

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1712-SBA-2004

Reserved on:07.02.2023

Date of Pronouncement:14.03.2023

State of Punjab

...Appellant

vs.

Gurmail Singh and others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Vipin Pal Yadav, Additional Advocate General, Punjab
for the appellant.

Mr. Keshav Pratap Singh, Amicus Curiae
for the respondents.

N.S.Shekhawat J.

By way of filing the instant appeal, the State of Punjab has challenged the impugned judgment dated 09.02.2004 passed by learned Additional Chief Judicial Magistrate, Faridkot, whereby the respondents have been acquitted of the charges under Sections 323, 324 and 34 of Indian Penal Code (for short 'IPC').

The brief facts of the prosecution are that on getting the information regarding the admission of three injured, namely, Balwant Singh, Darshan Kaur and Jagraj Singh in Civil Hospital, Kotkapura, ASI Roop Singh reached Civil Hospital and made an effort to record the statement of the injured. However, the injured were declared unfit for making the statements. Ultimately, the statement of Balwant Singh, injured, who was declared fit to make a statement, was recorded on 08.06.2001. The complainant stated that his grand-

father Kishan Singh had sold the land measuring 3 ¼ kilas in favour of Gurmail Singh, accused. Inder Singh, brother of his grand-father had given his land to them and they were cultivating the said land given by Inder Singh. He further stated that at about 6.00 p.m on 06.06.2001, the complainant alongwith his mother Darshan Kaur and Inder Singh were working in their fields, in the meantime, Gurmail Singh, accused armed with his .12 bore double barrel gun, accused Jagsir Singh armed with rod, accused Gurdeep Singh armed with rod, accused Lakhwinder Singh alias Pappu armed with 'kahi' reached there and started abusing them. Lakhwinder Singh gave a blow with 'kahi' on the left elbow of the complainant and Jagsir Singh, caught his mother from hairs and started pushing her and due to this, his mother Darshan Kaur had fallen on the ground. After that, Gurmail Singh had given a blow with his gun to his mother and due to this, his mother changed her side. Gurmail Singh, accused gave another 2-3 butt blow with his gun on her back side. Gurdeep Singh gave a rod blow to his mother, which hit on the upper portion of left leg of his mother. The complainant stated that his grand-father Inder Singh tried to save her and the accused pushed him also. They raised alarm to save them and Balwinder Singh came there from the side of his fields. The accused fled away from there with their respective weapons. As per the complainant, the motive behind occurrence was that the accused wanted to take forcible possession of the land belonging to Inder Singh, brother of their grand-father in exchange of the land of Kishan Singh, his grand-father. After arranging the vehicles, he alongwith his mother Darshan Kaur were shifted to Civil Hospital, Kotkapura, where they were medically examined. After recording the statement of the complainant, the case was registered against the accused. After conducting the necessary

investigation, the challan was presented against the accused under Sections 323, 324 and 34 of IPC.

I have heard learned counsel for the parties at length and with their able assistance, I have carefully perused the trial Court record.

After framing of charges, the prosecution examined three main witnesses; PW-4 Balwant Singh was the injured-complainant, who supported the case of the prosecution. PW-5 Darshan Kaur was also an injured eyewitness and supported the case of the prosecution. The prosecution further examined PW-6 Balwinder Singh, eyewitness, who also supported the case of the prosecution. However, Jugraj Singh, injured was not examined by the prosecution. The prosecution further examined PW-1 Dr. Balbir Kumar, who proved MLR Ex.PA with regard to the injuries suffered by Balwant Singh and found the following injuries on his person:-

“There was an incised wound on anterolateral aspect of left elbow with underline defuse swelling measuring 5 x 5 cm diamention of the wound is 1.25 cm x .25 cm x .25 cm with vertical direction. Clotted blood was present and x-ray was advised.”

Still further, PW-1 Dr. Balbir Kumar further proved MLR Ex.PD with regard to the injuries suffered by Darshan Kaur and found the following injuries on her person:-

“1. Half cm rounded lacerated wound with underline defused swelling measuring 5 x 4 cm on lateral aspect of left thigh 14 cm above the knee joint and the x-ray was advised.

2. Patient complained of pain in lower part of abdomen. Tenderness was present and surgeon’s opinion was advised.

3. *Patient complained of pain in centre of dorso lumbar area of spine with no external evidence of injury. Tenderness was present and x-ray was advised.”*

Learned counsel for the appellant submitted that the case of the prosecution was duly proved by the testimonies of PW-4 Balwant Singh, PW-5 Darshan Kaur, both injured witnesses as well as PW-6 Balwinder Singh, eye-witness. The learned trial Court committed grave error in not appreciating their testimonies in the correct prospective and the accused had been wrongly acquitted. Learned counsel further submitted that ocular account of the said witnesses had been duly corroborated by the medical evidence. However, this was completely over-looked by the learned trial Court and the impugned judgment is legally unsustainable. Learned counsel for the respondents has vehemently opposed the said submission and contended that the testimonies of the said witnesses suffered from material infirmities. Even the prosecution had concealed the real facts and genesis of the occurrence and the learned trial Court had rightly extended the benefit of doubt.

I have heard learned counsel for the parties and find that the submissions made by learned counsel for the appellant do not carry any weight. From a perusal of the FIR as well as from the testimonies of PW-4 Balwant Singh and PW-5 Darshan Kaur, it is apparent that number of injuries have been mentioned by both the witnesses, however, their testimonies are not supported by the medical evidence. Still further, learned trial Court rightly held that PW-2 Devinder Kaur stated in her cross-examination that she could not tell whether Darshan Kaur, injured remained conscious or unconscious, when she was taken to the hospital. Similarly, as per PW-3 Balwinder Kumari, no bed head ticket

was prepared by her. Thus, the benefit of doubt has been rightly extended by the learned trial Court. Apart from that, the alleged occurrence had taken place admittedly at 6.00 p.m. on 06.06.2001, whereas, the FIR in the instant case was registered against the accused on 08.06.2001 after delay of about 2 days. Even during the course of trial, the prosecution could not offer any explanation for delay in registration of the FIR and the possibility of false implication due to old enmity after a delay of two days, cannot be ruled out. In fact, the complainant has levelled allegations against three family members/sons of Jagraj Singh i.e. Gurmail Singh, Lakhwinder Singh and Gurdeep Singh, which proves the anxiety of the complainant to involve the whole family.

Learned counsel for the appellant vehemently argued that when there was sufficient direct evidence to prove the involvement of the accused in the present case, the prosecution was not under a legal obligation to prove the motive. In cases of direct evidence, the motive pales into insignificance. On the contrary, the learned counsel for the respondents contended that in the instant case, the prosecution had taken a specific plea with regard to the motive. However, the prosecution miserably failed to prove the existence of the same and rather motive was on the part of the complainant side to attack the accused.

I have heard learned counsel for the parties and examined the record in support of the said contention. The prosecution had set up a case that the motive behind the occurrence was that the accused wanted to take forcible possession of the land, whereas, it is apparent from the evidence itself that the accused party was already in possession of the land purchased by them from Inder Singh. The said fact was clearly admitted by PW-4 Balwant Singh and PW-5 Darshan Kaur in their respective cross-examinations. Apart from that,

DW-1 Jagjit Singh also proved the jamabandi Ex.D1 to Ex.D3, which clearly proved that the parties were in possession of the land belonging to them. Consequently, when the parties were already in possession of the land belonging to them, there was no question of dispossessing the complainant party from the land in question.

Still further, I have carefully gone through the findings recorded by the learned trial Court and the learned trial Court has correctly extended the benefit of doubt to the respondents/accused. Learned trial Court rightly held that it was a case of free fight between the parties, which had taken place in the fields and both the parties had not been able to prove as to which injury was caused by which accused. Even the question of aggressor could not be decided in the instant case and the benefit of doubt has been rightly extended to the respondents. Learned trial Court has recorded well-reasoned findings, which are based on correct appreciation of evidence and are liable to be affirmed by this Court.

Still further, the parameters have been laid down by this Court and the Hon'ble Supreme Court in entertaining the appeal against the order of acquittal in catena of judgments. It has been held in the matter of “***Mahadeo Laxaman Sarane and another Vs. State of Maharashtra***”, 2007 (3) RCR (Criminal) 2010, by the Hon'ble Supreme Court that in an appeal against acquittal, the High Court ought not to interfere in the order of acquittal if on the basis of same evidence two views are reasonably possible – one in favour of the accused and other against him. In such a case, if the trial Court takes a view in favour of the accused, the High Court ought not to interfere with the order of acquittal.

The Hon'ble Supreme Court has held that in the matter of **“Dwarka Das and others Vs. State of Haryana”, 2003 AIR (Supreme Court) 185** as follows:-

“3. Two earlier decisions of this Court ought also to be noticed in this context, namely, **Ramesh Babulal Doshi v. State of Gujarat (1996 (9) SCC 225) : 1996(3) RCR (Criminal) 188 (SC)**, wherein in paragraph 7 of the Report this Court observed :

"7. Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above-quoted conclusions. 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. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at

all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial Hitlist Next court are sustainable or not."

4. The other decision, though slightly earlier in point of time, happens to be that of Tota Singh [Tota Singh & anr. v. State of Punjab (1987(2) SCC 529) : 1987(2) RCR (Criminal) 35 (SC)], wherein this court in paragraph 6 of the Report stated as below :

"6. 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 characterised 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 a 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."

Even otherwise, I have gone through the judgment passed by the learned trial Court and I find that valid reasons have been recorded by the learned trial Court while recording the judgment of acquittal. Consequently, the appeal is meritless and is liable to be dismissed by this Court. The impugned judgment dated 09.02.2004 passed by learned Additional Chief Judicial Magistrate, Faridkot is affirmed and the appeal is dismissed.

Pending applications, if any, are also disposed off, accordingly.

Case property, if any, be dealt with, and destroyed after the expiry of period of limitation for filing the appeal, in accordance with law.

The trial Court record be sent back.

In the end, I record my appreciation for Mr. Keshav Pratap Singh, learned Amicus Curiae, who had rendered able assistance to this Court.

(N.S.SHEKHAWAT)
JUDGE

14.03.2023
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Whether speaking/reasoned : Yes
Whether reportable : Yes