

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-714-2020

Date of Decision: 09.03.2023

Prem Chand

....Applicant-Appellant

Vs.

Tara Chand and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Surinder Garg, Advocate,
for the applicant.

LISA GILL, J.

1. Present application has been filed by the applicant-appellant (complainant before the trial Court), seeking leave to appeal against the judgment dated 29.01.2020, passed by the learned Additional Sessions Judge, Mansa, whereby the complaint under Sections 307, 354, 452, 323 and 506 of the Indian Penal Code (hereinafter referred to as 'the IPC') read with Section 34 thereof and Section 25 of the Arms Act, 1959 (hereinafter referred to as the 'Act of 1959'), has been dismissed and all the accused, i.e. respondents No. 1 to 4 stand acquitted of the charges framed against them.

2. Brief facts necessary for adjudication of the case are that applicant-complainant filed the complaint under Sections 307, 354, 452, 323 and 506 of the IPC read with Section 34 thereof and Section 25 of the Act of 1959 against respondents No. 1 to 4. It is stated in the complaint that complainant was running a general store in a wooden cabin at Railway Station, Bareta, and that he had three sons. It is further stated that a few years prior, accused persons purchased their house fraudulently from the

complainant's father Birj Lal and complainant was turned out of the said house. The complainant, it is stated, thereafter, took a house on rent at Berata in the year 2004. Thus, a dispute existed between him and the accused party. Various complaints are stated to have been filed by the complainant against the accused but no action was taken. Respondent No. 4, Anguri Devi is alleged to have tried to kill the complainant on an earlier occasion by giving him poison.

3. It is further stated in the complaint that on 19.02.2007, at about 09:00 p.m., complainant was having dinner with his children when he heard the sound of a vehicle stopping in front of his house. In the light of a bulb which was switched on in the courtyard of his house, the complainant allegedly saw respondent No. 1, Tara Chand armed with a stick, respondent No. 2, Ajay Kumar armed with hockey, respondent No. 3, Davinder Kumar @ Neeta armed with pistol alongwith respondent No. 4, Anguri Devi. All the said respondents are alleged to have forcibly entered the complainant's house. Tara Chand asked Davinder Kumar @ Neeta to shoot the complainant on which Devinder Kumar fired a shot towards the complainant with intention to kill him. However, complainant escaped due to providence, with the bullet hitting the wall of his house after passing over his left ear. Complainant is stated to have run towards the stair case in order to save himself upon which Devinder Kumar again fired a shot towards him. The complainant to save himself hid behind the wall of the stairs. It is alleged that complainant went on to the roof of his house and raised a hue and cry on which Dev Raj came at the spot. Neighbours are also stated to have gathered at the spot. Respondent Ajay Kumar, it is stated, dragged the complainant's wife Parveen Rani, tore her clothes and

caught hold of her from her hair. Respondent, Anguri Devi, it is stated, beat up his children.

4. Preliminary evidence was led on which all four respondents were summoned to face trial for the offences punishable under Sections 307, 354, 452, 323 and 506 of the IPC read with Section 34 thereof and Section 25 of the Act of 1959. Matter was committed to the Court of Sessions and charge against the respondents was framed under Sections 452, 307, 354, 506 and 323 of the IPC read with Section 34 thereof and Section 25 of the Act of 1959. All the respondents pleaded not guilty and claimed trial.

5. Prosecution/complainant examined the complainant himself as PW-1 and his wife Parveen Rani as PW-2 to substantiate the version put forth. Statements of the respondents in terms of Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.') were recorded. They denied the incriminating evidence put to them and pleaded false implication and innocence. No evidence was led in their defence.

6. Learned trial Court on considering the evidence on record, facts and circumstances, concluded that the case against accused-respondents was not proved beyond reasonable doubt on the basis of evidence on record. Hence, all the four respondents were acquitted of the charges against them with the complaint being dismissed.

7. Aggrieved therefrom, the complainant seeks leave to appeal.

8. Learned counsel for the applicant-appellant submits that learned trial Court has grossly erred in law and on facts in dismissing the complaint filed by the complainant. It is contended that specific allegations have been levelled by the complainant which are duly corroborated by the

evidence of his wife Parveen Rani. It is further contended that learned trial Court has incorrectly discarded the testimony of the eye witness in respect to the incident which took place on 19.02.2007, on a presumption that appellant failed to produce any evidence to indicate that respondents had forcefully entered his house and that no evidence regarding any treatment taken by the appellant or his wife or children was produced.

9. It is thus, prayed that the leave to appeal be granted to the applicant-appellant and judgment dated 29.01.2020 passed by Additional Sessions Judge, Mansa, be set aside and consequently, the respondents be convicted for the offences as charged and punished in accordance with law.

10. We have heard learned counsel for the applicant-appellant and have gone through the file with his assistance. However, on careful consideration of the matter, we find no ground to interfere in the impugned decision dated 08.03.2019, for the reasons as discussed in the following paras.

11. It is a matter of record that allegations raised by the complainant are that on 19.02.2007, respondents No. 1 to 4 forcibly entered his house at about 09:00 p.m. and that respondent Davinder Kumar alias Neeta had fired two shots with intention to kill the complainant. Respondent, Ajay Kumar is alleged to have dragged the complainant's wife, torn her clothes and caught hold of her from her hair. Respondent, Anguri Devi who was admittedly 72 years old at the time of occurrence is alleged to have beaten the complainant's children. Respondent No. 1, Tara Chand, aged 73 years, is accused of exhorting Davinder Kumar alias Neeta to kill the complainant. Respondents Tara Chand & Anguri Devi are parents of respondents Davinder Kumar @ Neeta and Ajay Kumar. To

prove his case, complainant himself deposed as PW-1 and his wife has testified as PW-2. It is a matter of record that one Dev Raj who is stated to have arrived at the spot on 19.02.2007 at the time of the alleged occurrence has not been examined and in fact none of the neighbours who are stated to have gathered at the spot have been examined by the complainant for reasons best known to him. Complainant while deposing as PW-1 stated in his examination-in-chief that on 19.02.2007, he was closing his shop at about 09:00 p.m. and at that time all the four accused came on a car whereas, he then goes on to say that he was having dinner with his children at 09:00 p.m. at his residence.

12. Learned trial Court has categorically observed that applications Exs. C-2 to C-6 purportedly filed by the complainant with regard to the occurrence dated 19.02.2007 in fact do not pertain to the alleged occurrence dated 19.02.2007 but have indeed been moved prior to the said occurrence dated 19.02.2007 and are in respect to some other matter. Learned counsel for the appellant is unable to point out any evidence to the contrary. It is pertinent to note that PW-2, Parveen Rani has stated in her cross-examination that no written complaint was submitted to the police regarding the alleged incident dated 19.02.2007. Testimony of both the witnesses is not found to be credible or trustworthy in the given factual matrix.

13. Doubtlessly it is not necessary that actual injury should have been suffered by any person to attract the rigors of Section 307 of the IPC and intention or knowledge for causing murder has to be gathered from the evidence on record. In the present case, complainant stated that Devinder Kumar fired at the complaint with an intention to kill him but he

managed to escape with the bullet hitting the wall of house while going a little above his left ear. The second fire by Devinder Kumar also missed the complainant. Learned counsel for the applicant-appellant is again unable to deny that there is no proof of the same except the bald statement of PW-1, i.e. the complainant and his wife PW-2 Parveen Rani. It is a matter of record that even photographs of the wall where the bullets allegedly fired by Devinder Kumar are stated to have hit, have been placed on record. The pellets or the shells which would naturally have been available at the spot if shots were fired have also not been tendered in evidence. It is to be noted that it is not the case of the complainant that shells etc., were retrieved by the accused while leaving the place. Thus, in the facts and circumstances, it cannot be held that charge under Section 307 of the IPC against the accused is proved.

14. Furthermore, allegations that wife of the complainant was attacked by Ajay Kumar who tried to outrage her modesty is not proved by the evidence on record. There is no medical evidence on record to indicate that Parveen Rani or her children had been medically examined or given any treatment for alleged injury suffered by them. PW-2, Parveen Rani has stated in her cross-examination that they got medical treatment from a private hospital. However, she could neither give the name of the said hospital nor place on record any document to show such treatment. Torn clothes of the complainant's wife were never tendered in evidence.

15. Last but not the least, alleged motive disclosed by the complainant for causing injuries by the accused is also not proved from the evidence on record. PW-1, Prem Chand (the complainant) admitted in his cross-examination that his father Birj Lal sold the house to the accused. No

suit was filed by complainant's father against the accused persons in respect to the said transaction, neither did the complainant file any suit challenging sale of the house by complainant's father in favour of the accused. No action was admittedly taken by the complainant regarding the alleged forcible dispossession from the house in question. The accused are stated to have raised construction on the said property after demolishing old construction.

16. Keeping in view the facts and circumstances as above, the complainant has indeed miserably failed to prove the case against the accused-respondents beyond reasonable doubt. It is a settled position that an order of acquittal is not to be interfered with lightly because presumption of innocence of the accused is further strengthened by acquittal. Interference is called for only under compelling circumstances with substantial reasons forthcoming therefor and where the impugned judgment of acquittal is clearly perverse or unreasonable with relevant and convincing materials on record ignored unjustifiably by the trial Court. Reference in this regard can gainfully be made to decisions of Hon'ble the Supreme Court in **State of Madhya Pradesh Vs. Bacchudas @ Balram and others, 2007(9) SCC 135**, **Bhagwan Singh Vs. State of M.P, 2003(3) SCC 21**, **Mahamad Khan Nathekhan vs. State of Gujarat, (2014) 14 SCC 589** and in **State of Rajasthan versus Kistoora Ram 2022 (4) RCR (CrI.) 324**.

17. In the present case, learned counsel for the applicant-appellant is unable to point out any such compelling or substantial grounds which call for interference for setting aside judgment dated 29.01.2020 passed by the learned Additional Sessions Judge, Mansa, whereby respondents have

been acquitted of the charges framed against them.

18. No other argument has been raised.
19. Keeping in view the facts and circumstances as above, leave to appeal is denied and application is accordingly dismissed.

(LISA GILL)
JUDGE

March 09, 2023
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(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether Reportable	Yes/No