

2024:PHHC:125310-DB



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

CRA-D-1007-DB-2010 (O&M)

Date of decision: 18.09.2024

JAGTAR SINGH & ANR

.....Appellants

Versus

STATE OF PUNJAB & ORS

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. H.S. Randhawa, Advocate for appellant.

Mr. Rohit Bansal, Senior DAG, Punjab.

SUDHIR SINGH, J.

The present appeal filed by the complainants is directed against the judgment dated 18.05.2010 passed by the learned Additional Sessions Judge, Sangrur, whereby respondents No.2 to 8 have been acquitted of the charges framed against them.

2. The prosecution case was that on 03.08.2004 at about 05:00 PM, Sukhdev Singh, Harminder Singh, Gurjant Singh and 12 other persons belonging to Ramdasia caste, present at chowk of Village Kamalpur, had been talking to each other when two cars bearing registration Nos. HR-41-A-4955 and PB-42-0028 came there from the side of Village Safipur. Harjit Singh, Kamaljit Singh and Bhupinder Singh along with 5/6 other persons, armed with rifles, swords and *gandasas* etc., alighted from the aforesaid cars and raised *Lalkaras* and rushed towards the complainant party with the intention to kill them.

Accused-Kamaljit Singh fired a shot from his .12 single barrel rifle, which landed on the lower abdomen of Harminder Singh @ Bhola; that the accomplices of Kamaljit Singh fired a shot from his rifle, which landed on the testicles of Gurjant Singh; that both Harminder Singh and Gurjant Singh fell down; that the above said accused fired 7-8 more shots from their fire arms, which had caused injuries to the persons belonging to complainant party; that the other accomplices of the above said assailants gave injuries to the complainant party with *Gandasas* and Kirpans. Thereafter, upon hearing the noise of the shots, a lot of people had gathered at the spot whereafter the said assailants had fled from the spot along with their respective weapons. The incident was stated to have taken place as a counter to an occurrence on 02.08.2004, when death anniversary of Baba Ajmer Singh was being celebrated in the village and couple of boys belonging to the accused party had teased the girls of the village and the said boys had been scolded by the complainant party. The said boys had provoked their relations and friends to avenge upon the complainant party. In the said incident, Gurjant Singh and Parminder Singh succumbed to their injuries at the spot, whereas other injured persons were removed to the hospital, where they had been medico legally examined. On the aforesaid statement, the FIR was registered under Sections 148, 302, 307 read with Section 149 IPC and under Section 3(x) of Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 25 of Arms Act.

3. The investigation was conducted and the accused were arrested and thereafter charges against the accused were framed under Sections 148, 302, 307 IPC read with Section 149 IPC and Section 3(x)

of the SC/ST Act and Section 25 of Arms Act. The accused pleaded not guilty and claimed trial.

4. The prosecution examined as many as 14 witnesses, namely, PW1-Dr. Kripal Singh; PW1-Dr. Makhan Singh; PW3-Dr. Surjit Singh; PW4-Dr. Rajanbir Singh; PW5-Dr. P.C. Goyal; PW6-Dr. Anoop Kumar, KAD; PW7-Sukhdev Singh; PW8-Ajaib Singh; PW9-Nek Singh; PW10-Jaswinder Singh; PW11-Dharminder Singh, Draftsman; PW12-Surinder Kumar, Clerk at SDM Office; PW13-Subhash Chand and PW14-Inspector Tejinder Singh. In documentary evidence, documents Exhibits P.1 to P.192 were tendered. Thereafter the statements of the accused under Section 313 were recorded. The entire incriminating material was put to them, which they denied and pleaded innocence. However, no evidence was led by the defence.

5. The learned trial Court, after scrutinizing the entire evidence on record vide the impugned judgment and order convicted accused Kamaljit Singh under Sections 302, 307 IPC and Section 25 of Arms Act and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- each under Sections 302 IPC and 302/149 IPC; to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.7,000/- each under Section 307 IPC and 307/34 IPC; to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/- under Section 25 of the Arms Act and to undergo RI for one year under Section 148 IPC. However, the respondents No.2 to 8 (accused No.2 to 7 before the trial Court) were acquitted of the charges framed against them on the following grounds:-

(1) Accused other than Harjit Singh and Kamaljit Singh, were not named in the FIR and they were also not subjected to the identification parade.

(2) Except PW-7-Sukhdev Singh (complainant), no other witness has named respondent Nos. 2 to 8 as assailants or them being members of the unlawful assembly and thus, the prosecution has failed to establish the identity of the said accused.

(3) The incident was alleged to have taken place on 03.08.2004 at 05:00 PM, whereas copy of FIR (Ex.P-120), reached Magistrate only on 04.08.2004 at 07:40 PM i.e. after a gap of 14 hours and the prosecution has not been able to explain the said delay.

(4) Accused-Harjit Singh has falsely been implicated in the case and the prosecution has continuously tried to improve upon its case by introducing new accusations like the complainant party having been insulted in the name of their castes and, thus, Harjit Singh was held to be not being member of the unlawful assembly.

(5) The disclosure statements of the accused did not inspire any confidence as no recovery of the weapons allegedly used in the occurrence was effected pursuant to the said disclosure statements.

6. Vide order dated 07.10.2010 passed by a Co-ordinate Bench of this Court, application seeking leave to appeal filed by the appellants (complainants) was allowed and the appeal was admitted.

7. Learned counsel appearing for the appellants has vehemently argued that the very approach of the learned trial Court in acquitting the respondents No.2 to 8 is legally untenable as it has wrongly been held that the said respondents were not part of the unlawful assembly. It is further submitted that once the accused after their arrest had been identified in the police station by the complainant and other witnesses, there was no requirement for conducting a test identification parade as the identity of the accused was never in dispute. It is further argued that indisputably in the occurrence, two persons had died and, therefore, it is not at all plausible that only one person could commit the murder of two persons and will cause injuries to 16-17 other persons.

8. Learned State counsel also supported the submissions made by the learned counsel for the appellant. However, none is present on behalf of respondents No.2 to 8.

9. After hearing the learned counsel for the parties and careful perusing the record of the case, the following question arises for determination:-

“Whether the finding of acquittal recorded by the trial Court against respondents No.2 to 8 is legally sustainable?”.

10. It may be noticed that against his conviction and sentenced, accused Kamaljit Singh had filed CRA-D-617-DB-2010 before this Court. Vide order dated 14.11.2023 passed by a Co-ordinate Bench of

this Court, the said appeal has been disposed of as having abated, due to the death of the accused-appellant therein.

11. We are now to examine whether there is sufficient evidence on record which has been overlooked and not taken into consideration by the learned trial Court while acquitting the accused-respondents No.2 to 8 and extending them benefit of doubt.

12. The testimony of three witnesses i.e. PW-7 Sukhdev Singh (complainant) PW-8 Ajaib Singh and PW-14 Jatinder Singh, is very vital to determine the question framed above. Ex.P1/20 is the copy of the FIR. In the said FIR, the name of respondents No.2 to 8 were not mentioned. It was only subsequently during the testimony of the complainant PW-7 Sukhdev Singh in the Court that he had disclosed the name of the said accused-respondents. The said witnesses had admitted that the names of the accused-respondents were not mentioned in the FIR.

13. Though this witness had deposed that he had disclosed the names of the accused to the police, as noticed above, yet he admits that he had not named the said respondents in the FIR. PW-8 Ajaib Singh stated that he had received injuries in the incident, but he had not deposed that the accused-respondents had participated in the crime. PW-9 Nek Singh had though stated that there were 12 persons involved in the crime but he did not remember their names. In his cross-examination the said witness had stated that no test identification parade was conducted by the police. PW-14 Inspector Tejinder Singh stated that he did not make any arrangement for the test identification parade in the case.

14. Based on the aforesaid evidence, wherefrom it is clear that the identity of accused-respondents No.2 to 8 was not established, we

find no illegality in the findings recorded by the learned trial Court in this regard. The testimony of PW-7 Sukhdev Singh (complainant) and PW-9 Nek Singh would show that the number of assailants had kept increasing, as somewhere they had been stated to be 8-9 in number and at some other places as 10-15. This testimony of the aforesaid material witnesses casts a huge doubt on the accused of the prosecution. Still further, it is settled law that the disclosure statements made by the accused under Section 27 of the Evidence Act, can be used against the accused, if any, discovery of a new fact or the weapons used in the crime, is effected so as to connect the accused with the crime. In the instant case, except two accused i.e. Kamaljeet Singh and Harjit Singh, no other accused were named in the FIR and they were subsequently arrested. As per the prosecution case, they had suffered disclosure statements during the investigation. However, on the basis of the evidence on record, the trial Court has found that the recovery made from the said witnesses was not of the weapons, which were allegedly used in the crime. Thus, on this ground as well, the case of the prosecution was found to be doubtful. We find that the findings recorded by the learned trial Court, are based on evidence on record. It could not be pointed out that any evidence has been misread or not taken into consideration. The issue framed above, is answered accordingly.

15. While deciding an appeal against acquittal in a criminal case, the primary task with which the appellate Court is entrusted is to find out whether the findings in the impugned judgment are perverse, illegal, irrational and against the principles of natural justice. Once the appellate Court comes to the conclusion that the grounds on which the judgment is

based are not perverse, the scope of appeal against acquittal is limited, considering the fact that the presumption of innocence which is available with an accused, gets further strengthened by the finding of a Court. The Hon'ble Apex Court in **Mrinal Das Vs. State of Tripura**, (2011) 9 SCC 479, has held as under:-

“13. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final court of fact, is fully competent to reappreciate, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal.

14. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.”

16. In the case of **Ghurey Lal Vs. State of Uttar Pradesh**, (2008) 10 SCC 450, the Hon'ble Apex Court held as under:-

“The trial court has the advantage of watching the demeanour

of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable.”

17. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case if the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the appellate Court must not take a different view only because another view is possible. It is because the trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its decision must not be upset in absence of strong and compelling grounds.

18. In view of the above, finding no merit in the present appeal, the same is hereby dismissed.

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

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

18.09.2024
Himanshu

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