

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-3494-SB-2013 (O&M)

Date of Decision: 02.02.2023

Gurwinder Singh

... Appellant

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. NS Gill, Advocate,
Mr. Munish Gupta, Advocate for the appellant

Mr. Rajiv Verma, DAG Punjab

Sandeep Moudgil, J.

This criminal appeal has been directed against the judgment dated 19.07.2013 passed by the Sessions Judge, Fatehgarh Sahib vide which the judgment and order of sentence dated 28.09.2011 passed by the trial court has been set aside and the respondent No.2 has been acquitted in case FIR No.25 dated 23.04.1999 under Sections 323/324/34 IPC registered at Police Station Mandi Gobindgarh.

The facts of the case are that as per statement of Gurwinder Singh Ex.P-1 dated 23.4.1999 recorded by ASI Parkash Chand at Civil Hospital Amloh, on 22.4.1999, Gurwinder Singh aged 16 years alongwith his father Harjinder Singh, brother Manpreet Singh and mother Surinder Kaur were fixing the boundary of their fields, where bajra crop was sown. At about 8 A.M, Gurmit Singh armed with gandasi, Jaswinder Singh and Achhar Singh armed with soties and Sewa Singh armed with soti came on their tractor mark International. Tractor was driven by Gurmit Singh. On arrival, Achhar Singh exhorted that complainant party be taught lesson for filing case for setting

aside registered document. Gurmit Singh gave gandas blow on the head of Gurwinder Singh, Jaswinder Singh gave soti blow on the ankle of Gurwinder Singh. Achhar Singh gave soti blow on the back of complainant Gurwinder Singh fell down and Sewa Singh gave soti blow on the left leg of complainant. Complainant alongwith his father and other persons raised alarm, which attracted Amarjit Singh son of Sadhu Singh and Sadhu Singh son of Bachittar Singh, who were going from the fields of Amarjit Singh to their house. Accused persons ran away with their respective weapons. Complainant was being brought by his father to Civil Hospital, Amloh, but on the bus stand Shamshpur, Devinder Singh met him. Thereafter, Devinder Singh accompanied by the father of the complainant, got complainant admitted in the hospital. ASI Parkash Chand made endorsement on the statement, that on 22.4.1999, on receiving intimation from Civil Hospital, Amloh regarding admission of the injured, he reached the hospital, where doctor declared the injured unfit to make statement. Then on 23.4.1999, he again visited Civil Hospital, Amloh and then injured was declared fit to make statement. Therefore, his statement was recorded. On the basis of statement dated 23.4.1999, case under Section 324 read with Section 34 IPC was registered. After completion of investigation, challan was presented against the accused Gurmit Singh, Jaswinder Singh and Achhar Singh. The accused were charge-sheeted under sections 323, 324 read with Section 34 IPC IPC.

In support of its case, the prosecution examined Gurwinder Singh complainant PW-1, Manpreet Singh eye witness PW-2, ASI Parkash Chand Investigating Officer PW-3, Surinder Kaur eye witness PW-4, Devinder Singh

Pharmacist PW-5, Resham Singh Patwari PW-6, HC Ram Dass PW-7 and thereafter closed the evidence.

When examined under Section 313, the accused denied the incriminating evidence led against them and claimed that appellant-complainant and his family had sold the property to the accused. Appellant-complainant and his family filed suit for setting aside the sale deed, which was dismissed. Appeal was also dismissed by the Appellate Court. Appellant-Complainant lodged false case against them.

In defence evidence, the accused examined Ranjit Singh Clerk of Sh. Naveen Verma, Advocate Amloh as DW-1, Dr. Mahesh Kumar Jindal as DW-2 and closed the defence evidence after producing copy of complaint filed by him regarding the present occurrence.

After hearing all the parties and going through the file, the trial court vide judgment and order dated 28.09.2011 convicted and sentenced the accused under Sections 324, 323 IPC read with Section 34 IPC.

Aggrieved against the said judgment and order dated 28.9.2011, the accused persons filed criminal appeal which has been accepted and the accused persons have been acquitted granting benefit of doubt to them. It is against this judgment of acquittal of respondents No.2 & 3 that the appellant-complainant has preferred this criminal appeal before this Court.

Learned counsel for the appellant submits that the trial court has taken into consideration that there were injuries on the body of Jaswinder Singh which were 6 in number and the same has not been explained. But the appellate Court has went wrong in the manner that the said complaint was dismissed by the trial Court on the even date i.e. 28.09.2011 when the accused

were convicted and version of the accused was not believed by the court. The said judgment attained finality. Furthermore, the judgments relied upon by the trial Court to the effect that the judgments have attained finality by order dated 6.12.2004 passed by the Appellate Court and the matter has been decided in favour of Gurmeet Singh and others. The said point has been wrongly taken by the appellate Court because the said civil appeal is pending admitted as Regular Second Appeal before the Hon'ble High Court and interim stay of the operation of the judgments have been granted and is lying admitted. So the version taken by the appellate Court regarding the decision has attained finality in favour of the respondents is wrong,

Furthermore, the injuries alleged to have been caused to respondent Jaswinder Singh by the appellant's side is said to have not been explained. Moreso, the persons to whom the alleged injuries were attributed by respondent Jaswinder Singh have since been acquitted on 28.09.2011 and the judgment has attained finality i.e. the version set up by the respondents/accused have not been accepted by the trial Court so the Appellate Court has wrongly taken into consideration the injuries of the respondent No.2 which have been found to be false by the appellate Court.

It is further contended that the appellate Court further wrongly held that there is delay of one day in recording the statement of appellant, because he was admitted in the hospital on 22.04.1999 and MLR was conducted on 22.4.99 and the appellant being not fit to make statement, as is evident from the record of the Trial Court, his statement was recorded on 23.04.1999. It is pertinent to point out that if Harjinder Singh had refused to

make statement that does not affect the merits of the case. The judgment passed by the Appellate Court is based on surmises and conjectures.

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

A perusal of the judgment passed by appellate court shows that Gurwinder Singh complainant while appearing as PW-1 has reiterated his case. He has stated that on the exhortation raised by Achhar Singh, Gurmit Singh gave gandasi blow on his head. Jaswinder Singh gave soti blow on the ankle of Gurwinder Singh. Achhar Singh gave soti blow on the back of complainant. Sewa Singh gave soti blow on the left leg of complainant. Similar statement was made by his brother Manpreet Singh and mother Surinder Kaur. The time of the occurrence as per Gurwinder Singh PW-1 is 8 A.M. It further comes out that Dr. Karamjit Singh, who medico legally examined Gurwinder Singh, had died and his pharmacist has proved MLR Ex.PW5/B. MLR Ex.PW5/B shows that there were four injuries on the person of Gurwinder Singh, when he arrived in the hospital at 9 A.M. Injury no.1 on the head was incised wound. Remaining injuries were contusions and diffused swelling. None of the witnesses claimed that any injury was also caused to any of the accused. In this case, there is deliberate delay in making statement to the police. Injuries are such that due to such injuries, injured is unlikely to be unfit to make statement. However, ASI Parkash Chand PW-3 had made it clear that statement of injured was recorded on the next date i.e. 23.4.1999. In cross examination he has stated that on 22.4.1999, he had visited the hospital. He does not know, whether injured was in the hospital or not. Harjinder Singh father of the complainant had met and had told him that only complainant will make the

statement. Harjinder Singh father of the injured was eye witness. There is no reason for him not to make complaint to the police regarding occurrence. The one day delay gave sufficient opportunity to the complainant party to improve their version.

The defence evidence shows that Jaswinder Singh accused has also received six injuries on 22.4.1999. His MLR Ex PW5/A shows that he was also admitted in the hospital on 22.4.1999 at 10 AM his injuries are lacerated wound, diffused swelling, reddish contusions all the said injuries were simple in nature. It gives an indication that a fighting took place between the parties. The injuries as noticed by DW-2 Dr. Mahesh Kumar Jindal, are reproduced as under:-

1. Diffuse swelling about 8 cm x 6 cm on the upper part of shin of left leg. C/o pain and tenderness. Advised x-ray left leg including knee A.P and lat. View.
2. Lacerated wound about 3 cm x 1 cm on the medial aspect of lower third of left fore arm. C/o pain and tenderness.
3. Linear reddish contusion about 8 cm on the extensor surface of upper third of right fore-arm C/o pain and tenderness. Advised X-ray right fore-arm including elbow A P and lat.
4. Linear reddish contusion about 10 cm x 5 cm on the lower part of back of right side of chest Tenderness positive. Advised x-ray chest
5. Linear reddish contusion about 12 cm x 2.5 cm on the right sacral region.
6. Linear reddish contusion about 12 cm x 2.5 cm on the lateral aspect of right knee.

It was further rightly observed by the appellate court that the duration of injuries was within three hours. Kind of weapon used was blunt. Complainant party does not say that they caused any injury to Jaswinder Singh

accused. Not only this, Jaswinder Singh filed a complaint Ex.D-1 against Harjinder Singh, Mohinder Singh, Dev Singh Baldey Singh sons of Kartar Singh, Mania, Chhotta Singh sons of Harjinder Singh, Surinder Kaur wife of Harjinder Singh and Baljinder Kaur wife of Baldev Singh and one Sarabjit Singh son of Karam Singh under Sections 323/149 IPC. Complaint was dismissed by the trial court and the appeal was filed before this court. Admittedly, civil litigation was also pending. Copy of judgment of appellate court Ex.D-2 shows that appeal filed by Harjinder Singh was dismissed, meaning thereby that the matter should be decided in favour of the opposite party. It shows that judgment as well as evidence of the parties that there was land dispute between the parties. Six injuries on the person of one of the accused have not been explained. There is deliberate delay of one day in making the complaint. The injuries are simple in nature. Therefore, the appellate court rightly came to the conclusion that the possibility of fabricating the injuries to settle the dispute cannot be ruled out. In these circumstances, prosecution case could not said to be proved beyond all reasonable doubts.

In **Lakshmi Singh v. State of Bihar, (1976) 4 SCC 394**, the Supreme Court had held that the omission on the part of the prosecution to explain injuries on the accused would assume greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. It further held that non-explanation of injuries of the accused indicated that the prosecution had suppressed the genesis of occurrence which resulted into the theory that the persons denying the presence of injuries on the accused were lying and their evidence was unreliable. It was stated that the case presented by

the defence explained the injuries which was sufficient enough to cast probable doubt on the prosecution's case. The Apex Court further took note of the fact that there was a previous enmity between the two families on account of election of Sarpanch which could act as a double-edged sword. It can be used to establish motive but also opens up the possibility of false implication. Moreover, the Court noted that there was a delay of about 4-5 hours in lodging the FIR and the reason for the same was not explained by the prosecution, therefore, it was fit to give the benefit of doubt to the accused. The Court further observed that there was neither any mention of accused 8-10 in the intimation report nor in the spot panchnama. The said delay casted a serious doubt on the genuineness of the prosecution's case.

In **Ramesh Baburao Devaskar v. State of Maharashtra, (2007)**

13 SCC 501 emphasized on the fact that when there is a pre-existing enmity amongst the parties, immediate lodging of FIR provides credibility to the prosecution's case. The Bench, with respect to the issue of evidence of interested witnesses stated that when evidence was partly reliable, it was the responsibility of the Courts to separate the chaff from the grain and seek further corroboration from reliable testimony and accordingly granted the benefit of doubt to accused 8-10 by stating that "*Taking into consideration the delay in lodging the FIR, with the circumstance of their names not being mentioned in the contemporaneous documents, the possibility of the said accused being falsely implicated cannot be ruled out.*"...

The Supreme Court in **Mohar Rai v. State of Bihar, AIR 1968**

SC 1281 held that the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very

important circumstance from which the court can draw the inferences (i) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version; (ii) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable; (iii) that in case there is a defence version which explains the injuries on the person of the accused, it is rendered probable so as to throw doubt on the prosecution case.

In **Lakshmi Singh v. State of Bihar, (1976) 4 SCC 394** the Supreme Court held that where the prosecution fails to explain the injuries on the accused, in such eventuality, the evidence of the prosecution witnesses is untrue and that the injuries probabalize the plea taken by the accused.

In nine Judges bench of Allahabad High Court in **Rishikesh Singh v. State of U.P., AIR 1970 All 51 (FB)**, the question for consideration was as to whether the views of Seven Judges Bench in **Parbhoo v. Emperor, AIR 1941 All. 402 (F.B.)** were still a good law. While declaring that the majority decision in **Parbhoo** (supra), is still, good law, it was held that the accused person who pleads an exception is entitled to be acquitted if upon a consideration of the evidence as a whole (including the evidence given in support of the plea of the general exception) a reasonable doubt is created in the mind of the court about the guilt of the accused. Discussing it further, it was observed that the majority of their Lordships did not lay down anything beyond three important propositions which, if not either directly or indirectly supported by decisions of their Lordships of the Supreme Court, have not been affected in the slightest degree by these decisions. These propositions are: firstly, that no evidence appearing in the case to support the exception pleaded

by the accused can be excluded altogether from consideration on the ground that the accused has not proved his plea fully; secondly, that the obligatory presumption at the end of Section 105 of the Indian Evidence Act, 1872 is necessarily lifted at least when there is enough evidence on record to justify giving the benefit of doubt to the accused on the question whether he is guilty of the offence with which he is charged; and thirdly, if the doubt, though raised due to evidence in support of the exception pleaded, is reasonable and affects an ingredient of the offence with which the accused is charged, the accused would be entitled to an acquittal. Even if the accused fails to establish to the satisfaction of the court, the plea of private defence, it is enough, if a reasonable doubt arises on examination of the probabilities of the case. Accused need not prove the same beyond reasonable doubt. However, the circumstances should at least probabilise the same.

In view of the above discussion and scrutiny of evidence and submission along with the proposition of law referred to above, this Court does not find any illegality or infirmity in the judgment passed by the appellate court in granting benefit of doubt to the accused and acquitting them of the charges framed against them.

Dismissed.

02.02.2023
V. Vishal

(Sandeep Moudgil)
Judge

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

Yes/No
Yes/No