



**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRA-D-693-DBA-2003 (O&M)

Date of Decision:-23.5.2024

State of Haryana

... Appellant

Versus

Sonu and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present:- Mr. Munish Sharma, DAG, Haryana.

Mr. Karan Pathak, Advocate for respondents No.1 and 4.

Leave to Appeal qua respondent No.2 – Sudhir Singh son of
Bangali Singh already stands dismissed,
vide order dated 21.8.2003.

Mr. Gaurav Singla, Advocate for respondent No.3.

GURVINDER SINGH GILL, J. (Oral)

1. Appellant – State of Haryana assails judgment dated 18.2.2003 passed by learned Additional Sessions Judge, Faridabad vide which the accused, who were charged for offences under Sections 307, 324 read with Section 34 of Indian Penal Code, have been acquitted of all the charges framed against them.
2. The matter arises out of FIR No.333, dated 21.4.1998 (Ex.PG/1) registered at Police Station N.I.T. Faridabad, under Sections 307, 324 and 34 of Indian Penal Code was lodged at the instance of Kunwar Pal, wherein he alleged that on 20.4.1998 at about 10:00 P.M., when he alongwith his brother Leelu was returning home after delivering milk in Jawahar Colony, they were waylaid by



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(2)

Sudhir, Sonu, Ajay son of Ranbir and one more boy, who were all carrying knives and who attacked Leelu. Sonu inflicted a blow with knife in the abdomen of Leelu. Sudhir gave a knife blow to Leelu on his right hand and Ajay gave a blow on the head of Leelu. The fourth unknown boy gave a push to Leelu. When the complainant Kunwar Pal raised alarm, Leelu got up and rushed into the shop of Laxman Halwai, but the assailants followed him and gave kick blows while in the shop itself. However, since crowd had gathered there, the assailants fled away from the spot. The complainant Kunwar Pal took Leelu to B.K. Hospital, Faridabad from where he was referred to Safdarjang Hospital, Delhi and since Leelu was unfit for making any statement, the FIR came to be lodged at the instance of Kunwar Pal.

3. The accused Sonu, Ajay Kumar son of Ranbir, Sudhir Kumar son of Jawahar Lal and Sudhir son of Bangali Singh came to be arrested on 26.4.1998. Upon interrogation, the accused suffered disclosure statements leading to recovery of knives. The police conducted requisite investigation during the course of which opinion of doctor as regards injuries sustained by Leelu was obtained. Upon conclusion of investigation, challan was presented against accused before the Area Magistrate, who committed the matter to the Court of Sessions vide commitment order dated 27.7.1998. Learned Additional Sessions Judge, Faridabad, to whom the case was entrusted, framed charges against accused for offences under Sections 307, 324 and 34 of Indian Penal Code on 26.11.1998.
4. The prosecution, in order to establish the charges framed against the accused, examined as many as 10 witnesses. **PW-1** Constable Satbir Singh proved the recovery memo 'Ex.PC' vide which shirt of Leelu had been taken into



possession by the police. **PW-2** Constable Ashok Kumar proved the scaled site plan 'Ex.PD'. **PW-3** Laxman son of Sidhu Ram is an eye-witness in whose shop injured Leelu had entered when he was chased by the assailants, but he did not support the case of prosecution and was declared hostile. **PW-4** Dr. S.A. Lakra, Safdarjung Hospital, Delhi, who had medically examined the injured Leelu, proved the MLR as 'Ex.PF'. **PW-5** ASI Rattan Deep, who had recorded formal FIR 'Ex.PG/1' upon receipt of 'ruqa' 'Ex.PG', proved the same. **PW-6** ASI Dhan Singh is the Investigating Officer, who stated in respect of the investigation conducted by him and proved various memos prepared during the course of investigation. **PW-7** Lilu (injured) stated in respect of the occurrence i.e. the manner in which the accused had inflicted injuries to him. **PW-8** Kunwar Pal, who is the complainant, stated in tune with the version got recorded by him in the FIR. **PW-9** Dheeraj is a witness to the disclosure statements made by the accused. **PW-10** Ramesh, father of the injured, who handed over a shirt 'Ex.P1' to the police, stated about the same.

5. Upon conclusion of evidence of prosecution, statement of accused in terms of provisions of Section 313 Cr.P.C. was recorded, wherein they denied the prosecution case in *toto* and pleaded false implication. The accused were afforded opportunity to lead evidence in their defence, but they did not lead any evidence.
6. Learned Trial Court, upon appreciating the evidence on record, held that the prosecution had been unable to establish the guilt of accused beyond shadow of reasonable doubt and consequently acquitted all the accused.



7. Learned State counsel vehemently argued that it is a case where the factum of existence of injuries on the person of injured Leelu is clearly established and, as such, there was no room to discard the prosecution evidence on the basis of minor discrepancies. Learned State counsel further submitted that, even if, one of the eye-witness had resiled, the conviction could still be based on the testimonies of the remaining witnesses.
8. On the other hand, learned counsel representing the respondents submitted that the impugned judgment is a well reasoned judgment passed upon due appreciation of the evidence on record while bearing in mind the celebrated principles of criminal jurisprudence that the prosecution is required to establish its case beyond shadow of reasonable doubt. Learned counsel representing the respondents thus prayed for dismissal of the appeal.
9. We have considered rival submissions addressed before this Court.
10. The Trial Court, while examining the evidence led by prosecution, has referred to various discrepancies/inconsistencies in the statements of witnesses. The relevant part of the impugned judgment is extracted hereinunder:

“23. A perusal of the statement of PWs Leelu, Kanwar Pal and Dheeraj would make it clear that there are contradictions and discrepancies galore. As per the original prosecution version which was put to effective use in contradicting PWs Kunwar Pal and Leelu, all the accused were armed with knives and PW Kunwar Pal was accompanying Leelu as there was threat perception. However, PW Leelu stated that he was all alone. According to him PWs Kunwar Pal and Dheeraj reached the spot from Piyali factory. He has further stated that accused Ajay was armed with hockey. As against this PW-Kunwar Pal stated that he was five to seven paces behind PW



Leelu when the occurrence took place. It is, therefore, evident that there are not only contradiction inter-se but, improvements over original version. As per the F.I.R. cycle and containers were found missing few days before the occurrence and later on it transpired that accused Sonu and Sudhir had lifted them. However, both Leelu and Kunwar Pal changed their version when they stepped in the witness box. According to them containers and cycle were snatched by all the accused. There is difference between "missing" and "snatching". The original version was that when PWs Kunwar Pal and Dheeraj raised alarm, PW Leelu got up and ran into the shop of Laxman, Halwai, where he was followed by the accused and was given kick-blows. However, nothing to this effect was stated by PWs Kunwar Pal and Leelu. PW Leelu when confronted with statement Ex.DA to the effect that he had entered into the shop of Laxman Halwai denied. However he admitted that in Ex.DA it was so mentioned. Needless to say that none of the witnesses, when stepped in the witness box deposed or gave even slightest of indication that after having been stabbed, PW Leelu ran into the shop of Laxman Halwai. PW-7 even went on to the extent of stating that at the time of occurrence only Jhaman's shop was open. Similarly, the original prosecution version was that PW Leelu was removed to Hospital by PW Kunwar Pal in a three-wheeler. However, in his statement on oath PW Kunwar Pal stated that he had taken PW Leelu to Hospital in his car. To this extent he was confronted with the statement Ex.PG wherein the factum of taking the PW Leelu to hospital in three-wheeler stood mentioned.”

11. A perusal of the discrepancies noticed by the Trial Court would show that it is not a case of one or two stray discrepancies, but there are discrepancies on material aspects of the case. The aforesaid discrepancies, when coupled with the fact that the only independent eye-witness namely PW-3 Laxman did not support the case of prosecution, would leave the testimony of complainant and



of his brother bereft of independent corroboration. As such, the view taken by the Trial Court cannot be said to be perverse or erroneous in any manner.

12. It is well settled that finding of acquittal is not to be readily interfered with. In this context, a reference can be made to a judgment reported as 2023(8) SCC 197, Central Bureau of Investigation Vs. Shyam Bihari & others, wherein Hon'ble the Apex Court while examining a case of acquittal where some infirmities in impugned judgment were noticed, but the appeal had remained pending for a decade, held as under

“26. At the outset, we may observe that no doubt the judgment and order of the High Court appears a bit cryptic but that by itself need not be a ground for us to set aside the order and remit the matter to the High Court, particularly, when we have the relevant record to assess the merit of the prosecution case. More so, because the incident is of the year 1987 and the appeal has remained pending since more than a decade. In such circumstances, if we remit the matter to the High Court only to rewrite the judgment, it would be travesty of justice. Consequently, as the trial court has dealt with the matter at great length and has discussed each and every piece of evidence on which the prosecution seeks to rely, it would be apposite for us to assess whether, by not granting leave to appeal against the judgment of the trial court, there has been a miscarriage of justice.

27. It is trite law that in an appeal against acquittal, the power of the appellate court to re-appreciate evidence and come to its own conclusion is not circumscribed by any limitation. But it is equally settled that the appellate court must not interfere with an order of acquittal merely because a contrary view is permissible, particularly, where the view taken by the trial court is a plausible view based on proper appreciation of evidence and is not vitiated by ignorance/misreading of relevant evidence on record.”

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13. The ratio of above referred judgment further lends strength to the findings and observations recorded above, given the fact that occurrence had taken place about 27 years back.
14. In view of the aforesaid discussion, this Court does not find any infirmity in the impugned judgment and the same is hereby upheld. Finding no merit in the present appeal and the same is hereby dismissed.

(GURVINDER SINGH GILL)
JUDGE

23.5.2024
Pankaj

(N. S. SHEKHAWAT)
JUDGE

Whether speaking /reasoned	Yes/No
Whether Reportable	Yes/No