

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

CRA-AD-152-2022

Date of Decision: 27.10.2022

YADWINDER SINGH AND ANOTHER

..... Appellant(s)

Versus

STATE OF PUNJAB AND OTHERS

..... Respondent(s)

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE HARSH BUNGER**

Present: Mr. Gazi Mohd. Umair, Advocate
for the applicants-appellants.

LISA GILL, J.

Applicant-appellants seek to appeal against judgment dated 27.02.2020, passed by learned Additional Sessions Judge, Sangrur, whereby respondents no.2 and 3 have been acquitted of the charges framed against them for the offences punishable under Sections 307, 394, 397 read with Sections 34, 201 of IPC arising out of FIR No.71 dated 13.07.2018, registered at Police Station Sadar Sangrur. Applicant/appellant no.1- Yadwinder Singh is the complainant in the above mentioned FIR and applicant/appellant no.2 – Sukhpal Singh is the person injured in the incident, which took place on 13.07.2018.

Brief facts necessary for adjudication of the matter are that FIR No.71 dated 13.07.2018 was registered on the statement of Yadwinder Singh to the effect that he was working as Security Supervisor in Security Trans India Private Limited (SIPL), Patiala at Sangrur. He stated that on 13.07.2018 he alongwith Satwant Singh s/o Ranjit Singh, Gurpreet Singh s/o Lal Singh and Sukhpal Singh s/o Pritam Singh, a Security Guard

carrying 12 Bore gun was going from Axis Bank, Sangrur to Axis Bank, Bhawanigarh for uploading of cash, Rs.5,00,000/- in the ATM of Axis Bank. They were travelling in a Mahindra Maximo Van bearing registration No.PB-11AU-7563 being driven by its driver Gursant Singh s/o Harnek Singh. It is further stated that when they reached near PGI, Ghabdha at about 11:15 A.M., a black motorcycle (Pulsar), not bearing any registration number came from the back of the van. Both the riders, it is stated had covered their faces with handkerchiefs, with one wearing a helmet and the pillion rider supporting a turban and they suddenly started firing on their van from its left side by plying their motorcycle alongwith the van. Security Guard Sukhpal Singh, who was sitting on the passenger seat alongwith the driver was hit on his head. Motorcycle riders are alleged to have fired many other shots towards the van with an intention to loot the cash. As one of the tyre of the van was hit, the van stopped. Motorcycle riders while threatening to kill the complainant and others fled towards Sangrur, after snatching the bag containing Rs.5,00,000/-, keys of ATM machine etc. Action was sought against the unknown assailants. Formal FIR, Ex.PW7/C under Sections 394, 34 IPC and 25 of the Arms Act was registered.

SI Sukhwinder Kaur PW7, alongwith other police officials and the complainant proceeded to the place of occurrence and prepared rough site plan (Ex.P4) of the place of occurrence. The van found at the place of occurrence was inspected and three pellets were recovered, which were taken in custody after sealing the same with the parcel bearing impression 'SK' vide a separate memo. A black colour turban with blood stains was recovered from the van. The van alongwith turban was also taken in the

custody vide separate recovery memos. Case property, it is stated, was deposited with the MHC in the Malkhana. CCTV footage of the area was recovered. Investigation was handed over to SI Rakesh Kumar PW12, after transfer of SI Sukhwinder Kaur.

Respondents no.2 and 3 were arrested in FIR No.115 dated 14.11.2018 under Sections 302, 392, 34 IPC at Police Station Kotwali Nabha. It is the case of the prosecution that said accused/respondents during investigation in FIR No.115, admitted commission of the offence in the present FIR no.71 dated 13.07.2018. Therefore, they were nominated as accused in the present case and formally arrested by PW12 SI Rakesh Kumar, on 19.12.2018 in this matter. It is stated that the accused during investigation claimed to have spent the money and thrown away other documents due to which offence under Section 201 IPC was added. Black motorcycle bearing registration no.PB-10PC-9639 allegedly used in the commission of offence and a black helmet were taken in custody. Two revolvers of .32 bore, it is stated, were recovered from the accused and pellets sent to FSL, Mohali for analysis. After obtaining opinion of the doctors regarding injuries on the person of Sukhpal Singh offence punishable under Sections 307 and 397 IPC was added as the injuries on the person of Sukhpal Singh were declared dangerous to life. Offence punishable under Section 483 IPC was added on the basis of the report of RTA, Ludhiana to the effect that registration no.PB-10PC-9639 was not allotted to the motorcycle and there was tampering with the engine and chassis numbers of the motorcycle. PW12 stated that offence punishable under Section 201 IPC was added, as accused did produce the cash, keys of ATM, two ATM cards besides PAN card of Satwant Singh. After

completion of investigation, final report/challan under Section 173 Cr.P.C. was presented.

Case was committed to the Court of Sessions and charges framed against respondents no.2 and 3 under Sections 307, 201, 394 and 397 read with Section 34 of IPC on 29.04.2019. As many as 12 witnesses were examined by the prosecution to prove its case. FSL report Ex.PX was also tendered in evidence. Statements of the accused under Section 313 Cr.P.C. were recorded wherein they denied the incriminating evidence put to them and they pleaded innocence. No evidence in defence was led by the accused.

Learned trial Court on considering the evidence on record, facts and circumstances concluded that prosecution had failed to prove its case beyond reasonable doubt against the accused. Therefore, giving them benefit of doubt, respondents no.2 and 3 were acquitted of the charges against them. It was concluded by the learned trial Court that identity of the accused could not be proved. It was specifically noted that the complainant as well as other persons accompanying him on 13.07.2018 alongwith the injured had clearly stated that faces of the accused being muffled were not visible. No test identification parade had been conducted and that in fact there was no evidence to identify the assailants. The complainant – Yadwinder Singh PW1 along with eyewitness Gursant Singh PW4 were declared hostile.

It is to be noticed that though the complainant i.e. applicant/appellant no.1 was declared hostile, present appeal challenging the judgment of acquittal has been filed by him alongwith injured. There is no explanation coming forth, even at the time of arguments, as to the reason why the complainant who was declared hostile is now seeking to challenge the order of acquittal. Be that as it may, the evidence on record has been

examined and scrutinized by us carefully.

Argument raised by learned counsel for the applicant-appellants is that there is sufficient evidence on record to indicate the guilt of respondents no.2 and 3. It is submitted that said respondents had confessed to the commission of the crime when taken in custody in FIR No.115 dated 14.11.2018 under Section 302 IPC. Learned counsel for the applicant-appellants further submits that accused persons were duly identified in Court by PW2 Gurpreet Singh, PW3 Satwant Singh and PW5 Sukhpal Singh. Number of other cases, it is contended, are registered against respondents no.2 and 3 and the disclosure statement by respondents no.2 and 3 accepting the commission of offence by them has been wrongly ignored by the learned trial Court.

We have considered the arguments raised by learned counsel for the applicants-appellants and after a careful and close scrutiny of the evidence on record, we find no ground whatsoever to interfere for setting aside judgment dated 27.02.2020, acquitting respondents no.2 and 3 of the charges framed against them. It is relevant to note that besides the complainant, the injured as well as the persons who were travelling in the van on 13.07.2018 have in one voice stated that both the riders on the motorcycle had muffled their faces with handkerchiefs. The motorcycle riders were admittedly supporting a helmet and a turban respectively. It is a matter of record that pamphlets, (Ex.PW7/D) were issued after the occurrence with photographs of the accused obtained from the CCTV footage of the area. Admittedly, faces of the accused are not visible at all and neither is there any such distinguishable feature which would identify the accused. There is no registration number on the motorcycle on which the

accused are alleged to have been riding. No test identification parade was ever carried out. The same is borne out from the evidence of PW7 SI Sukhwinder Kaur and PW12 SI Rakesh Kumar. Therefore, to say that identification of the accused in Court by the witnesses in the present case is sufficient, is not acceptable for the reason that there is indeed nothing on record as to how and in what manner witnesses could have identified the accused persons to be the persons who were riding the motorcycle on 13.07.2018.

It is relevant to note at this stage that PW1 Yadwinder Singh - applicant/appellant no.1 has categorically stated that he had never seen the accused persons after the incident till date and had never identified the accused earlier. Furthermore, he could not identify the accused present in Court to be the same persons who had committed the crime. PW1 had specifically denied having identified the accused on 19.12.2018 in the Police Station and has denied the statement Mark X. PW2 Gurpreet Singh, the ATM custodian has admitted that no test identification parade was ever carried out. Though in his examination-in-chief, PW2 Gurpreet Singh states that he identifies the accused present in Court but in the cross-examination which was conducted on the same day i.e. 18th of July, 2019, PW2 Gurpreet Singh stated that “it is correct that I cannot identify the accused present in Court as culprits in the present case.”

The position is exactly the same in respect to the testimonies of PW3 Satwant Singh and PW4 Gursant Singh. PW5 Sukhpal Singh, the injured in this case stated that the riders on the motorcycle, one wearing helmet and another a turban, were having muffled faces and that he was hit on the head by a shot fired by one of them. The van stopped as one of the

tyres was hit and the accused persons alighted from the motorcycle and threatened to shoot them and then they snatched the cash alongwith the keys of the ATM etc. PW5 Sukhpal Singh further states that he became unconscious thereafter and was taken to Civil Hospital, Sangrur and thereafter referred to Amar Hospital, Patiala. In the cross-examination PW5 stated that he became unconscious on the spot after receiving the head injury and he did not know where he was taken thereafter and that he regained consciousness after three months of the alleged incident.

It is pertinent to note that the common thread running through the statements of all the witnesses travelling in the fateful van is that the accused had muffled faces at the time of alleged occurrence and their faces were not visible. There is indeed nothing on record to indicate as to how and in what manner these witnesses were able to identify the accused. At this stage, it is relevant to refer to the cross-examination of PW7 SI Sukhwinder Kaur, who has admitted that in none of the CCTV footage recovered, the accused are identifiable.

Much stress has been laid by learned counsel for the applicant-appellant on the disclosure statement of the co-accused in FIR No.115 dated 14.11.2018, wherein they are alleged to have accepted the commission of the crime by them. This argument is clearly untenable, hence rejected for the simple reason that the confession made by an accused in police custody is hit by the provisions of Section 25 of the Indian Evidence Act, 1872. Section 27 of the Indian Evidence Act, 1872 would come into play only on discovery of a fact on the basis of such confession. In the present case, there is indeed no discovery of any fact pursuant to the said disclosure statement.

PW9, SI Gurmeet Singh, the Investigating Officer in FIR No.115 dated

14.11.2018, has categorically stated that no recovery was ever effected in the present case from the accused by him. PW12, SI Rakesh Kumar, the Investigating Officer in the present case has also admitted that no recovery whatsoever was effected from the accused in the present case. PW12 stated that the motorcycle bearing registration no. PB-10PC-9639 and the black coloured helmet were produced by the MHC Kotwali Nabha on 15.02.2019, as the articles were lying in malkhana of Kotwali Nabha. In the given factual matrix there is indeed no evidence to link the accused with the commission of offence in question.

It is also to be noted that the FSL/Ballistic Report, Ex.PX, is also inconclusive and does not link the accused with the commission of the offence.

It is a settled position that there have to be strong, compelling and substantial reasons to set aside acquittal of the accused. Simply because another view may be possible, cannot be a ground for reversing a judgment of acquittal. Hon'ble Supreme Court in ***Arulvelu v. State represented by the Public Prosecutor 2009 (10) SCC 206*** held that :-

“ Unquestionably, the Appellate Court has power to review and re-appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by aforementioned judgments of this Court. The accused is

presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court."

Reference in this regard can also be made to judgment of Hon'ble Supreme Court in **Criminal Appeal No. 2119 of 2010 (State of Rajasthan versus Kistoora Ram)** decided on 28.07.2022, wherein it is held that it is not permissible to interfere with finding of acquittal unless it is found that view taken by Court is impossible or perverse.

Learned counsel for the applicants-appellants is unable to point out any evidence whatsoever to indicate the complicity of the accused in the commission of the offence as alleged. Learned counsel for the applicants-appellants is unable to point out any illegality, infirmity or perversity in the impugned judgment dated 27.02.2020, passed by learned Additional Sessions Judge, Sangrur, which calls for any interference by this Court.

No other argument has been raised.

Accordingly, appeal is dismissed.

(LISA GILL)
JUDGE

(HARSH BUNGER)
JUDGE

27.10.2022
Sunil

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