

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD No. 227 of 2022(O&M)

Date of Decision: April 26,2023.

Ram Lubhaya

.....Applicant-appellant.

Versus

State of Punjab and others

Non-applicant-respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Jagdip Singh Bhatta, Advocate
for the applicant-appellant.

LISA GILL, J.

1. Complainant-appellant is aggrieved of judgment dated 07.02.2022 whereby respondents no.2 to 4 have been acquitted of the charges framed against them under Section 302 and 120-B of IPC.

2. Brief facts necessary for adjudication of the matter are that FIR No. 12 dated 14.12.2018, under Sections 302, 120-B IPC, was registered at Police Station, Sadar, Fazilka, on the basis of statement of complainant namely Ram Lubhaya. He stated that he had four sisters with Sukhwinder Kaur being his elder sister, aged 45 years. Sukhwinder Kaur was married to Jaspal Chand of village Mohar Khiwa. No child was born out of this wedlock. Jaspal Chand, her husband passed away in 2011. Jaspal Chand had three sisters namely Santosh Rani, Krishna and Paramjit Kaur but no brother. It is further stated that after death of Jaspal Chand, one of his sisters

namely Santosh Rani staked her claim over Jaspal Chand's land i.e., the land in question. FIR No 205 dated 25.12.2012 under Section 420 IPC, was registered at her instance against the complainant and his sister Sukhwinder Kaur. However, both of them were acquitted of the charges on 12.04.2016. It is alleged that the said case was pursued by Santosh Rani with the help of Janak Singh son of Bashir Singh as well as Bashir Singh, Khan Singh son of Narinder Singh and Boota Singh. It is stated that on 14.01.2018 at about 12 noon, complainant received a message that Sukhwinder Kaur had been murdered, whereupon he along with his brother Subhash Chander reached her house and found her dead body lying on a cot. FIR was accordingly registered against Santosh Rani and abovesaid five persons.

3. Place of occurrence was inspected by the Investigating Officer. Inquest proceedings were concluded and statement of witnesses recorded. Blood stained earth was taken in possession vide memo Ex.P-5. Rough site plan of the occurrence was prepared and postmortem was dead body was conducted at Civil Hospital, Fazilka. Postmortem report is Ex.P-2. No weapon of offence etc., was recovered from the spot. Accused Bashir Singh, Boota Singh and Khan Singh were declared innocent whereas Malkit Chand @ Raman and Harjinder Kumar son of Kala Ram were nominated as accused. Both the said accused along with Santosh Rani, were arrested on 13.03.2018 on being produced by Sarpanch Sarabjit Singh, PW-5. Said accused are stated to have suffered extra-judicial confessions before PW-5 Sarbjeet Singh, who has incidentally not supported the prosecution version. He was declared hostile.

4. As per postmortem report and testimony of Dr. Amit Gulany, Medical Officer, Civil Hospital, two injuries were found on the person of the deceased, which are described as under:-

“Deep wound with clotted blood of 7 cm x 0.5 cm over forehead.

Deep wound of 20 cm x 3 cm started from the left lateral aspect of nose to back of left ear. Clotted blood was present on whole over face with left eye crushed and multiple fractures of nasal wound orbit parietal, temporal and occipital part of skull over left side.”

5. Cause of death as per the board of doctors was injury to vital organ i.e., brain. Both the injuries were ante mortem in nature.

6. After completion of investigation, challan was presented and matter committed to the Court of Sessions on 29.05.2018.

7. Charge under Section 302 read with Section 120-B IPC was framed against the accused, who pleaded not guilty and claimed trial.

8. Prosecution examined as many as 11 witnesses to buttress its case.

9. Statement of the accused under Section 313 Cr.P.C., were recorded wherein they refuted the incriminating evidence put to them and pleaded false implication. All the accused stated that as the police could not trace out the real culprits, they had been falsely implicated merely on the basis of suspicion on account of land dispute. However, no evidence was led in defence.

10. Learned trial Court on considering the evidence on record, facts and circumstances, concluded that prosecution failed to prove its case against the accused beyond reasonable doubt thus all the accused were acquitted of the charge/s framed against them.

11. Aggrieved therefrom, appeal has been filed by the complainant.

12. Learned counsel for the applicant-appellant vehemently argued that pendency of civil litigation between the parties is a matter of record.

Therefore, accused had specific motive to commit murder of his sister-

Sukhwinder Kaur. Land in question belonged to Jaspal Chand. Mohindro Bai wife of Chaman Lal i.e., mother of Jaspal Chand had executed a will dated 07.02.2001 in favour of Jaspal Chand. Mohindro Bai passed away on 13.11.2007 on which Jaspal Chand became owner of this land to the exclusion of his sisters. Acrimonious relations between the parties, it is submitted are apparent from lodging of FIR under Section 420 IPC by Santosh Rani in which accused i.e., present appellant as well as the deceased stood acquitted. Learned counsel for the applicant-appellant further argued that weapon of offence i.e, Kirch/s were recovered from near the place of occurrence at the instance of accused Malkit Chand and Harjinder Kumar. Moreover, in the disclosure statement before Sarabjit Singh, Sarpanch, the accused have admitted commission of offence in question. Furthermore, identity-card was also recovered. It is also contended that the Investigating Agency did not carry out proper investigation inasmuch as even FIR under Section 420 IPC was not collected, therefore shoddy investigation cannot in any manner be of any avail to the accused. It is thus prayed that this appeal be allowed.

13. We have heard learned counsel for the applicant-appellant and have gone through the record with his able assistance.

14. Admittedly, present is a case which rests entirely upon circumstantial evidence. There is indeed no eye witness to the murder of Sukhwinder Kaur. In the present case, Respondents no.2 to 4 were sought to be implicated on the ground of pending civil litigation, extra judicial confession before Sarabjit Singh and recovery of Kirch/s, alleged weapons of offence from respondents no. 3 and 4. However, prosecution has indeed miserably failed to prove its case beyond reasonable doubt qua the said respondents. This is for reasons as discussed hereinafter.

15. As per prosecution version, FIR was registered at the instance of complainant-PW-2, Ram Lubhaya, who at the first flush stated that he received information regarding murder of his sister on the intervening night of 13/14.03.2018. He raised apprehension of murder of his sister at the hands of Santosh Rani in connivance with Janak Singh, Bashir Singh, Khan Singh and Boota Singh. Complainant had not named Malkiat Chand @ Raman and Harjinder Kumar son of Kala Ram at the outset, though, in his examination in chief, he states that he had named Malkiat Chand @ Raman and Janak Singh along with others. Respondents no. 2 to 4 are stated to have been arrested on 13.03.2018 after they were produced before PW-11 by Sarpanch Sarabjit Singh, who has deposed as PW-5. It is the case of the prosecution that respondent no.2, suffered an extra ordinary judicial confession, Mark-A, before Sarabjit Singh to the effect that she along with her son Malkiat Chand @ Raman and Harjinder Kumar had murdered Sukhwinder Kaur on 13/14.03.2018 with a view to take the land in question.

16. It is relevant to note, at this stage, that PW-5-Sarabjit Singh, categorically stated that respondent-Santosh Rani, at no stage suffered any confession before him. He stated that Santosh Rani told him that the police is raiding her house and on 13.03.2018 he along with Santosh Rani came to police station Sadar Farilka, whereby his signatures were obtained on blank papers by the police authorities and Santosh Rani was kept at the Police Station. PW-5, was declared hostile. Extra judicial confession before Sarabjit Singh, which otherwise is a weak piece of evidence, is of no avail to the applicant-appellant in the given facts and circumstances. Alleged recovery of the offending weapons i.e., Kirch/s used by Harjinder Kumar and Malkiat Chand is again of no avail to the prosecution. Said weapons were allegedly recovered on the basis of disclosure statements Ex.PW-11/I

and Ex.PW-11/J suffered by the said accused.

17. Perusal of alleged disclosure statements of the accused Harjinder Kumar and Malkiat Chand reveal that they stated that weapons used by them for murdering Sukhwinder Kaur i.e., Kirpans (Swords) can be got recovered by them. However, as per the prosecution, it is Kirch/s which were recovered. Learned counsel for the applicant-appellant is unable to deny that there is a stark difference between Kirch/s and Kirpans (swords). Moreover, no independent witness was admittedly associated at the time of recovery of the alleged weapon for which there is no explanation. This recovery of kirch/s was effected on 13.03.2018 i.e., about two months after the alleged commission of crime. It is further a matter of record that as per testimony of Investigating Officer, Inspector Lekh Raj, PW-11, two kirch/s recovered from the conscious possession of accused Malkit Chand and Harjinder Kumar as per their disclosure statements as above, are easily available in the market. Kirch/s were put in a bag and kept concealed underneath stubble i.e. Parali. It is correctly held by the learned trial Court that mode and manner of recovery of the alleged weapons, is not sufficient to convict the accused. It is also to be noted that the said weapons were not put to PW-3-Dr. Amit Guglany to indicate whether injuries on the person of deceased could have been caused by the said weapons.

18. It is borne out from the record that Mohindro Bai (mother of Jaspal Chand) was reflected to be in possession of 54K-9M of land with the ownership being of the Provincial Government. As per order dated 14.11.2017, passed by the Additional Civil Judge (Sr. Division), Fazilka, Ex.PX, suit for declaration titled 'Sukhwinder Kaur Vs. State of Punjab', possession of Sukhwinder Kaur (deceased) was not found. Interim relief was denied to her, though parties to the *lis* were directed not to alienate the land

in question. FIR under Section 420 IPC, stated to have been registered against the deceased and the complainant, has not been produced on record. Be that as it may, it is complainant's case himself that he and his deceased sister were acquitted therein in the year 2016. Incident in question is of December 2018. In the absence of clear and cogent evidence on record, mere pendency of the civil litigation or even registration of FIR against the complainant and the deceased, if any, or their acquittal in the year 2016, cannot be made the basis of conviction of the accused as the same does not in any manner prove the prosecution case against them beyond reasonable doubt. It is reiterated that there is no evidence on record to indicate that deceased was seen in the company of the accused prior the commission of the offence. Similarly, alleged recovery of weapons of offence is also doubtful. Evidence on record is not sufficient to prove the guilt of the accused beyond reasonable doubt. It is settled position of law that prosecution has to prove its case beyond a reasonable doubt and suspicion however strong cannot take place of proof.

19. It is a settled position that there have to be strong, compelling and substantial reasons to set aside acquittal of the accused. Simply because another view may be possible, cannot be a ground for reversing a judgment of acquittal. Hon'ble Supreme Court in **Arulvelu v. State represented by the Public Prosecutor, 2009(10) SCC 206** held that :-

“ 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 judgment 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 crystallized by aforementioned judgments 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."

20. Reference in this regard can also be made to judgment of Hon'ble Supreme Court in **State of Rajasthan versus Kistoora Ram, 2022(4) RCR (Criminal) 324**, wherein it is held that it is not permissible to interfere with finding of acquittal unless it is found that the view taken by Court is impossible or perverse. It is settled position of law that acquittal of an accused is not to be set aside only if another view may be possible under the given facts and circumstances.

21. Learned counsel for the appellant is unable to point out any evidence on record which indicates that the impugned judgment dated 07.02.2022, passed by learned Sessions Judge, Fazilka, is perverse or suffers from any infirmity or illegality.

22. Keeping in view the facts and circumstances of the case, we do not find any ground to interfere for setting aside judgment dated 07.02.2022, passed by learned Sessions Judge, Fazilka.

23. No other argument has been raised.

24. Accordingly, appeal is dismissed.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

April 26, 2023.
s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.