

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104

CRM-A-1781-2019 (O&M)
Date of Decision: 22.08.2023

Naresh Kumar Malik

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Ranjan Lakhanpal, Advocate for
Ms. Rajinder Kaur, Advocate
for the applicant.

N.S.SHEKHAWAT, J. (Oral)

1. The applicant has filed the present application under Section 378(4) Cr.P.C. with a prayer to grant special leave to appeal against the impugned judgment dated 25.03.2019 passed by the Judicial Magistrate 1st Class, Rajpura, whereby, the respondents have been acquitted of the charge under Sections 452, 323, 324 and 506 IPC.

2. As per the case of the prosecution, the applicant/complainant filed the complaint under Sections 323, 324, 452, 506 and 34 IPC by alleging that at about 11.30 p.m., on 21.04.2010, he alongwith Ranjan Hans were sitting in the courtyard of standard chicken corner and were taking dinner. Ranjan Hans left for home for some work. However, in the meantime, Suraj Bhan,

accused armed with revolver, Vijay Hans accused armed with rod, Vinay Kumar accused armed with rod, Harish Kumar accused armed with Hockey and Dinesh Mehta accused armed with a wooden stick (*Bhinda*) came in a swift car bearing registration no. CH-04-6892 and made inquiries about Ranjan Hans. The complainant refused to tell about the whereabouts of Ranjan Hans and on this Suraj Bhan accused pointed his revolver towards him and the other accused tried to attack him with their respective weapons. The complainant was frightened and ran away from the spot, but the accused chased him and apprehended him in the Anaj Mandi. Suraj Bhan pointed his revolver towards him and asked about Ranjan Hans but the applicant refused to say anything about his whereabouts. Vinay Kumar attacked him four times with a rod on his left arm, Harish Kumar and Dinesh Mehta also caused injuries to the complainant. The complainant managed to flee from the said place and reached his home on his motorcycle. The respondents/accused also followed him to his house and entered his house. Accused Vinay Kumar was armed with a gun and by pointing it towards the applicant/complainant, he threatened him. In the meantime, Ranjan Hans also came at the spot and Vijay Kumar son of Om Parkash, his neighbor also reached there. However, in the meantime, on hearing the siren of patrolling jeep, the accused fled away from the spot and the complainant/applicant had suffered multiple injuries in the present attack. The complainant was admitted in A.P. Jain Hospital Rajpura and was treated there. Accused Vinay

Kumar was also admitted in the hospital, even though he was not injured. Vinay Kumar also threatened the complainant in the hospital. The persons, who were accompanying Vinay Kumar threatened the doctor and, as a result of which, the complainant could not get proper treatment and his X-ray was also not prepared. Neither the treatment was provided to the complainant nor any X-ray was conducted. The complainant remained in the hospital for two days and had received grievous injury on his left hand, still treatment was provided. Later, on the statement of the complainant, DDR No. 13 dated 22.04.2010 was recorded in the Police Post Kasturba, but no action was taken on the same. Thereafter, on 26.04.2010, the complainant moved an application to the SSP Patiala, but still no action was taken in the present case. The complainant later on got his X Ray done from Dr. Subhash Sachdeva and on 05.05.2010, he again went to A.P. Jain Hospital to get his hand treated and tried to meet Dr. Chawla, but he was busy. After that the complainant approached Dr. Sunny Singla, who treated him and plastered his hand. When the police did not take any action, Ranjan Hans approached the High Court by filing CRM M-18432 of 2010 and vide order dated 01.07.2010, this Court ordered the police to inquire in the matter. Again as per the complainant, the DSP Rajpura in connivance with the accused prepared a wrong report and produced the same before this Court. It was also submitted that local police tried to register a false case against Ranjan Hans at the instance of accused, but he was

granted anticipatory bail by the Court of Sessions. Ranjan Hans also moved application for protection before the higher police officers and also moved an application before the Punjab State Human Rights Commission regarding the threats by the accused and inaction of the police officials and the said application was decided on 27.11.2012 and the complainant was directed to file a complaint in the Court of law. With these broad allegations, the complaint was lodged by the complainant.

3. After preliminary evidence, the respondents were summoned under Sections 323, 324, 452, 506 and 34 IPC and Section 25 of the Arms Act.

4. In pre-charge evidence, the applicant/complainant examined CW1 Ranjan Hans, CW2 Vijay Kumar and as CW3, the applicant has himself appeared in the witness box. Further, Dr. Subash Sachdeva was examined as CW4 and Dr. Sunny Singla as CW5. Dr. Akshay Bhargava was examined as CW6 and HC Gurpreet Singh was examined as CW7. After examining the said seven witnesses, respondents/accused were ordered to be charge sheeted under Sections 323, 324, 506 and 452 IPC.

5. After holding the complete trial, the trial Court held that considering the discrepancies in the complainant's evidence, medical evidence as well as various inquiries conducted by the police officials in the present case, there remained no doubt that the case of the

applicant/complainant was full of doubts and an inevitable conclusion could be drawn that the applicant/complainant had not been able to prove his allegations against the accused beyond the shadow of reasonable doubt.

6. I have heard the learned counsel for the applicant and perused the record.

7. Learned counsel for the applicant vehemently argued that there was no delay in filing the present complaint. The occurrence had taken place on 21.04.2010 and the applicant had approached this Court for redressal of the grievances and number of inquiries were held. Apart from that, the applicant also approached Punjab State Human Rights Commission for getting justice, but to no avail. Learned counsel further submitted that the impugned judgment is based on misappreciation of evidence and law and is legally unsustainable. Learned counsel further contends that there were no discrepancies in the statements of the witnesses and impugned judgment is legally unsustainable.

8. Having heard learned counsel for the applicant and after pursuing the record, this Court is of the firm opinion that there is no infirmity in the impugned judgment passed by the trial Court. The occurrence in the present case had taken place on 21.04.2010 and the statement of the applicant/complainant was recorded by the police on 22.04.2010. As per the complainant, he moved an application to SSP

Patiala, but no action was taken on the same and the police had merely proceeded against the respondents under Sections 107/151 Cr.P.C. Later on, the applicant alongwith Ranjan Hans approached this Court by way of filing a CRM M-18432 of 2010 and vide order dated 01.07.2010, this Court directed the police to inquire into the matter and on the directions of this Court, the DSP Rajpura presented a report before this Court. However, the inquiry report of DSP Rajpura has been concealed by the applicant. Thereafter, Ranjan Hans moved an application before the Punjab State Human Rights Commissioner regarding the threat given to him and inaction by the police officers. Again vide order dated 27.11.2012, the complainant was directed by the Human Rights Commission to file a compliant in the Court of law. Still, the present complaint was instituted on 17.04.2013 and this delay of about three years in lodging the criminal complaint remained unexplained.

9. Still further, the allegations of the applicant/complainant were inquired twice, i.e, once by DSP Rajpura on the directions of this Court and secondly by the police on the directions of Punjab State Human Rights Commission. Apparently, no truth was found in the allegations leveled by the applicant and neither this Court nor the Punjab State Human Rights Commission recommended/ordered any action on the cases filed by the applicant and Ranjan Hans. The applicant as well as CW1 Ranjan Hans had also concealed the said

inquiry reports, while filing a complaint before the learned Area Magistrate and even the said reports were not exhibited by him intentionally. Even, neither the applicant nor Ranjan Hans raised any objection with regard to the above said two inquiries either before this Court or before the Punjab State Human Rights Commission. Thus, the trial Court has rightly held that despite two unfavourable reports, the applicant and Ranjan Hans had filed the present complaint with the same allegations and the complaint has been right dismissed.

10. Still further, as per the applicant, the occurrence had taken place in two parts, i.e., first occurrence was at about 11.30 p.m., on 21.04.2010 at Standard Chicken Corner, where the applicant/complainant was present himself and the second occurrence had taken place at midnight at the house of the applicant. As per the case of the complainant/applicant, Lajpat Rai @ Pappu was present at Standard Chicken Corner at the time of the first attack, but he was never examined by him. Apart from that, 5/6 persons were also present at Standard Chicken Corner, but none of them was examined as witness in the present case. Still further, even at the time of second occurrence, there were other houses near the place of occurrence, but no independent witness was examined by the applicant/complainant. Even, the trial Court rightly held that the testimonies of CW1 Ranjan Hans, CW2 Vijay Kumar and CW3 Naresh Kumar were self contradictory as well as contradictory to each other. Thus, testimonies

of the witnesses produced by the applicant have been correctly disbelieved by the trial Court. The trial Court has discussed the cross-examination of CW1 to CW3 in detail and has recorded well founded observations that the prosecution had utterly failed in proving the case against the present respondents. Still further, the trial Court has discussed the testimony of CW4 Dr. Subhash Sachdevca in detail and rightly come to the conclusion that the complainant had allegedly suffered a fracture of left hand, but surprisingly he left the hospital against the medical advice. Moreover, the testimonies of the witnesses CW4 Dr. Subhash Sachdeva and CW6 Dr. Akshay Bhargava did not help the applicant in any manner and after taking into account the totality of the facts and circumstances, it was correctly held that the prosecution had failed to prove the case beyond the shadow of reasonable doubt

11. It has been held by the Hon'ble Supreme Court in the matter of **“Bhaskarrao and others Vs. State of Maharashtra”**, **2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** as follows:-

“14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed

in Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974 -

"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally

interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

15. In **Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867**, this Court observed:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

12. Still further in **Criminal Appeal No(s.) 410-411/2015**

[Ravi Sharma Vs State (Government of N.C.T. of Delhi) and

another], decided on 11.07.2022, Hon'ble the Supreme Court has

held as under:-

"Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') while deciding

*an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in **Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495)** as follows:*

“25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused.

Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal.

Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

13. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant application for leave to appeal is bereft of merit and without any substance; thus, it must fail. No case for interference has been made out. Consequently, the judgment dated 25.03.2019 passed by the Judicial Magistrate, 1st Class, Rajpura is ordered to be upheld.

14. Resultantly, with the above-said observations made, the application for leave to appeal stands dismissed.
15. Pending application(s), if any, is also disposed off.
16. Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law.

22.08.2023

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No