

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

332-2

Decided on : 20.12.2022

CRA-S-2284-SB-2003 (O&M)

Balwinder Singh

... Appellant(s)

Versus

State of Haryana

... Respondent(s)

CRR-1177-2004 (O&M)

Maya Devi

... Appellant(s)

Versus

Balwinder Singh @ Balwinder Jit Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Mohit Garg, Legal Aid Counsel,
for the appellant in CRA-S- 2284-SB-2003 and
for respondent No. 1 in CRR-1177-2004.

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. Vikram Singh, Advocate
for respondent in CRR-1177-2004.

SANJAY VASHISTH, J. (Oral)

Verification report by way of an affidavit in the name of Gaurav Fogat, HPS, Deputy Superintendent of Police, Karnal-II on behalf of respondent No. 1 alongwith annexures R-1 and R-2, has been filed by learned State counsel and same is taken on record.

Registry is directed to tag the same at appropriate place.

In miscellaneous session case No. 51 of 2003 arising from FIR

No. 409 dated 04.12.1998 under Sections 148/307 read with Section 149 of the Indian Penal Code, registered at Police Station Nissing, total 12 accused were tried by the Court of learned Additional Sessions Judge, Fast Track Court, Karnal and accused No. 13th was declared as proclaimed offender.

Vide judgment of conviction and order of sentence dated 29.11.2003 and 02.12.2003, respectively, 11 accused were acquitted and accused- Balwinder Singh was held guilty for the offence under Section 307 IPC and Section 27 of the Arms Act and was sentenced accordingly.

Section(s)	Sentence	Fine	In default
307 IPC	03 years, R. I.	Rs. 10,000/-	06 months, R. I.
27 of the Arms Act	03 years, R. I.	Rs. 5,000/-	03 months, R.I.

Assailing the said impugned judgment of conviction and order of sentence, present appeal was filed by appellant-Balwinder Singh and connected matter i.e. CRR-1177-2004 has been filed by Maya Devi against the acquittal of other 11 accused.

On 30.11.2022 following order was passed:

“Learned Amicus Curiae submits that on inquiry made by him on his own level, it was found that appellant Balwinder Singh, who was member of the Bar at Karnal had already expired about 10 years back.

Upon this, learned State counsel seeks time to verify the aforesaid fact.

Adjourned to 20.12.2022.

photostat copy of this order be placed on the file of connected case.”

Learned State counsel submits that as per said verification report, factum of death of Balwinder Singh (who expired on 15.07.2005) is confirmed. He also points out that this Court has already dealt with the provisions of Section 394 of Cr.PC in **IOIN-CRA-S-4686-SB-2018 in CRA-S-4686-SB-2018**, titled as, “**Shivji Ram @ Dimple Vs. State of Punjab**”, decided on **24.11.2022**, and in view of the same, present appeal may be disposed of.

Upon this, counsel for the appellant points out that fine amount of Rs.10,000/- for the offence under Section 307 and Rs. 5,000/- for the offence under Section 27 of the Arms Act already stands deposited and said fact is also mentioned in the paragraph 6 of order of sentence dated 02.12.2003.

In view of said circumstances, present appeal stands abated, and same is disposed of as such subject to conditions laid down in **IOIN-CRA-S-4686-SB-2018 in CRA-S-4686-SB-2018**, titled as, “**Shivji Ram @ Dimple Vs. State of Punjab**”, decided on **24.11.2022**, Law Finder Doc ID #2076392.

CRR-1177-2004 (O&M)

By way of revision petition, complainant Smt. Maya Devi has sought conviction of the respondents i.e. (1) Balwinder Singh @ Balwinderjit Singh (2) Randhir Singh (3) Mala (4) Udey (5) Jaimal (6) Rugha (7) Pirthi (8) Dharam Singh (9) Giani (10) Manga (11) Messar (12) Fatta because except Balwinder Singh @ Balwinderjit Singh, all other accused were acquitted by learned trial Court vide its judgment dated 29.11.2003.

Learned trial Court has already discussed the injuries suffered by complainant- Smt. Maya Devi (PW 8). On 04.12.1998, during medicolegal examination following injuries were noticed:

“There were multiple scattered punctured wound of size 0.5s x 0.5cm. Circular each on lateral aspect of right side of abdomen and right side of the back in the lumbar region and a few wound were present on the left side of back of the lumbar region. Two such wounds were present on the lateral aspect of right fore-arm. The margins of the wounds were inverted. Fresh bleeding was present. Collar of abrasion was present all around the wounds. X-rays of abdomen, lumbar region of the back and right fore arm were advised. Kamiz (shirt) of the patient was blood stained and there were multiple punctures present at the corresponding areas. Patient was kept under observations and the duration was within few hours.

There was an alleged history of fire-arm injuries on that day at about 12.30 p.m. The patient was conscious, oriented, pulse was 88 per minute B.P was 116/80 mmhg, chest/CVS/CNS were normal clinically.”

Description of said injuries clearly denotes that suffered pellet injuries undoubtedly, were the result of the fire shot by main accused-Balwinder Singh @ Balwinderjit Singh. No other injuries are noticed during the medico legal examination. This way involvement of all the other accused is highly doubtful. In paragraph No. 32 of judgment, it has been dealt with that Maya Devi suffered injuries because of the fire shot by one of the accused i.e. Balwinder Singh @ Balwinderjit Singh. Role of none of other accused i.e. respondents is found or proved by the prosecution on the file.

Para 34 says as under:

*‘The perusal of report of Forensic Science Laboratory, Madhuban, Ex. PX reveals that **empty cartridge was found to be used in the gun.** Further as per report Ex. PY of the Forensic Science Laboratory, Madhuban, blood was*

detected on the shirt of Smt. Maya Devi and as per report of Serologist the blood was of human.”

From the said aspect also, it becomes clear that there was recovery of one empty Cartridge and that creates an impression that only one shot was fired and that was by the convict Balwinder Singh @ Balwinderjit Singh. There is no evidence available on file about use of any other weapon or recovery of the same, connecting with the injury suffered by the complainant.

Thus, this Court is in an agreement with the findings of acquittal of the charges against them.

There is no specific point addressed by learned counsel for the appellant pointing out any illegality/perversity in the judgment passed by learned trial Court.

As per the basic principle of criminal jurisprudence established for the first time by House of Lords in the landmark case of **Woolmington v. Director of Public Prosecutions [1935] UKHL 1**, there is always a presumption of innocence of the accused. Such presumption becomes more heavier, once there is a recording of finding of acquittal against the accused.

Moreover, Section 401 (3) of Cr.P.C. limits the power of the High Court vis-a-vis the findings of the acquittal already existing.

Section 401 (3) of Cr. P.C. says as under:

- “1. XXXX
2. XXXX
3. *Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.*
4. XXXX
5. XXXX”

Revision petition stands dismissed.

Pending criminal miscellaneous application(s) in both cases, if any, also stand disposed of.

(SANJAY VASHISTH)
JUDGE

December 20, 2022
Riya

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