

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

219

CRR-4046-2016

Date of Decision: 31.10.2022

Pawan Kumar

... Petitioner

VS.

Sandeep Kumar & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Naresh Jain, Advocate for the petitioner

None for the respondents

Sandeep Moudgil, J. (Oral)

This criminal revision petition has preferred by the petitioner against the judgment dated 19.07.2016 passed by Id. Additional Sessions Judge, Sri Muktsar Sahib and the judgment dated 14.12.2015 passed by Id.Sub Divisional Judicial Magistrate, Malout whereby the accused persons have been acquitted in case FIR No.136 dated 28.09.2008 under Sections 325/323/427 IPC registered at Police Station Lambi, District Sri Muktsar Sahib.

The brief facts of the case are that one MLR bearing No. PK/180/08 qua injured Pawan Kumar son of Krishan Kumar, resident of Tarmala was received from PHC Lambi in the police station. On receipt of MLR, HC Pritpal Singh along-with other police officials reached at PHC Lambi and obtained opinion of doctor regarding fitness of the injured, who declared the injured unfit to give statement. Due to this reason, statement of injured Pawan Kumar was recorded on 28.09.2008 at civil hospital, Abohar. The petitioner/injured Pawan Kumar got recorded that he is an agriculturist and his father has expired twenty years ago and after the death of his father,

their joint land was partitioned with the intervention of relatives. Narma crop was sown and boundary line was constructed. When Narma crop was fit for plucking, then his uncle Bishan Dutt and son of his other uncle Devi Lal namely Malik Kumar alias Michal came to his field two days before the occurrence and started plucking his narma crop. Petitioner asked them not to do so and they went away while abusing. Petitioner further alleged that on 27.09.2008, he and son of his uncle Rameshwar Dutt, namely Mahavir were going to see the watercourse on scooter No. PB-30B-5127 and when they reached on the katcha passage in front of the field of his uncle Devi Lal at about 12.20 PM, then one tractor make Farmtrack of blue colour bearing No. PB-30A-9086 came, which was driven by Sandeep Kumar son of Bishan Dutt and on his left side, his uncle Bishan Dutt armed with .12 bore gun was sitting and on his right side, Malik Kumar alias Michal armed with Gandasi was sitting and beside him, Sanjeev Kumar son of Bishan Dutt armed with handle of spade was also sitting. Petitioner stopped his scooter due to narrow passage. When the tractor came near to them, then Sandeep Kumar raised Lalkara to teach a lesson to the petitioner for restraining them from plucking Narma crop and ran over the tractor over their scooter with intention to kill them, but they both fell down from the scooter due to striking of tractor with the same and the front tyre of the tractor ran over upper portion of right knee of petitioner, as a result of which his leg was fractured. In the meantime, Malik Kumar and Sanjeev Kumar also alighted from the tractor and Malik Kumar gave Gandasi blow from its reverse side on the fingers of left foot of petitioner while he was lying down on the ground and Sanjeev Kumar gave spade blow on middle front portion of his right leg. On the alarm being raised

by them, Mohinder Kumar cousin of petitioner also came on the spot and rescued them from the accused. Thereafter, accused ran away from the spot while leaving their tractor. Petitioner was got admitted in Civil Hospital, Lambi, from where he was referred to Civil Hospital, Abohar. On the basis of above statement of petitioner, FIR in this case was registered and investigation was initiated in the matter.

Accused Sandeep Kumar was arrested. On receipt of x-ray report, injury no.1 on the person of petitioner was declared grievous in nature while the remaining two injuries were declared as simple in nature. On further investigation, accused Bishan Dutt, Sanjiv Kumar and Malik Kumar were found innocent. On completion of necessary investigation, challan against the accused Sandeep Kumar was presented before the learned trial Court.

Learned trial court acquitted the respondents on the ground that from the evidence, it is not proved that the accused have caused injuries to the petitioner. Aggrieved against the said judgment, the petitioner-injured filed appeal before the learned Additional Sessions Judge, Sri Muktsar Sahib but the same has been dismissed upholding the view of the learned trial court.

I have heard learned counsel for the petitioner and gone through the record.

It is contended that since PW2 was examined on 06.11.2013 after approximately 5 years of the date of occurrence i.e. in the year 2008, the contradiction if any, is minor in nature. It is further contended that the courts below have ignored the fact that the doctor has specifically in the MLR stated that there was a fracture on the leg and the loopholes of the police official

cannot prove to be fatal to the case of the petitioner-injured. In this regard, the petitioner has filed a separate complaint under Section 210 CrPC. Further the contention of the petitioner is that the learned courts below have not properly examined the evidence as PW3 Dr. Pardeep Kumar has specifically stated that he conducted x-ray of the injured.

I have heard learned counsel for the petitioner and gone through the record. This Court does not find any error apparent on the face of the record to set aside the well-reasoned judgments passed by the courts below.

Learned courts below have rightly observed that the petitioner alleged that Sandeep Kumar has raised the lalkara and ran over the tractor on their scooter, but PW2 Mahavir Singh deposed that Sanjiv Kumar raised the lalkara, which is material contradiction right from beginning in regard to initiation of the fact. Furthermore, the complainant alleged that Bishan Dutt has fired upon him from his 12 bore gun, but no injury has been inflicted upon the complainant. No recovery of weapon has been allegedly effected even during the entire investigation. Petitioner also alleged that there were two persons and their scooter fell down on the ground, when Bishan Dutt has fired towards them with an intention to commit their murder, then it is strange that none of the complainant party have suffered any kind of injury. As such, the whole story brought by complainant on this account is found to be implausible and improbable.

Learned courts below have rightly pointed out that the medical evidence does not corroborate the version the petitioner that the tractor had overrun his right leg but neither any injury of crushing the leg has been found in the MLR nor this fact has been proved by the petitioner.

Learned courts below have rightly returned a finding of fact that the declaring of injury by this witness as grievous does not carry any weight, when the prosecution has failed to examine the Radiographer and the doctor, who had allegedly conducted the x-ray. Accordingly, testimonies of these witnesses do not inspire confidence in the story of prosecution, rather contradicts the ocular version.

The learned appellate court further observed that:-

“20. Keeping in view of above discussion, documents and evidence brought on record, it is clear that the prosecution has failed to bring any cogent and convincing evidence, which proves the allegations of prosecution story. The testimony of complainant as well as another alleged witness PW2 are neither found to be credible and nor trustworthy. Furthermore, there is unexplained 30 hours delay in regard to registration of the FIR and the allegations leveled by complainant qua unfitness is found to be baseless due to surfacing of material in the medical evidence. Furthermore, when no complaint has been lodged qua picking of cotton crop, then it is very strange that the motive alleged by the complainant is totally found to be false. Interestingly, PW2 an alleged eye-witness has not suffered any injury, whereas another witness PW6 has not given support to the version of prosecution, rather he has proved the stand of defence that the complainant has planted the false case. Due to these circumstances, investigating officer has neither collected any blood stained clothes and nor any blood stained earth. Furthermore, these documents have neither been produced and proved on record by complainant at the time of trial. Moreover, neither original record has been produced and nor Radiographer has been examined to prove the factum

of x-ray, therefore, alleged opinion given by the doctor is also not based on the true genesis of the occurrence, rather same has been concealed by the complainant. As such, learned trial Court has rightly appreciated and evaluated the material evidence brought on record.

21. In the light of above circumstances the law referred by learned counsel for appellant-complainant in State of U.P. versus Atar Singh & Ors., Shyam versus State of M.P. through P.S. Bercha, Ghasita Sahu versus State of Madhya Pradesh, Bhargavan and Ors. Versus State of Kerala and Jagir Singh versus The State(Delhi Administration) (Supra) neither covers to the facts and nor to the matter in controversy, whereas on the other hand, the submissions raised by learned counsel for respondents qua presumption of innocence in favour of respondents-accused also carries weight. On this account this Court finds support and strength from A. Shankar Vs. State of Karnataka, 2011 AIR Supreme Court 2302. Moreover, the prosecution has failed to bring any reliable and unimpeachable evidence to prove the ingredients of offence for offence under Sections 325, 323, 427 of IPC against the accused before the learned trial Court, then the evidence has been correctly seen by the learned trial Court. Moreover, defence witnesses DW1 to DW6 coupled with documentary evidence have rightly repelled the stand of prosecution and made doubt in the story of prosecution. It is also golden principle of Criminal jurisprudence that benefit of doubt always tilts in favour of accused and against the prosecution. Accordingly, finding recorded by learned trial Court that prosecution has failed to substantiate the charge beyond shadow of reasonable doubt is found to be on proper appreciation of material evidence as well as well on proper reasoning.”

In view of the above, this Court does not find any ground to interfere with the judgments passed by both the courts below.

Dismissed.

31.10.2022
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No