taken place on 22.03.2004 at about 8.00 PM is doubtful in view of cross examination of PW3 Sewa Dass. He has admitted in view of cross examination that they used to open their shop at 8.00 AM and used to close the same at 7.00 PM and went towards their house on their cycles. He further admitted that it takes about 40/45 minutes to reach their houses. He further admitted that after returning to their houses, they took meals and it took about one hour and thereafter they returned to their shop. If time is calculated as given by him, then they would have returned to their shop at about 8.45 PM or thereafter. When all the witnesses are discrepant about the fact that whether occurrence had taken place on 22.03.2004 at 8.00 PM, then certainly benefit of doubt goes to the accused.

15. Furthermore, all the star witnesses are making contradictory statements regarding material particulars of the occurrence. PW1 Resham Lal is alleging that they used to open their shop at 9.00 AM in the morning and closed by 7.00 PM, whereas PW3 Sewa Dass is alleging that they used to open their shop at 8.00 AM and closed it at 7.00 PM. PW1 has stated that distance between Balagan Chowk and Batti Da Pind is about 2 km. Whereas PW3 Sewa Dass has stated that he does not know what is the distance between village Bhatti Da Pind and GT Road. Even PW1 has stated that he does not know if rough site plan is properly prepared or not. PW1 has admitted that he became unconscious and cannot tell that who had inflicted what injury on which person. Similarly, PW2 has stated in his cross examination that he cannot say that how many injuries were inflicted by Krishan on him. He is making vague allegations that all the accused inflicted injuries to him with dangs, datar. But he is not specifically alleging that which injury was inflicted by whom. PW3 Sewa Dass is alleging that his mother and brother Yog Raj, were also present at the spot and the accused had not inflicted any injury to them. He further stated that even his mother and brother had

not tried to rescue him. Rather this admission on the part of PW3 Sewa Dass totally shatters the case of prosecution because it is unbelievable that mother and real brother of this witness were present and they did not try to rescue him from the clutches of the accused. These material contradictions in the evidence of these material witnesses clearly show that they are deposing falsely being close relatives and accused have been falsely implicated in this case.

16. Furthermore, there is no motive for the accused to inflict injuries on the person of complainant and his other family members. The motive as alleged by the prosecution is that there was dispute regarding a sum of Rs. 20,000/- between Resham Lal and Shingara Singh. This contention is without any merits. PW1 is alleging that he had paid Rs. 20,000/- to Shingara Singh on 20.01.2004. But there is no document on the file to prove this fact that a sum of Rs. 20,000/- was paid by Resham Lal to Shingara Singh. PW2 Tarsem Lal has also alleged that Shingara Singh had taken a sum of Rs. 20,000/- from his brother but he cannot tell the date or month when this amount was taken. He further stated that at that time, no other person was present when amount was paid to Shingara Singh. Thus, motive part is missing in the present case.

17. Further, the learned defence counsel has alleged that on 22.03.2004, Shingara Singh was busy in duty as there were elections and he has been falsely implicated in the present case. In order to prove this fact, the defence counsel has examined DW2 Sukhwinder Singh who has specifically stated that Shingara Singh was on election duty on the relevant date and he was on duty till 9.00 PM as per letter Ex.D2/A. He has further stated that Shingara Singh remained on duty from 5.00 PM to 9.00 PM and performed his duty in the office of SDM and he remained continuously there. This witness has categorically stated that Shingara Singh was present on his duty and he could not reach at the spot to cause injuries to the complainant. It also creates doubt regarding case of prosecution because as per case of prosecution, Shingara Singh was main instrumental in causing injuries to them. When Shingara Singh was present in the office of SDM, due to election duty, then by any stretch of imagination, it is not possible that any official can be exempted from performing his significant duty during election period. Thus presence of accused Shingara Singh having caused injuries to complainant and other persons is doubtful. The learned defence counsel has also drawn my attention towards various documents on the file to prove previous enmity between

the complainant and the accused and as such, false implication of accused in the present case cannot be ruled out.

18. It is the main contention of the respondents that there is inordinate delay in lodging FIR, which is fatal to the case of the prosecution. There is no doubt in it that if delay in lodging FIR is duly explained on the file, then it is not fatal to the case of the prosecution. However, if delay is not properly explained by prosecution, then delay in lodging FIR is highly doubtful. The learned counsel for respondents has relied upon **2008(4) Crl. Court Cases 642 (SC) State of Andhra Pradesh vs. M. Madhusudan Rao**, in which it has been held by the Hon'ble Apex Court that delay in lodging FIR is not explained and it raises considerable doubt regarding the genuineness of the complaint and the veracity of the evidence of the complainant. In **Megh Raj Singh vs. State of Uttar Pradesh, reported in 1994 RCR 626 (SC)**, it has been held by the Hon'ble Apex Court that FIR in a criminal case and particularly in a murder case is vital and valuable piece of evidence for the purpose of corroborating the evidence led at the trial. The object of insisting upon prompt lodging of FIR is to obtain early information regarding the circumstances in which the crime was committed including the names of the actual culprits, part played by them, the weapons, if any used and also names of the eye witnesses, if any. Delay in lodging of FIR often results in embellishment which is creature of afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of the coloured version or exaggerated story. Same view was taken by the Hon'ble Apex Court in **2003 (2) RCR (Crl.) 95** in case titled **Rajeevan vs. State of Kerala**. The law laid down in this citation is fully applicable to the facts of case in hand. Admittedly, in the present case, FIR was registered on the statement of complainant Resham Lal. It is not explained on the file by complainant that if the occurrence had taken place on 22.03.2004, then why he had waited till 23.03.2004 for lodging the present FIR. Consequently, delay in lodging of FIR is not properly explained on file by prosecution and as such it is fatal to the case of prosecution.

19. Furthermore, it is settled proposition of law that when appeal is filed against order of acquittal, the Appellate Court can only interfere when there are compelling and substantial reasons for doing so as held in **2008(1) Crl. Court Cases 889 (SC) State of UP vs. Atar Singh and others**. When on the basis of evidence appearing on the file, two views are possible, then

accused are entitled to benefit of doubt. The learned counsel for the appellant has failed to prove that what was the illegality or irregularity in the judgment, passed by the learned trial Court, whereby it acquitted the accused by giving them benefit of doubt. There are no compelling and substantial reasons for interfering in the judgment of acquittal passed by the learned lower Court.

20. Thus, it is clear that prosecution had failed miserably to bring home the guilt of the accused beyond any reasonable shadow of doubt. After considering these aspects, the learned trial Court acquitted the accused of the charge framed against them. There is no illegality or irregularity in the impugned judgment and rather it has been passed on the basis of well established principles of law. Rather this appeal is devoid of any merits.

21. In view of aforesaid discussion, it is clear that appellant has failed to prove its case. Accordingly, appeal filed by the complainant/appellant is hereby dismissed being devoid of any merits and the judgment of the trial Court is hereby affirmed. The record of learned trial Court be sent back. Appeal file be consigned to the record room.”

Learned counsel for the petitioner has argued that both the courts below have wrongly discharged the accused persons/private respondents despite the fact that from the prosecution evidence, it has come on record that they formed an unlawful assembly and caused injuries to petitioner/complainant Resham Lal, his brother Tarsem Lal and son Sewa Dass.

Learned counsel for the petitioner has further argued that injured/victims have sustained multiple injuries at the hands of complainant and, therefore, ocular version was corroborated by the medical evidence.

Learned counsel for the petitioner further argued that the injured/witnesses have also given detail in which manner the injuries were caused to them and there was a motive attributed towards accused persons for causing injuries to the injured/victims.

In reply, learned State counsel has submitted that both the

courts below have passed well reasoned orders after appreciating all the evidence and the scope of interference by this Court in the present revision petition is limited and warranted only if any patent illegality, on the basis of the record, is committed by the Courts below.

After hearing learned counsel for the parties and perusing the lower courts' record, I find no merit in the present revision petition.

Both the courts below have passed detailed judgments giving well reasoned findings that the presence of the accused persons, at the time of incident at the place of occurrence, is doubtful, therefore, it is not proved that they have caused injuries to the injured/victims.

The courts below have also recorded a finding that it has come in the statement of complainant that he did not remember whether there was electricity cut at the relevant time when they sustained injuries, therefore, the identification of the accused persons is in doubt.

The courts below have also recorded a finding that there are material contradictions in the statement of complainant/PW1 Resham Lal and his son PW3 Sewa Dass regarding the manner in which the injuries were caused to them.

The prosecution has also failed to prove the motive alleged by it that there was a dispute between complainant Resham Lal and accused Shangara Singh regarding Rs. 20,000/- and there is no evidence on record to show that the said amount was paid by the petitioner/complainant to Shangara Singh as he could not give any date of lending the said money.

In view of the concurrent findings recorded by the courts below acquitting the accused/private respondents and also considering the limited

scope of the present revision petition, I find that the presumption of innocence goes in favour of the accused/private respondents and there is no compelling or substantial reason to differ with the findings recorded by the courts below as no miscarriage of justice has arisen while acquitting the accused/private respondents.

Accordingly, the present revision petition is hereby dismissed.

19.11.2019

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No