

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRR-768-2016 (O&M)

Date of Decision : 28.04.2023

MUKHTIAR KAUR

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA.

Present: Mr. Sanjeev Sharma, Legal Aid Counsel
for the petitioner.

Mr. Madhur Sharma, AAG, Punjab.

DEEPAK MANCHANDA J.

1. The instant revision petition is directed against the judgment/order of acquittal dated 24.12.2015, rendered by learned Additional Sessions Judge, Ludhiana, whereby, after setting aside the verdict of conviction and order of sentence dated 18.01.2014, as passed by the learned Judicial Magistrate First Class, Jagraon, i.e. trial Court, the respondents No. 2 to 4 have been acquitted by the Appellate Court from the charges framed against them, in FIR No.47 dated 17.06.2006, under Sections 325/34 of the IPC, registered at Police Station, Sudhar.

2. The brief facts of the case are that on the statement of petitioner (complainant) FIR No.47 dated 17.06.2006, under Sections 325/34 of the IPC was registered at Police Station, Sudhar against the respondents No.2 to 4 and they were chargesheeted on 26.08.2006 for the abovesaid Sections and trial of the case was concluded whereby the learned trial Court observed that prosecution has duly proved the guilt of the accused beyond any shadow of

reasonable doubt by leading cogent and convincing evidence and held the respondents No.2 to 4 guilty under Section 325 of IPC read with Section 34 IPC and convicted the accused thereunder to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- each and in default payment of fine they shall further undergo simple imprisonment for one month, vide judgment of conviction and order of sentence dated 18.01.2014.

3. The respondents No.2 to 4 preferred appeal against their conviction before Sessions Court and the Additional Sessions Judge, Ludhiana vide the impugned judgment dated 24.12.2015 allowed the appeal by setting aside the judgment of conviction and sentence order dated 18.01.2014 passed by the trial Court and the accused/respondents No.2 to 4 have been acquitted of the charges framed against them by giving them the benefit of doubt.

4. After passing the impugned judgment whereby accused/respondents No.2 to 4 have been acquitted, the petitioner, who is the complainant, preferred the present revision petition for setting aside the impugned judgment of acquittal and to maintain the conviction as had been passed by the learned trial Court.

5. Learned counsel for the petitioner submits that the Appellate Court erred in law and facts while setting aside the well reasoned judgment and sentence order passed by the trial Court. He submits that the Addl. Sessions Judge vide the impugned judgment dated 24.12.2015 acquitted the respondents no. 2 to 4 without considering the evidence led by the prosecution and has overlooked the evidence. It has been contended that the testimonies of the prosecution evidence was corroborated by the medical evidence duly proved on record and in order to prove the injuries the

prosecution had examined PW3 Dr. Sushil Jain, who conducted the medico legal examination of the petitioner and proved on record the injuries found by him on the person of the petitioner and declared the injuries as grievous in nature. With these submissions he prayed for allowing the revision petition and for setting aside the impugned judgment of acquittal passed by the Appellate Court and to maintain the conviction passed by the trial Court.

6. The learned State counsel submits that although the trial court convicted and sentenced the accused-Respondents no. 2 to 4, however in the appeal against conviction and sentence order, the Appellate Court acquitted them by giving the benefit of doubt observing that the prosecution failed to prove the guilt of the accused. He submits that there is no illegality in the impugned judgment passed by the Appellate Court and prayed for dismissal of the present revision petition.

7. I have heard learned counsel for the petitioner and the learned State Counsel and have gone through the case file.

8. First of all, as the impugned judgment of acquittal has been passed by the Appellate Court, therefore, a query is posed and confronted the learned counsel for the petitioner as to how, the present case is maintainable as a revision petition in view of the provisions contained in section 372 Cr.P.C., which contain the proviso *“Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”*

9. In response to the aforesaid query, learned counsel for the petitioner, although fairly admits the above position, as contained in section

372 Cr.P.C, however, made a submission that this court has enough power to adjudicate the present case as a revision petition against the judgment passed by Addl. Sessions Judge, whereby accused-respondents no. 2 to 4 have been acquitted while setting aside the well reasoned judgment of conviction and sentence order passed by the trial Court.

10. Since the revision has been preferred against the judgment of acquittal passed by the Addl. Sessions Judge, this Court, in provisional jurisdiction, refrains from re-appreciating the entire evidence of the courts below, therefore, only the impugned order of acquittal passed by the Appellate Court will be examined and that too, strictly within the parameters of the provisions as contained in section 401 of the Criminal Procedure Code.

11. In the appeal filed by the respondents no. 2 to 4, the Appellate Court, after recording its satisfaction, acquitted respondents no. 2 to 4 from the charges formed against them by the trial Court by giving the benefit of doubt and observed as under :-

“ 18. I have considered the contentions raised by the learned counsel for both the parties. As per the prosecution version, it has come into the testimony of complainant Mukhtiar Kaur wife of Mukhtiar Singh that at about 7.30 A.M. on 6.06.2006, accused were about to start watering their fields which they have taken on contract basis. The accused were trying to pass the water through the fields of the complainant to which the complainant objected to and restrained them from doing so. At this she deposed that accused acted swiftly and gave a spade blow directly upon knee joint and her leg got fractured. As per the complainant a spade blow was given to her from its sharp side and she started bleeding and upon hearing her cries, her son Charanjit Singh came rushing from the house and then accused persons ran away along with weapon and she was admitted in

the hospital. She stated that spade blow was given by Ajit Singh. In her cross-examination she has deposed that this incident took place suddenly and she was only given one spade blow from its front side, which was given to her by accused running towards her. From this testimony of the complainant, it is evident that she has not attributed anything to accused/applicant Sukhjinder Singh alias Bablu or accused/appellant Ram Singh. As such their participation in the alleged incident is doubtful.

19. *It also is doubtful even if accused/appellants were having any premeditated concert intending to cause injury on the person of the complainant. Rather receipt of the injury by the complainant in this incident and involvement of the appellants itself is doubtful because as per the complainant she was given spade blow from its sharp side and this version she has not uttered for once rather she time and again has stated that the spade blow was given from its sharp side by way of her testimony in examination-in-chief and also in her cross-examination. However, Doctor Sushil Jain (PW-3), who has medico legally examined the complainant, has deposed that the weapon used was blunt, which is contrary to the version as given by the complainant and it casts doubt.*

20. *This serious infirmity assumes significance because as per the complainant the occurrence took place at about 7:30 A.M. and immediately thereafter she was removed to hospital. As per her statement made on next date i.e. 06.06.2006 (Ex.PB/2) she could not make any statement on 05.06.2006 as she stated that she was not completely conscious. Whereas Doctor Sushil Jain (PW-3), who had examined the injured and has proved MLR (Ex.PC) has mentioned therein that the patient is conscious, co-operative and well orientated to time, place and portion at 11 A.M. on that date. There, thus, was no reason with the complainant to have waited to make her statement only on next date at 7 P.M. after about 36 hours of the alleged occurrence. IO Retired ASI Jaswant Singh has admitted in his cross-examination*

that he had not gone to hospital on 05.06.2006 and that HC Joginder Singh had gone to record the statement of the complainant on that day and doctor had declared the complainant fit to make the statement but complainant out of her own sweet will did not make her statement. Complainant even also admitted that on that day i.e. 05.06.2006 her son and daughter came visiting her and she talked to them and narrated the entire incident. Meaning thereby is that the complainant for no valid reasons did not make statement to the police forthwith and under the circumstances adding of colourable version cannot be ruled out and this long delay, under the circumstances, has not been explained by the prosecution and delay is fatal and false implication of the appellants cannot be ruled out all together. It is more so when the Doctor Sushil Jain (PW-3) has deposed that the injury was a diffused swelling with reddish bruise and weapon used blunt. Whereas Charanjit Singh (PW-2) has deposed that clothes of his mother were soaked in blood. But no such blood stained clothes were noticed by Doctor (PW-3) nor were these taken into police possession. Rather IO has deposed that the said spade was not blood stained either. Charanjit Singh has also deposed that on 05.06.2006 his maternal uncle had come to hospital and his mother had told him about the incident and in the same breath he deposed that his mother was unconscious which again is contradictory to the statement of Doctor and IO. Charanjit Singh (PW-2) admitted that on next day i.e. 06.06.2006 their relatives had come visiting and thereafter her mother made the statement.

21. Complainant had received only single injury and if actually the accused were present armed with weapon and had premeditated mind then they would not have spared the complainant by giving one injury only, which in itself is doubtful. Even the presence of son of complainant at the spot is doubtful because it is in the statement of complainant herself that upon hearing her cries her son Charanjit Singh came rushing from the

house. Obviously he has not seen any one of the accused inflicting injury and he has admitted in his cross-examination that the said land is at a distance of 1-1½ Killa from their house and he deposed that when he reached at the spot, her mother was in semi-conscious state of mind and admitted that when her mother cried he was inside his house. So witnessing of any such incident by him also is doubtful.

22. In these circumstances, opinion of the PW-7 Doctor H.K. Singla that the possibility of this injury due to fall on a hard surface cannot be ruled out seems to be more probable and the defence version of false implication cannot be strongly ruled out. From this shaky evidence of the complainant it shows that her version with regard to the alleged incident is totally doubtful.

23. For the aforementioned reasons, it is held that the prosecution has miserably failed to prove the guilt of the appellants/accused beyond shadow of reasonable doubt. Benefit of doubt must be extended to the appellants and by extending so the appeal is accepted, the impugned judgment is set aside and the appellants/accused are acquitted of the charges framed against them by giving them the benefit of doubt. Fine, if any, paid by the appellants is ordered to be refunded to the appellants after the expiry of period of appeal or revision. “

12. It is worthwhile to point out that ordinarily, the order of acquittal passed by the Appellate Court will not be interfered with, lightly, merely because other view of the trial court convicting the accused is possible. Upon passing of an order of acquittal although in an appeal filed by the accused, presumption of innocence in favour of the accused gets reinforced and strengthened, as laid down by Hon'ble Supreme Court in “***Harijana Thirupala vs. Public Prosecutor, High Court of A.P.***”, (2002) 6 SCC 470.

13. In dealing with the present case, where revision petition has been preferred, instead of remedy of appeal available under section 372 Cr.P.C., therefore, this court is analyzing the impugned judgment passed by the Appellate Court, which reveals that the prosecution evidence was carefully examined by the Appellate Court and the conclusion drawn in favour of the respondents no. 2 to 4 is based upon correct appreciation of material on record. Thus, this court is of the considered opinion that the impugned judgment passed by the Addl. Sessions Judge does not suffer from any illegality or impropriety.

14. In view of the given facts and circumstances, this Court does not find any ground to interfere with the order of acquittal passed by the Appellate Court.

15. Resultantly, the instant revision petition is hereby dismissed, it being not maintainable and bereft of merit as well. As such, the impugned Judgment of acquittal, rendered by the learned Additional Sessions Judge, Ludhiana acquitting the accused respondent no.2 to 4 is hereby upheld.

16. All pending miscellaneous application(s) also stand disposed of.

April 28, 2023
Nisha Yadav

(DEEPAK MANCHANDA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No