

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

CRA-AD-7-2020

Reserved on: 15.11.2022

Date of decision: 21.11.2022

TRILOK CHAND SHARMA

...Appellant

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Devender Kumar, Advocate
for the appellant.

Mr. Pradeep Prakash Chahar, DAG, Haryana

SURESHWAR THAKUR, J.

1. The instant appeal is directed by the aggrieved-victim against the verdict of acquittal, as made on 12.09.2019, by the learned Additional Sessions Judge, Gurugram, upon Sessions Case No.SC/187/2018, and, is led to institute thereagainst the instant appeal before this Court.

FACTUAL BACKGROUND

2. The facts relevant for a decision being made, upon the instant appeal are carried in FIR, to which Ex.P2 is assigned. The FIR (supra) details the factum that on 11.11.2017, a telephonic ruqa was received from control room that one Trilok son of Jagdish, resident of Bhawani enclave, Gurugram, after getting bullet shot injuries was admitted in General Hospital, Gurugram. On receiving the said information, Inspector Bijender Singh, SI Kamruddin, ASI Suresh, ASI Ghanshyam, ASI Mukesh, HC Sumer alongwith Ct. Sudhir with driver Laxman reached General Hospital, Gurugram and collected ruqa and

MLC, where doctor had opined fire arm injury and had referred the injured to Higher Centre. Further information was received that injured had been admitted to Medanta Hospital, where an application was moved for recording the statement of injured, doctor declared that the injured was unfit for making the statement. Thereafter, brother of injured namely Dinesh son of Jagdish moved an application stating that his younger brother Trilok Chand Sharma was raising construction of his house No. 639/3, Bhawani Enclave, where he was also running his clinic. On 11.11.2017 when the complainant was present at home, his brother Trilok Chand came there and stated that there was some money dispute between him and Sagar son of Ashok Kumar, resident of House No. 325, Gali No.4, Part 1, Basai, who was not returning the same. Thereafter, he and his brother went to the house of Sagar for demanding money. Then Sagar said that he would pay the money after withdrawing the same from ATM at Sector 9 Market. Thereafter complainant on his motorcycle bearing registration No. HR-26BB-5886 and his brother Trilok on his scooty bearing registration No. HR-26DB-5170, where Sagar was pillion rider, started together. When they reached near Govt. College, Sector 9, Gurugram, complainant Dinesh heard a bullet shot and he saw that accused Sagar was carrying pistol in his hand and after leaving the pistol at the spot, he ran away on the scooty of his brother. He took his brother, who was injured, to General Hospital, Sector 10, Gurugram from where he was referred to Medanta Hospital. Complainant further stated that on account of money dispute, Trilok was shot. Legal action was requested.

INVESTIGATION

3. On this complaint, case was registered. Investigation was carried out by SI Kamrudeen, investigating officer had prepared the rough site plan recorded the statements of the witnesses. From the spot, country made pistol and

bullet used in the commission of offence, were taken into police possession. During investigation, accused was arrested on 11.11.2017. Accused made a disclosure statement and snatched scooty was got recovered from house No. 325, Gali No.4, Part 1, Basai Enclave, Gurugram, which was taken into police possession and blood stained cover from the scooty was also taken. Case property was deposited in FSL Madhuban. After completion of the investigation, the present police report under Section 173 Cr.P.C., was filed.

COMMITTAL PROCEEDINGS

4. Since the afore offences were exclusively triable by the Court of Session, thus vide committal order dated 20.02.2018, the learned Judicial Magistrate Ist Class, Gurugram, committed the accused to face trial before the Court of Session.

TRIAL PROCEEDINGS

5. The prosecution examined as many as 19 witnesses and, subsequently, the public prosecutor closed prosecution evidence. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, he did not choose to lead any defence evidence.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

6. The learned counsel for the appellant has contended before this Court, that the appreciation of evidence as made by the learned trial Judge concerned, is tainted with a vice of gross mis-appreciation, and non-appreciation of evidence, therefore, he has argued that the impugned verdict of acquittal be quashed, and, set aside.

7. On the other hand, the learned State counsel has argued that the impugned verdict of acquittal, as has been challenged before this Court, is well

merited, as it is based upon a sound appreciation of evidence as became adduced by the prosecution before the learned trial Judge concerned, thus, it does not require any interference being made by this Court.

ANALYSIS OF THE DEPOSITION OF THE INJURED-VICTIM, WHO STEPPED INTO THE WITNESS BOX AS PW-15

8. The injured-victim while stepping into the witness box, as PW-15 has therein supported the genesis of the prosecution case, as becomes encapsulated in FIR, to which Ex.P2 is assigned. Nonetheless, complete reliance cannot be placed qua the speakings made by him in his examination-in-chief nor would it be appropriate to do so, unless an incisive reading is also made of his deposition, as comprised in his cross-examination. A reading of his cross-examination reveals the factum, that both the accused, and, the deceased were on friendly terms, and, that the accused had made some borrowings from the victim-injured. Even in his cross-examination there are speakings about the relevant incident taking place at a crowded street. However, excepting PW-8 (Dinesh), the investigating officer concerned, did not associate any other witness to the relevant occurrence. The victim-aggrieved is yet insistent that, at the relevant time he was accompanied by his brother PW-8 (Dinesh), and, that the latter was an eye-witness to the occurrence. Therefore, it has to be discerned, but on a wholesome reading of the testification of PW-8 (Dinesh), whether irrespective of the fact that, he is the brother of the injured-victim, whether he was in fact an ocular witness to the occurrence, and/or, that he has in his testification spoken a truthful and undoctored version, rather corroborative to the testified version as spelt by the victim-injured.

ANALYSIS OF THE TESTIFICATION OF PW-8 (DINESH)

9. However, a reading of the testification of PW-8 (Dinesh) reveals that, though therein he has corroborated the version, as spelt by the injured-

victim, to the extent that the victim was driving the scooty, at the relevant time, and, also to the extent of his following them, on his motorcycle bearing Registration No.HR-26BB-5886, and, when he witnessed the factum of the accused firing a shot from a pistol, at the back of the injured. However, the reason for discounting the creditworthiness of the testification, as made by PW-8 (Dinesh), stems from the factum *qua* MLR Ex.P17/B rather not mentioning therein, the name of the injured-victim. The lack of mentioning of the name of PW-8 (Dinesh), in the apposite MLR, to which Ex.P17/B is assigned, brings home an inevitable inference, that PW-8 (Dinesh), did not eye-witness the occurrence. The reason for making the above conclusion spurs from the factum that, if he had been an eye-witness to the occurrence, he would have ensured that, he carries his injured brother to the hospital, besides also would have definitely ensured that his name is reflected in the apposite MLR. However, since the name of PW-8 (Dinesh) is not echoed in the apposite MLR, to which Ex.P17/B, is assigned, thereupon obviously the above, is an unnatural circumstance, and, concomitantly belies the factum of PW-8 (Dinesh) eye-witnessing the relevant occurrence.

THE TESTIFICATION OF THE INJURED-VICTIM IS BELIED ON ACCOUNT OF IT CONTRADICTED THE MEDICAL EVIDENCE

10. Irrespective of the factum of the prosecution utterly failing in establishing that PW-8 (Dinesh) was an eye-witness to the occurrence, but yet on anvil of the sole testification of the injured-victim, a verdict of conviction could well be recorded against accused, but yet again if medical evidence was not grossly astray from the ocular account, as became rendered *qua* the prosecution case by the injured-victim. The injured-victim has spelt in his testification that while he was driving the scooty, the accused was occupying pillion thereof, whereupon the latter fired from the pillion, a pistol shot, which

struck his back on the left side. However, the medical evidence, as became deposed by PW-18, and, PW-19 candidly reveals that the injury caused by the bullet was on the chest, and, exit wound was on the back. Thus, the above points of entry and exist of the bullet, categorically voices, that the accused was purportedly not on the pillion of the scooty, but was driving the same. If so, the version as spoken by the injured-victim *qua* the accused occupying the pillion of this scooty, whereon, he was astride as its rider, besides his voicing that, from the rear the accused fired a bullet from the apposite firearm, is but, obviously a completely untruthful, doctored and prevaricated version. Resultantly, no credence is to be meted thereto.

11. Even though, in case there are discrepancies *inter-se* medical evidence and primary direct evidence, thereupon credence is to be meted to the direct or primary evidence, as becomes comprised in an ocular account rendered *qua* the prosecution case.

12. Since this Court has for reasons aforesaid rather discarded the testimony of an eye-witness to the occurrence, thereupon the solitary testification of the injured-victim, which also is completely contrary to the medical version, does foster, a conclusion, that in the said situation rather preponderance is to be assigned to the medical evidence. Thus, the solitary tainted version *qua* the prosecution case, as becomes spoken by the injured-victim, becomes susceptible to skepticism and no credit can be assigned thereto.

RECOVERY OF WEAPON OF OFFENCE

13. Since the recovery of the weapon of offence was not made through any recovery memo nor when the recovery was made, at the instance of the accused, to the investigating officer concerned, nor when it was preceded by any disclosure statement containing therein the apposite confession of guilt.

Contrarily, when the recovery of weapon of offence as well as of the bullets, became effected rather at the crime site, and, that too from a crowded place. Moreover, when the recovery was made after 12 hours, as evident on a reading of the testification of PW-8 (Dinesh), and, on a reading of testimony of PW-9 (HC Sumer Singh), rather elapsing since the ill-fated incident taking place, at the relevant site. Therefore, the effect of the recover(ies) being made from an open un-secluded place or rather from a crowded place does bring home a conclusion, that the said recover(ies) are extremely feeble and that no credence can be assigned thereto.

14. The learned counsel appearing for the victim-aggrieved has centered, upon the factum of recovery of the scooty being made through memo Ex.P-11, from the house of the accused, and, especially when preceding thereto a signed disclosure statement of the accused, as enclosed in Ex.P-10, was rather made. Thus, he argues that when the above recovered scooty was owned by the victim-injured and which was allegedly at the relevant time hence occupied by both the victim-injured, and, the accused, thereupon it does override the effects, if any, of the above exculpatory reasons.

15. However, even the above submission falters. The reason for making the above inference is grooved in the factum that the investigating officer concerned, in his cross-examination rather making speakings about his not verifying the trite factum *qua* the scooty being owned either by the accused or by the injured-victim. Therefore, the scooty as became recovered through memo Ex.P-11, is to be concluded to be not owned by the injured-victim, rather is to be concluded to be owned by the accused, and, but obviously its occurrence within the house of the accused does not beget any suspicion. Resultantly, it does not hold any incriminatory tinge.

SUMMARIZATION OF PRINCIPLES

- I. Though, normally in case there is contradiction *inter-se* ocular account and medical account qua rather than the ocular account rendered in respect of the relevant crime does assume preponderance. However, if the ocular account rendered *qua* the prosecution case is provenly false or is prevaricated, then the ocular account does lose its creditworthiness, and medical account assumes paramount evidentiary worth.
- II. If the recover(ies) are not made in pursuance to a provenly signed disclosure statement recorded by the accused, before the investigating officer concerned, but are made from the crime site, which is but an open/un-secluded place, thereupon, the recoveries do not comprise any valid potent link in the chain of circumstances.

FINAL ORDER

16. For the reasons assigned hereinabove, the instant appeal is dismissed, and the impugned verdict of acquittal is maintained and affirmed.
17. Bail bonds, if any, are ordered to be forthwith cancelled and discharged. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.
18. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

21.11.2022
Ithlesh

(KULDEEP TIWARI)
JUDGE