

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

208

CRM-A-1931-MA-2017

Reserved on:23.08.2022

Date of Decision: 07.09, 2022

Chhote Lal and another

...Applicants

Versus

Jiya Lal and others

... Respondents

**CORAM : HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present : Ms. Ekta Thakur, Advocate
for the appellants.

Kr. Yashwant Singh Rathore, APP for U.T., Chd.,with
Mrs. Sudha Singh, Advocate and
Kr. Yuvraj Singh Rathore, Advocate
for respondent No. 3.

N.S.SHEKHAWAT, J.

Aggrieved by the judgment of acquittal passed by the Court of learned Additional Sessions Judge, Chandigarh, the victims have filed the instant application before this Court under Section 372 Cr.P.C. with a prayer to set aside the same and to convict and sentence the respondents No. 1 and 2 under such sections, for which, they were charge-sheeted by the trial Court.

The records of the learned trial Court was requisitioned and with the able assistance of learned counsel for the both sides, we have minutely perused learned trial Court records and heard both the sides at length.

Learned counsel for the applicants has vehemently argued that prosecution had examined three injured witnesses,

namely, PW1 Chhote Lal, PW2 Dharambir and PW3 Brij Lal, whose respective testimonies have been duly corroborated by medical evidence. Learned counsel for the applicants has relied upon the testimony of PW7 Dr. Gurdeep Kaur Kang, who medico-legally examined two injured, namely, Brij Lal and Dharambir and issued their MLR Ex.P-14 and P-15, respectively. Learned counsel has further submitted that the injured witnesses had given the vivid description of the entire occurrence and the respondents have been wrongly acquitted by the trial Court. Learned counsel further submitted that the evidence led by the prosecution was clear, cogent and creditworthy and non-explanation of injuries on the person of accused loses its importance. Still further, a person, who is unlawfully attacked has every right to counteract and attack his assailants and cause such injury as may be necessary to ward off the apprehended danger or threat. Learned counsel has further submitted that the accused party was the aggressor and the said fact had been duly proved by the testimony of PW6 SI Harpal Singh, who conducted the investigation. Consequently, it was submitted that the impugned judgment of acquittal may be set aside and the respondents may be convicted and sentenced for the charges, which the trial Court had framed.

Learned counsel for the appellants has relied upon the law laid down by the Hon'ble Supreme court in the matter of **State of Madhya Pradesh Vs. Sardar**, 2001(3) R.C.R. (Criminal) 622, to

contend that the accused were the aggressors and caused injuries to the complainant side and the non-explanation of injuries by the prosecution witnesses was irrelevant.

It has been held by the the Hon'ble Supreme Court in the matter of **Bhaskarrao & Ors. Vs. State of Maharashtra and connected appeals**, 2018(5) R.C.R. (Criminal) 228 as follows:-

14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in Tota Singh and Anr. V. State of Punjab, 1987(2) RCR (Criminal) 35: 1987 CriLJ 974-

“The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such re-appreciation, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not

constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. 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 if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous”.

15. In *Ramesh Babulal Doshi Vs. State of Gujrat, 1997(3) RCR (Criminal) 62: 1996 CriLJ 2867*, this Court observed:

“This Court has repeatedly laid down 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 with an order of acquittal unless it come to the conclusion that the entire 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 palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative the order of acquittal is not be disturbed.”

Coming back to the appreciation of evidence at hand, at the outset, we would refer to the evidence led by the prosecution to prove the charge against the respondents No. 1 and 2. First of all, from a perusal of the testimonies of three injured witnesses, it is apparent that all three witnesses have not only contradicted each other, but also suppressed the material facts. The prosecution examined PW1 Chhote Lal who only mentioned that he was caused injuries with a 'danda' by Jiya Lal and by a knife by accused Bade Lal. The said witness did not mention about the injuries suffered by other injured witnesses, i.e. PW2 Dharambir and PW3 Brij Lal and admitted that the place of occurrence was only shop-cum-residence of Bade Lal. Still further, he expressed the ignorance with regard to the injuries suffered by accused persons and rather stated that the accused had fled from the spot after inflicting injuries to them.

Similarly, PW2 Dharambir only mentioned about the injuries suffered by him and Chhote Lal, injured. He did not state a word with regard to the injuries suffered by Brij Lal. Again he admitted that incident had taken place at the house of Bade Lal (accused), where he is running a shop and is also residing there. Even, he stated that he did not know if both the accused/respondents No. 1

and 2, Sarita wife of Bade Lal and Shobha sister of Sarita were in hospital and were under treatment or not. He feigned ignorance about the injuries suffered by Bade Lal and Jiya Lal in the said occurrence.

Similar is the case of PW3 Brij Lal, who did not make any reference to the injuries suffered by PW2 Dharambir and he only mentioned the injuries suffered by PW1 Chhote Lal and himself. Even, the said witness stated that wife of Bade Lal, namely, Sarita and her sister Shobha were not at the place of occurrence and the accused had not suffered any injury in the incident.

Consequently, the testimonies of various prosecution witnesses would establish that they had not only concealed origin and genesis of the occurrence but also did not support the testimonies of the other prosecution witnesses.

Still further, the various prosecution witnesses were not able to prove the motive on the part of the accused to cause the injuries to the complainant side. It has been asserted by Chhote Lal that respondents No. 1 and 2 were nursing a grudge against him because their brother Amrit Lal was also carrying on POP work and PW1 Chhote Lal was his competitor being in the same profession, whereas, on the other hand, PW2 Dharambir stated that the reasons of dispute between Bade Lal and Chhote Lal was that both were doing the business of POP and business of Chhote Lal was more flourishing.

Even during the course of evidence, the prosecution led no evidence at all to prove the motive on the part of respondents

No. 1 and 2 to cause injuries to the prosecution witnesses rather it is evident from the evidence led by the prosecution that the place of occurrence was near the shop-cum-residence of Bade Lal, respondent No.2.

The prosecution examined PW6 SI Harpal Singh, who was the initial Investigating Officer. His testimony would establish on record that the investigation was conducted in the most unfair and partisan manner. He stated before he reached at the spot, the PCR had already come at the spot. Still, he did not record the statements of any official of such PCR vehicle nor their statements were recorded as PWs. The injuries were caused to both the sides in the present occurrence. However, he did not meet any lady, namely, Sarita or Shobha in the hospital. Even, it had not come in the investigation that any injury was received by Sarita or Shobha whereas as a matter of fact, both of them had got themselves examined and had suffered injuries. Even, he did not record the statement of any person from the neighbourhood regarding the occurrence. He further admitted that it was in his knowledge that the respondents No. 1 and 2 had also sustained injuries. However, he did not attach the MLR of respondents No. 1 and 2 on the Court file. He admitted that the MLR of respondents No. 1 and 2 might not have been annexed with the challan for the simple reason that those pertained to the accused. During investigation, he did not come across any MLR in the name of Chhote Lal other than the injured of the case. Even, he admitted

that Bade Lal accused had suffered a fracture due to fall while fleeing. He did not record the statement of any witness from the neighbourhood, even though, the place of occurrence was situated in a thickly populated area. Consequently, the investigation is tainted in the instant case and the benefit of doubt is extended to the respondents No. 1 and 2.

PW7 Dr. Gurdeep Kaur Kang, in her cross-examination, proved on record the MLR of Bade Lal respondent No. 2 as Ex.P17 and found small red abrasion over left dorsum of hand and advised X-ray of the left forearm.

Dr. Karam Singh had given the opinion that fracture of ulna was seen and the injury was declared to be grievous in nature and the copies of the reports of radiologist were annexed as Ex. DB and Ex.DC. Even, he had examined Sarita and Shobha and proved their original OPD cards as Ex.DD and Ex.DE. He further stated that MLR of Sarita and Shobha were not issued as the police had not requested for issuance of the MLR.

It has also come in the testimony of PW6 SI Harpal Singh that he did not meet the injured on the side of the accused. Further, it did not come in the investigation that any injury was received by Sarita or Shobha, whereas, as a matter of fact, both the ladies had suffered injuries on their person. He did not record the statements of the persons from the neighbourhood. He further admitted that he might have recorded the statement of Sarita and

Shobha, but no such statement has been annexed with the challan. He further admitted that MLR's of Bade Lal and Jiya Lal might not have been annexed with the challan for the reason that they pertained to the accused. He further admitted that during investigation he did not go to the house of the complainant and come across any MLR of Chhote Lal other than the injured of this case. He further admitted that none of the witnesses had mentioned as to how the accused party had suffered injuries. Thus, it is evident that the prosecution not only concealed genesis of the occurrence, but even the Investigating Officer did not investigate the version of the witnesses at all. Even otherwise, the fight had taken place in front of the shop-cum-residence of the respondents.

On the other hand, DW4 Bade Lal and DW5 Jiya Lal appeared as defence witnesses to prove their case. Even, four persons, namely, Bade Lal, Jiya Lal, Sarita and Shobha had suffered injuries on the side of the accused. Consequently, the non-explanation of the injuries suffered by the accused by the prosecution witnesses renders the case of the prosecution to be highly doubtful and the benefit of doubt can be extended to the accused in the instant case. Still further, the judgment rendered by the Hon'ble Supreme Court in the matter of **State of Madhya Pradesh** (supra), relied upon by the learned counsel for the appellants is not applicable to the facts and circumstances of the instant case.

Keeping in view the substratum of the prosecution case and the material available on record, we are of the considered opinion that the prosecution has miserably failed to prove the guilt of the accused beyond the shadow of reasonable doubt and the trial Court has rightly acquitted the respondents No. 1 and 2. Thus, The application is without any merit and, therefore, dismissed. Leave to appeal is declined. The judgment dated 06.06.2017 passed by the learned Additional Sessions Judge is upheld and affirmed.

All the pending miscellaneous applications, if any, are disposed off, accordingly.

The trial Court record be sent back forthwith.

(SURESHWAR THAKUR)
JUDGE

07.09, 2022
amit rana

(N.S.SHEKHAWAT)
JUDGE

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