

103 (2 cases)

2024:PHHC:094119-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.

CRA-D-637-DBA of 2003
Date of Decision: 26.07.2024

State of Punjab

...Appellant

Vs.

Hari Singh and another

...Respondents

2.

CRR-931-2003

Balbir Singh

...Petitioner

Vs.

The State of Punjab and others

...Respondents

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

Present: Mr. I.P.S. Sabharwal, DAG, Punjab.

Mr. Arun Jindal and Mr. Kanish Jindal, Advocates
for respondent No. 1 in CRA D-637-DBA-2003 and
for respondent No. 2 in CRR-931-2003.

Mr. Vinod Ghai, Senior Advocate with
Ms. Kasish Sahni, Advocate, for the petitioner
in CRR-931-2003.

Appeal qua respondent No. 2-Jit Singh stood abated.

N.S.SHEKHAWAT, J.

1.

This judgment shall dispose off two petitions, i.e.,

CRA-D-637-DBA of 2003 titled as “**State of Punjab Vs. Hari Singh and another**” and **CRR-931-2003** titled as “**Balbir Singh Vs. The**

State of Punjab and others”, as the same arise out of the common judgment and order dated 23.01.2003 passed by the Sessions Judge, Sangrur. In fact, Hari Singh and Jit Singh, both the accused were tried by the Court of Sessions Judge, Sangrur and vide the impugned judgment, Hari Singh accused was ordered to be acquitted, whereas, Jit Singh accused was convicted under Section 304-II IPC and was sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 2,000/- alongwith default stipulation.

2. During the pendency of the present appeal and revision, Jit Singh had expired and vide order dated 10.07.2024, the proceedings qua Jit Singh respondent No. 2 in CRA-D-637-DBA-2003 and respondent No. 3 in CRR-931-2003, stood abated. Now, the only question to be answered by this Court in both the petitions is as to whether the acquittal of Hari Singh, respondent No. 1 in CRA-D-637-DBA of 2003 and respondent No.2 in CRR-931-2003 by the trial Court was justified.

3. The FIR Ex.PF in the present case was registered on the basis of the statement made by Balwinder Singh son of Anokh Singh, resident of Kaheru and the same has been reproduced below:-

“At this time, Balwinder Singh son of Anokh Singh Jat resident of Kaheru, came to the police station and informed that I am resident of village Kaheru and is an agriculturist. My residential house had made in my field. Yesterday on 4.9.2000 my Jija (husband of his sister)

Balbir Singh son of Shigara Singh Jat and my nephew, Harwinder Singh son of Balbir Singh Jat residents of Bhatian Kalan, Police Station Amargarh came to our village Kaheru to meet. After taking meals at night we were sitting and talking in the house, then Harwinder Singh told me that, I am going to meet Hari Singh, who is residing near Gurdawara and after saying this Harwinder Singh left the house. When Harwinder Singh did not come back for about two hours, then I alongwith my brother-in-law Balbir Singh went towards the house of Hari Singh for enquiring. When we reached near the house of Hari Singh son of Pritam Singh Jat resident of Kaheru then it will be about 11 p.m., that the electric light in the house of Hari Singh was glowing and there was a Raula being raised inside the house. The outer door was lying open. When we entered the house and noticed that Hari Singh having Kulhari in his hand was inflicting a blow on Harwinder Singh and uncle of Hari Singh namely Jeet Singh son of Dial Singh having Soti in his hand was inflicting a blow on Harwinder Singh when we raised Raula "Na Maro Na Mara" then Hari Singh, with in our sight Hari Singh caused the Kulhari blow holding in his hand, on the head of Harwinder Singh and both Hari Singh and Jeet Singh ran away from the spot with their respective weapons. Then Harwinder Singh went inside the room while unsteady with in our sight Harwinder Singh died at the spot. In the meantime, my nephew Nirbhey Singh son of Kashmir Singh and my elder brother Kashmir Singh also reached at the spot. The motive for killing Harwinder Singh is that Hari Singh suspected that Harwinder Singh is having illicit

relations with his wife Simranjit Kaur Simmi. After leaving my brother in-law Balbir Singh and brother Kashmira Singh near the dead body and accompanied with my nephew Nirbhey Singh came to the police station for giving the information. Statement has been got recorded to you. Heard and is correct. Action be taken.

5.9.2000.

Sd/-

Balwinder Singh

Attested

Officer Incharge P.S.Dhuri”

4. After the registration of the FIR, the necessary investigation was conducted by the police and the final report under Section 173 Cr.P.C. was presented against the accused in the present case. Since, the offence under Section 302 IPC was triable by the Court of Sessions, the case was committed to the Court of Sessions Judge, Sangrur. On the strength of the evidence collected by the police during the course of investigation, the trial Court found that a *prima-facie* case under Sections 302/34 IPC was made out against both the accused and they were charge sheeted accordingly. The accused pleaded that they had been framed and claimed trial.

5. In support of the prosecution case, 10 witnesses were examined before the trial Court. Dr. Ramesh Sharma, Medical Officer, Civil Hospital, Dhuri, was examined as PW1, who had conducted the postmortem examination on the dead body of Harwinder Singh son of Balbir Singh at 08.25 a.m. on 05.09.2000.

While appearing as PW1, he stated as under:-

“As per the information furnished by police, alleged to be died of injuries.

The length of body was 5'-7 ½". There was no ligature mark around neck. It was body of well built well nourished male of about 30 years, male with long hair bearing shirt, underwear, pajyama and baniyan. Rigormortis were present with postmortem staining on posterior parts.

I noted the following injuries:-

- 1. There is an incised wound 3 cm x 0.8 cm x bone deep on the left hand on its palmar and lateral aspect on the base of the thumb with clotted blood underlying bone was normal.*
- 2. There was an incised wound 2.5 cm x 0.7 cm bone deep on the same side 1" distal to injury No.1 underlying bone was normal.*
- 3. There was a bluish contusion mark on the left upper arm on further examination there was fracture of humerus in its middle.*
- 4. There was an incised wound 1.5 cm x 0.8 cm x bone deep on the left leg anterior aspect on its lower 1/3rd part and on further dissection there was fracture of both bones.*
- 5. There was an penetrating incised wound 1.5 cm x 1 cm x bone deep on the right leg anterior aspect on its middle part underlying bone was normal.*
- 6. There was an incised wound 4.5 cm x 0.8 cm x bone, deep on the right temporal region in an oblique position. On further dissection the underlying bone was fractured.*

There was clotted blood was present in cranial cavity and laceration of the brain matter.

7. There was lacerated swelling on the left mandible region bluish in colour and on further dissection there was fracture of mandible angle.

8. There was a deep wound 1.4 cm x 0.8 cm x bane deep on right elbow region on its posterior aspect and on further dissection fracture of radial bone on its proximal part was there.

Skull scalp, membrances, brain have been described. The organs of abdomen were healthy. Stomach contained about 150 mls of liquid and pasty material. All other organs were healthy. The walls, ribs cartilages, pleurae both lungs, described in injuries.

In my opinion the death in this case had occurred due to shock and hemorrhage mainly due to injury No. 6 which was sufficient to cause death in ordinary course of nature and all the injuries were antemortem in nature. The probable time that elapsed between injury and death was immediate and between death and postmortem was within 24 hours”.

He proved on record the original postmortem report Ex.PA, which was conducted on police request Ex.PB. On police request Ex.PD, he gave his opinion that the possibility of injury No. 6 as mentioned in the postmortem report to be caused with an axe could not be ruled out. In his cross-examination, he stated that he had not noted or noticed any cut on the clothes worn by the deceased.

6. The prosecution further examined Wasakha Singh,

Draftsman, as PW2, who prepared the site plan Ex.PE with correct marginal notes. The prosecution further examined PW3 Balwinder Singh, complainant of the case. He had reiterated the version as mentioned in the FIR Ex.PF. In his cross-examination, he stated that his house was about 1½ kilometers. On that day, Balwinder Singh and Harwinder Singh came to his house first on scooter. From his house, Harwinder Singh went away by saying that he was going to meet Hari Singh. He left the house at about 08.00 p.m. He knew Hari Singh earlier. The deceased was on frequent visiting terms at the house of Hari Singh. Hari Singh was a driver on a tempo. They firstly went to the house of Kashmir Singh at about 10.45 p.m. and stayed there for 4/5 minutes and inquired only from Kashmir Singh. They went to house of Hari Singh and the door was lying open. The blows were caused to Hari Singh and Jit Singh in their presence and they had raised the alarm. Within their sight, after the injuries, the deceased went inside the room and fall on the ground near the bed. They were near the door of that room at that time. They could hold him but he fell down and they raised alarm only. Their clothes were blood stained. He further stated that Hari Singh suspected that Harwinder singh had illicit relations with his wife. He denied the suggestion that Harwinder Singh went to the house of Hari Singh, in absence of Hari Singh and Jit Singh saw Harwinder Singh in naked condition and Jit Singh inflicted injuries to him.

8. The prosecution further examined PW4 Balbir Singh father of Harwinder Singh, deceased. He alongwith Harwinder Singh had gone to Balwinder Singh, his brother-in-law. He alongwith Balwinder Singh went towards the house of Hari Singh at 11.00 p.m. He also supported the statement of PW3 Balwinder Singh. In his cross-examination, he also admitted that Hari Singh was driving a tempo and some times, Hari Singh used to go out of the village. He stated that Hari Singh inflicted injury and they raised the noise, however, they did not remove the injured for any medical aid. Their clothes were blood stained. However, he and Balwinder Singh did not hand over their blood stained clothes to the police. When they raised alarm, accused ran back towards the room.

7. The prosecution further examined PW5 HC Narinder Singh, PW6 Constable Sukhdev Singh and PW7 Head Constable Mohinderjit Singh and their testimonies were formal in nature. PW8 SI Sarabjit Singh was examined by the prosecution, who proved the copy of the FIR Ex.PF. He also remained associated during the initial investigation. In his cross-examination, he admitted that the dead body was found lying in the house of Jit Singh accused in the abadi of village Kaheru. Jit Singh accused was a Nihang Sikh. Hari Singh accused was a driver. According to the accused, the deceased had illicit relations with the wife of Hari Singh, accused. As per the FIR, the motive was suspected to be the said illicit relation. During his

investigation, no other motive came to his knowledge. Only the accused could tell, if in the absence of Hari Singh, the deceased used to come to the house. He did not give a note that there was a cut in the turban. He had not mentioned any cut marks on any clothes, which were worn by the deceased. He denied the suggestion that the deceased was naked, when the injuries were caused to him.

8. The prosecution further examined PW9 Constable Harjinder Singh, who tendered in evidence his affidavit Ex.PU. SI Gurwinder Singh was examined as PW10, who was posted as SHO, Police Station Dhuri on 05.09.2000 and was the Investigating Officer of the present case. He stated in his cross-examination that he had seen the room, where the dead body was recovered and it was on the backside of the house. He admitted that the house was situated on the main road. He did not record the statements of any person from the neighbourhood. He did not record even the statements of any person from 05.09.2000 to 11.09.2000. During investigation, it came to his notice that the deceased was having illicit relations with wife of Hari Singh and no other motive for causing death came to his notice. It also came to his notice that Hari Singh was driver and he used to remain away from his house for number of days.

9. After closer of the prosecution evidence, the statement of Hari Singh, accused was recorded under Section 313 Cr.P.C. and he stated as under:-

“I am innocent. I am driver on a truck and so oftenly, I remain out of house on truck. Deceased had illicit relations with my wife and in my absence he used to visit my house. He came to my house in my absence and slept with my wife in my absence during night. My uncle Jit Singh awoke suddenly and when he saw deceased with my wife in an objectionable condition, out of anger, he caused injuries to deceased and gave information to the police. No witness was present on the spot. Police after reaching the spot, called the relations of the deceased and introduced false witnesses of the occurrence. I came to my village on the next day at about 11.00 a.m. from my tour on the truck, when the police arrested me and then implicated me in this false case”.

10. Still further, statement of Jit Singh was also recorded under Section 313 Cr.P.C and he stated as under:-

“I am innocent. I belong to Nihang Singh sect. Hari Singh accused is my nephew. Our houses are situated in the same enclosure. Hari Singh, my nephew is a driver of Tanker-Truck and oftenly remains out of house. Deceased Harwinder Singh developed illicit relations with the wife of Hari Singh my nephew. During the night of occurrence, my nephew Hari Singh was out of station with the Tanker and in his absence deceased Harwinder Singh came to the house of Hari Singh and during night slept with his wife in an objectionable condition. During night, I noticed presence of the deceased and when I woke up, I saw deceased with the wife of Hari Singh in an objectionable condition. On this I got enraged and in the passion of anger, I caused injuries to Harwinder

Singh, due to which he died. I went to the police station and gave information to the police about the occurrence. The police came to the spot during night. Police called the relations of the deceased and later on introduced false witnesses and implicated me and my nephew in this case falsely”.

11. Learned State counsel as well as learned senior counsel appearing on behalf of the complainant vehemently argued that the judgment passed by the trial Court was based on presumption and surmises. The trial Court had not appreciated the evidence of PW3 Balwinder Singh and PW4 Balbir Singh in correct perspective. In fact, the presence of both the witnesses at the place of the occurrence was natural and both the witnesses had deposed with regard to the occurrence. Even, the blood stained weapons of offence were recovered from both the accused and there was sufficient evidence to prove their involvement in the crime. The trial Court further failed to appreciate that the FIR in the present case was promptly registered and the trial Court has wrongly granted the benefit to the accused on the ground of delay in registration of the FIR also. Thus, it was prayed that the impugned judgment may be set-aside and Hari Singh, the sole surviving respondent may be convicted under Section 302 IPC.
12. On the other hand, learned counsel appearing on behalf of Hari Singh respondent vehemently argued that the impugned judgment is based on correct appreciation of evidence of the settled

law and the appeal filed by the State of Punjab as well as revision petition filed by the complainant are liable to be dismissed by this Court.

13. We have carefully heard the rival contentions made by learned counsel for the parties and also perused the trial Court record.

14. The FIR Ex.PF in the present case was got registered by PW3 Balwinder Singh. As per him, the occurrence had taken place at about 11.00 p.m. on 04.09.2000. He reached the police station at about 12.30 a.m. during night and the police also came to the spot at 2.30 a.m. Similarly, PW4 Balbir Singh also repeated the same facts, however, the FIR is shown to have been registered at 1.10 a.m. on 04.09.2000. According to PW8 S.I. Sarabjit Singh, the residence of SDJM, Dhuri was at about 100 yards from their police station. Thus, the special report could be delivered by the police to SDJM Dhuri in 15 to 20 minutes. Still, the special report was delivered to the Area Magistrate at about 11.00 a.m. on 05.09.2000. Thus, the delay of 12 hours in sending the special report to the Area Magistrate clearly proves that the FIR was registered in the morning of 05.09.2000 and this delay had not been satisfactorily explained and is fatal to the case of the prosecution.

15. Still further, in the present case, the entire prosecution case rests on the testimonies of PW3 Balwinder Singh, complainant and PW4 Balbir Singh, who was father of Harwinder Singh, since

deceased. As per PW3 Balwinder Singh and PW4 Balbir Singh, Harwinder Singh had left their house at about 08.00 p.m. He had gone to the house of Hari Singh, which was situated at a distance of 1.5 kilometers from their house. We find that the trial Court had correctly recorded that it was doubtful that after 2.5 hours, PW3 Balwinder Singh and PW4 Balbir Singh, reached the house of accused exactly at the time when the accused were causing injuries to the deceased. PW3 Balwinder Singh was uncle of deceased, whereas PW4 Balbir Singh was father of the deceased and still they made no efforts to save Harwinder Singh from the assailants and even did not chase the accused. Even, there is noise to save Harwinder Singh but nobody from the neighbourhood reached at the spot. Even, PW10 SI Gurwinder Singh admitted that from 05.09.2000 to 11.09.2000, he did not record the statements of any person. Even, PW3 Balwinder Singh stated that their clothes were not blood stained whereas PW4 Balbir Singh stated that their clothes were blood stained, but they did not hand over the blood stained clothes to the police. Consequently, the trial Court was correct in holding that the presence of PW3 Balwinder Singh and PW4 Balbir Singh at the place of the occurrence was highly doubtful and their testimonies were rightly disbelieved. Still further, in the present case, in the FIR Ex.PF itself, the motive for causing injuries was illicit relations between Harwinder Singh and Simranjit Kaur @ Simmi wife of Hari Singh, accused. Even, this

fact has been admitted by PW10 SI Gurwinder Singh, who was the Investigating Officer of the case and other prosecution witnesses and the police officials admitted that the deceased was having illicit relations with the wife of Hari Singh, accused and no other motive for causing death of Harwinder Singh came to their notice. Even, the prosecution witnesses admitted that Hari Singh was a driver and used to remain away from his house for number of days. The trial Court correctly recorded that Harwinder Singh would never go to the house of Hari Singh when Hari Singh would be present in the house. It appeared that in the absence of Hari Singh, Harwinder Singh had gone to his house by telling his father that he was going to meet Hari Singh. Harwinder Singh had no friendship with Hari Singh, accused and the family of Hari Singh already suspected that Harwinder Singh was having illicit relations with the wife of Hari Singh. Consequently, the defence version that Harwinder Singh had visited the house of Hari Singh in his absence and was seen by Jit Singh in an objectionable position with wife of Hari Singh seems probable. In fact, Hari Singh used to remain out of the house for several days as admitted by the prosecution witnesses themselves and it appears that on getting the said information from Simranjit Kaur @ Simmi, Harwinder Singh had visited the house of Hari Singh.

16. The defence version also seems probable on examination of the prosecution evidence further. The postmortem examination in

the present case was conducted by PW1 Dr. Ramesh Sharma. During the postmortem, he had noticed one incised wound on the left leg, a penetrating incised wound on the right leg, a deep wound on the right elbow and an incised wound on the right temporal region. Even, PW1 Dr. Ramesh Sharma, further admitted in his cross-examination that he did not note or notice any cuts on the clothes worn by the deceased. PW8 S.I. Sarabjit Singh also stated that he did not notice any cut on the turban, when he took it in possession. Thus, it is apparent that Harwinder Singh was not wearing any clothes at the time when the injuries were caused to him, that was from the location of the injuries. It was apparent that the clothes were worn by him must have carried corresponding cut marks. The absence of cut marks on the clothes as well as turban of Harwinder Singh would clearly establish that at the time when the injuries were caused, Harwinder Singh, deceased was not wearing any clothes on his person.

17. Apart from that, the trial Court has correctly held that the place from where the dead body was lying also strengthens the defence version and we find no reasons to differ from the said findings. The dead body was found in the rear side of the house of the accused where a double bed was lying. Harwinder Singh had no friendly relations with Hari Singh and he had no reason to go to his bed room and it proved that he was having sexual intercourse with Simranjit Kaur @ Simmi wife of Hari Singh. Even, the occurrence

had taken place near the gate of the room and the deceased fall on the floor itself near the bed. Still further, PW8 S.I. Sarabjit Singh also admitted that there was no trail of blood at the spot and blood was lifted from the bed room itself. This clearly shows that the occurrence was not witnessed by PW3 Balwinder Singh and PW4 Balbir Singh as they had stated that the injuries were caused at a different place in the house and, thereafter, the deceased had gone to the rear side of the house. This further strengthens the defence version that Jit Singh had seen the deceased in an objectionable condition with Simranjit Kaur @ Simmi wife of Hari Singh and when he noticed both of them, he caused the injuries to the deceased. Still further, even in his statement under Section 313 Cr.P.C., Hari Singh respondent had clearly stated that he used to remain out of house for several days and deceased had developed illicit relations with his wife and he used to visit his house in his absence. In his absence, Jit Singh, his uncle had seen the deceased with his wife in an objectionable position and out of anger, he had caused injuries to the deceased. Even, Jit Singh had taken a similar stand in his statement under Section 313 Cr.P.C. and the defence version seems to be more probable in the present case.

18. While discussing the scope of interference by the Appellate Court, while dealing with the judgment of acquittal, the Hon'ble Supreme Court held in the matter of **Bhaskar Rao and others Vs. State of Maharashtra AIR 2018 SC 2222:2018 (5) RCR**

(Criminal 288) as follows:-

“14. As the trial Court and High Court, having appreciated the evidence on record has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this Court as expressed in Tota Singh and Anr. Vs. State of Punjab, 1987 (2) RCR (Criminal) 35:1987 CriLJ 974.

The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW-2 and PW-6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such re-appreciation, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the

evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such, which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse: Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

19. In **Ramesh Babulal Doshi v. State of Gujarat, 1997(3)**

RCR (Criminal) 62: 1996 CrilJ 2867, this Court observed as under:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

20. In view of the above discussion and the law laid down by the Hon'ble Supreme Court, we have no hesitation to hold that the

findings recorded by the trial Court are based on correct appreciation of material on record and we find no reasons to overturn the well reasoned judgment passed by the trial Court. Consequently, impugned judgment and order dated 23.01.2003 passed by the Sessions Judge, Sangrur, are ordered to be upheld.

21. Finding no merits, CRA-D-637-DBA of 2003 and CRR-931-2003 are hereby ordered to be dismissed.
22. All pending applications, if any, are disposed off, accordingly.
23. Trial Court record be sent back to the trial Court.
24. All concerned may be intimated.

(GURVINDER SINGH GILL)

JUDGE

(N.S.SHEKHAWAT)

JUDGE

26.07.2024

amit rana

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No