HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRA No.74/2013

Reserved on : 03.10 .2024
Pronounced on : 19.11.2024

Ravinder Singh, S/o Sagar Singh, R/o Juthana, Tehsil and District Kathua …. Petitioner/Appellant(s)

Through:- Mr. Balwant Singh Billowria, Advocate

V/S

The State of Jammu and Kashmir ..... Respondents
Th. Station House Officer, Police Station,
Billawar, District Kathua

CRR 20/2015

Chandu Ram age 52 years, S/O Sh. Munshi Ram
R/O village Juthanu, Tehsil and District Kathua.

Vs.

1. Ravinder Singh alias Telia

2. Hari Singh alias Makhnu, both sons of Sagar Singh,
R/o Juthanu Tehsil and District Kathua.

3. State of J&K through SHO, Police Station Billawar,District Kathua.

Through: Mr. Suneel Malhotra, GA
Mr. Ashok Sharma, Advocate

CORAM : HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGMENT

1. The appellant-Ravinder Singh through the medium of the instant appeal bearing CRA No.74/2013 has challenged his conviction and sentence recorded by the Court of learned Principal Sessions Judge, Kathua (for short 'trial Court') vide judgment and order dated 29.11.2013 in File No. 44/Sessions, titled ***State Vs. Ravinder Singh and another***, whereby he has been convicted for commission of offences punishable under Sections 324 and 325 of the RPC and 4/25 of the Arms Act and has been sentenced to

undergo imprisonment for four years in totality and to pay the fine, whereas, in Cr. Revision bearing CRR 20/2015, petitioner-Chandu Ram has also challenged the judgment dated 29.11.2023 to the extent of acquittal of accused No. 1-Ravinder Singh under Section 307 RPC and also of complete exoneration of accused No.2-Hari Singh.

2. Prosecution case, in brief, is that on 29.10.2013, the victim-Chandu Ram, was on his way back when accused no.1-appellant herein,wielding a sword and accused no. 2 a lathi had laid an ambush, came out of the bushes and waylaid him. Accused no.1-appellant herein attempted to hitvictim on his neck with the sword, but it hit his left shoulder. The victim raised an alarm. Accused No.2 fled away, butaccused no.1 chased victim and hit him on his head andback. Some people working in the nearby field came on spot and rescued the victim. This report led to registration of case against the accused.

3. During the course of investigation, statement of victim and other witnesses was recorded.Victim was also medically examined. On disclosure by the appellant, weapon of offence was recovered. The injured spoke about the recovery effected at the instance of the accused. Police took him along with accused no.1 to his house and accused no.1 brought out a sword and handed it to the police. Similarly, accused no.2 produced a lathi before the police.

4.Impugned judgment of conviction and order of sentence are challenged in this appeal, *inter alia*, on the following grounds:

(i) *the trial court while convicting and sentencing theappellant has relied only upon the hostilewitnesses. The conviction*

andsentence ofthe appellant has been based upon inadmissibleevidence.

(ii) *that while examining the appellant in terms of 342ofCrPCthe trial court failed to give reasonable opportunity to him toexplain all the incriminating circumstances appearing in the prosecution evidence;*

(iii) *that the trial court also erred in relying upon the statements of those prosecution witnesseswho were interested and having positiveanimus against the appellant;*

(iv) *that the trial court has failed to consider the variance inter-se the FIR, Challan andthe ocular testimony of the eye witnesses. It has also failed to consider the variance inter-se the alleged weapon of offence and the injury sustained by the deceased.There is unexplained delay in recording the statement of the injured and registration of FIR;*

(v) *that the Disclosure statement of appellant and recovery of alleged weapon of offence hasbeen attributed to the appellant in violation of statutory provisions and in absenceof any FSLreportby expert and the doctor's statement during trial;*

5. The accused-appellantsecured interimbail before the trial Court, which was made absolute later on with a direction toparticipate in the investigation from 10.00 AM to 4.00 PM.The accusedNo.1-appellant made a disclosure statement pursuant to which a swordwas recovered at his instance. Similarly, a lathi was also recoveredfrom accused No.2. Evidence was collected and after conclusion of investigation, the complicity of accused in the commission ofaforementioned offences was established. So, the investigationculminated in filing of the charge sheet.

6. During the trial, PW Ram Singh and PW Tridu Ram, in whose presence recovery memo is said to have been prepared, were not called, so application was made under section 540 Cr.P.C. for production of the said

witnesses being relevant and necessary for disposal of case, but the Trial Court rejected the application.

7. Learned counsel for the accused/appellant submits that there is no cogent evidence to hold that the charges stand established and that the trial Court has wrongly appreciated the Certificate issued by the doctor without examining him. He further submits that trial Court has relied upon disclosure statement wrongly and there has been no expert evidence, like FSL, who should have examined the weapon of offence with respect to fingerprints.

8. Heard learned counsel for the parties and perused the material on record as well as the impugned judgment of conviction dated 29.11.2013, rendered by the trial Court.

9. It is pertinent to mention here that this Court as an Appellate Court, in an appeal against conviction, has the duty to appreciate the evidence on record and if two views are possible on assessment and evaluation of evidence, the benefit of reasonable doubt has to be given to an accused inasmuch as it is not correct to suggest that the Appellate Court cannot legally interfere with the order of conviction where the Trial Court has found the evidence as reliable and that it cannot substitute the findings of the Sessions/Special Judge by its own, if it arrives at a different conclusion on reassessment of the evidence. This is what has been held by the Supreme Court in Lal Mandi v. State of W.B. AIR 1995 SC 2254; relevant portion thereof is beneficial to be reproduced hereunder:

> "To say the least, the approach of the High Court is totally fallacious. In an appeal against conviction, the Appellate Court has the duty to itself appreciate the evidence on the record and if two views are possible on the appraisal of the evidence, the benefit of reasonable doubt has to be given to an accused. It is not correct to suggest that the "Appellate Court cannot legally interfere with" the order of conviction where the trial court has

> found the evidence as reliable and that it cannot substitute the findings of the Sessions Judge by its own, if it arrives at a different conclusion on reassessment of the evidence. The observation made in Tota Singh's case, which was an appeal against acquittal, have been misunderstood and mechanically applied. Though, the powers of an appellate court, while dealing with an appeal against acquittal and an appeal against conviction are equally wide but the considerations which weigh with it while dealing with an appeal against an order of acquittal and in an appeal against conviction are distinct and separate. The presumption of innocence of accused which gets strengthened on his acquittal is not available on his conviction. An appellate court may give every reasonable weight to the conclusions arrived at by the trial court but it must be remembered that an appellate court is duty bound, in the same way as the trial court, to test the evidence extrinsically as well as intrinsically and to consider as thoroughly as the trial court, all the circumstances available on the record so as to arrive at an independent finding regarding guilt or innocence of the convict. An Appellate Court fails in the discharge of one of its essential duties, if it fails to itself appreciate the evidence on the record and arrive at an independent finding based on the appraisal of such evidence. The High Court failed to do so and its view is patently erroneous. Though this Court does not generally reappraise the evidence which has been considered by two courts below in an appeal by special leave but since the consideration of the evidence by the High Court was not proper, we have ourselves analysed the evidence on the record with the assistance of learned counsel for the parties"

10. In the above backdrop, analyzation of prosecution witnesses produced by prosecution before the Tral Court is must, which is reproduced hereunder: -

> ***PW-Chandu Ram****has stated that accused are hellbent tooccupy his land forcibly and he also lodged the report againstthem, where after they started threatening him. On 28.10.2003,he had gone to meet Naib Sarpanch Kirpal Singh but themeeting was not possible and so he left back for his home. Atabout 11.30 AM while he was proceeding to his home, accusedcame out of bushes and accused No.l was having a sword withhim and he started assaulting him on his head but it hit his arm.As the accused No.l attempted to hit him again, he raised alarmand again the sword hit his arm and he got injured. AccusedNo.2, who was having a lathi with him, could not assault himbecause he ran away. Accused No.l chased him and hithim again on his back. As a result of assault, he fell down. Somepeople came on spot and rescued him. Five/seven minutes after,he fell unconscious.*
>
> ***PW-Rattan Singh****has stated that there was a quarrelbetween the accused and the victim. The victim was foundrunning away saying that he was assaulted by accused. As thevictim came near*

him, he fell down. He was shifted byParshotam, Govinda, etc. from the place of occurrence.

In cross-examination by PP, he says that he does not know about theoccurrence although he saw the victim running for help.

***PW-Sardar Singh** has stated that on 28.10.2003,accused assaulted the victim. He was told about the occurrence by the victim himself on 30.10.2003 in Kathua hospital.*

***PW-Kali Dass**has deposed that on 30.10.2003,police seized blood stained clothes of the victim through EXPW-CR/I and he was made to signed the seizure memo.*

***PW-Rattan Singh** statedthat on 28.10.2003, he foundaccused No.l with a sword in his hand chasing the victim. Thevictim was running for help. Accused No.l hit the victim frombehind with the sword and fled away. The victim fell down and hewas shifted to hospital.*

In cross-examination, the witness saysthat he did not see accused No.2 on spot. It was the victim whotold him that he was assaulted by accused No. l. He did not see the actual assault being launched by accused.

***PW-Kali Pass**has stated that he does not know anything about the occurrence. He was declaredhostile by the prosecution.*

***PW-Shankar Singh**has stated thathe was not present on spot and he heard about the occurrencefrom the villagers. This witness has also turned hostile toprosecution.*

***PW-Janak Singh**has stated that he heard somenoise and some people gathered on spot. The victim was alsothere and the people shifted him to hospital. This witness hasalso been declared hostile.*

***PW-Parshotam Singh**has been declaredhostile by the prosecution after he stated that he does not knowabout the occurrence.*

***PW-Govind Singh** - This witness has also been declaredhostile by the prosecution after he stated that he does not knowabout the occurrence.*

***PW-Abdul Rashid, ASI**has stated that on20.11.2003, he was posted in Police Station, Billawar, and on the said date accused No.l was brought arrested to Police Stationand during the interrogation, he made a disclosure statementabout the weapon of offence which was recoveredat hisinstance from his house.*

In cross-examination, the witness says thatat the time of disclosure another Constable was also present inthe room. Accused precisely stated that he had kept a sword inhis cattle shed which he could recover.

PW-Anchal Singh*has been declaredhostile by the prosecution after he stated that he does not knowabout the occurrence.*

PW-Sardar Singh *has stated that on 28.10.2003, hewas working in his field when he saw accused No.l and victimrunning. Victim was ahead of accused No.l. He fell down andwas removed on a cot. This witness has also been declaredhostile by the prosecution.*

In cross-examination by PP, headmits that accused No.l was chasing the victim with a sword inhis hand and was assaulting the victim. The victim sustainedinjuries on left shoulder and right arm. He fell unconscious.Anchal Singh, Janak Singh, Govind Singh, Rattan Singh andRattan Singh were on spot.

In cross-examination by defencecounsel, he says that it is a fact that he did not see anyoccurrence.

PW-Dewan Singh*has stated that he was working in his field when he was informed by one Shankar Singh thataccused No.l had assaulted the victim with a sword. He alsowent on spot and found that the victim had been shifted from theplace of occurrence. He did not see the occurrence himself.*

PW-Omkar Chand Jogal *has stated that on20.11.2003, accused were being interrogated in Police Station.Accused No.l made a disclosure statement that he hadconcealed the weapon of offence which he could recover. Next morningaccused No.l brought the sword from the place identified by himand it was seized on spot.*

In cross-examination, he stated that the recovery/seizure memos are not signed by him.

PW-lsher Dass *stated that on 27.10.2003, hereceived a telephonic message that victim was hospitalized onaccount of the injuries. On 28.10.20003, the statement of theinjured could not be recorded because he was not fit to give thestatement. Thereafter his statement was recorded and the casewas registered. He seized the blood-stained clothes of the victim,prepared the map of the occurrence and examined thewitnesses. The accused No.l made a disclosure statementabout the sword which was later on recovered at his instance.Accused No.2 produced the lathi which was also seized. Thedocuments like seizure memos, recovery memos, disclosurestatement, etc. were prepared, the contents of which are correct.*

11. Perusal of impugned judgment dated 29.11.2013 would show that the trial Court, while appreciating evidence produced by prosecution,has observed that the case mainly hinges on the testimony of the injured.While going through the entire statement and evaluating it in the lightof facts

projected, the trial Court has observed that the statement of injured- Chandu Ram,is complete andcompact as well as without any major aberration. If the statement of the injured is compared with his statement dated 30.10.2003 recorded two daysafter the occurrence,it is abundantly found that both the statements are incomplete contradictionto each other. The trial Court while relying upon theApex Court judgments incases titled ***State of MP*** **Vs.** ***Man Singh and ors.*****(2003)10 SCC414**and***State of Maharashtra*** **Vs.** ***Tulshiram BhanudasKamble and ors.2007 (3) Apex Court Judgments 276 (SC)***,has held that evidence of the injured-Chandu Ram, is sufficient enough to connect accused No.1-appellant with the commission of the crime and there is no reason much less the compelling one to discredit his statement insofar as accused No.1 is concerned.

11. Prosecution witness-Sardar Singh in cross-examination, while concluding hisstatement, says that he did not see the occurrence himself. First, hesays he knows nothing. Then during cross-examination by PP,he admitsthe fact of having watched the occurrence and ultimately on cross-examination by defence counsel, he says that he did not seeanything. The statement of hostile witness cannot be rejected as a whole. The portion of the statement ofthe hostile witness, which is in conformity with the case of eitherparty, can be considered admissible.

12. As observed hereinabove, PW-Sardar Singh is an eyewitness and he has fully supported the case of the prosecution. As per settled position of law, there can be a conviction on the basis of the deposition of the sole eyewitness, if the said witness is found to be trustworthy and/or reliable.As observed hereinabove, the said witness is hostile, therefore, there

is a reason to doubt credibility and/or reliability of this witness. Conviction of accused cannot be done while placing reliance on the deposition of PW.

13. The Supreme Court in case titled ***State v. Laly***, 2022 SCC On Line SC 1424 has held as follows: -

> *"Assuming that the recovery of the weapon used is not established or proved also cannot be a ground to acquit the accused when there is a direct evidence of the eye witness. Recovery of the weapon used in the commission of the offence is not a sine qua non to convict the accused. If there is a direct evidence in the form of eye witness, even in the absence of recovery of weapon, the accused can be convicted."*

14. As regards, the disclosure statements made by appellant in pursuance of which they had allegedly got sword recovered from their possession, the statements are admissible to that extent only with regard to recovery of weapons, but the other contention that the weapons had been used in the incident for causing injuries cannot be considered. Furthermore, it is not the case of prosecution that the sword was the weapon used to injure the victim. The weapon was admittedly not sent to Forensic Science Laboratory (FSL), to find out as to whether the same was having any blood stains or fingerprints of the accused-appellant. This is a major lacuna in the investigation. In the absence of such evidence, it cannot be said that the weapon was used in any incident. Further, thetrial Court has wrongly appreciated the Certificate issued by the Doctor without examining him,

15. In case of Injury Certificate/Wound Certificate/ Certificate etc., the execution of such a document has to be proved by evidence of those technical/expert persons who can certify the contents of such document. It should be proved firstly by examining the Doctor himself who issued the same and, if the said Doctor is not found, the course available to the

prosecution is to examine some other Doctor from the same Hospital, who knew the handwritings and signature of the Doctor who issued the Certificate in question. When the other Doctor is examined who knew the handwritings and signature of the Doctor who issued medical report of the victim, he would have spoken about the contents of the medical report and the conclusions reached therein. In such an event, there would have been an opportunity to the appellant/accused to cross-examine the said Doctor to answer the questions raised in relation to the injury and it would have been helpful to the Court to arrive at a just conclusion.

16. The evidence of a medical witness is very crucial to corroborate the case of prosecution and it is not merely a check upon testimony of eyewitnesses, it is also independent testimony, because it may establish certain facts, quite apart from the other oral evidence. The medical evidence adduced by the prosecution has great corroborative value as it proves that the injuries could have been caused in the manner alleged. Non-examination of the Doctor who issued injury certificate certainly causes prejudice to the appellant/accused. So, non-production of the doctor to confirm the report/evidence was fatal to the case. Testing the prosecution case on the touchstone of the evidence of the aforesaid witnesses, impugned judgment is not based on reason and logic.

17. The judicial precedent reported in the case of ***Prithipal Singh v. State of Punjab, 2012 (1) SCC 10***, assumes significance on that count. There it has been held as follows: -

> "This court has consistently held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in acquitting a person on the sole testimony of a single witness. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it

> is not the number or the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphases on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record acquittal. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence..."

18. The law settled in the aforesaid judgement is that as a general rule the court can and may act on the testimony of a single witness, provided he is wholly reliable and there is no legal impediment in acquitting a person on the sole testimony of a single witness, but if there are doubts about the testimony, the court will insist on corroboration. It is not a number or quantity, but the quality that is material and time-honoured principle is that the evidence has to be weighed and not counted. So, the test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. Thus, it is open to a competent court to fully and completely rely on a solitary witness and record the acquittal and conversely it may acquit accused in spite of testimony of several witnesses if it is not satisfied about quality of evidence.

19. In the present case, the Trial Court has miserably failed to appreciate the case in its right perspective. The record available before the Trial Court speaks volumes about non-appearance and examining of the doctor. As held in ***Sharad Birdhich and Sarda v. State of Maharashtra, (1984) 4 SCC 116***, the failure to explain can only be held as an additional link to complete the chain of circumstance. In the instant case, since the other circumstances in the chain are not established, the same cannot be held against the appellant.

In reiteration of golden principle that runs through the web of administration of justice in criminal case, the Supreme Court in ***Sujit Biswas v. State of Assam, (2013) 12 SCC 406***, has held that suspicion, however grave it may be, cannot take place of proof, and there is a large difference between something that 'may be' proved, and something that 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between 'may be' and 'must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the Court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between `may be' true and `must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case as well as the quality and credibility of evidence brought on record. The court must ensure that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt but a fair doubt that is based upon reason and common sense.

20. In the case at hand, the trial Court while convicting and sentencing the accused-appellant has wrongly relied upon the statements of the hostile

witnesses and has come to the conclusion that the recoveries of the weapons of offence were made from the accused and this finding, in my view, is not sustainable.

18. For the aforesaid reasons, the instant appeal (CRA No.74/ 2013) deserves to be allowed and is, accordingly, **allowed**. The impugned order and judgment of conviction dated 29.11.2013passed by the Court of learned Principal Sessions Judge, Kathua in File No. 44/Sessions, titled *State Vs. Ravinder Singh and another*, is set aside. The appellant is hereby ***acquitted*** of the charges.

19. In view of the order passed in the instant appeal, the revision petition being CRR No.20/2015 filed by the injured-Chandu Ram shall stand dismissed.

20. Record of the trial Court be sent back forthwith along with copy of this judgment.

(VINOD CHATTERJI KOUL)
JUDGE

JAMMU
19.11.2024
BIR

Whether the order is reportable: ***Yes/No***