

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-303-DBA-2004
Decided on:- 26.04.2024

The State of PunjabAppellant

Versus

Harwinder Singh and another ...Respondents

CORAM:- HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Eklavya Darshi, DAG, Punjab.

Mr. H.S. Dhandi, Advocate,
Legal Aid Counsel for respondents No. 1 and 2.

AMARJOT BHATTI, J.

1. The appellant-State of Punjab has filed appeal against judgment of acquittal dated 11.07.2003 passed by learned Additional Sessions Judge (Adhoc), Ludhiana in Sessions Case bearing No. 108 dated 12.01.2002, titled as "State Vs. Harwinder Singh and another" in FIR No. 71 dated 24.10.2001 under Section 364/34 of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Sudhar, District Ludhiana.

2. Brief facts of the case are that on 24.10.2001, ASI Labh Singh along with police party was on patrol duty, when at about 06:00 pm Lal Singh complainant met him on the bridge of drain in the area of village Dhapai and got his statement recorded. Complainant stated that he is resident of village Chaminda, P.S. Sudhar and is an agriculturist. On 24.10.2001 at about 04:00 pm, he was standing at bus stand of his village for boarding bus. Harwinder

Singh son of Lachhman Singh and Ajit Singh son of Joginder Singh came there and had an altercation with him. They wanted to take him to the land in dispute and in that course they grappled with him. In the meantime, Dilshad Singh son of Mohinder Singh came there and he was holding a rope. They all tied him with a rope and forcibly took him to the residence of Harwinder Singh. Jasbir Kaur, daughter-in-law of complainant also came there but she was threatened due to which she ran away. However, she informed the police of police post Jodhan, from where Constable Albel Singh and Constable Gurmit Singh reached at the spot. On seeing the police officials, Harwinder Singh, Ajit Singh and Dilshad Singh ran away and Lal Singh was rescued. His statement was recorded and after making endorsement, *ruka* was sent for registration of formal FIR.

Investigation was commenced. Rough site plan of place of occurrence was prepared. Cot and rope with which complainant was tied were taken into police possession. Statements of witnesses were recorded. Search of all accused was conducted and when police party reached canal bridge situated in the area of village Dhaipai, all the three accused were seen coming from the side of village Sarabha. On identification by complainant Lal Singh, accused persons were apprehended. Their medical examination was conducted from Civil Hospital, Pakhowal. After completion of investigation, challan was presented against Harwinder Singh, Ajit Singh and Dilshad Singh in the Court of Sub Divisional Judicial Magistrate, Jagraon.

3. The accused were supplied complete set of copies of challan report as provided under Section 207 of Cr.P.C. Since the offence under Section 364 of IPC is exclusively triable by the Court of Sessions, therefore,

learned Sub Divisional Judicial Magistrate, Jagraon committed the case to the Court of learned Sessions Judge, Ludhiana for trial vide commitment order dated 21.12.2001.

4. Learned Additional Sessions Judge, Ludhiana, after hearing arguments, framed charge-sheet against accused persons under Section 364 of IPC, which was read over and explained to them in simple language to which they pleaded not guilty and claimed trial.

5. In order to prove the facts of case, prosecution examined complainant Lal Singh as PW1, Jasbir Kaur as PW2, Satish Kumar, Draftsman as PW3, Dr. Ramesh Chand, Medical Officer as PW4, Constable Gurmit Singh as PW5, Varinder Singh, Clerk, Judicial Record Room, Ludhiana as PW6, Constable Albel Singh as PW7, HC Harmesh Kumar as PW8, ASI Labh Singh, Investigating Officer as PW9. Thereafter, learned Additional Public Prosecutor closed the prosecution evidence on 08.05.2003.

However, during the pendency of trial, accused Ajit Singh expired.

6. Statements of accused Harwinder Singh and Dilshad Singh were recorded under Section 313 Cr.P.C. They denied the incriminating evidence put to them and pleaded innocence and false implication on account of land dispute.

7. In defence, accused examined only one witness namely Jaggar Singh, Ex-Sarpanch as DW1.

8. After hearing arguments advanced by learned Additional Public Prosecutor for State and learned counsel representing accused persons, Harwinder Singh and Dilshad Singh were acquitted of the charge-sheet

framed against them under Section 364 of IPC vide judgment dated 11.07.2003 passed by learned Additional Sessions Judge (Adhoc), Ludhiana.

9. Feeling aggrieved of this judgment of acquittal, present appeal has been filed by State of Punjab.

10. We have heard arguments advanced by learned State counsel and learned legal aid counsel representing respondents No. 1 and 2 and have gone through the record carefully with their able assistance.

11. Learned State counsel took the stand that judgment of acquittal dated 11.07.2003 passed by learned Additional Sessions Judge (Adhoc), Ludhiana is without proper appreciation of facts of the case and the evidence produced by prosecution. The statements of victim Lal Singh PW1 and his daughter-in-law Jasbir Kaur PW2 have been wrongly ignored. There is direct evidence to the occurrence which clearly shows that Lal Singh was forcibly abducted by Harwinder Singh, Ajit Singh and Dilshad Singh by tying him with a rope and was confined in the house of Harwinder Singh respondent/accused No. 1. Said Lal Singh was beaten up. The entire occurrence is duly proved by the aforesaid witnesses. Jasbir Kaur PW2 informed the police and ultimately Lal Singh was rescued by police i.e. Ct. Albel Singh examined as PW7 and Ct. Gurmit Singh examined as PW5. Both these witnesses categorically stated that when they reached the house of Harwinder Singh, Lal Singh was rescued, whereas, respondents/accused managed to escape from there. Both respondents/accused were duly identified by complainant Lal Singh PW1 as well as his daughter-in-law Jasbir Kaur PW2.

HC Harmesh Kumar PW8 confirmed that on the basis of information received by him on telephone, he had recorded DDR No. 14 dated 24.10.2001 Ex.PW8/1 and thereafter, Ct. Albel Singh examined as PW7 and Ct. Gurmit Singh examined as PW5 were directed to reach the spot from where Lal Singh was rescued. The MLR of Lal Singh is proved on record by Dr. Ramesh Chand, Medical Officer, R.H. Mansooran as PW4. The said MLR is Ex.PF and pictorial diagram is Ex.PF/1. The scaled site plan of place of occurrence is proved by Satish Kumar, Draftsman as PW3, which is Ex.PE. The investigation was carried out by ASI Labh Singh who has been examined as PW9. The learned trial Court has acquitted both the respondents/accused by referring to minor discrepancies in the statements of witnesses examined by prosecution. It is argued that judgment of acquittal is based on surmises and conjectures and it has resulted into grave miscarriage of justice. From the evidence led by the prosecution, charge framed against both the respondents/accused under Section 364 of IPC is duly proved on record, therefore, they are liable to be convicted thereunder. It is, thus, submitted that judgment of acquittal dated 11.07.2003 passed by learned trial Court may be set aside by accepting the present appeal.

12. On the other hand, learned legal aid counsel representing the respondents No. 1 and 2 pointed out that both the respondents including Ajit Singh who had expired during pendency of trial were falsely implicated in this case due to land dispute which was already going on between them. The testimonies of Lal Singh complainant PW1 and his daughter-in-law Jasbir Kaur PW2 were not found to be reliable by learned trial Court. There are major discrepancies regarding the manner occurrence took place and the way

Lal Singh was rescued by the police. Ct. Gurmit Singh PW5 and Ct. Albel Singh PW7 had allegedly rescued the complainant Lal Singh. Out of them Ct. Albel Singh was declared hostile. Even these witnesses did not establish the presence of respondents/accused when they allegedly rescued Lal Singh. The MLR proved on file by Dr. Ramesh Chand PW4 was rightly appreciated and considered by learned trial Court. There was no independent corroboration to the statements of prosecution witnesses. In fact, respondents were falsely implicated on account of their land dispute which is further confirmed from the copy of judgment and decree dated 30.04.2001 in Civil Suit No. 559 dated 14.12.1999 proved on record as Ex.PC and Ex.PD respectively. The respondents had examined Ex-Sarpanch Jaggar Singh as DW1 who has fully supported the case of respondents/accused. His testimony cannot be ignored. Thus appeal preferred by State against judgment of acquittal is without any basis and it deserves dismissal.

13. We have considered the arguments advanced before us and carefully scrutinized the evidence on record. The present appeal has been preferred against the judgment of acquittal in favour of Harwinder Singh and Dilshad Singh respondents No. 1 and 2, in which they have been acquitted of the charge framed against them under Section 364 of IPC. The FIR was registered on the statement of Lal Singh who stated that he was present at Bus *Adda* of village Chaminda for boarding a bus when Harwinder Singh and Ajit Singh came and they wanted to take him to the land in dispute. They had a scuffle with him. In the meantime, Dilshad Singh came with a rope. They tied him with a rope and forcibly took him to the house of Harwinder Singh, where he was tied with a cot and was also given beating. As per the version of

Lal Singh, his daughter-in-law Jasbir Kaur reached on the spot but she was threatened and told to go away. She had informed the police of police post Jodha on telephone and ultimately he was rescued by two police officials namely Ct. Albel Singh and Ct. Gurmeet Singh. With these allegations, respondents Harwinder Singh, Dilshad Singh along with Ajit Singh were charge-sheeted under Section 364 of IPC. During trial, Ajit Singh expired, whereas, respondents No. 1 and 2 were acquitted vide impugned judgment dated 11.07.2003 passed by learned Additional Sessions Judge (Adhoc), Ludhiana.

It is settled proposition of law that it is for the prosecution to prove the guilt of accused beyond the shadows of reasonable doubt. Thus, the prosecution was to lead convincing, trustworthy evidence to prove the guilt of accused facing trial in this case. Minor discrepancies bound to occur with the passage of time and the same can be ignored if the testimony of witnesses is trustworthy. Gainful reference in this regard can be made to the judgment of **Hon'ble Supreme Court of India** in case title "***Yogesh Singh versus Mahabeer Singh & Ors.***" **2016(4) R.C.R.(Criminal) 753**, where in para No.29, it was held as under :-

"29. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the Court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every

omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission.”

In the case in hand, prosecution has examined Lal Singh, complainant as PW1 who has narrated the occurrence as stated by him in the statement given before the police Ex.PA. During cross-examination, he was confronted with his statement Ex.PA, where Lal Singh PW1 tried to give improved version by alleging that he was given beating and accused pulled his beard. He stated that it took about 20 minutes for the accused to take him from bus stand to the house of Harwinder Singh. He raised hue and cry. Some persons heard the alarm raised by him but nobody dared to rescue him. The cross-examination of this witness further shows that the road leading to the house of Harwinder Singh from Bus *Adda* is a thoroughfare and there are houses of others in that area. Regarding this, Jasbir Kaur PW2 sole eye witness stated differently that 10-12 persons had collected there and some of them tried to rescue Lal Singh. She further claimed that when Lal Singh was rescued, he was not in his full sense, whereas, Lal Singh as PW1 did not say anything in this regard.

Learned trial Court further considered the testimony of Jasbir Kaur PW2 with a doubt where during cross-examination she could not tell

from whose house she had called the police nor she could tell the phone number on which the information was given to the police. She nowhere stated that she raised hue and cry seeking help of the neighbours. The evidence of a closely related witness is required to be scrutinized and appreciated carefully. Apart from the testimony of these witnesses, the prosecution could not examine any independent witness of the locality to prove the occurrence. The learned trial Court rightly concluded that it was highly improbable that a person was being forcibly abducted in a broad day light on a thoroughfare but nobody came for his rescue nor anybody stepped into the witness box to prove the occurrence.

14. It is the case of prosecution that Ct. Gurmit Singh examined as PW5 and Ct. Albel Singh examined as PW7 were deputed to reach on the spot. Ct. Gurmit Singh PW5 in his examination-in-chief stated that when he reached the house of Harwinder Singh, Lal Singh was found present lying on a cot. He further stated that on seeing the police party, accused ran away. He further stated that Lal Singh was untied from the said cot and was told to intimate the occurrence to the SHO. This witness further stated that they tried to chase the accused but failed to catch them. He identified the accused facing trial in this case. However, during cross-examination, this witness stated that they were brought to the house of Harwinder Singh by daughter-in-law of Lal Singh. He further stated that the door of the house of Harwinder Singh was closed but not bolted from inside. Lal Singh was lying on a cot but the ropes were already lying untied. He further stated that when they reached the house, nobody was present in that room. Accused had fled away from the spot prior to their arrival. Therefore, this witness has taken contradictory stand in his

examination-in-chief as well as during his cross-examination.

The other witness examined by the prosecution was Ct. Albel Singh PW7. He during his examination-in-chief stated that when the police party reached there, some persons ran away but he did not know those persons. He further claimed that Lal Singh was present in the house of Harwinder Singh who was sitting there but he was not tied. This witness was declared hostile by the prosecution and was subjected to cross-examination. During cross-examination, Ct. Albel Singh claimed that he did not enter the house of Harwinder Singh. He did not see the accused persons who were arrested later on by ASI Labh Singh. Therefore, the testimony of these two witnesses was also contradictory to the prosecution version.

15. In the case in hand, the ocular version of prosecution witness Lal Singh PW1 did not match with the medical record proved on file. Dr. Ramesh Chand PW4 has proved the MLR of Lal Singh which is Ex.PF and the pictorial diagram is Ex.PF/1. As per this MLR, he suffered following injuries :-

- “1. Abrasion 1/2 cm x 1/2 cm superficial index finger left hand.
2. Abrasion 1 cm x 1 cm superficial right elbow.”

PW4 Dr. Ramesh Chand during his cross-examination categorically stated that injury No. 1 could not be received by tying him with a rope. Lal Singh claimed that his arms were tied and then he was tied with cot. However, there was no mark of injury in the shape of abrasions etc. on his wrist or arms. The alleged injuries are merely small superficial abrasions on index finger and right elbow. In the case in hand, Lal Singh was not taken to the hospital for medical examination either by Ct. Gurmit Singh PW5 or

Ct. Albel Singh PW7. The statement of Lal Singh was recorded by ASI Labh Singh on the same day at about 07:00 pm. Even he did not take Lal Singh to the hospital for his medical examination. The MLR Ex.PF shows that Lal Singh went to the hospital for his medical examination at 10:00 pm, accompanied by Pardeep Singh. This fact further creates doubt regarding any injury received by him in the alleged occurrence.

16. It is established on record that there was dispute between Lal Singh and respondents/accused regarding a piece of land. The respondents/accused in their statements recorded under Section 313 Cr.P.C. categorically stated that there was a shamlat land in possession of Harwinder Singh accused where he was storing manure. They further alleged that the complainant wanted him to vacate the said land and for that Lal Singh was putting pressure on them. The prosecution examined Varinder Singh, Clerk, Judicial Record Room, Ludhiana as PW6 who has proved on record copy of judgment in Civil Suit No. 559 of 14.12.1999 decided on 30.04.2001, case title "Lal Singh versus Gurmeet Singh and Harvinder Singh alias Pilla" in a suit for permanent injunction restraining the defendants from encroachment or raising construction in the land as detailed in the said judgment. Therefore, the land dispute between Lal Singh complainant and the respondents/accused No. 1 and 2 is duly established on record. It cannot be ignored that motive is a double edged weapon. It can be a reason for committing a crime as well as for false implication. Therefore, the prosecution was required to prove the guilt of respondents/accused No. 1 and 2 by leading convincing evidence on record.

17. The learned trial Court while passing judgment of acquittal dated 11.07.2003 rightly analysed all the facts of the case and evidence led by the

prosecution.

Considering the aforesaid discussion, we do not find any reason to interfere in the judgment of acquittal dated 11.07.2003 passed by learned trial Court. Same is upheld accordingly.

18. Appeal preferred by appellant-State of Punjab is accordingly, dismissed.

19. Pending application(s), if any, also stand(s) disposed of accordingly.

(AMARJOT BHATTI)
JUDGE

(SURESHWAR THAKUR)
JUDGE

26.04.2024
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No