

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

218 - CRR-1358-2017

Date of Decision: 15.12.2022

Rishi Pal

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Arun Kumar, Advocate for
Mr. Nonish Kumar, Advocate for the petitioner

Sandeep Moudgil, J.

This criminal revision petition has been preferred by the petitioner seeking quashing of the impugned judgment dated 05.11.2016 passed by Addl. Sessions Judge, Karnal vide which the judgment/order dated 13.05.2014/16.05.2014 passed by the JMIC, Karnal has been affirmed and respondents No.2 to 5 have been acquitted in Criminal Complaint No.14416 of 2013 and in FIR No.372 dated 21.05.2009, under Sections 323, 324, 326, 452 and 506/34 IPC, registered at Police Station Civil Lines, Karnal.

Prosecution case is that on 20.05.2009, complainant, Rishi Pal, got recorded his statement to ASI Dharambir stating that he is a farmer by profession and they are eight brothers. His elder brother was running shop No.35 under the name and style of 'Balaji Diary', which is situated at Mugal Canal, Karnal. On 20.05.2009 at about 4:30 p.m., he alongwith his brother Dharampal and brother-in-law (Jija) Jasmer Singh, was present at the shop and they had left for taking tea at their rented house - House No.229, Sector-13 Extn., Karnal, leaving him alone at the shop. They had also kept an amount of Rs.84000/- of Poultry Farm and sale of shop amounting to

Rs.1700/- in the money box. At about 5:00 p.m., 8-9 young persons, out of which 4-5 persons were having muffled faces, entered into his shop alongwith weapons i.e. lathi, danda and sword in their hands and started giving beatings to him with lathi and dandas. He could identify two persons namely, Vicky and Iqbal Singh. Vicky was having sword in his hand and he hit the same on his left arm, whereas Iqbal was having gandasi in his hand and he gave a gandasi blow on his head. However, the remaining assailants gave blows of danda, lathis and fists on various parts of his body. Due to fear, he fled away from the spot and had gone to his rented house. He narrated the whole story to his brother Dharampal and Jija Jasmer. When they returned to the shop, they found that all the articles of the shop were lying scattered and money lying in the Galla (money box) was also missing. Accordingly, the instant FIR was registered.

Having complied with Section 207 Cr.P.C and on finding a prima facie case, accused Vikas, Uttam Singh, Karamvir and Narinder Kumar were charge-sheeted, vide order dated 17.09.2009, for the offences punishable under Sections 323, 324, 326, 452 & 506 read with Section 34 IPC, to which the accused pleaded not guilty and claimed trial. It is pertinent to be mentioned here that during proceedings of the case, prosecution moved an application under Section 319 Cr.P.C. for summoning Iqbal Singh, which was allowed vide order dated 07.07.2010 by the Court of Sh. Sumit Garg, the then learned JMIC, Karnal. On appearance, accused Iqbal Singh was charge-sheeted vide order dated 28.01.2011, for the offences punishable under Sections 323, 324, 326, 452 & 506 read with Section 34 IPC, to which the accused pleaded not guilty and claimed trial.

The trial court, after considering the evidence of the prosecution, defence evidence and contentions of both the sides, vide its judgment dated 13.05.2014 convicted and held guilty accused Vikas alias Vicky only for the commission of offence under Sections 323, 324, 326 and 452 IPC and sentenced the convict vide order dated 16.05.2014, whereas, the remaining accused have been acquitted of the charges framed against them. Feeling aggrieved, the convict Vikas alias Vicky preferred an appeal against the impugned judgment of conviction and order of sentence. Whereas, the State of Haryana as well as appellant-complainant Rishi Pal also preferred separate appeals with a prayer for setting aside the judgment of acquittal. But the appeal of the complainant, the appellant herein and the State have been dismissed vide common judgment dated 05.11.2016, prompting the appellant to file the present criminal appeal before this Court.

Learned counsel for the appellant, at the outset, contended that the both the courts below have wrongly come to the conclusion that case against the respondents No.2 to 5 – accused has not been proved beyond reasonable doubt. He argued that there was sufficient evidence on the record to hold that all the accused including respondents No.2 to 5 are guilty for commission of the offences. It is argued that the courts below have not considered and appreciated the oral as well as documentary evidence led by the prosecution during the course of trial and the allegations against the respondents No.2 to 5 – accused are fully proved from the deposition of prosecution witnesses, including the medical evidence. Further, these witnesses were subjected to lengthy cross-examination, but the respondents No.2 to 5 – accused could not impeach their credence.

Heard.

Records of the case are perused with the able assistance of counsel for the petitioner.

The courts below rightly observed that appellant-complainant Rishi Pal PW1 was the only person to depose before the Court regarding the identity of the accused as there is no other eye witness to the incident, cited by the prosecution. As per the version of PW1 Rishi Pal, he identified only accused Vicky and Iqbal. However, in his cross-examination he stated that he had no prior dispute of any kind with the accused persons and prior to the alleged incident, he has never been acquainted with the accused persons. He stated that the names of the accused were told to him by the police in the Police Station. However, he knew about the identity of the accused. Thus, from the statement of complainant PW1 Rishi Pal, it is established that except accused Vicky and Iqbal, all other persons had muffled their faces and the complainant-injured had not seen them. There is no material on the record as to whether any identification parade was conducted or not by the police during the course of investigation. The complainant, in his initial version, had failed to explain about the physical body structure of the remaining accused persons.

The appellate court has rightly relied upon the judgment of Apex Court in **Criminal Appeal No.1381 of 2014 (C.K. Dasegowda & Ors. vs. State of Karnataka)** decided on 15.07.2014 to hold that the appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available under the fundamental principle of criminal jurisprudence that every

person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. If two reasonable conclusions are possible on the basis of the evidence come forth on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

In view of the above discussion, this Court does not find any illegality or infirmity in the judgments passed by both the courts below and as such the same are upheld, being based on law and evidence.

Dismissed.

15.12.2022
V.Vishal

(Sandeep Moudgil)
Judge

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

Yes/No
Yes/No