

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-227 of 2022
Date of decision : 04.08.2023

SubhashAppellant

Versus

Rahul and another Respondents

CORAM: HON'BLE MR. JUSTICE B.S. WALIA.
HON'BLE MR. JUSTICE LALIT BATRA.

Present: Mr. C.M. Munjal, Advocate and
Mr. Satyam Arora, Advocate for the appellant.

B.S. WALIA, J.

Application has been filed under Section 378(4) Cr.P.C. for grant of Leave to Appeal by the complainant against judgment of the learned Additional Sessions Judge, Rohtak, dated 23.03.2021 acquitting the respondents of the offences under Sections 323 / 324 / 307 / 506 / 34 IPC.

[2] Learned Counsel contends that evidence on the record establishes that the complainant was assaulted by the accused on 26.09.2010 and inflicted injuries with sharp-edged weapons as a result of which he became impotent and had to undergo treatment in different hospitals at Rohtak, therefore, the finding of false implication and consequential acquittal of the respondents is unsustainable.

[3] As per case set up by the complainant, his wife, Rekha, sister of respondent No.1 / accused - Rahul, was involved in an illicit relationship with Sanjay, respondent No.2 / accused, on which he rebuked her, besides, called accused / respondent No.1 to his house where both of them (i.e. complainant as well as his brother-in-law) reprimanded Rekha for her

conduct due to which she committed suicide on 17.09.2010 and pursuant thereto his in-laws got a case registered against him at Jind and that in order to evade arrest, he escaped to Alwar (Rajasthan) but while returning home to surrender, the respondents got prior information about his movements, as he found 2-3 suspicious persons in the train in which he was travelling whereupon he alighted at Railway Station Kharawar and called his brother – Jora Singh who in turn deputed their cousin Anil to fetch him. In the meantime, he proceeded on foot from the Railway Station to the Kharawar bypass and at about 9.15 p.m., he noticed that he was being followed by the aforesaid suspicious persons whom he recognized in the light of passing vehicles to be accused – Rahul and Sanjay (respondent Nos.1 and 2 herein), besides, an unknown person. Said unknown person caught hold of him while the accused, Rahul and Sanjay inflicted blows upon him with sharp edged weapon. However, he was rescued by some passersby, one amongst whom was Ajmer son of Hawa Singh. Thereafter, the accused escaped from the spot by threatening him with dire consequences. In the meantime, his cousin, Anil reached the spot and got him admitted in PGIMS, Rohtak where a medical memo was dispatched by the doctor along with his MLR to the Police Post PGIMS, Rohtak and on receipt of the information, the Investigating Officer from Police Station Sampla arrived at the hospital and collected medical memo, MLR etc., besides, recorded his statement, on the basis of which FIR No. 395 under Sections 323 / 324 / 506 / 34 IPC was registered at Police Station Sampla. He was discharged from the hospital on 27.09.2010 whereafter he was informed by Rambir that he had seen the accused, Rahul, Sanjay and an unknown person boarding the train from Railway Station, Jind for Delhi on 26.09.2010. Likewise, Jitender son of Bhai Ram had also gone to Village Budha Khera on the occasion of the

cremation of Rekha and he disclosed that on 27.09.2010, Gauran Singh @ Hari Karan, father of Rahul and Rekha had been openly proclaiming that he would not spare the complainant and he would be done to death. Complainant also claimed to have been hospitalized at Oxygen Hospital, Rohtak from 28.09.2010 to 30.09.2010 besides asserted that due to the injuries inflicted upon him, he became impotent, therefore, offence under Section 307 IPC was made out.

[4] On the basis of the preliminary evidence, the accused were summoned to face trial under Sections 323 / 324 / 307 / 34 IPC, case was sent to the Court of Sessions vide order dated 15.01.2016 passed by Ms. Savita Kumari, the then learned JMIC, Rohtak and subsequently, the case was entrusted to the Court of the learned Additional Sessions Judge, Rohtak where charges under Sections 323 / 324 / 307 / 506 / 34 IPC were framed against the two accused to which they pleaded not guilty and claimed trial.

[5] During the course of trial, the prosecution examined nine witnesses i.e. Subhash-complainant-PW-1, ASI Sukhbir-PW-2, Jora Singh-PW-3, Dr. Sandeep-PW-4, Rohtash-PW-5, Pala Ram-PW-6, Dr. Gaurav-PW-7, Dr. Rohit Singh-PW-8 and Dr. Navneet Kumar-PW-9. However, witnesses, Ajmer and MHC, Police Station Sampla were given up by the Public Prosecutor. Statements of the accused under Section 313 Cr.P.C. were duly recorded in which they denied all the allegations levelled against them and pleaded innocence and false implication. In defence, the accused examined Constable Hari Om as DW-1 and HC Rajender Kumar as DW-2.

[6] The learned trial Court took into account the allegations of the complainant of his having been attacked by his brother-in-law / accused Rahul and his friend Sanjay along with an unknown person on the night of 26.09.2010 with the unknown person catching hold of him while the accused

Rahul and Sanjay inflicted injuries upon him with sharp edged weapons as a result of which he sustained injuries on his private part, left arm, chest and right side of abdomen but in the meantime, several persons gathered at the spot including Ajmer son of Hawa Singh whereupon the accused escaped by threatening to kill him, the complainant's cousin-Anil also arrived there and took him to PGIMS, Rohtak where he was hospitalized, complainant's statement was recorded by the Police i.e. Ex. P/1 (on which complainant identified his signatures at Point-A) as well as of his having been discharged on the following day after treatment and returning home but on account of being in pain, again being admitted to Oxygen Hospital till 30.09.2010 and thereafter surrendering before the Police at Jind in FIR No.637, besides the complainant identifying both accused as the persons who had assaulted him.

[7] The learned trial court also took into account that eye witness – Rohtash (PW-5) stated that on the night of 26.09.2010 at about 10.00 p.m. he and Anil while going to Village Ismaila from Rohtak on reaching near Village Kharawar, saw Rahul and two other persons beating Subhash but on their reaching near them, the assailants fled from the spot, whereupon they took Subhash to PGIMS, Rohtak as he had sustained three injuries on his thighs and abdomen besides one injury on his testicles. PW-5 identified accused Rahul but Sanjay could not be identified as on the day testimony of PW-5 was recorded, Sanjay had been granted exemption from appearance.

[8] The learned trial Court took into account the assertion of the complainant of his having telephonically informed his brother Jora Singh about some suspicious persons travelling in the train with him whereas Jora Singh – PW3, brother of the complainant merely stated that on 26.09.2010 at about 10.00 p.m., he received telephonic intimation from Anil that Subhash was admitted in PGIMS, Rohtak on account of his having sustained injuries

in an assault, whereupon he along with Rohtash (PW-5) went to PGIMS, Rohtak where Anil and the complainant informed him (PW-3) that Subhash had been assaulted by the accused Rahul and Sanjay on his testicles, left hand and knee. Thus the testimony of PW-3 Jora Singh, brother of the complainant is contrary to the testimony of Rohtash (PW5).

[9] Learned trial Court also took into account the assertion that Jora Singh had agreed to send his as well as the complainant's cousin Anil to bring him to safety, but while deposing before the Court as PW-3, Jora Singh did not make any such submission nor claimed that there had been any conversation between him and his brother-Subhash, complainant, rather he stated that he had received information about Subhash being injured in an assault, from Anil, son of Satbir at about 10.00 p.m. However, for reasons best known to the prosecution as well as the complainant, Anil was not examined. Learned trial Court further took into account that Jora Singh (PW-3) had also stated that he and Rohtash (PW-5) went to PGIMS, Rohtak where they met Anil and Subhash, whereas contrary thereto, Rohtash (PW-5) claimed that he and Anil were proceeding to Village Ismaila from Rohtak when they noticed Rahul and two other persons beating Subhash but surprisingly, Subhash (PW-1) stated that while he was being beaten by the accused Rahul and Sanjay and their unknown accomplice, several persons had gathered at the spot among whom there was Ajmer son of Hawa Singh resident of Village Kharkhara (who was given up by the prosecution) and that it was Ajmer who had intervened to save the complainant, but in the meantime, Anil alone had arrived at the spot and had taken him to PGIMS, Rohtak. However, as per the MLR of the complainant- Ex.P6, the complainant was brought to PGIMS, Rohtak by his brother but the name of the brother has not been mentioned. In the aforementioned circumstances,

the learned trial Court recorded that there was clearly no consistency in the statements of the witnesses regarding the incident and the contradictory versions regarding the sequence of events which took place itself created a suspicion in the mind of the Court regarding the genuineness of the version set up by the complainant.

[10] Learned trial Court further took into account that in cross-examination, Rohtash PW-5, out-rightly rejected the suggestion that Jora Singh (PW-3) had telephonically informed Anil about the injuries sustained by Subhash, instead he stated that he and Anil had gone for some personal work and were returning to Village Ismaila through Kharawar bypass when they had witnessed the assault but he did not know the name of the third companion of the two accused who attacked the complainant, that he and Anil were together at the time of admission of Subhash at PGIMS, Rohtak. The learned trial Court observed that the statement of PW-5 falsified the claim of Jora Singh (PW-3) who had stated that he and Rohtash (PW-5) had come to the hospital together and that Anil was already present with the complainant. In his cross-examination, the complainant reiterated that he had telephonically informed his brother Jora Singh regarding the accident who in turn had informed Anil about the same. In the aforementioned background, the learned trial Court recorded that the discrepancies in the statements of the witnesses cast a serious doubt on the credibility of their testimony.

[11] Regarding, injuries upon the person of the complainant, the learned trial Court observed that as many as four doctors were examined in the case while Pala Ram (PW-6) produced CR file (Ex.P7) and that although Dr. Sandeep (PW-4) produced the MLR (Ex.P6) and certified the same, but he had neither treated the complainant nor had any knowledge about the

injuries sustained by him, while Dr. Gaurav Dhuper (PW-7), tendered in evidence, affidavit, Ex.PW-7A stating therein that he had examined the complainant on 26.09.2010 at around 11.00 p.m. and prepared MLR Ex.P6, that the patient had come with a history of assault at the bypass near Village Kharawar at about 9.45 p.m. on the same day and had sustained four injuries all of which had been caused with a sharp edged weapon within six hours and the same were kept under observation, that he had recommended surgical opinion for injuries on the abdomen and testicles and ortho opinion for the injury on the left arm and had also sent the medical memo Ex.P3. The learned trial Court recorded that although it was interesting to note that Dr. Gaurav Dhuper (PW-7) had sent the medical memo Ex.P3 but as per his statement, he had not given any opinion regarding injuries sustained by Subhash and even while testifying before the Court, he did not offer any opinion regarding the nature of the injuries but admitted that the application for obtaining the MLR (Ex. DA) had been moved by Anil Kumar.

[12] Dr. Rohit Sagu (PW-8) on the other hand stated that the patient Subhash was admitted to the PGIMS, Rohtak on 26.09.2010 and remained under his treatment till his discharge on 27.09.2010. He identified his signatures on the Short Stay File (Ex.P7) as a resident doctor and also identified the signatures of Dr. Navneet, Registrar (PW-9) but despite perusal of the record in the Short Stay File (Ex.P7), he could not give any comment qua the injuries sustained by the patient Subhash nor whether complainant had sustained any grievous injury and merely stated that *“this can only be commented upon by the doctor who had prepared the MLR at the time of admission.”* Further, Dr. Navneet testified as PW-9 in the same manner as the other doctors, and stated that the patient had been managed conservatively from the general surgical point of view for the lacerated

wounds on the right side of the abdomen and scrotum for which antiseptic dressing of the wounds was done with local suturing but that no suturing was done on the testicles by the surgical team. He also did not comment about the nature of injuries mentioned in the MLR because *“the MLR had been prepared by some other doctor.”* He further stated that the patient was discharged on 27.09.2010 with advice for follow up in the OPD and in his cross-examination, he stated that the patient was fully conscious at the time of his admission till his discharge and was fully oriented.

[13] We have considered the submissions of learned counsel, perused the paper-book, as also record referred by the learned counsel and in the circumstances are of the considered view that no ground whatsoever has been made out by learned counsel for taking a view different than the view as was taken by the learned trial Court while acquitting the respondents / accused of the offences punishable under Sections 323 / 324 / 307 / 506 / 34 IPC.

[14] A perusal of the statements of the doctors as noted above reveals that the complainant was brought to PGIMS, Rohtak on the night of 26.09.2010 where he was initially examined by Dr. Gaurav (PW-7) at about 11 pm and who sent the medical memo (Ex.P3) whereafter the patient was treated by Dr. Rohit (PW-8) and Dr. Navneet (PW-9) but as per the aforesaid doctors, only basic treatment was given to the patient who was conscious and well-oriented. The evidence of the doctors reveals that the patient had not sustained any such injury justifying further treatment, besides, none of the doctors stated that he had sustained any grievous injury. Although the applicant claimed that he remained admitted in Oxygen Hospital, Rohtak from 26.09.2010 to 30.09.2010, but no such evidence has been referred to by the learned counsel for the applicant. In fact as per MLR (Ex.P6) as well as

the testimony of Dr. Rohit (PW-8) and Dr. Navneet (PW-9), there were only superficial injuries on the person of the applicant / complainant including on his testicles for which antiseptic treatment was given besides superficial suturing was done on the abdomen but no surgery as such was done. In the circumstances, there appears to be substance in the finding of the learned trial court that it appeared that the complainant was trying to make out a case of attempt to murder by asserting that an attempt to injure his private part had been made by the accused as there was nothing on the record to substantiate the claim of the complainant that any of injuries suffered by him were grievous in nature. ASI Sukhbir Singh (PW-2) stated that on receipt of the medical memo, Ex.P3 from PGIMS, Rohtak on 27.09.2010, he and EHC Jagphool Singh had gone to the hospital and after collecting the memo, Ex.P3 and MLR, Ex.P6, they recorded the complainant's statement Ex.P1 on which he (PW-2) made the endorsement, Ex.P4 and sent it through EHC Jagphool Singh for registration of FIR besides prepared a rough site plan, Ex.P5 and entrusted the file to the SHO, that the site plan was prepared on the demarcation of Anil Kumar and that he did not know the fate of FIR No.395.

[15] It also needs noticing here that although FIR No.395, Ex. DB was registered on the basis of complaint Ex. P1 by the applicant herein, however, untraced reports, Ex. DC and Ex. DD were made qua the aforesaid FIR besides, as per report Ex.DD, during investigation, it was found that Anil was a cousin (Chacha's son) of the complainant and call details of his mobile No. 9896670870 revealed that his tower location was in Village Ismaila at Chuliana turning at 9.15 p.m. on 26.09.2010 while the tower location of Sanjay's mobile No.9467978736 was at Jind. Investigation also disclosed that there had been exchange of calls between the complainant and

his brother Jora besides Anil and the details of the same were obtained on 02.11.2010, that while Mobile No. 8010344533 of accused Rahul was issued in the name of Vikas, resident of Hewatpur, Jind, at the time of alleged incident, its tower location was at Kinana, Jind. Similarly, the other mobile phone used by Rahul bearing No.9854463522 had not been used between 17.09.2010 to 30.09.2010. As per the call details record, the accused Rahul and Sanjay were not found present at the spot at Village Budha Khera, besides, they were not present with the complainant party on that day. The Investigating Agency after verifying the facts from respectable persons besides, the tower location as also call details record of both the parties concluded that the complainant had falsely named Rahul and Sanjay as the assailants whereas actual assailants, if any, were untraceable, accordingly, an untraced report was filed.

Accused have examined Constable Hari Om who appeared as DW-1 produced the copy of FIR, Ex. DB and untraced report Ex.DC while HC Rajender Kumar (DW-2) produced the untraced report, Ex. DD and copy of the record as Mark-A to Mark-C.

[16] Perusal of the aforementioned position reveals that involvement of the accused in the alleged assault upon the applicant / complainant is not proved. No doubt, the applicant / complainant was medically treated for some injuries sustained by him in an alleged assault but the complainant has failed to prove that it was the accused who assaulted him. None of the doctors opined with regard to the injuries and the evidence of the two eye-witnesses is contradictory, besides, on query, the learned counsel expressed ignorance about the outcome of the criminal trial which his client i.e. the complainant Subhash was facing for the murder of his wife-Rekha, sister of Rahul (accused / respondent No.1). Although the accused have been named

by the complainant and Rohtash (PW-5) as being the assailants but the evidence in the form of call details and tower location collected by the Investigating Agency in FIR No.395, Ex.DD indicates that they were not present in the vicinity of the place of occurrence and were in fact at their home in District Jind at the relevant point of time, consequently, they could not have possibly assaulted the applicant / complainant on the date of incident and that too in the manner alleged, besides, the complainant never disclosed the nature of the weapon or weapons allegedly used by the assailants nor were any such weapons recovered. Consequently, no ground is made out for convicting either of the accused for having assaulted the complainant or of having attempted to murder him, instead the implication of the respondents appears to be having its foundation in a dispute pertaining to the death of the complainant's wife, i.e. real sister of the accused Rahul, for whose death the complainant was facing a murder trial. The deposition of the complainant and his two alleged eye witnesses is contradictory and unreliable, besides, the evidence collected by the Investigating Agency during investigation of FIR No.395 falsifies the case set up by the complainant. Apparently the complainant tried to falsely implicate the accused Rahul and Sanjay to pressurize them in the criminal trial being faced by him on account of the death of his wife.

[17] In the aforementioned background, details were verified from the District Court's website, and it was found that the Court of Sh. Ramendra Jain, the then learned Sessions Judge, Jind had convicted the complainant-Subhash and two others in case FIR No.637 dated 18.09.2010 Police Station City Jind, under Sections 302 and 120-B IPC vide judgment dated 01.11.2011 passed in Sessions Case No.03 of 05.01.2011, Sessions

Trial No.08 of 07.02.2011 and sentenced the applicant / complainant

(herein) i.e. Subhash as well as co-accused under Section 302 read with Section 120-B IPC to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- each and in default of payment of fine, to undergo rigorous imprisonment for a further period of one year each and that CRA-D-1175-DB of 2011 filed by the complainant-Subhash against the aforesaid conviction is pending adjudication before this Court.

[18] Law is well settled that a judgment of acquittal cannot be set aside merely because another view may be possible and that mere possibility of another view is not a ground for reversing a judgment of acquittal unless there are compelling and substantial reasons for doing so. Hon'ble the Supreme Court in Arulvelu vs State represented by the Public Prosecutor, 2009(10) SCC 206 held as under :-

“ Unquestionably, the Appellate Court has power to review and re appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgement of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallised by aforementioned judgements of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court. ”

To similar effect is the decision of Hon'ble, the Supreme Court in case reported as State of Rajasthan versus Kistoora Ram, 2022 (4) (Criminal) 324.

[19] Learned Counsel has not been able to point out any perversity or illegality in the impugned judgment dated 23.03.2021 passed by the learned Additional Sessions Judge, Rohtak, acquitting the respondents of the offences under Sections 323 / 324 / 307 / 506 / 34 IPC.

[20] Accordingly, in the facts and circumstances of the case, no case whatsoever is made out for grant of leave to appeal. Consequently, the application for grant of leave to appeal, is dismissed.

(B.S. WALIA)
JUDGE

(LALIT BATRA)
JUDGE

04.08.2023

'Amit'

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| 1. Whether Speaking/reasoned: | Yes/No. |
| 2. Whether reportable: | Yes/No |