

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

**CRM-1082-2019 in/and
CRM-A-153-2019 (O&M)
Date of Decision: April 11, 2023**

JALLU

..... Applicant-Appellant(s)

Versus

YUSUF AND OTHERS

..... Respondent(s)

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Tanvir Singh Attariwala, Advocate (Amicus Curiae)
for the applicant-appellant.

LISA GILL, J.

Applicant-appellant seeks leave to appeal against judgment dated 07.07.2018, passed by learned Additional Sessions Judge, Palwal, whereby respondents no.1 to 6 have been acquitted of the charges framed against them for the offences punishable under Sections 148, 302 IPC read with Section 149 IPC and Section 201 IPC, arising out of FIR No.251 dated 15.09.2011, registered at Police Station Hathin, District Palwal.

Brief facts necessary for adjudication of the matter are that as per prosecution case, telephonic information regarding death of one Shamsudeen in a firing incident at village Mithaka was received on 15.09.2011. Dead body was lying in mortuary of Civil Hospital, Palwal, whereupon ASI Ram Chander and other police officials went to General Hospital, Palwal where complainant Jallu, PW11, was found present with the dead body. He recorded his statement Ex.PW1/A, on the basis of which FIR No.251 dated 15.09.2011 was registered. Complainant stated that his

younger brother Shamsudeen (deceased) and his nephew Subedeem had jointly purchased four wheeler i.e. Tata Magic and it was being driven by Subedeem. It is stated that on 15.09.2011 at about 6:00 P.M. Subedeem was bringing said vehicle to village but on the way, Hakam son of Hanif and Arshad alias Rana son of Idrish borrowed said Tata four wheeler from Subedeem and took it to village Kot. Complainant and his brother Shamsudeen went to his nephew Subedeem and inquired about vehicle, on which Subedeem informed that Hakam and Arshad had taken the vehicle alongwith 8 – 10 persons. Complainant's brother told Subedeem that these persons were of criminal nature, therefore, vehicle should not have been given to them. Complainant alongwith his brother – Shamsudeen and Subedeem went in search of vehicle towards Kot road. Vehicle was found by them in the fields of Ameen at about 9:00 P.M. It is stated that complainant's brother Shamsudeen started the vehicle, on which Hakam fired a shot at the temple of Shamsudeen. It is alleged that Hakam was accompanied by Suba son of Hanif, Hanif son of Himmat; Ashu & Arshad sons of Rashid, Lehar Khan son of Sitab, Nooru son of Noor Mohammad, Ishub son of Mohammad Khan, Sakul son of Mohammad Khan and Arshad alias Rana son of Idrish, who attacked his brother. It is further stated that after sustaining bullet injury, Shamsudeen fell down and Arshad alias Rana ran over his brother with the vehicle. Complainant and his nephew Subedeem protested in loud voice, on which villagers came to the spot and assailants fled from the spot. While the complainant and Subedeem were taking Shamsudeen to the hospital, he succumbed to his injuries and his body was kept in the mortuary of Civil Hospital, Palwal.

Formal FIR Ex.P3 was registered on the basis of statement of complainant Jallu. Inquest proceedings were carried out. Postmortem of the body was carried out. Postmortem report is Ex.PW13/A. Rough/scaled site plans of the place of incident were prepared. Accused Yusuf alias Isub was arrested on 19.09.2011 with the final report/challan being presented. Thereafter, accused Hakam was arrested on 27.07.2012 with supplementary challan being filed. Subsequently, accused Hanif and Asgar were arrested on 30.10.2012 and 21.12.2012, respectively, with supplementary challan being filed against them. Thereafter, accused Arshad was arrested on 02.08.2013 with supplementary challan being filed. During pendency of trial accused Arshad absconded and was declared proclaimed offender on 15.12.2017. In the meanwhile, accused Lehar Khan and Yunus were arrested on 31.01.2014 with supplementary challan being filed against them. Matter was committed to the Courts of Sessions vide orders dated 24.12.2011 and 16.03.2013. Charges were framed on 22.08.2014 and 09.01.2015, to which all the accused pleaded not guilty and claimed trial.

Prosecution, in order to prove its case, examined as many as 27 witnesses. PWs - Mehru, ASI Ashok Kumar, Dr. Manisha, Dr. Devender Partap and DSP Anil Kumar were given up with Mehru stated to have been won-over by the accused and others being unnecessary. Prosecution evidence was closed on 26.05.2017. Separate statements of all the accused under Section 313 Cr.P.C. were recorded. They denied all incriminating evidence put to them and pleaded innocence and false implication. In defence accused examined DW1 - SI Liyakat Ali (retired), DW2 – Ameen and DW3 – Hassan Khan.

Learned trial Court on considering the evidence on record, facts and circumstances concluded that prosecution has miserably failed to prove its case beyond reasonable doubt against the accused. Learned trial Court took note of the fact that medical evidence on record did not indicate any fire arm injury on the deceased as alleged and neither was there any evidence to show that deceased had been ran over by vehicle in question. It was found that material improvements were made by the complainant, which pointed to lack of credibility of said witness. Aggrieved therefrom, present appeal has been filed by the complainant.

Learned counsel for the applicant-appellant vehemently argued that learned trial Court has proceeded on the basis of surmises & conjectures and has ignored cogent and clear evidence on record, which clearly proves complicity of the accused in commission of offence in question beyond any reasonable doubt. It was argued that there is an eyewitness account of the incident in question, therefore, any discrepancy in medical record what-so-ever, is irrelevant and has been wrongly relied upon by learned trial Court to acquit the accused persons. It is further submitted that there is no material improvement in the statement of complainant. Minor discrepancies are natural and probable, keeping in view the fact that at the time of incident, appellant/complainant was in a state of shock and may not have been able to give all details of the incident. FIR in question, it is contended, was registered promptly within about four hours of the occurrence of incident which rules out possibility of any concoction or after thought creeping in. It is further submitted that photographs of the deceased indicate injuries on the head and as per postmortem report (Ex.PW13/B), cause of death is shock and hemorrhage due to injuries and that even as per defence witnesses, dead

body of Shamsudeen was found under the vehicle – Tata four wheeler. Furthermore, learned trial Court, it was argued, was incorrect in discarding evidence of witnesses on the ground of them being closely related to the deceased. Close relationship between the deceased and the witnesses cannot be a ground to discard their evidence as their presence was natural and normal at the spot. It is, thus, prayed that present appeal be allowed, judgment dated 07.07.2018, passed by learned Additional Sessions Judge, Palwal, be set aside and the accused be convicted for the offences as charged and sentenced in accordance with law.

We have heard learned counsel for the applicant-appellant and have gone through the record with his able assistance.

FIR No.251 dated 15.09.2011 was recorded on the basis of statement (Ex.PW1/A) of complainant Jallu, PW11. It is to be noted that complainant has specifically stated in his first and initial statement that he alongwith his brother Shamsudeen and nephew Subedeem went in search of vehicle Tata four wheeler, which had been borrowed/taken away by Hakam and Arshad alias Rana. Said vehicle was found by them in the field of Ameen. Complainant's brother Shamsudeen is stated to have started the vehicle on which respondent – Hakam fired a shot. It is specifically stated by the complainant that after sustaining bullet injury Shamsudeen fell down and then he was attacked by as many as 10 persons and thereafter, Arhad alias Rana ran over his brother, who had fallen on the ground, with the vehicle in question. In his statement before the learned trial Court, complainant deposing as PW-11 stated that he alongwith his brother Shamsudeen and nephew Subedeem went in search of four wheeler. They did not find the four wheeler, however when they were returning, they noticed lights of a vehicle

in the field of Ameen. Said vehicle was their four-wheeler. It is stated that they proceeded to the spot and saw Hakam, Hanif, Subba and Rana sitting on the edge of the field on which Shamsudeen rebuked them and sat on driver seat of four wheeler, on which Hakam fired a shot upon Shamsudeen. Then Rana caught hold of Shamsudeen and threw him on the ground. In the meantime, Saikul, Jameel, Lehar Khan, Ishab, Asgar, Yunus, Ashu and Arshad appeared and Saikul asked Rana to run over Shamsudeen with four wheeler. Shamsudeen was then run over with four wheeler by Rana. It is further alleged that Subba and Hanif over powered the complainant. Hanif and Jamil then gave rod blows to Shamsudeen with Yusuf, Arshad and Ashu giving lathi blows to Shamsudeen. All the accused were stated to be armed with lathis. Amrudeen (who is not mentioned in the FIR), Nurudeen, Liyakat and Rashid on hearing the commotion, allegedly came to the spot alongwith other co-villagers. Assailants are thereafter alleged to have fled from the spot with their respective weapons. In his cross-examination, complainant admits that he never received any injury and thereafter, feigns ignorance as to whether Shamsudeen received a bullet injury or not but asserted that accused persons fired shots at the spot. Complainant in his cross-examination stated that 'I did not receive any injury. Amrudin, Liyakat and Subedeen also did not sustain any injury. I do not know whether Shamsudeen received bullet injury or not but the accused persons had fired shots at the spot'. Complainant further in his cross-examination stated that key of four wheeler was with his brother Shamsudeen when he started it.

It is pertinent to note that PW2 Subeddin, allegedly an eye-witness of the incident, stated that he had handed over TATA magic four-wheeler to Hakam and Arshad on 14.09.2011 at about 6.00 p.m. They sought

to take it to village Mithaka. Thereafter, he proceeded to the house of his maternal uncle (Mama), namely, Shamsudeen. However, on the way complainant-Jallu and Shamsudeen met him. They said that four-wheeler should not have been given to Hakam and Arshad as they are criminals. PW2 Subeddin further stated that when they reached village Kot in search of the vehicle, they came to know that his four-wheeler was standing in the fields of Ameen whereupon all of them proceeded to the fields of Ameen and found four persons – Hakam, Arshad, Hanif and Sube at the spot. When Shamsudeen sat on the driver seat, Arshad threatened to kill Shamsudeen. It is alleged that Hakam fired a shot from a country-made pistol and Shamsudeen was pulled down by Arshad from the vehicle and threatened to be crushed under the four-wheeler. Thereafter Hakam, Arshad and Hanif are stated to have beaten Shamsudeen with iron rods and lathis. Then 9-10 persons allegedly came to the spot, caused injuries to Shamsudeen and then ran four-wheeler over Shamsudeen. PW2 Subeddin however did not reveal as to from whom they came to know that their four-wheeler was standing in the fields of Ameen. PW2 Subeddin was duly confronted with his statement recorded under Section 161 Cr.P.C. (Ex.D1) where he had not said that Hakam crushed Shamsudeen under the four-wheeler. Subedin (PW2) and complainant-Jallu allegedly tried to save Shamsudeen from accused persons but surprisingly they did not receive any injuries, whatsoever, despite number of people being armed with Lathis, iron rods with one of them even alleged to be carrying a country-made pistol. PW2 stated in his cross-examination that injuries were caused to Shamsudeen for about half an hour. It is highly improbable that in such a situation Subeddin and Jallu were completely unharmed.

After careful consideration of the evidence on record we find that version put forth by the prosecution is highly improbable. The ocular version is not corroborated on any count by the evidence on record. First and foremost it is to be noted that no bullet injury was sustained by Shamsudeen, the deceased, despite categorical statement of alleged eyewitness that Shamsudeen was shot at by Hakam from a country made pistol.

Perusal of the record reveals that six injuries were found on the person of deceased-Shamsudeen. Said injuries as described in the post-mortem report (Ex.PW13/B) are reproduced as hereunder:-

1. Incised wound of size 8cm x 5cm over right side of forehead extending till parietal region, bone exposed, fracture of under lying bone present.
2. Incised wound of size 4cm x 5cm deep over right side temporal parietal region, no fracture of under lying bone present.
3. Multiple large abrasions over left forearm, arm and elbow joint, no fracture of under lying bone present.
4. Lacerated wound of size 5cm x 2cm over right shoulder joint, irregular margin, blood and mud deposited.
5. Abrasions of size 2cm x 1.5cm over the tip of nose, no fracture of under lying bone present.
6. Abrasions of size 2cm x 1.5cm over right scapular region, no fracture of under lying bone present.

Cause of death in the opinion of the Medical Board was shock and haemorrhage due to antemortem injuries to vital organs, which were sufficient to cause death in ordinary course of nature. Affidavit Ex.PW13/A and postmortem report Ex.PW13/B conducted by Dr. Chirag Sethi PW13, Dr. Manisha, Eye Surgeon and Dr. Devender Partap Singh was tendered in

evidence by PW13. Dr. Chirag Sethi, Medical Officer, in his cross-examination stated that possibility of receiving injury no.3 by falling on hard surface from reasonable height, cannot be ruled out.

Learned counsel for the applicant/appellant is unable to deny that there is indeed not an iota of evidence on record to indicate that deceased was shot at and thereafter run over by a vehicle. There is no bullet injury, crush injury or any tyre marks etc. to indicate the same. To the contrary, injury no.1 on the forehead and injury no.2 on the right temporal parietal region of the deceased are described as incised wounds, which clearly do not corroborate the ocular version, as has been put forth.

It is also relevant to note at this stage that evidence on record does not indicate recovery of any cartridges or pellets from the alleged place of occurrence, which would verify and cement the version as put forth by the complainant. Learned counsel is also unable to point out anything on record, which would indicate that there was examination of vehicle in question to fortify the ocular version that deceased was run over by four wheeler. Mystery as to how and from where Shamsudeen got the key of vehicle, is also not indicated by the evidence on record. Subedeen, PW2, surprisingly stated that Shamsudeen had the key of the vehicle with him when he got into the driver seat. Ocular version that over ten persons attacked Shamsudeen and beat him with lathis and iron rods, is not corroborated in any manner by the medical evidence on record, which reveals that deceased had six injuries on his person with no gun shot injury. It is further opposed to all probabilities that complainant and Subedeen stated to be accompanying the deceased at the relevant time, would come out unscathed in the incident without even a scratch on their person.

Testimonies of the complainant Jallu, PW11 as well as Subeddin - PW2, who are alleged to have been present on the spot, fail to inspire confidence. Doubtlessly, in a given case where clear-cut and succinct ocular version is available on record, discrepancies in medical evidence may be ignored. However, in the present case, gap between medical evidence and ocular version is so wide and stark that ocular version is clearly rendered untrustworthy and it is not safe to accept the same without seeking corroboration from attending evidence on record. Evidence on record as discussed in the foregoing paras does not support the ocular version. It is to be noted at this stage that complainant in his testimony has referred to some litigation of criminal nature between complainant side and accused though details thereof are not forthcoming on record.

PW3 Amruddin who is alleged to have come to the spot as per later statement of the complainant, stated that he never saw any of the accused persons causing injuries to Shamsudeen while stating that he saw 14 persons who were duly armed with weapons running away from the spot. In his next breath, PW3 states that when he reached at the spot he only found complainant-Jallu and PW2 Subeddin to be present with injured Shamsudeen.

Similarly, PW4 Liyakat who is stated to have come to the spot on hearing commotion stated that his house is situated at a distance of four acres from the fields of Ameen. PW4 stated that on 14.09.2011, on hearing sound of firing, he came out of his house and met Amruddin, PW3, on the way and both proceeded towards Hathin – Kot road. They met Rashid, PW16, who told them that sound of firing was coming from the fields of

Ameen. All of them then went to field of Ameen and saw fourteen persons running towards village. Names of all fourteen were given before the trial Court. They allegedly saw the four wheeler in Ameen's field and Shamsudeen lying injured near the four wheeler. Jallu and Subedeen were stated to be trying to save Shamsudeen, villagers shifted him to the hospital but he died on the way. He was duly confronted with his statement (Ex.DA), recorded before the police, wherein names of the other accused are not mentioned. PW4 Liyakat while revealing that Fajru, father of the deceased was his grandfather, admitted that his statement was never recorded by the police on 14.09.2011. Rashid, PW16, stated that at about 8:00 P.M., when he was going to answer the call of nature, he heard the sound of gun shots. He met Amruddin, Liyakat and all of them proceeded to field of Ameen. PW16 stated that he saw ten or eleven people running from Ameen's field towards the road. Hakam with a country made pistol was allegedly seen by him alongwith, Subeddin, Anif, Rana @ Arshad, Asgar @ Kadkali, Ashu, Jamil, Yusuf duly armed with iron rods and lathis and five/six unidentified persons. Shamsudeen was found in injured condition behind the four wheeler. He was taken to the hospital, that PW16 did not accompany, but Shamsudeen passed away on the way. PW16, in his cross-examination admitted that his statement was recorded on 15.09.2011 at 2:30 P.M. Distance of his house is also about three (3) acres from alleged place of occurrence. None of these witnesses could give the details about who took the deceased to the hospital.

In so far as the testimony of PW3 Amruddin, PW4 Liyakat, and PW16 Rashid, is concerned, the same is also of no utility to the prosecution.

None of them admittedly saw the incident in question. Their houses are three/four acres away from the place of occurrence. There are material discrepancies in the statements of PW2 Subedeen, PW11 Jallu, complainant as well as PW3 Amruddin, PW4 Liyakat and PW16 Rashid, which render the same untrustworthy. It is reiterated that version put forth by them is not corroborated in any manner by the evidence on record. It is correctly observed by the learned trial Court that witnesses PW3, PW4 and PW16 seem to have been introduced as an afterthought. There is no quarrel with the proposition that merely because a witness may be related to the deceased, his evidence has to be discarded. Testimony of an interested witness may also be worthy of credit but in the present case for the reasons as narrated in the foregoing paras, it is not safe to rely solely on their testimony while ignoring the other evidence on record which provides no corroboration at all. Suspicion, however, strong can never form the basis of conviction. In the present case, prosecution has miserably failed to prove its case against the accused beyond reasonable doubt.

It is a settled position that there have to be strong, compelling and substantial reasons to set aside acquittal of the accused. Simply because another view may be possible, cannot be a ground for reversing a judgment of acquittal. Hon'ble Supreme Court in *Arulvelu v. State represented by the Public Prosecutor, 2009(10) SCC 206* held that :-

“Unquestionably, the Appellate Court has power to review and re-appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused

possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court."

Reference in this regard can also be made to judgment of Hon'ble Supreme Court in **State of Rajasthan versus Kistoora Ram, 2022(4) RCR (Criminal) 324**, wherein it is held that it is not permissible to interfere with finding of acquittal unless it is found that the view taken by Court is impossible or perverse. It is settled position of law that acquittal of an accused is not to be set aside only if another view may be possible under the given facts and circumstances.

Learned counsel for appellant, despite the vehement arguments is unable to point out any illegality, infirmity or perversity in the impugned judgment dated 07.07.2018, passed by learned Additional Sessions Judge, Palwal, which calls for any interference by this Court.

No other argument has been raised.

There is a delay of 21 days in filing the appeal. As the appeal has been decided on merits, question of condonation of delay in filing the appeal is rendered academic. Application is disposed of accordingly.

Accordingly, leave to appeal is declined.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

April 11, 2023

Sunil

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No