



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

CRA-D-542-DBA-2002 (O&M)
Date of Decision:- 24.05.2024

State of Punjab ... Appellant

Versus

Major Singh ... Respondent

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

Present:- Mr. I.P.S.Sabharwal, DAG, Punjab.
Ms. Manveen Pheruman, Advocate, for the respondent.

GURVINDER SINGH GILL, J.

1. Aggrieved by acquittal of respondent-Major Singh in a trial arising out of FIR No.82, dated 4.5.1999, Police Station Bhikhiwind, District Amritsar, under Section 302, IPC, the State has preferred this appeal challenging judgment dated 20.11.2001 passed by learned Sessions Judge, Amritsar,



vide which the respondent/accused namely Major Singh has been acquitted of the charges framed against him.

2. The FIR (Ex.PQ/2) was lodged at the instance of Veer Kaur widow of deceased Baldev Singh. Her husband Baldev Singh and his elder brother Major Singh were residing in the fields, where they had having their separate residences, but a courtyard was joint. They used to irrigate their fields from a common tubewell in accordance with their turns, as had been settled. On 30.4.1999, at about 6:00 am, when her husband switched on the tubewell to wash his face and also to irrigate his fields, then Major Singh came out of his house while holding a '*kassi*' (hoe) and challenged him to teach a lesson for irrigating the fields without his turn. Upon hearing the noises, the complainant came out of her house along with her son Balwinder Singh. Major Singh gave a blow from the blunt side of '*kassi*' to Baldev Singh hitting him on his forehead. Thereafter, he threw away the '*kassi*' and pushed Baldev Singh into well of the tubewell, which was about 20/22 feet deep. Thereafter, Major Singh picked up brick-bats lying near the well and gave blows with the same to Baldev Singh who had fallen in the well. When the complainant raised alarm, then Major Singh fled away from the spot along with his '*kassi*'. The complainant and her son took out Baldev Singh from the well and removed him to STGB Hospital, Amritsar from where he was referred to Guru Nanak Dev Hospital and where he breathed his last on 5.5.1999. Although the hospital authorities had sent intimation to the police regarding admission of Baldev Singh, but his statement could not be recorded as he was found to be unfit to make his statement.



3. The police conducted requisite investigation in the matter. Inquest report was prepared. The dead body was got subjected to post mortem examination. The accused was arrested on 06.05.1999 and upon interrogation he suffered disclosure statement and pursuant to which he got recovered 'kassi' from a cattle shed of his house. The police visited the spot and collected brick-bats. Statements of witnesses were recorded and upon conclusion of investigation challan was presented in the Court of area Magistrate, who upon finding that the facts *prima facie* disclosed commission of offences punishable under Sections 302 IPC, committed the case to the Court of Sessions. Charges were framed against the accused for offence punishable under Sections 302 IPC by learned Sessions Judge, Amritsar on 20.08.1999 to which accused pleaded not guilty and claimed trial.
4. The prosecution in order to establish its case examined as many as 14 PWs, the gist of whose testimonies is being briefly referred to herein under:-
- PW-1**-Dr. Vikas Bhandari, Junior Resident, S.G.T.B. Hospital, Amritsar, stated that Baldev Singh (deceased) was admitted to hospital on 30.4.1999 and was discharged on 4.5.1999 and that he had declared Baldev Singh unfit to make statement.
- PW-2**-Lakhwinder Singh, Junior Resident, S.G.T.B. Hospital, Amritsar stated that on 2.5.1999, he had declared Baldev Singh unfit to make statement and that on 4.5.1999 he had referred Baldev Singh to Guru Nanak Dev Hospital, Amritsar.



PW-3-Dr. Gurjot Singh, Junior Resident, S.G.T.B. Hospital, Amritsar stated that on 3.5.1999 he had declared Baldev Singh unfit to make statement.

PW-4-Dr. Ashok Chanana, Assistant Professor, Department of Forensic Medicines, Govt. Medical College and Hospital, Amritsar, who had conducted post mortem examination on the dead body of Baldev Singh, proved post mortem examination report as Ex.PJ wherein he has described the injuries found on the dead body. He opined that cause of death was obstruction of the air passage due to collection of blood leading to asphyxia as a result of injury No.2 which was sufficient to cause death.

PW-5-Constable Sukha Singh is a formal witness who had proved his affidavit deposing therein that he had delivered special reports to Illaqa Magistrate and to senior police officers.

PW-6-Dr. Suman Bhagat, House Surgeon, Guru Ram Dass Medical College and Hospital, Amritsar, stated that he had informed the Incharge Police Post Sri Guru Teg Bahadur Hospital, Amritsar about death of Baldev Singh on 5.5.1999.

PW-7-Amrit Singh of Punjab State Electricity Board, deposed on the basis of record that electricity supply was there to Village Bainka on the night of 30.4.1999.

PW-8-Dr. Didar Singh, stated that on 2.5.1999, he was posted in Department of Forensic Medicines, Government Medical College, Amritsar and on the said day he had medically examined Baldev Singh and had found



injuries on the person. He described 5 injuries, found on the person of Baldev Singh and proved the copy of MLR as Ex.PM.

PW-9-HC Satwant Singh and **PW-10**-Constable Satnam Singh are formal witnesses who tendered their affidavits in evidence.

PW-11-Veer Kaur (complainant) stated in tune with the version got recorded by her in the FIR.

PW-12-Balwinder Singh son of the complainant also stated identically as stated by her mother namely Veer Kaur.

PW-13-ASI Gurmej Singh stated that upon receipt of intimation from hospital, he went to the hospital and sought opinion of doctor regarding fitness of Baldev Singh but he was declared unfit. He further stated that even on 2.5.1999 and 3.5.1999 he moved identical applications, but Baldev Singh was not found to be fit. He deposed about the investigation conducted by him in the matter. He further stated that later Baldev Singh was shifted to G.N.D. Hospital, Amritsar where he met Veer Kaur and recorded her statement and on the basis of which FIR was lodged.

PW-14-SI Manmohan Singh, SHO, Police Station Bhikwind, who is the Investigating Officer in the present case stated in detail about the proceedings of investigation and proved various documents prepared during the course of investigation.

5. Upon conclusion of prosecution evidence, statement of the accused was recorded in terms of Section 313 Cr.P.C. wherein he denied the case of



prosecution in toto and pleaded innocence. The accused however, did not lead any evidence in defence.

6. The trial Court upon considering the evidence held that the prosecution had failed to establish the charges framed against the accused. The reasons weighing with the trial Court may be broadly summed-up as under:

i. Delay in lodging the FIR

While the incident had taken place on 30.4.1999, the FIR was lodged on 4.5.1999 i.e. after about a period of 4 days of the occurrence. Though the prosecution seeks to explain the said delay by assigning a reason that the deceased had not been declared fit to make statement, but a perusal of statement suffered by PW-8-Dr. Didar Singh, who had medically examined Baldev Singh on 2.5.1999 stated during cross-examination that Baldev Singh at the time of medical examination was conscious and had signed the copy of MLR. The aforesaid cross-examination would cause a serious dent in the case of prosecution as regards the stand that delay was on account of the deceased not being fit. Still further, it remains unexplained as to why the complainant and her son both of whom claimed to witnessed the occurrence did not get their statements recorded before the police for a good 4 days. The Court also noticed that the complainant during cross-examination admitted that between 30.4.1999 till the time she got her statement recorded with the police she had been regularly going to her village to get money and her brothers had also visited in the hospital, but despite the same she did not lodge the report.

ii. The ocular version not fully in tune with medical evidence

Although, it is a specific case of the complainant that the accused had hit the deceased with a 'kassi' on his forehead and had thereafter thrown him in a well, but it is only an abrasion which was found on the fore-



head and the cause of death has been opined to be on account of injury No.2 on the back of the deceased which was in the nature of an abrasion on the lateral aspect of trunk below mid axillary point.

iii. Conduct of complainant and witness

The trial Court noticed that although the complainant and her son claimed to have witnessed the incident, but it remains unexplained as to why they did not take any step to stop the accused from throwing brick bats in the well when the deceased had allegedly been thrown into the well.

iv. That the deceased might have accidentally fallen in the tubewell and later the complainant concocted a false story so as to debar the accused for usage of joint tubewell.

v. That the nature of injuries is such which could have been sustained on account of fall in the well accidentally.

7. Though the learned State counsel has vehemently argued that having regard to the fact that it is a case of an eye-witness account, the acquittal was not justified, but upon considering the entire evidence and the reasoning assigned by the trial Court for acquittal of the accused, this Court is of the opinion that the defence has been able to make a sufficient dent in the case of prosecution so as to seek benefit of doubt.

8. The aforesaid infirmities when coupled together do make the case of prosecution doubtful. As such, the view of the trial Court in having acquitted the accused cannot be said to be a perverse view. 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 passed by Hon'ble the Apex Court



rendered in 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.”

9. The factual position of the present case, as already discussed above, when examined in light of ratio of cited case leaves no room for interference in



impugned judgment. Finding no merit in this appeal, the same is dismissed. Bail bonds/surety bonds shall stand discharged.

(GURVINDER SINGH GILL)
JUDGE

24.05.2024
mohan

(N.S.SHEKHAWAT)
JUDGE

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