



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

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CRRNo.1564-2019

Date of decision: 26.09.2024

Sukhwinder Kaur

....Petitioner

V/s

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: M. N.S. Dhandiwal, Advocate for the petitioner.

SUMEET GOEL, J. (Oral)

1. Present revision petition has been filed against the judgment dated 02.01.2019 passed by Additional Sessions Judge, Moga upholding the order dated 07.09.2017 passed by Sub Divisional Judicial Magistrate, Nihal Singh Wala, whereby respondent No.2 (herein) was acquitted from the charges under Sections 458 and 354 of IPC.

2. For the sake of brevity, convenience and to avoid any confusions the revisionist-petitioner, who was the original complainant-informant in the FIR, will be referred to as 'complainant', and respondent No. 2, who was accused in the FIR, will be referred to as 'accused', respectively, in the present judgment.

2. Facts germane to the adjudication of the present revision petition are that FIR No.27 dated 23.03.2016 was registered against accused, resident of village Daudhar Garbi, District Moga under Sections 458 and 354 of IPC at Police Station Badhni Kalan. The trial of the said case was concluded by the Court of Sub Divisional Magistrate, Nihal Singh Wala, and vide its judgment 07.09.2017, the accused was acquitted from the charges levelled against him. Aggrieved, by the acquittal of the accused (respondent



No.2 herein), the complainant preferred an appeal challenging his acquittal. The learned Additional Sessions Judge, Moga vide the judgment dated 02.01.2019, upheld the order dated 07.09.2017 by holding that the trial Court has rightly acquitted the accused after appreciating the evidence in correct perspective and hence does not require any interference.

3. Feeling dis-satisfied by the acquittal of the accused (respondent No.2 herein) by both the Courts below, the complainant (revisionist) has preferred the present revision petition challenging his acquittal before this Court.

4. Briefly, the case of the prosecution, in brief, as set up in the FIR is that the complainant namely Sukhwinder Kaur wife of Daljit Singh, resident of village Daudhar Garbi, stated that during the intervening night of 15/16.03.2016, following a death in the extended family of her husband, Daljit Singh, who were also their next-door neighbors, her husband requested her to prepare tea around 12:15 am. While, she was preparing tea, the accused, Manmohan Singh, silently entered into the kitchen, hugged her from behind and started outraging her modesty. She immediately raised a hue and cry, prompting her husband, her brother-in-law, Gurmeet Singh, and their neighbor, Ajaib Singh, to rush to the scene. A scuffle ensued between her husband and the accused. However, the accused managed to flee from the spot. Due to the shame and distress caused by the incident, she felt compelled to leave her marital home and was unable to report the matter immediately. Subsequently, the complainant, along with her husband and the witnesses, approached the local police station to file a formal complaint regarding the incident, whereinafter the FIR in question was registered. During investigation, the Police recorded the statements of the complainant



version of events. The accused, Manmohan Singh (respondent No.2 herein), was later apprehended by the Police based on the evidence and statements provided by the complainant and other witnesses.

5. Learned counsel for the petitioner-complainant has argued that both the Courts below have erred in acquitting the accused and the impugned orders are contrary to the law, facts and evidence on record. According to the learned counsel, the prosecution witnesses had fully established the case against the accused during the trial, but both the Courts below had failed to properly appreciate the evidence on record in correct perspective. Furthermore, the Courts below gave undue weightage to the minor contradictions in the testimonies, leading to an erroneous acquittal of the accused. The learned counsel has further asserted that the prosecution had adequately explained the delay in lodging the FIR, but the trial Court did not give any credence to the explanation furnished by the prosecution in this regard. It has been further argued that the both the Courts below have erroneously given undue weightage to the defence put forth by the accused wherein the accused claimed that he and the complainant are relatives, who were not on talking terms and hence he has been falsely implicated in the instant case; which is highly improbable to believe, as it is unreasonable that anyone would compromise their dignity over such a personal grudge. The learned counsel has further argued that the both the Courts below have wrongly and unlawfully acquitted the accused, despite there being sufficient evidence on record to establish his guilt. According to the learned counsel, the prosecution has successfully proven its case beyond reasonable doubt, and the acquittal of accused is not justified in light of the evidence presented.



6. 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 as ***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."

7. 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 petitioner, perused the entire case record and judgments passed by the learned trial Court as well as by the appellate Court.

8. While going through the impugned judgments passed by both the Courts below, it appears that the prosecution has not discharged the burden of proving its case through credible evidence/witnesses.

8.1 As per the case put forth by the prosecution, the relevant time and date of the alleged occurrence has been stated to be at 12:15 A.M., in the intervening night of 15th /16th March, 2016. The complainant when examined as PW-1 has categorically admitted in her cross-examination that the complainant-side had called the police by dialing at No.100 (Police Control Room Number) and the police reach at the spot about 01:00/01:30 A.M., on the day of occurrence and recorded her statement. However, the FIR of the alleged incident was lodged on 23.03.2016, i.e. after 8 days of the alleged incident. The availability of the police, at the place of occurrence, on the

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First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay the report not only gets bereft of the advantage of spontaneity danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.

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from the alleged spot of occurrence. This non-explanation of escape of accused from the place of occurrence assumes more significance in light of the statements made by the prosecution witnesses, to the effect, that the husband of the complainant, Daljit Singh (PW-2), entered into physical altercation with the accused. However, nothing has been brought on record which corroborates this factum of altercation, such as, any evidence as to any injury on the body of accused or Daljit Singh (PW-2); torned clothes, etc. This lack of corroborative evidence of surrounding circumstances, significantly undermines the credibility of the version as put forth by the prosecution.

8.3 The story put forward by the prosecution is further tainted by the fact that a combined reading of depositions of various prosecution witnesses and the site plan (Ex. PW-4/C), leaves no plausible room for the accused to have entered into the kitchen of the complainant, on the alleged day of occurrence. A perusal of the site plan (Ex. PW-4/C), makes it abundantly clear that the house of the complainant is surrounded by the houses of Gurmeet Singh, Ajaib Singh (PW-3) and one Amarjeet Singh on three sides, respectively, and the door/gate of the house of the complainant is situated on the western side, which has been deposed to be closed from inside. It has been stated by PW-4 (ASI Satnam Singh) that the only passage to ingress and egress from the house of the complainant was the kitchen door which was inter-linked with the house of the Surjeet Singh on the Northern side. A cumulative consideration of all these facts shows that there was no occasion of the accused to trespass into the house of the complainant.

8.4 As is apparent from the record, the alleged place of occurrence is in the kitchen of the house of the complainant, which is situated in a



complainant, other prosecution witnesses as well as some other people/neighbors are stated to have been awake, around the time of occurrence, owing to a death in one of the neighbouring houses (extended family of the complainant's husband). It is highly unlikely that on complainant having raised loud hue and cry, no one else, except the examined related and interested prosecution witnesses, would have arrived at the place of occurrence. This factum assumes more importance, in light of the fact, that the alleged place is in a rural set up and in one of the neighbouring houses there was a death having taken place owing to which other people too would have been awake around the relevant time. However, the prosecution has not only failed to examined any such independent witness, but the prosecution case does not provide even a mention of the same the prosecution has miserably failed to examine any independent witness from the neighbourhood, despite the residence of the complainant being located in a densely populated locality. The absence such a crucial testimony, when it could have been reasonably procured, further weakens the case of the prosecution. Reference in this regard may be made to a judgment passed by the Hon'ble Supreme Court in the case of ***Takhaji Hiraji versus Thakore Kubersing Chamansing:2001 AIR (SC) 2328***, relevant whereof reads as under:-

“19. xxxx

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It is true that if a material witness, which would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness which though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the Court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non- examination of such other witnesses may not be material. In such a case the Court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself - whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being with



held from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the Court can safely act upon it uninfluenced by the factum of non-examination of other witnesses.

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9. It is a well established principle in criminal jurisprudence that the burden of proof rests squarely upon the prosecution, which must establish the guilt of the accused beyond reasonable doubt. Any failure to meet this standard, particularly when key evidence is either missing or questionable, entitled the accused to the benefit of the doubt. It has been consistently held that suspicion, however grave, cannot substitute for proof, and where there exists any reasonable doubt, the accused must be acquitted in accordance with law. In light of the above discussed discrepancies and inconsistencies, it can safely be inferred that either the case put forth by the prosecution is false or the occurrence did not take place in the manner as projected by the prosecution. Where the prosecution itself has failed to substantiate its case beyond reasonable doubt, as has happened in the case before hand, the defence, if any, raised/pleaded by the accused recedes into the background and rather becomes immaterial. However, as has been noted by the learned Additional Sessions Judge, while passing the judgment of acquittal, in para No.23 of the judgment passed by him that the family of the complainant allegedly nursed a grudge against the accused as Darshan Singh, who is the uncle of the accused, had transferred his land to the father of the accused and also lived with them. To support his defence, the accused presented Darshan Singh as DW-1, who testified that there had been prior altercations between the two families and the possibility of false implication of the accused cannot be ruled out.

In the facts and circumstances of the entire case coupled with



Sessions Judge, as well as, the learned trial Court, rightly arrived at the conclusion 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 prosecution.

10. The facts of the case clearly narrate that the prosecution has intentionally tried to conceal the real genesis of the case. However, both the Courts below i.e. trial Court and the appellate Court, have meticulously and judiciously examined the matter, appreciating the facts and evidence in their proper context. Both the Courts below have rightly discerned the attempt of the prosecution to distort the narrative and have delivered their findings based on thorough evaluation of the material on record.

11. Perusal of the impugned judgments of acquittal passed by both the Courts below show that the entire evidence led by 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 judgments of acquittal are based on sound reasoning, do not suffer from any illegality or perversity. As such, the judgment of acquittal dated 02.01.2019 passed by Additional Sessions Judge, Moga upholding the order dated 07.09.2017 passed by Sub Divisional Judicial Magistrate, Nihal Singh Wala, is upheld. Resultantly, the present revision petition, being bereft of merits fails and is dismissed.

12. Pending application(s), if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

September 26, 2024

Ajay

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No