2024:PHHC:104245-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-D-14-DBA-2003
Reserved on: 06.08.2024
Date of decision: 13.08.2024

STATE OF PUNJAB ...Appellant

Versus

PRITAM SINGH AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab
for the appellant.

Mr. S.P.Soi, Advocate and
Mr. Sahil Soi, Advocate
for respondents No. 2 and 3.

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SURESHWAR THAKUR, J.

1. The instant appeal is directed by the State of Punjab, against the verdict drawn on 26.07.2002, upon Criminal Case No. 15/1/97, by the learned Judicial Magistrate First Class, Nakodar, wherethrough in respect of charges drawn for offences punishable under Sections 326/323/324/34 IPC, he made a verdict of acquittal qua all the accused.

FACTUAL BACKGROUND

2. Around 8-9 days prior to the occurrence, Sh. Harbans Singh, the elder brother of the complainant went to the house of the accused No. 1 and asked him to put the pipe in the '*Aar*' *(channel for connecting two pieces of land through which water can pass to the other part)*. Accused No. 1 – Pritam Singh felt offended by the said act of Harbans Singh.

3. Thereafter, on 01.07.1995 the complainant (Gurdeep Singh)

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alongwith his wife Smt. Swaran Kaur and his son Narinder Singh was going on his bullock cart to fetch some 'Pathe' (Animal fodder) from their well. When they reached near the Kamad' (fodder), accused No. 1 Pritam Singh, holding a *sua (*poker*)* in his hand, accused No.2-Parminder Singh holding a stick in his hand and accused No.3-Harjinder Singh empty handed abruptly came out and encircled them. Accused Pritam Singh said to the complainant that they will teach him a lesson for forcing them to put the pipe in *Aar* .

4. Accused No.2 gave *lathi* blow on the head of the complainant and he fell down from the cart. When the complainant fell down, accused-Pritam Singh stabbed the complainant on his 1eft leg with '*Sua*'. Accused No.3 hit the complainant by giving him kicks. Accused No.2 gave *lathi* blows to the complainant on the left side and back near the rib cage. Accused No.1 stabbed the complainant on his left shoulder with the 'Sua'. The complainant raised hue and cry by shouting *Mar Ditta Mar Ditta* and his wife prayed to the assailants to spare him but the accused gave a number of blows to the complainant causing internal injuries to the complainant. Thereafter, the accused ran after Narinder Singh, son of the complainant but he ran out of the reach of the accused. The accused then fled away from the crime scene on their tractor with their respective weapons. Somebody informed the complainant's brother Harbans Singh about the occurence, who reached at the spot and took the complainant to Nakodar Hospital where he received treatment. The medical officer PHC Mehatpur who had examined the complainant on 01.07.95 at 8.00 P.M. found six injuries on the person of the complainant as per MLR No. S36/95. For injury No.1 weapon was sharp and for injuries no. 3, 4, 5 and 6 the weapon used was blunt.

5. The accused No. 1 – Pritam Singh also reached PHC Mehatpur about

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15 minutes earlier than the complainant on the same day and was examined by MLR S35/95. The medical officer PHC Mehatpur who had examined the accused Pritam Singh, found seven injuries on his person. Injury No. 1, 2, 6 and 7 were simple. Injury No. 3, 4, and 5 after X.Ray examination. The kind of weapon was blunt for injuries No. 1 to 7.

INVESTIGATION PROCEEDINGS.

6. The police recovered both the weapons of offence i.e. *Sua* from accused No. 1 vide seizure memo dated 12.08.95 and *lathi* was recovered from accused No. 2 – Parminder Singh vide seizure memo dated 06.07.95. After completion of the investigation and necessary formalities, the challan against the accused was presented.

TRIAL COURT PROCEEDINGS.

7. On finding a *prima facie* case, charges under Sections 326/323/324 IPC became framed, against all the accused, to which they pleaded not guilty, and, claimed trial.

8. The accused No. 1-Pritam Singh feeling aggrieved by the police investigation filed criminal complaint No. 8/1/96 dated 29.01.96 under Section 323/325/506/34 IPC against the complainant Gurdeep Singh, his son Bhupinder Singh and against the daughter of the complainant Amandeep Kaur alias Amna giving his own version of the same incident that took place on 01.07.95, on the basis of which the instant FIR was lodged. The said complaint has been dealt with separately by the learned trial Judge concerned.

9. In support of the prosecution case, the prosecution examined eight witnesses. After completion of recording of the depositions of the prosecution

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witnesses, the learned Judicial Magistrate First Class, Nakodar drew proceedings under Section 313 of the Cr.P.C., but thereins, the accused claimed false implication, and, pleaded innocence. However, the accused did not lead any evidence in their defence.

10. After conclusion of the trial, as, became entered upon the FIR (supra), by the learned Judicial Magistrate First Class, Nakodar, the latter proceeded to make the afore verdict of acquittal, upon, the accused-respondents.

SUBMISSIONS OF THE LEARNED STATE COUNSEL.

11. The learned counsel for the State, has made a vigorous submission before this Court that, the impugned verdict of acquittal suffers from a gross taint of gross mis-appreciation and non appreciation of evidence germane to the charge. Thus, he argues that the impugned verdict be quashed and set aside by this Court and the accused be held guilty of the charged offences and sentenced accordingly.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS.

12. Contrarily, the learned counsel for the respondents has argued that, the verdict challenged before this Court is well merited, and, does not warrant its becoming interfered with, by this Court.

13. Before proceeding to delve into and also for making an adjudication in respect of the submissions (supra) addressed before this Court, it is deemed imperative to extract the relevant paragraphs, as occur in the impugned judgment of acquittal.

Case based on testimony of eye witness, who is the son of the complainant.

17. I would now discuss the merits of the evidence and the arguments led by both the sides so that the whole discussion can be

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concluded to arrive at the final findings. xxxx xxxx xxxx

Only force in the arguments advanced by the 1d. counsel for the accused that are worth while in this regard are the non production of the alleged Sua recovered by the police, the role of the I.O. in the absence of Independent witness and the procedural mistakes on the part of the prosecution which has sabotaged the case of the prosecution.

18. xxxx xxxx xxxx

19. ***The version of the prosecution apart from the complainant is supported only by one eye witness who is the son of the complainant and is thus an interested witness.***

xxxxx xxxx xxxxx

Before accepting the evidence of interested and partisan witness, the said evidence should pass the test of close and reverse scrutiny. ***However, in the present case PW3 is not only interested but highly inimical as it is alleged that the accused ran after PW 3 but he (PW3) managed to escape somehow. In view of this, the testimony of PW 3 is not to be believed*** *as is also held in Sevi Vs. State of Tamil Nadu AIR 1981 S.C.1230.*

20. The prosecution story has many missing links which substantially affect the credibility of the prosecution case. ***The witness Shri Harbans Singh (PW4) which has been given up by the prosecution, is the brother of the complainant, who went to the house of accused and asked him to put the pipes in the said 'Aar' so that the complainant did not face any problem in future. The said action on the part of Shri Harbans Singh annoyed the accused No.1 and provided him with the requisite mensrea and the motive to perpetrate attack on the complainant. The said Harbans Singh also allegedly took the complainant to the hospital after the occurrence. The coming up of such material witnesses has given lathi blows to the prosecution case as witnesses would have testified the relevant part of the prosecution story before the court. As such an adverse inference would have to be drawn against the prosecution that if***

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the said Harbans Singh would have been examined, he would not have supported the prosecution Case. Thus the prosecution has failed to prove the motive of the accused by cogent evidence.

21. ***Most important, ASI Gurmail Singh I.0. who had recovered the alleged Lathi from the person of accused No.2 in the presence of HC Baldev Raj and the independent witness Shri Amarjit Singh but not have been entrusted with the investigation of the case or alternatively the I.O. A.S.I. Gurmail Singh should not have effected recovery of the said Lathi.*** *This is contrary to the law laid down by the Hon'ble Apex Court in Megha Singh Vs. State of Haryana AIR 1995 SC Page 2339 in which the Hon'ble Apex Court has observed that the officer who had arrested and recovered the articles should not have been provided with the investigation of the case.* ***As such the investigation by the police is not proper. Further 1.O. AS.I. Gurmail Singh has also admitted during his cross examination that the S.H.O. took the investigation of this case from him before presentation of challan. This suggests that there may be somethingh fishy in the conduct of the I.0****.*

22. The prosecution ***has not been able to produce the siad 'SUA' in the court*** *although it was recovered vide seizure memo dt. 12.8.95 (Ex.PD). It was important for the prosecution to have produced the said 'Sua' before this court so that the description of the said 'Sua' in the seizure memo could have been physically verified and it could also have been ascertained if the alleged 'sua' could have caused the injuries described on the person of the complainant.* ***Accordingly an adverse inference against the prosecution is to be drawn that if the said 'Sua would have been produced in the court it would have falsified the version of the prosecution.***

INFERENCES OF THIS COURT.

14. The reasons as become assinged by the learned trial Judge concerned, for recording a finding of acquittal vis-a-vis the accused are but made on an objective analysis of the adduced evidence.

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15. The learned trial Judge has aptly discarded the testification of PW-3, not only on the ground of his being related to the complainant but also on the ground that he was inimical towards the accused. Therefore, the recording of the testification of an independent witness to the occurrence, namely one Harbans Singh (PW-4) rather would have ensured the emanation of a candid, fair and transparent account in respect of the crime event.

16. Enigmatically, the said witness was given up. Contrarily, upon the said witness stepping into the witness box rather would have ensured the renditions, thus by him of an independent besides an impartisan account qua the crime event. Resultantly, the non stepping of the said witness in the witness box, thus is personificatory qua therebys the prosecution attemting to smother the truth of the prosecution case. If so, the further consequence thereof, is that, the version as put forth by the prosecution in respect of the crime event, but was an engineered, concocted and false version.

17. Furthermore, therebys a cloud of doubt seeps into the prosecution case and benefit thereof, is to be assigned to the accused. Conspicously also since only from the mouth of the said witness, the purported motive of the accused to commit the crime event rather would have truthfully surfaced, whereas, his becoming given up, has reiteratedly not only smothered the genesis of the prosecution version, but also had put a cloud of doubt qua the purported motive of the accused to commit the crime event.

18. Apart from the above, the further snag in the prosecution case, is comprised in the factum of non production of the recovered incriminatory *sua,* in the Court, despite the fact that it became recovered through recovery memo Exhibit PD. The non production of the said recovered *sua* in the Court, does

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constrain this Court to infer, that the recovery of the incriminatory *sua* was concocted and manufactured. Moreover, it also appears that the said *sua* did not become recovered in the manner ordained by law and/or if it became recovered, it remained unenclosed in sealed cloth parcels, and therebys some weapon of offence other than the one which became recovered rather may have been produced in Court, thus in a tampered and spoiled condition, whereupon, the learned trial Judge may have been led to castigate the prosecution version. Resultantly it appears that to avoid the above castigation and/or to avoid the invitings of censure(s), thus from the learned trial Judge concerned, qua the defective recovery of incriminatory *sua,* that the same remained unproduced in the Court. However, yet its non production in the Court, thus has an adverse impact on the prosecution case.

FINAL ORDER OF THIS COURT.

19. In consequence, for all the reasons stated (supra), this Court finds no merit in the appeal, and, the same is accordingly dismissed. The impugned verdict of acquittal, as made by the learned trial Court concerned, is maintained, and, affirmed.

20. The case property, if any, be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal. Since the main case itself has been decided, thus all the pending application(s), if any, are disposed of.

(SURESHWAR THAKUR)
JUDGE

13.08.2024 **(SUDEEPTI SHARMA)**
kavneet singh **JUDGE**

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

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