

226

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-3156-SB-2014 (O&M)

Date of decision:25.09.2023

Sukhmander Singh and others

....Appellants

versus

State of Punjab

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Randeep Singh, Advocate for
Mr.Gopal Singh Nahel, Advocate
for the appellants.

Mr.Mohit Chaudhary, AAG, Punjab.

ARUN MONGA, J. (ORAL)

Present appeal has been filed challenging the judgement and order of sentence dated 27.05.2014 passed by learned Additional Sessions Judge, Sri Muktsar Sahib, vide which appellants have been convicted and sentenced for offences under Sections 148/149/452 of the IPC.

2. The succinct facts of the present case, as narrated in the grounds of appeal, are as follows: An FIR No.46, dated 21.4.2007, was registered under Sections 307/452/323, 324, 148, 149 of the Indian Penal Code (IPC) and Sections 25 and 27 of the Arms Act at the Gidderbaha Police Station in the Sri Muktsar Sahib District. This FIR was filed at the instance of one Jagdev Singh, son of Tarsem Singh, against the appellants. According to the complainant's version, he was employed as a driver for Rajesh Kumar Gandhi, also known as Bittu Gandhi, who held the position of M.C. (Municipal Councillor) in the area. It was alleged that around 12 noon on April 21, 2007, a group of 8-10 individuals arrived in a car and a jeep, inquiring about the whereabouts of Bittu Gandhi. Subsequently, the complainant sustained the injuries described in the FIR.

Based on these allegations, the aforementioned FIR was registered. However, following the investigation, charges were filed against only appellant no.1, namely Sukhmander

Singh, also known as Mander Singh, under sections 323/324 of the IPC, while the others were found innocent. Subsequently, appellants No.2 to 6 were added as accused persons after an application was submitted by the prosecution under Section 319 of the Criminal Procedure Code (Cr.P.C.).

3. To support the charges, prosecution examined as many as 6 witnesses, namely, eye-witness Rajesh Kumar alias Bittu Gandhi as PW1, Jagdev Singh injured-complainant as PW2, Hardeep Singh as PW3, Harpreet Singh alias Rubi as PW4, SI Bant Singh (retd.) as PW5 and Dr. Sudarshan Singla (retd) as PW6.

4. All the incriminating evidence produced by the prosecution was confronted to the accused in their statement under Section 313 Cr.P.C. They controverted the same and pleaded innocence. They did not adduce any evidence in defence.

5. Learned counsel for the appellants submits that learned trial Court has rightly appreciated the evidence of Jagdev Singh complainant (the only injured person), who categorically deposed as PW2 in the Court that the alleged incident had never taken place and the appellants/accused persons never came to the house of Rajesh Kumar Gandhi @ Bittu Gandhi. He further deposed that he has seen the accused persons present in the Court and they never entered in the house of Rajesh Kumar Gandhi @ Bittu Gandhi. Further the ld. Trial Court also rightly appreciated the evidence of Hardeep Singh PW3, Harpreet Singh PW4 (cited as eye witnesses) who also deposed in the Court that no incident ever took place in their presence and further they also deposed that the accused persons present in the Court did not cause any injury to Rajesh Kumar @ Bittu Gandhi. In the light of statements made by prosecution witnesses especially the injured himself and the eye witnesses to the effect that the alleged incident never took place, acquittal of the accused persons/appellants for offences under Sections 307/323/324 of IPC was ordered by the learned trial Court.

6. He further contends that the trial Court also rightly appreciated that Rajesh Kumar @ Bittu Gandhi PW1 himself deposed that blood had oozed from the wound of Jagdev Singh and his clothes were stained with blood but no blood had fallen on his clothes and the police did not lift any blood from his house from the place of occurrence

and he further deposed that he does not know whether the police took into possession the blood stained clothes of the injured or not. It is submitted here that all the witnesses including the injured/complainant himself, eye witnesses did not support the prosecution version and only the statement of PW1 remained before the Id. Trial Court to be considered. It is further submitted here that PW1 Rajesh Kumar was neither the injured nor the complainant and as such conviction of appellants u/s 148/149/452 IPC could not sustain especially when he himself deposed that no blood stained clothes/earth which was stated to be oozing out from Jagdev Singh (injured), were lifted by the police from his house i.e. from the place of occurrence, which itself indicates that the alleged incident had never taken place at his house. It is also submitted here that the complainant/injured namely Jagdev Singh PW2 not only deposed against the prosecution version but also specifically stated that no person had come to the house of above named Rajesh Gandhi @ Bittu Gandhi and further it has also come on record that the said injured/complainant also left the hospital against advice/permission of the doctors. It has also come on record in the shape of medical evidence of PW6 Dr. Sudarshan Singh that possibility of injuries on the person of Jagdev Singh to be given by friendly hand cannot be ruled out. It is submitted in the light of these circumstances it is clear that infact Rajesh Kumar Gandhi @ Bittu Gandhi planted a false criminal case against the appellant by putting his driver as a tool and managed to lodge an FIR by using his influence as M.C. of the area.

7. Learned counsel for the appellants further submits that the appellants deserve to be acquitted of all the charges in the light of evidence produced on record including the offences under Sections 148/149/452 IPC. The trial Court though rightly appreciated the evidence on record and acquitted the appellants of charges under Sections 307/323/324 IPC. However it failed to appreciate that even ingredients of Sections 148, 149, 452 IPC were not fulfilled against the appellants especially when all the eye witnesses, including complainant deposed in the Court to the effect that the accused persons/appellants did not come to the house of Rajesh Gandhi @ Bittu Gandhi on the alleged date and did not cause any injury on any person. Despite this, the learned trial Court wrongly held the appellants guilty for commission of offences punishable under

Sections 148, 452 read with Section 149 IPC and accordingly convicted and sentenced them.

8. *Per contra*, learned counsel appearing for the State contends that learned Court below after considering the evidence and material on record rightly convicted and sentenced the appellants.

9. I have heard the rival contentions of learned counsel for the parties and have perused the case file.

10. As noted in paragraph no.10 of the judgement under challenge the complainant/informant PW-2, on whose statement FIR was registered deposed as below:-

10. *Jagdev Singh, who is the injured-complainant of this case while appearing in the witness box as PW2 has deposed that he was working as a driver with Rajesh Kumar alias Bittu Gandhi for about eight/ten years. No incident ever took place in his presence. No person ever entered into the house of Rajesh Gandhi or caused injuries on his person or on his person. He has seen the accused present in the Court. They never entered into the house of Rajesh Kumar Gandhi and they never caused injuries on the person of Rajesh Kumar Gandhi. At this stage this witness was declared hostile at the request of the Ld. Addl. PP for the State and was allowed to be cross-examined by him.*

11. *Qua* the same version as above, the owner of the house who also claimed himself to be an eyewitness-Rajesh Kumar alias Bittu Gandhi-PW1 yet did not come forth to get the FIR registered, the trial Court observed as below:

11. *Rajesh Kumar alias Bittu Gandhi, who is the eye-witness and was allegedly manhandled by the accused, while appearing in the witness box as PW1 has deposed that he is running a commission agency business. On 21.4.2007 at about 12:00 Noon, he alongwith his driver Jagdev Singh reached his house after having a round of his wheat Focal Point situated at village Peori. Harbans Singh, Pala Singh, Mander Singh, Jaspal Singh, Bhola Singh and one Dhaliwal, who are all the accused and present in the Court came on one jeep and a car bearing registration number of Haryana state and entered his house. At that time, he was inside his house and on hearing noise, he came outside in his park and saw that accused Harbans Singh armed with rifle, Jaspal Singh armed with rod, Pala Singh armed with danda, Mander Singh armed with Parna on his shoulder were present in his park. Harbans Singh accused aimed his gun towards him and told him to sign a slip which he took out of his pocket. He signed the same as Bittu Gandhi in Punjabi, which are not his signatures. Thereafter Harbans Singh pressed the trigger of the rifle, but, the rifle did not fire. In the meantime, his driver Jagdev Singh alias Jagga intervened and grappled with the accused. Accused Jaspal Singh gave a kirpan blow which hit on his left hand. Accused Pala Singh gave a rod blow on the person of Jagdev Singh. Jaspal Singh accused again scuffled with Jagdev Singh and Bhola Singh accused was very active in the commission of the offence and he gave danda blow: After this*

scuffle, he went inside the kothi. The intimation was given to the police and after hearing the raula his neighbourer Rajesh Kumar Bansal and two other persons visited him for their own work and also witnessed the occurrence. At the time of leaving the spot, the accused Harbans Singh raised a lalkara in loud voice and threatened his driver that they would kill him in case he deposed against them. Jaspal Singh accused also threatened him that if he dared to demand the money due from him, they would kill him. All the accused except accused Mander Singh managed to escape on their jeep and car and Mander Singh accused ran on foot, who was arrested by the police at the spot. The incident had taken place in order to avoid the payment of money which was recoverable from all the accused by him. The accused had also got foisted a false case under the Arms Act against him from their nephew Swaran Singh. They had also threatened his driver Jagdev Singh that they would also entangle him in the above said case in the event he deposed against them. Jagdev Singh was admitted in civil hospital, Gidderbaha. His statement was recorded by the police. Binder Dhaliwal, who was armed with rod, tried to save him.

12. Learned trial Court *inter alia* observed as under:-

20. XXXXX. In his cross-examination, PW1 Rajesh Kumar alias Bittu Gandhi has admitted that no injury was caused on his person in the alleged incident and he was not admitted in the hospital. He has further deposed that blood had oozed from the wounds of Jagdev Singh and his clothes were stained with blood, but, no blood had fallen on his clothes. The police did not lift any blood from his house from the place of occurrence. He does not know whether the police took into possession the blood stained clothes of the injured or not. He has further admitted that L.G. Crime, Chandigarh had conducted an inquiry on the application of the accused, but, he does not know whether the accused were declared innocent in the inquiry or not. He has also deposed in his cross-examination that the police had not taken the said slip which was got signed by the accused from him in its possession. He further admitted that the said slip has not been used by the accused in any case till date.

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22. As far as the submission of the learned defence counsel that there is only statement of PW1 Rajesh Kumar alias Bittu Gandhi and as such no conviction can be based on the basis of his solitary statement is concerned, it may be mentioned here that there cannot be any bar to base conviction on the basis of solitary statement of a witness in the event his presence appears to be probable and the version given by him appears to be intrinsically reliable and the material on record does not indicate that an attempt has been made to falsely implicate the accused. Furthermore, the deposition of a solitary witness cannot be discarded in the event the same is found to be credible. If the evidence of the witness is free from any doubt and inspires confidence, it cannot be discarded on the ground of his being solitary witness. Here, in this case, the occurrence has taken place at the house of Rajesh Kumar alias Bittu Gandhi PW1 and his presence at his house cannot be doubted at all.

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25. However, the prosecution has been able to prove on record that on 21.04.2007 at about 12:00 Noon, all the accused while armed with deadly weapons formed an unlawful assembly and in prosecution of common object thereof they committed the offence of rioting and further in prosecution of the common object of the above-said unlawful assembly, the accused trespassed into the house of Rajesh Kumar alias Bittu Gandhi having made preparation for assaulting him and for putting him in fear of hurt and aimed the gun at him and got a parchi signed from him. XXXXXXXX.

13. Obviously the aforesaid two testimonies of PW-1 and PW-2 are totally at variance with each other. That apart, PW1 at the relevant time rather chose to ask his driver to be the complainant/informant whereas actually the aggrieved party was the complainant and his family as per his own allegations.

14. In view of this and the aforesaid contradictions, the prosecution clearly failed to establish any culpability on the part of the appellants beyond shadow of doubt.

15. Trite it is to be observed that in the absence of having established the case beyond any shadow of doubt the conviction of the appellants cannot be upheld and the same deserves to be set aside.

16. That aside, I am in agreement with the arguments advanced by the learned counsel for the appellant which have been noted in the preceding part of this order/judgment.

17. Instant appeal is thus allowed and judgment and order of sentence dated 27.05.2014 passed by learned Additional Sessions Judge, Sri Muktsar Sahib, is set aside.

18. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 25, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No