

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

257

CRR-2522-2017 (O&M)
Date of decision: 10.08.2023

Sunita Kumari

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Inderjit Sharma, Advocate for the petitioner

Ms. Himani Arora, AAG Punjab

AMAN CHAUDHARY. J.

CRM-22819-2017

For the reasons stated in the application, the same is allowed. Delay
condoned.

CRR-2522-2017

1. The present revision petition has been preferred against the judgement dated 23.05.2016 passed by Additional Sessions Judge, Gurdaspur dismissing the appeal filed against the judgement dated 31.08.2013 passed by Chief Judicial Magistrate, Gurdaspur, whereby the accused-respondents were acquitted.

2. For the sake of convenience, the facts in a nutshell are that on intervening night of 19/20.02.2001 at about 12.30 A.M., when the complainant, was present in her house alongwith her father Kesar Chand, someone knocked at their door, when she opened it, she saw the petitioners- Ved Parkash armed with

knife, Parveen Kumar, Asha Rani, Sneh Lata and one Ram Parkash, along with Satpal Bhogal, who was armed with dang. All of them inflicted injuries with their respective weapons and thereafter, the assailants fled the scene of occurrence. FIR was registered and after investigation, final report under Section 173 CrPC was presented in the Court.

3. From the perusal of the challan and the trial Court after hearing the arguments on charges, served with the accused with the chargesheet to which they pleaded not guilty and claimed trial.

4. In order to prove the case against the accused, the prosecution examined 3 witnesses and thereafter closed its evidence. The statements of accused under Section 313 of Cr.PC were recorded, wherein, all the incriminating evidence were put to them, to which they pleaded their innocence and claimed that they have been falsely implicated on account of enmity with the complainant. In their defence, they examined 4 witnesses and closed their evidence.

5. The trial Court after carefully examining the evidence on record and hearing the learned counsel for the parties came to the conclusion that prosecution has failed to prove its case beyond the shadow of reasonable doubt, and thus, acquitted the accused-respondents vide judgment dated 31.08.2013.

6. Feeling aggrieved, the petitioner filed an appeal against the aforesaid judgment before the Additional Sessions Judge, Gurdaspur, which also came to be dismissed vide judgment dated 23.05.2016.

7. Hence the present revision petition.

8. Learned counsel for the petitioner submits that the Courts below have committed grave error in acquitting the accused-respondents by passing judgments

merely on conjectures and surmises and failed to appreciate the evidence on record. The delay in lodging the report with the police was on account of the fact that the complainant had to approach various police authorities to get her complaint recorded. The applications filed by her under Sections 391 and 311 CrPC for examining the IO were also wrongly dismissed, causing grave prejudice to her case. The complainant had established her case with cogent and reliable evidence against the accused persons of unlawfully trespassing into her house with the intention to hurt her. The ocular version of the prosecution also stood corroborated by the medical evidence brought on record.

9. Learned State counsel submits that the impugned judgments have been rightly passed by the Courts below and suffer from no illegality or perversity, which would warrant interference by this Court.

10. Heard the learned counsel for the parties and have perused the case file.

11. Before proceeding to consider the present case, it is necessary to make a reference to the judgement of the trial Court, dated 31.08.2013, wherein while acquitting the petitioners, it has been observed thus:

“31. The prosecution in this case has failed to prove its case beyond shadow of reasonable doubt on the following grounds:

(a) That there is delay in the registration of the FIR. So the chances of the distortion of the facts cannot be ruled out.

(b) That there is delay in conducting the medical of the complainant.

(c) The presence of the witnesses at the scene of the occurrence is doubtful as the the occurrence has taken place late at night and no injury has been received by Kesar Chand when he is shown to be present in the house of the complainant.

d) That the complainant has tried to make improvement

in the case by suffering the supplementary statement on the same day on the basis of which the offence under section 307 IPC was added which was disbelieved by Id. Addl. Session Judge vide his detailed order.

(e) The presence of the all the female members as accused at late hours is doubtful.

(f) The weapons of offence were not recovered.

(g) The accused came in large number but only a few injuries were received by the complainant.

There is every possibility that the facts may have been distorted although there may have been no discrepancies in the statement of the complainant. So, by taking into consideration the aforementioned discussion the benefit of doubt has to be given to the accused. Accordingly the points of determinations i and ii are decided against the prosecution and in favour of the accused.”

12. The lower Appellate Court while dismissing the appeal filed by the complainant-petitioner, had recorded the following findings:

“23. Undisputedly, the occurrence took place on 19.02.2001 at about 12.30 A.M. The report under Section 173 Cr.P.C. makes it evident that after receiving the information regarding the occurrence. the investigating Officer visited the hospital as well as the house of PW.2, however, she was not found present there. It further find reflected in the report under Section 173, Cr.P.C. that since there were efforts of compromise, as such, complainant did not suffer statement to the police and it was only then the FIR was registered, when the efforts of compromise failed. The complainant has suffered statement on 06.03.2001 Exhibit PB on the basis of which FIR was registered against the accused. Therefore, there is delay of almost 15-16 days in lodging the FIR. On 06.03.2001, itself, the PW.2 suffered supplementary statement Exhibit PC to the police for implicating the accused under Section 307 IPC, as such, the offence under Section 307 IPC and 506 IPC were added, on the basis of rapt No.34 dated 06.03.2001. It is settled proposition of law that the delay is not fatal to the prosecution case, when it is explained and one such judicial pronouncement on this point is Baldey Singh versus State of Punjab, 2013 (4) Criminal Court Cases 337 (S.C) wherein this point was also dealt with that on the account of intervention of the Supreme Court, there was progress in the investigation and the statement of witnesses were recorded by the IO. Rather in the present case in hand, there is not that much delay as in the case law referred. The FIR was not got registered by PW.2 by suffering

statement to the police without delay. The very purpose of the spontaneous reporting of the matter is to avoid any concoction and colorful version. Rather in the report under Section 173 Cr.P.C, the reason for not suffering the statement by PW.2 was that there was efforts of compromise inter-se the parties and when the efforts proved futile, only then, PW2 stated to have suffered statement to the police. The police rather showed promptness to visit the hospital and the house of PW.2 after receiving the information regarding the incident, but she was not found present. It was only on 06.03.2001, the PW.2 has come out of hibernation and reported the matter to the police and FIR was registered without delay. It is not the case of the prosecution that the delay in lodging the FIR was on account of threats given to her by the accused, therefore, the judicial pronouncement Dalip Singh versus State of Punjab reported in 2015 (Suppl.) Criminal Court Cases 637 (P&H) (DB). It is quite evident from the file that PW.1 suffered statement Exhibit PB on 06.03.2001 and on the same date, she suffered supplementary statement for getting booked the accused for the offence under Section 307 IPC. There is no doubt that the accused are the in laws family of PW.2 with whom she has axe to grind, therefore, it is clear that PW.2 on 06.03.2001, itself, suffered two statements i.e. Exhibit PB and Exhibit PC for getting them booked in serious offence. It is established that the uncle of the complainant is an MLA, therefore, the political clout seems to have been exercised by her, in order to get the accused booked in the present FIR case. Therefore, the delay in filing the FIR is not explained, therefore, the same proved to be fatal to the prosecution case.

24. During the trial, an application under Section 391,311 Cr.P.C.was filed that since the investigating officer was not examined by he prosecution, therefore, the real picture of the case in hand does not stand established. Moreover, the delay and non recovery of the weapon causes prejudice. There was no fault of the complainant, rather the Investigating Officer, is the prosecution witness. The complainant should not suffer on account of non examination of the IO. As far as the question of additional evidence is concerned, the learned counsel for the complainant referred Umesh versus State of Rajasthan reported in 2004 (4) RCR (Criminal) 785, that additional evidence can be allowed at the stage of appeal, when there is likelihood of failure of justice, and if the additional evidence is required to promote interest of justice, then it should not be refused on the ground of delay. In this regard, it is observed that the prosecution case has failed not only on account of non examination of the Investigating Officer, but for the other reasons i.e. delay etc. Even otherwise, as per judicial

pronouncement Umesh (supra), the discretion is to be exercised not to fill up gaps or lacuna in the prosecution evidence. Since, the prosecution case has failed on one of the reason of non examination of the Investigating Officer, therefore, the complainant has tried to fill up the gap or lacuna left in the prosecution evidence, therefore, observing, this, the application filed by the complainant is held not maintainable. Therefore, in continuity. it is held that the explanation required to be established by the Investigating Officer regarding delay, and non proof of other document due to his non examination, proves to be fatal to the prosecution case. The weapon of the offence were also not recovered. In view of judicial pronouncement Shankar Lal another versus State of Madhya Pradesh reported in 1982 CrL. L J. 254, the prosecution case fails due to delay in FIR. non examination of Investigating Officer, recovery of weapons etc. Furthermore as per judicial pronouncement Ishwar Singh versus State of Utter Pradesh reported in 1976 CrL. LJ 1883, the duty of prosecution is to unfold prosecution story by way of examining witnesses.

25. It is the cardinal principle of criminal jurisprudence to prove the guilt of the accused beyond reasonable doubt. In the present case in hand, it is proved that the prosecution has not been able to prove the guilt of the accused beyond reasonable doubt on the account of delay in lodging FIR, non examination of Investigating Officer and eyewitnesses. Therefore, the findings of the learned trial Court are affirmed. I do not find any reason to interfere into the well reasoned judgment of acquittal. The grounds of appeals are devoid of merits and the appeals are dismissed.”

13. This Court in **Ram Partap vs. Rajesh Kumar**, 2014 SCC OnLine P&H 8659 relied upon the dictum of **Jagannath Choudhary vs. Ramayan Singh**, (2002) 5 SCC 659, wherein while expounding on the scope of revisional jurisdiction of the High Court, Hon’ble The Supreme Court had held that, “Incidentally object of revisional jurisdiction of the High Court as envisaged under Section 401 CrPC, is to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction, aimed at correcting miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of apparent harshness of treatment which result, on the one hand, in

some injury to the due maintenance of law and order, or, on the other, in some undeserved hardship to individuals.”

14. Hon’ble The Supreme Court in the case of **Hydru vs. State of Kerala**, (2004) 13 SCC 374, discussed the ambit of powers of revisional Court in revision against acquittal by a private party and held the same to be very limited. It was observed that interference can only occur if there is any procedural irregularity or material evidence has been overlooked or misread by the trial Court.

15. The Courts below meticulously examined the evidence and arrived at the right conclusion as the prosecution could not establish the guilt of the accused-respondents beyond reasonable doubt. There is no glaring defect in the procedure, and no miscarriage of justice is caused to the complaint, who had failed to bring home the guilt of the accused persons successfully.

16. Applying the principles laid down in the foregoing judicial pronouncements to the facts of the present case, wherein the trial Court examined all aspects threadbare, this Court finds that the impugned judgments cannot be characterised as perverse requiring any interference. Consequently, the revision petition *sans* merit, is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

10.08.2023
M. Kamra

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No