

2024:PHHC:021796-DB

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

CRM-A-469-2022 (O&M)
Date of decision: 15.02.2024

State of Punjab

....Applicant

Versus

Gurpreet Kaur & Anr.

....Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present: Mr. Dhruv Dayal, Addl. AG, Punjab,
for the applicant.

SUDHIR SINGH, J.

The instant application seeking leave to appeal is preferred against the judgment dated 17.09.2021 passed by the learned Addl. Sessions Judge, Sri Muktsar Sahib, whereby respondents have been acquitted of the charges under Sections 302/342/323/325/148 and 149 of IPC.

2. Vide order dated 08.01.2024, the lower Court record was called for. The same has been received today.

3. The prosecution case, as per the complaint of complainant-Ramesh Kumar (PW-1) is that on 15.08.2017, the complainant's son- Deepak Tiwari @ Shanky and one Sukhwinder Singh had gone to attend the birthday party of the son of Manga Singh. At said birthday party, a dispute arose and Jiwan Singh, Ajay Singh, Ravi Kumar and Veer Chand, had given beatings to his son and Sukhwinder Singh. After returning from the party, complainant's son told the complainant about the aforementioned dispute. Then, the complainant along with

his son and Sukhwinder Singh left for the house of Satpal Singh to complain about it but were stopped by Jiwan Singh armed with *dang*, Ajay Singh armed with *soti*, Gurpreet Kaur empty handed, Ravi armed with *dang*, Veer Chand armed with *soti*, Gopal Singh empty handed, Kinder Singh armed with *dang*, in the street. At about 2:00 am, Jiwan Singh raised a *lalkara* that today Shanky and Sukhwinder Singh should not be spared. After the *lalkara*, all the above said persons dragged the complainant's son and Sukhwinder Singh to the house of one Satpal Singh and started hitting them with their respective weapons. 3-4 unidentified persons also came at the place of occurrence and caused injuries to his son and Sukhwinder Singh. When the complainant raised *raula Na- Maaro Na- Maaro*, the above said persons even tried to hit the complainant and the complainant had to run away from the spot to save his life. Ambulance Van No. 108 took his son and Sukhwinder Singh to Civil Hospital, Malout for emergency treatment. Later on, the complainant came to know that his son had succumbed to the injuries and his dead body was lying in Civil Hospital, Gidderbaha.

4. Based on the complaint, FIR No. 205 dated 16.08.2017 under Sections 302/342/323/325/148/149 IPC, at P.S. Lambi, was registered. After investigation, the chargesheet was submitted, whereupon cognizance was taken. Thereafter, charges were framed against the respondents, to which they pleaded not guilty and claimed to be tried. Accused Kashmir Chand, Veer Chand and Deepa were arrested during the trial ,

and supplementary challan were presented against them in the court. Accused Gopal was declared a proclaimed offender vide order dated 18.01.2018 and accused Kinder Singh @ Gurwinder Singh was declared Juvenile-in-conflict-with-law by the Court.

5. During the trial, the prosecution examined nineteen witnesses, namely, Ramesh Kumar- complainant (PW-1), Sukhjinder Singh (PW-2), Dr. Jasanpreet Singh, M.O. (PW-3), Dr. Nitesh Goyal, M.O. (PW-4), Inspector Bikramjit Singh (PW-5), ASI Sham Sunder (PW-6), SI Prem Chand (PW-7), Dr. Dhirender Garg, M.O. (PW-8), Dr. Sameer Kaur, M.O. (PW-9), Ajit Sharma, Draftsman (PW-10), HC Ved Parkash (PW-11), HC Paramjeet Signh (PW-12), Ramesh Lal, SSA (PW-13), Dr. Dheeraj Goyal, M.O. (PW-14), Chiman Lal, Ward Attendant (PW-15), SI Jasver Singh, SHO (PW-16), Gursewak Singh, driver of the ambulance (PW-17), Dr. Harmeet Singh, M.O. and ASI Pritpal Singh as PW-19. In support of its case, the prosecution had also produced evidence in the form of Ex.P1 Proclamation of Gopal Ram, Ex. P2 Report, Ex. PC parcels of blood-stained east and simple earth, Ex. PW3/DPostmortem Report of deceased, Ex. PW3/G Medico-Legal Report of injured, Ex. PW3/L injury declaration by board of doctors, Ex. PW3/M, Ex. PW3/M1, Ex. PW3/M2 X-ray and reports, Ex. PW5/B FIR, Ex. PW5/E Site Plan, Ex. PW5/G Memo of arrest, Ex. PW5/H Personal search memo, Ex. PW5/I Intimation to heirs, Ex. PW5/L Memo of recovery of *soti*, Ex. PW5/L1 Memo of recovery of *dang*, Ex. PW5/O Memo of arrest, Ex. PW5/P Memo of Search, Ex. PW5/S Memo of recovery of *dang*, Ex. PW5/S2 Memo of recovery of *dang*, Ex. PW5/T DDR

No. 35, Ex. PW16/B Memo of recovery of *soti* and Ex. PW16/L Memo of recovery of *dang*. The defence produced evidence in the form of Ex.D1 MLR No. JS/19/2017, Ex D2 MLR No. JS/18/2017 and Ex. D5 & D6 Photos, in support of its case. After the conclusion of the trial, the learned Trial Court acquitted the accused person.

6. The grounds considered by the learned Trial Court for acquitting the Respondent are as under:-

“The complainant (PW-1) as well as the injured-eye witness (PW-2) Sukhjinder Singh vide their statements affirmed the fact that the present respondents, namely Gurpreet Kaur and Gopal Ram were empty-handed, hence the possibility of causing injuries to the deceased and the injured by the above named accused does not arise.”

7. The learned State counsel, while assailing the judgment of acquittal passed by the trial Court, argued that when there is testimony of eyewitnesses corroborating the entire occurrence, whereby the accused have been named to be specifically present at the place of occurrence of the alleged crime which resulted in the death of the deceased, there was no occasion for the trial Court, to discard the prosecution case. He has further submitted that even if the respondents were empty-handed, yet their presence at the place of occurrence, being a member of the attacking party calls for a conviction albeit for a lesser offence. It is further submitted that the respondents being the part of an unlawful assembly having a common object, cannot escape their criminal liability.

8. After hearing the arguments advanced by the learned counsel appearing for both the parties and upon examining the

material available on the record, the following issue arises for consideration before this Court:-

“Whether mere presence of the respondents at the place of occurrence that too empty handed, is sufficient to prove that they in any manner had the common object or knowledge regarding the commission of the alleged offence?”

9. Now, to consider the issue as formulated above, we have carefully examined the testimony of the eyewitnesses, namely, PW-1 and PW-2. Upon a thorough scrutiny of these testimonies, it becomes evident that these eyewitnesses have consistently stated that they identified the accused, who were acquitted by the trial Court, as being part of the unlawful assembly but ‘empty-handed’. It is crucial to emphasize that mere presence in an assembly does not automatically classify a person as a member of an unlawful assembly. The determination of membership in such an assembly hinges on whether it can be proven that there was a shared common object, and whether the individual was actuated by that common object. This common object must be shown to be shared by all the members. In cases where the common object of an unlawful assembly is not proven, Section 149 cannot be invoked to convict the accused persons. In the present case, the prosecution has not presented any evidence to demonstrate that the acquitted-accused shared a common objective to assault the deceased or PW-2. The existence of the common object of unlawful assembly must be ascertained in light of the facts and circumstances of each case. There must be a nexus between the common object and the

offence committed, and it must be established that the offense was committed to accomplish the common object. In the facts of this case, the accused persons did not share a common object at all stages. It is vital to note that an altercation had earlier occurred at the birthday party of son of Manga Singh, following which the complainant, his son (deceased) and Sukhwinder Singh were headed to the house of Satpal Singh to complain against the same. It is apparent from the evidence of eyewitnesses, that all the accused were present in the street on the way to the house of Satpal Singh. Thus, the common object of the assembly might have been to teach them a lesson. But, it cannot be proved that all the accused persons had the common object to murder the deceased and PW-2 (injured), as no dangerous weapon was used and all the wounds were allegedly caused with blunt weapons i.e. *danda* and *soti*. Furthermore, relying on the prosecution's evidence, it cannot be finally inferred whether the present respondents were present at the place of occurrence to protect the deceased and the injured or to beat them, as no overt act has been attributed to them in the deposition. Sukhwinder Singh (PW-2) stated that the respondents only 'caught hold' of Deepak Tiwari (deceased) and him while the rest of the accused gave *dang* and *soti* blows to them. It is difficult to believe that anyone would be willing to catch hold of a person when 6 people are also assaulting the said person with blunt weapons. We do not agree with the prosecution's version of the respondents' role as that of *Kalidasa*, who tried to saw off the very branch on which he was sitting.

10. At this juncture, it would be relevant to take note of the decision of the Hon'ble Supreme Court rendered in Allauddin Mian Vs. State of Bihar, (1989) 3 SCC 5. In para 8 of the said judgment, it was held as under:-

"8...This section creates a specific offence and makes every member of the unlawful assembly liable for the offence or offences committed in the course of the occurrence provided the same was/were committed in prosecution of the common object or was/were such as the members of that assembly knew to be likely to be committed. Since this section imposes a constructive penal liability, it must be strictly construed as it seeks to punish members of an unlawful assembly for the offence or offences committed by their associate or associates in carrying out the common object of the assembly. What is important in each case is to find out if the offence was committed to accomplish the common object of the assembly or was one which the members knew to be likely to be committed. There must be a nexus between the common object and the offence committed and if it is found that the same was committed to accomplish the common object every member of the assembly will become liable for the same. Therefore, any offence committed by a member of an unlawful assembly in prosecution of any one or more of the five objects mentioned in Section 141 will render his companions constituting the unlawful assembly liable for that offence with the aid of [Section 149](#), IPC. In the present case, the common object of the unlawful assembly as alleged in the charge was to kill PW 6 Baharan Mian. To accomplish that objective accused 1 and 2 went after PW 6. Sensing danger PW 6 ran into the adjoining room to fetch a spear to defend himself. His wife PW 5, however, blocked his way and did not permit him to go out. When accused 1 and 2 realised that PW 6 was beyond their reach, they, frustrated at their failure to accomplish their mission, wielded their weapons on the innocent girls who were playing in the "dalan". The common object having thus been frustrated, accused 1

and 2 took out their wrath on the innocent girls which was no part of the common object of the unlawful assembly. It was not necessary to kill these girls to accomplish their object of killing PW 6 as these two girls had not prevented them from reaching PW 6. The learned counsel for the accused, therefore, rightly submitted that while accused 1 and 2 can be punished for their individual acts committed after the common object stood frustrated and abandoned on PW 6 placing himself beyond their reach, the other members of the unlawful assembly could not be punished for the acts of accused 1 and 2 as the killing of the girls was no part of the common object of the assembly. Once PW 6 was beyond the reach of his two tormentors, the common object to kill him stood frustrated and whatever the individual members did thereafter could not be said to have been done in prosecution of the common object of the assembly. It is not the intention of the legislature in enacting Section 149 to render every member of an unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to invoke Section 149 it must be shown that the incriminating act was done to accomplish the common object of the unlawful assembly. Even if an act incidental to the common object is committed to accomplish the common object of the unlawful assembly it must be within the knowledge of other members as one likely to be committed in prosecution of the common object. If the members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of the common object they would be liable for the same under [Section 149](#), IPC. In the instant case, however, the members constituting the unlawful assembly had gone to the house of PW 6 to kill him. That was the common object of the unlawful assembly. For accomplishing that common object it was not necessary to kill the two girls who were not an hinderance to accused 1 and 2 accomplishing their common object. We are, therefore, of the opinion that accused 3 to 6 cannot

be convicted for the injuries caused to the two minor girls by accused 1 and 2 with the aid of [Section 149](#), IPC. We, therefore, set aside the conviction under [Section 326/149](#), IPC, and also the sentence imposed on accused 3 to 6 on that count..."

11. Importantly, PW-2, who was an injured witness, did not mention anything about the use of any weapon by the acquitted accused in his evidence. There is no evidence whatsoever to suggest that the acquitted accused acted in concert or pursued a common objective.

12. Thus, in light of the factual matrix of this case and considering the established legal position as discussed above, this Court is of the view that the prosecution has utterly failed to establish that the acquitted accused shared a common object in causing the death of the deceased and attempting to cause death of PW-2. Accordingly, the issue is decided in negative.

13. In criminal appeal against acquittal what the appellate court has to examine is whether the finding of the learned court below is perverse and prima facie illegal. Once the appellate court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court passed in the case of Mrinal Das versus State of Tripura, (2011) 9 SCC 479, it has been observed that:

"13. It is clear that in an appeal against acquittal in the absence of perversity in the

judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final court of fact, is fully competent to reappreciate, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal.

14. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.”

In the case of Ghurey Lal Vs. State of Uttar Pradesh, (2008) 10 SCC 450 in para no. 75, the Hon'ble Supreme Court re-iterated the said view and observed as follows:

"75. The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable."

14. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the appellate Court must not take a different view only because another view is possible. It is because the trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its decision must not be upset in the absence of strong and compelling grounds.

15. In view of the above, we do not find any illegality and perversity in the findings recorded by the trial Court. Accordingly, the present application is dismissed and leave to appeal is declined.

(Sudhir Singh)
Judge

(Harsh Bunger)
Judge

15.02.2024
Mahavir/ ds

-	<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
-	<i>Whether reportable:</i>	<i>Yes/No</i>