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

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Date of decision: 17.09.2024

PINKI

... PETITIONER

V/s

STATE OF HARYANA AND ORS.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. V.D. Sharma, Advocate for the petitioner.

Ms. Mahima Yashpal, DAG, Haryana.

SUMEET GOEL, J.(ORAL)

1. Present appeal has been filed against the judgment of acquittal dated 15.03.2017, passed by Additional Sessions Judge, Jind in criminal appeal No. 70 (RBT) bearing CIS No.330 of 2013.

2. Facts germane to the adjudication of the present appeal are that FIR No.163 dated 16.05.2010 was registered against respondents No.2 and 3 alongwith one Shyam Sunder son of Baru Ram resident of village Roopgarh, Teshil and District Jind, under Sections 323, 354, 452, 506 read with Section 34 of the IPC at Police Station Sadar, Jind. The trial of the said case was concluded by the Court of Judicial Magistrate, 1st Class, Jind, vide judgment of conviction, dated 20.03.2013. It is pertinent that the trial in the case was conducted against three accused persons, namely, Purshotam (respondent No.2 herein), Suraj Mal (respondent No.3 herein) and Shyam Sunder and all of them were convicted under Sections 354 and 452 of the IPC and were sentenced to 1 year rigorous

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imprisonment under Section 354 IPC; and 3 years rigorous imprisonment and a fine of Rs.5000/- each under Section 452 of IPC, whereby both the substantive sentences were ordered to run concurrently.

3. All the three convicts preferred an appeal against their order of conviction, recorded vide judgment dated 20.03.2013 passed by the Judicial Magistrate, 1st Class, Jind. However, during the pendency of said appeal one of the convicts, (appellants therein) namely Shyam Sunder, died on 09.09.2013 and the appeal qua him was ordered to have been abated by the Additional Sessions Judge, vide order dated 19.11.2013. The learned Additional Sessions Judge, Jind vide the impugned judgment dated 15.03.2017, allowed the said appeal and respondents No. 2 and 3 (herein) were acquitted and the judgment of conviction dated 20.03.2013 passed by the Judicial Magistrate was set aside.

4. Feeling dissatisfied by the acquittal of the accused persons by the 1st Appellate Court, the complainant (appellant herein) has filed the present appeal challenging their acquittal. It is pertinent to mention here that during the pendency of the present appeal, respondent No.2 – Purshotam, has also expired on 10.05.2021. The factum of death of respondent No.2 – Purshotam on 10.05.2021, has been verified by the State through a status report dated 16.09.2024, submitted in this court on 17.09.2024 at the time of the final arguments. As mentioned in the order dated 06.04.2022, despite

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service upon respondents No.2 and 3, none had appeared on their behalf in the case. Even today none has appeared on behalf of the surviving respondent No.3.

5. Briefly, the case of the prosecution as set up in the FIR is that the complainant, was a 26 years old married lady, having two children. On 15.05.2010, she was sleeping on the rooftop along with her son aged 1½ years. At about 11.30 PM, accused Purshotam (respondent No.2 herein-since deceased) came to the rooftop and pressed her mouth, due to which she raised a loud alarm. He grappled with her due to which her bangles broke, he tried to press her neck and tear her clothes, and she suffered scratches on her hand and neck. The accused attempted to commit rape upon her and he was holding a knife as well. Upon hearing her screams, her sister-in-law, namely, Santosh wife of Baljeet (examined as PW-5) came to the place of occurrence and witnessed accused Purshotam running away by jumping from the roof, and threatened her not to disclose the incident to anybody. She disclosed the incident to her father-in-law, Rishi Ram son of Sheoni Ram (examined as PW-2) who thereafter went to the house of the accused Purshotam to lodge his protest, whereafter the accused persons, namely Purshotam, Shyam Sunder and Suraj Mal came to their house armed with lathi, gandasi, jaily and abused all of them.

6. It is argued on behalf of the appellant that a well-reasoned judgment of conviction, passed by the trial Court, has been



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illegally and erroneously interfered with by the Additional Sessions Judge. It is argued that the trial Court has correctly appreciated in para-No.11 of the judgment of conviction that the accused could not prove any alibi nor examined any witness to discard the case of the complainant which is corroborated by other witnesses. It is argued that the trial Court while convicting the accused under Sections 354 and 452 of the IPC has acquitted them from the charges framed against them under Sections 323 and 506 of the IPC, this itself shows, the due application of mind by the trial Court to the facts and evidence of the present case. The judgment of conviction passed by the trial Court ought not to have been tinkered with lightly by the Additional Sessions Judge.

7. The principles governing the scope of interference by the High Court in an appeal against the judgment of acquittal, have been laid down by the Hon'ble Supreme Court in the judgment passed in the case titled ***"Babu Sahebagouda Rudragoudar and others versus State of Karnataka"***, 2024 INSC 320 = 2024(2) Law Herald (SC) 928 held as under:

"39. Thus, it is beyond the pale of doubt that the scope of interference by an Appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

- (a) That the judgment of acquittal suffers from patent perversity;*
- (b) That the same is based on a misreading/omission to consider material evidence on record;*
- (c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."*

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8. In the light of the above principles laid down by the Hon'ble Supreme Court, I have thoughtfully considered the arguments advanced on behalf of the appellant, perused the entire case record and judgments passed by the learned trial Court as well as by the Additional Sessions Judge.

9. Perusal of the judgment passed by the trial Court convicting the respondents No.2 and 3 alongwith Shyam Sunder son of Baru Ram resident of village Roopgarh, Teshil and District Jind (since deceased) makes it abundantly clear that the same has been passed by the trial Court without discussing any evidence led on the record of the case. There is not even an *iota* of evidence in the said judgment to substantiate how the evidence led by the prosecution proves the ingredients of the offence, as alleged against the convicts. In the entire judgment, the learned trial Court has only reproduced the generic and general propositions, hardly concerning the aspect of appreciation of evidence led on record of the case. The non-application of proper judicious mind to the facts of the case on the part of the trial Court is apparent from the findings returned by it in para No.11 of the judgment passed by it, that the counsel for the accused has not proved any alibi nor examined any witness to discard the case of the complainant. While returning such a finding, the learned trial Court has committed a grave legal error in not appreciating that it is a settled proposition of criminal jurisprudence that in criminal trial onus lies upon the prosecution to prove its case



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beyond the shadow of reasonable doubt. The prosecution cannot be held entitled to take benefit from the fact that the accused has not examined any witness to discard the case of the complainant. The Hon'ble Supreme Court of India in the case of ***Narender Kumar vs State (NCT of Delhi), 2012 (3) RCR (Criminal) 66*** held as under:

“Prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. Conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix case becomes liable to be rejected.”

10. The factum of non-application of proper judicious mind, by the trial Court to the facts of the case is further apparent from the findings returned in para 17 of the judgment of conviction passed by the trial Court. Wherein, it is held that *‘accused has although examined few witnesses in view of the foregoing discussion, the deposition of witness have not been found to have much relevance’*. The said finding returned by the trial Court, is ex-faciely wrong as the accused did not lead any evidence in the case.

11. The learned Additional Sessions Judge discussed the entire evidence led by the prosecution in detail and touched upon every minute aspect of the case while passing the judgment of acquittal. The learned Additional Sessions Judge noted, in para 14 of the judgment of acquittal passed by him, that respondent No.2 –

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Purshotam (since deceased) sustained the injuries at the hands of his neighbours Rishi Raj, Ram Sarup and Suresh on 15.05.2010 at about 10.00 PM. His MLR forming part of the report under Section 173 of the Cr.P.C. filed by the police, shows that the time of his arrival at the hospital is 1.30 PM. A telephonic message regarding the admission of respondent No.2 Purshotam (since deceased) to the hospital was received by ASI Harpal Singh, Police Station Sadar, Jind on 16.05.2010. However, no action was taken by the police in this regard. Furthermore, PW-7, SI Rajbir in his deposition in Court while explaining the said aspect of the case, deposed that he moved an application Ex.PW7/F, before the medical officer seeking an opinion regarding the injury sustained by respondent No.2. The concerned doctor opined that the possibility of injuries having been suffered by him while jumping from a roof cannot be ruled out. But the learned Additional Sessions Judge, has correctly discarded the testimony of this witness, in this regard, by observing that application Ex.PW7/F reveals that the aforesaid opinion was initially written by someone and thereafter, it was struck off, meaning thereby that there is no medical opinion on the case file in this regard.

12. Perusal of the record shows that the MLR of the complainant (appellant herein), in this case, depicts her time of arrival in the hospital to be 2:05 PM, on 16.05.2010. Whereas, the MLR of respondent No.2-Purshotam (since deceased) shows his time of arrival at the hospital to be 1:30 P.M., which is clearly, prior to

that of the arrival of the complainant (appellant herein). Despite that, the police did not take any action on the request of respondent No.2- Purshotam (since deceased). The learned Additional Sessions Judge, while pointing out the tainted investigation conducted by the police against the accused on the complaint of the complainant has rightly arrived at the conclusion that the investigation was conducted in a biased manner against the accused persons (private respondents herein). PW-2, Rishi Ram (Father-in-law of the complainant) in his statement before the Court denied that ASI, Mange Ram and ASI, Ram Niwas are related to him and that a false case was registered through them. But the complainant as well as her husband, when examined as PW-1 and PW-3, respectively, admitted in their depositions that both these ASIs are known to them and are in their relationship. Both these aspects, compel this Court to draw a reasonable conclusion that complainant (appellant herein) was not fair in her conduct.

13. The non-explanation of injuries by the prosecution on the person of the accused- Purshotam (respondent No.2 herein-since deceased) also bears significant importance in the facts and circumstances of the present case. At this stage, it is pertinent to refer herein to a dicta of the Hon’ble Supreme Court in the case of *Lakshmi Singh v. State of Bihar; AIR (Supreme Court) 1976 (4) 394*, relevant whereof reads as under:-

“11. xxxx	xxxx	xxxx
xxxx	xxxx	xxxx



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*This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow : (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabilise the plea taken by the present case has not correctly applied the principles laid down by this Court in the decision referred to above. In some of the recent cases, the same principle was laid down. In *Puran Singh v. The State of Punjab*, Criminal Appeal No. 266 of 1971 decided on April 25, 1975 = (reported in AIR 1975 Supreme Court 1674) which was also a murder case, this Court, while following an earlier case, observed as follows :*

"In State of Gujarat v. Bai Fatima (Criminal Appeal No. 67 of 1971 decided on March 19, 1975) = (reported in AIR 1975 Supreme Court 1478) one of us (Untwalia, J.) speaking for the Court, observed as follows :

"In a situation like this when the prosecution fails to explain the injuries on the person of an accused depending on the facts of each case, any of the three results may follow :

(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self defence.

(2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.

(3) It does not affect the prosecution case at all.

The facts of the present case clearly fall within the four corners of either of the first two principles laid down by this judgement. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case."

It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences :

(1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version.

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

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In the facts and circumstances of the case at hand, the non-explanation of the injuries on the person of the accused can be set to be fatal to the case of the prosecution and it can be safely inferred that either the story put forth by the prosecution was false or the occurrence did not take place in the manner as projected by the

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prosecution. It can be observed that the prosecution has intentionally concealed the real genesis of this case and this fact has been completely ignored by the trial Court (Judicial Magistrate 1st Class), but appropriately appreciated by the learned Additional Sessions Judge in the right perspective.

14. Be that as it may, the allegations levelled against the sole surviving accused of the case i.e. respondent No.3 do not make out any case against him. It is pertinent that the accused persons were convicted by the trial Court only under Sections 354 and 452 of the IPC, whereas they were acquitted of the charges framed against them under Sections 323 and 506 of the IPC. The facts of the case, clearly narrate that no overt act has been attributed to respondent No.3, qua the alleged incident on the rooftop of the complainant (appellant herein). The role attributed to respondent No.3 of allegedly abusing the father-in-law (PW-5) of the complainant (appellant herein), when he went to their house, to complain against the accused Purshotam-respondent No.2 (since deceased) does not meet the ingredients of Sections 354 and 452 of the IPC. The appellant did not challenge the acquittal of the accused persons by the trial Court under Sections 323 and 506 of the IPC and as such the same attained finality. The appellant cannot be permitted to agitate the acquittal of the accused under Sections 323 and 506 of IPC at this stage.

17. Perusal of the impugned judgment of acquittal passed by the Additional Sessions Judge shows that, the entire evidence led by



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the prosecution has been gone through in detail and in a painstaking manner and has dealt with each and every aspect of the case in a pragmatic manner. The judgment of acquittal based on sound reasoning, does not suffer from any illegality or perversity. As such, the judgment of acquittal dated 15.03.2017 passed by the learned Additional Sessions Judge, Jind in the present case is upheld. Resultantly, the present appeal being bereft of merits fails and is dismissed.

(SUMEET GOEL)
JUDGE

September 17, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No