

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AD No.250 of 2023 (O&M)
Date of Decision:14.09.2023

Raju ... Appellant

Versus

Mukesh @ Talli and others ... Respondents

**CORAM : HON'BLE MR. JUSTICE RAJ MOHAN SINGH
HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Ms. Subhpreet Kaur Grewal, Advocate for
Mr. Nagar Singh, Advocate
for the appellant.

HARPREET SINGH BRAR, J. (ORAL)

1. The present appeal has been preferred against the judgment dated 21.03.2023 passed by the learned Additional Sessions Judge, Chandigarh acquitting the respondents No.1 and 2-accused in case bearing FIR No.82 dated 23.05.2020 registered under Sections 304, 34 IPC at Police Station Sarangpur, Chandigarh.

FACTUAL BACKGROUND

2. Brief facts of the prosecution case are that on 17.05.2020, son of the complainant namely Suraj had a scuffle with four boys namely Billa, Talli, Sandeep, Dhanush, all residents of the same locality. In the said scuffle complainant's son suffered multiple internal injuries on his head and chest. The matter was stated to be compromised on 21.05.2020. Due to internal injuries sustained by the son of the complainant in the said scuffle, he was taken to GMSH-16, Chandigarh for treatment after which he was discharged. However, on the intervening night of 22/23.05.2020, the condition of complainant's son deteriorated and he was re-admitted to GMSH-16. Thereafter, he was referred to

PGI, Chandigarh where he died during treatment. The complainant alleged that the death of his son occurred due to the injuries caused to him by the accused persons. During investigation, the accused were arrested and the weapon used in commission of offence was recovered. Rough site plan and scaled site plan were prepared. Statements of witnesses were recorded and MLR was obtained. On completion of investigation and all other necessary formalities, challan was presented before the learned Illaqa Magistrate.

3. After presentation of the challan before the learned Illaqa Magistrate, copies of the challan were supplied to the accused as envisaged under Section 207 Cr.P.C.

4. On finding a *prima facie* case against the accused persons, charges under Sections 304, 34 IPC were framed. The accused pleaded not guilty to the charges framed against them and claimed trial.

5. In order to prove its case, prosecution examined as many as 8 witnesses.

6. Statements of the accused persons were recorded under Section 313 Cr.P.C. and the entire incriminating evidence was put to them. They denied the prosecution version and pleaded innocence, however, did not examine any witness in their defence and closed the evidence.

7. After hearing the rival submissions and perusing the prosecution evidence, the trial Court came to the conclusion that the prosecution has not been able to establish the prosecution case beyond a reasonable shadow of doubt, which resulted in acquittal of the respondents No.1 and 2-accused. Thus, the present appeal has been filed.

CONTENTIONS

8. Learned counsel for the appellant contends that the son of the appellant was attacked by respondents No.1 and 2-accused and that respondent No.1 gave a

knife blow to the deceased-son of the appellant. In pursuance thereof, a DDR was also registered, however, the matter was later compromised. On the day of occurrence i.e. 17.05.2020, the deceased was admitted to GMSH-16, Chandigarh and discharged after giving treatment to him. Therefore, it is crystal clear that the deceased suffered injuries at the hands of respondents No.1 and 2-accused, which proved fatal to him. On the intervening night of 22/23.05.2023, condition of the deceased deteriorated and he was taken to GMSH-16 from where he was referred to PGI, Chandigarh, however, he died on his arrival there. It is argued that Dr. Charan Singh, Senior Resident, PGI, who authored the medico-legal summary of the deceased stated that on 23.05.2023, deceased was brought to PGI with multiple wounds over the left side of his chest and he died just on his arrival at PGI. He categorically opined that *'the patient was hemodynamically unstable, was in shock, B.P. and P.R. were not recordable and also air entry was decreased, SPO2 was low. Patient also had surgical emphysema with a lacerated wound in anterior chest. All these features suggested patient had severe injury, which led to fatal outcome. Nature of injury could be both blunt and sharp, which could not ascertained on examination..'* However, surprisingly neither the prosecution nor the learned trial Court examined the said witness despite the fact that his name was mentioned in the list of witnesses, rather the learned trial Court had blindly accepted the cause of death as 'pulmonary edema' as mentioned in the post-mortem report. In fact, the deceased did not have any history, which could cause pulmonary edema, as he had not suffered any sepsis, pneumonia or severe bleeding. The deceased-son of the complainant had died due to severe injuries caused to him by the respondents No.1 and 2-accused. The police had registered a case under Section 304 IPC instead of Section 302 IPC. The impugned judgment passed by the learned trial Court is totally against the medical evidence brought on record and therefore, the same is liable to be set

aside and respondents No.1 and 2 are liable to be convicted for the offence committed by them.

ANALYSIS AND OBSERVATION

9. We have heard the learned counsel for the appellant and after having gone through the records of the case, we find that the finding of acquittal recorded by the trial Court is reasonable and logical. It is a settled proposition of law that the finding of acquittal recorded by the learned trial Court cannot be disturbed merely because another view is possible. If two views are possible, the one which favours the accused would invariably prevail over the other.

10. The Hon'ble Supreme Court has articulated the above principle in the following decisions:

- a) A three Judge Bench of Hon'ble Supreme Court in **Kali Ram v. State of H.P., 1973 (2) SCC 808**, speaking through Justice H.R. Khanna, has held as under:

“25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted...”

- b) A two Judge Bench of Hon'ble Supreme Court in **Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415** has laid down the parameters with regard to the power of appellate Court while dealing with an appeal against an order of acquittal. Speaking through Justice C.K. Thakker, the following was held:

“35. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reapprciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

11. A perusal of the record reveals that the FIR was lodged at the behest of the complainant on 23.05.2020 wherein he did not mention that on 17.05.2020 his deceased-son suffered knife injuries on left side of his chest and several other injuries on his face at the hands of accused persons despite the fact that a DDR qua the incident that occurred on 17.05.2020 was recorded. Moreover, brother-in-law of the complainant namely Gajender, who was eye-witness of the alleged incident and appeared in the witness box as PW-2 has nowhere deposed that

respondents No.1 and 2-accused had inflicted injuries on the deceased. Further, the complainant, who appeared as PW-1, did not depose that his brother-in-law had witnessed the alleged incident on 17.05.2020 and that he left his deceased-son behind at complainant's house in an injured condition. In the FIR, he stated that with regard to the incident that occurred on 17.05.2020, a compromise was effected on 21.05.2020 but in the Court, he deposed that on 21.05.2020, his son was again beaten up by four persons and that respondent No.2 herein had given an iron rod blow to his son. In his cross-examination, he stated that he did not mention about the incident dated 21.05.2020 in the FIR but made a complaint to the police that his son died due to injuries caused to him by the accused persons.

12. Ex.P1/PW6 i.e. DDR No.61 dated 21.05.2020 was lodged by HC Kuldeep Singh stating therein that he along with other police officials in order to investigate the matter had reached EWS Colony, Dhanas and recorded the statement of deceased-Suraj, son of the complainant. In his statement, he stated that the deceased had an altercation with respondent No.1, on which he dialled number 112, however, the matter was compromised. He did not allege that he had suffered any knife injury or any other kind of injury at the hands of accused persons. He stated that it was merely a verbal spat and the altercation was only with respondent No.1-accused herein. He has nowhere stated that four persons had inflicted injuries to him either on 17.05.2020 or 21.05.2020.

13. HC Kuldeep Singh appeared in the witness box as PW-6 and deposed that he had received a wireless message on 21.05.2020 that a quarrel had occurred at EWS Colony, Dhanas and he along with Constable Sushil reached at the spot within 15 minutes where they met the deceased-Suraj and his father. However, no one was found to have suffered injuries in the said altercation. There was no injury on the person of deceased-Suraj. Subsequently, Suraj and his father came to the police station and a compromise was effected between the parties. On

21.05.2020, deceased-Suraj did not disclose the incident that had occurred on 17.05.2020 to the police authorities.

14. Ex.P8/PW-6 i.e. the discharge summary of deceased-Suraj revealed that he was admitted in GMSH-16 on 23.05.2020 at 1:58 AM and discharged on 23.05.2020 at 4:10 AM as he was referred to PGI, Chandigarh where he died just on his arrival. However, it is pertinent to mention here that there is no medical evidence regarding admission of the deceased-Suraj in GMSH-16 on 17.05.2023. Had he been severely injured as alleged by the complainant, he ought to have been admitted in the hospital and record would have been available regarding his admission and treatment in the hospital on the said date. But no such medical evidence is available on record. The post-mortem of the deceased was conducted by Dr. Shivika Pawar, who appeared as PW-3 and deposed that only one injury i.e. laceration wound of a size of 2x1 cm was found 3 cm above the left nipple of the deceased. She opined the cause of death of the deceased as 'PULMONRY EDEMA'. To a specific query raised by the Investigating Officer whether a lacerated wound of size of 2x1cm as mentioned in the post-mortem report can be a cause of 'PULMONRY EDEMA', the aforesaid Medical Officer answered in negative.

15. The argument raised by the counsel appearing for the appellant that Dr. Charan Singh, who was author of medico legal case summary of the deceased at PGI, Chandigarh, had declared the nature of multiple wounds on left side of chest of the deceased to be dangerous to life and described the said wounds to be caused by sharp weapons not not have much significance. The fact of the matter is that the son of the complainant namely Suraj died just on his arrival at PGI, Chandigarh and Dr. Charan Singh had not even had a chance to treat him. He described the lacerated wound to be an injury dangerous to life while preparing the medical legal case summary whereas the post mortem report suggested the

cause of death of the deceased to be ‘PULMONRY EDEMA’. Dr. Charan Singh was not even examined by the prosecution to corroborate the medical opinion given by him. Moreover, the doctor, who conducted the post-mortem of the deceased, had clarified in clear words that the injury found on the person of the deceased cannot be a cause of ‘PULMONRY EDEMA’, which was the actual cause of death of the son of the complainant namely Suraj. Further, the disclosure statements made by the accused before the police are not admissible in evidence. The prosecution has miserably failed to link the cause of death of the deceased to the injuries suffered by him at the hands of respondents No.1 and 2-accused.

CONCLUSION

16. In view of the discussion made in the preceding paragraphs, we are of the considered opinion that the finding rendered by the trial Court is based upon the correct appreciation of evidence and there is no perversity in it. It is trite law that presumption of innocence gets further entrenched and fortified on acquittal of the accused by the trial Court. Learned counsel for the appellant has failed to point out any perversity or illegality in the findings recorded by the learned trial Court and therefore, we are unable to arrive at a different view than the one taken by the learned trial Court. We do not find any substantial and compelling reason or glaring mistake to unsettle the judgment of acquittal passed by the learned trial Court. As such, there is no merit in the present appeal and consequently, the same is dismissed.

(RAJ MOHAN SINGH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

September 14, 2023

Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No