

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**CRM-A-1948-2019
Date of decision: 15.03.2024State of Haryana

.....Applicant

Versus

Nagender @ Monu and others

.....Respondents

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

Present: Mr. Manish Dadwal, AAG, Punjab, for the applicant.

Mr. Rahul Bhargava, Advocate,
for respondents Nos. 1 to 3 and 5.

Mr. Sunil Kumar, Advocate, for respondent No.4.

SUDHIR SINGH, J.

The instant application seeking leave to appeal is preferred against the judgment dated 20.11.2018 passed by the learned Additional Sessions Judge, Jhajjar, whereby respondents No.1 to 5 have been acquitted of the charges under Sections 148, 341, 302 read with Section 149 IPC.

2. Vide order dated 28.04.2022, the Lower Court record was called for. The same was received on 10.11.2022.

3. The prosecution case, as per the complaint of complainant-Ranbir Singh (PW-4) is that on 18.01.2015, at about 5.00 P.M., his nephew, Satish, was going to the Stadium for playing and he (complainant) was following him, as he was going for a walk. When Satish reached near the gate of the Stadium, the accused-respondents, namely-Nagender, Yashpal, Hoshiyar Singh, Ashwani, Sanjeet and Ravinder, armed with iron pipe, iron rod, *jelly* and *lathi* reached there and started beating the victim with an intention to murder him. Nagender

hit the victim with an iron pipe and Hoshiyar hit him with an iron rod, whilst Yashpal hit him with a *jelly*. Rest of the accused-persons also hit the victim with *lathis* and caused injuries on his person. The complainant stated that prior to the incident, all the accused persons had gathered in the house of Yashpal and had conspired to murder Satish. Ashwani (respondent No.2) had inquired about the whereabouts of victim from his mother Kamlesh. He saw that the victim had fallen unconscious. Thus, he and Kamlesh raised hue and cry upon which, all the accused persons fled away from the scene along with their weapons. The victim was brought to General Hospital, Beri for treatment, from where, he was referred to the PGIMS, Rohtak. Later on, the victim succumbed to the injuries. Thus, application was moved by PW4 before the police to lodge an FIR.

4. Based on the aforesaid complaint, formal FIR No.19 dated 20.01.2015, under Sections 148, 149, 323, 341, 506, 302 IPC, was registered at Police Station, Beri. After investigation, the charge-sheet was submitted, whereafter cognizance was taken. Thereafter, charges were framed against the respondents, to which they pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined fourteen witnesses, namely, PW1 Ravinder, PW2 Bhupender, PW3 ASI Vijay Pal, PW4 Ranbir Singh (complainant), PW5 Kamlesh (mother of deceased Satish), PW6 ASI Om Parkash, PW7 Constable Sonu, PW8 Dr. Kunal Khanna, PW9 Ct. Sunil Kumar, PW10 HC Sant Kumar, PW11 Dr. Rajesh Singhal, PW12 ASI Subhash, PW13 Constable Parveen and PW14 Inspector Jasbir

Singh (Investigating Officer). On conclusion of the prosecution evidence, statements of the accused (respondents) were recorded under Section 313 Cr.P.C., wherein entire incriminating evidence was put to them. However, they denied the same and pleaded false implication in the case. In defence, no evidence was led by them. After conclusion of the trial, the learned Trial Court acquitted the accused persons.

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

1. Ranbir Singh-complainant (PW-4), himself did not support the prosecution version. He categorically stated that the accused persons had not committed any offence against Satish. He was declared hostile by the learned Public Prosecutor as he denied the contents of his complaint Ex.PW4/A.
2. PW5 Kamlesh (eye witness), mother of deceased, supported the case of the prosecution by stating that she was present at the spot, but during her cross-examination, she admitted that she was not present at the time of alleged occurrence and rather she was informed about the said occurrence by one Naveen. The prosecution did not examine Naveen in order to corroborate the version of Kamlesh. PW5 Kamlesh further stated that Lalit son of Satbir had informed her that a quarrel was going on between her son (victim) and some others and she had reached the place of occurrence after about 10 minutes. Thus, the presence of PW5 Kamlesh at the spot was highly doubtful.
3. The prosecution has failed to prove recovery of any weapons from the accused persons. There is no incriminating material against the accused, which could prove their involvement in the commission of crime.
4. Furthermore, there was delay of more than 45 hours in lodging the FIR, which creates a further doubt in the prosecution's story.

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 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 witnesses had turned hostile during the trial, the Court can still look into his statement to the extent of admission of offence committed by the accused. He has further submitted that the respondents being the part of an unlawful assembly having a common object, cannot escape their criminal liability. It is, thus, argued that the learned trial Court, while passing the impugned judgment, has totally ignored the said aspect of the matter.

8. On the other hand, the learned counsel appearing for the respondents while defending the judgment passed by the trial Court, submits that the findings recorded by the trial Court are based on the facts and circumstances on record and the same do not call for any interference.

9. 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 arise for consideration before this Court:-

“Whether in a case based on direct evidence, an accused can be convicted, especially when one of the eye-witnesses (complainant) has turned hostile and other’s testimony is found doubtful?”

10. Admittedly, there were two eye witnesses of the said occurrence i.e. PW4 Ranbir and PW5 Kamlesh, mother of the deceased. In the case at hand, the complainant had been declared hostile and he denied moving any complaint (Ex.PW4/A) to the police. Furthermore, there are material contradictions in the deposition of PW5-Kamlesh, which clearly prove that she was not present at the spot and had only reached there after the occurrence. It is pertinent to note that the prosecution has not been able to connect the accused persons with the said recovery of weapons. The factum of the date of recovery of the weapons of offence is also disputed. No blood stains were detected on the weapons shown to have been recovered from the accused.

11. There is no other eye witness of the case. Though only the complainant (one of the eye witnesses) had turned hostile, yet the fact remains that the version of the PW5-Kamlesh along with the other eye witness has been found to be doubtful. The case of the prosecution was based on direct evidence and in such a circumstance, the eye witness account holds the key. In para No. 19 of its judgment, the trial Court, has found as under:-

“19. The entire case of the prosecution was based on the statements of these two material witnesses, but the first witness PW4 Ranbir had turned hostile and did not support the case of the prosecution and the presence of the second witness PW5-Kamlesh at the place of occurrence is highly doubtful. Thus, from the eye-witness account, the case of the prosecution could not be proved.”

12. Once the eye witness account did not hold the ground, the only other evidence was to connect the alleged weapons with the commission of the alleged crime by the accused. The trial Court has noticed in its judgment that though the Investigating Officer had collected blood stained brick and a piece of tripal from the place of occurrence on 20.01.2015, yet said brick was never sent to FSL for ascertaining whether it contained any blood stains or not. The piece of tripal was sent to FSL and it was found that it contained human blood, but the blood group on it did not match with that of the deceased or accused. Thus, the prosecution has failed to connect the accused with the crime. Even no blood was found on the weapon shown to have been recovered from the accused. The prosecution has failed to prove said weapons had been used in the commission of the crime. Thus, there is no conclusive evidence to incriminate the accused with respect to committing the murder of Satish. Accordingly, the issue is decided in the negative.

13. While deciding an appeal against acquittal in a criminal case, the primary task with which the appellate Court is entrusted is to determine whether the findings in the impugned judgment are perverse, illegal, irrational, and against the principles of natural justice. Once the appellate Court comes to the conclusion that the grounds on which the judgment is based are not perverse, the scope of appeal against acquittal is limited, considering the fact that the presumption of innocence, which is available with an accused, gets further strengthened by

the finding of a Court. In the case of Mrinal Das Vs. State of Tripura, (2011) 9 SCC 479, it has been observed by Hon'ble Supreme Court 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 the exercise of such power, and the appellate Court is free to arrive at its own conclusion keeping in mind that acquittal provides for a presumption in favor 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 the opinion of this Court, the trial Court has taken a plausible view based on the evidence available on the record. The view taken by the trial Court cannot be held to be bad or perverse. Under such circumstances, no case for interference with the impugned judgment is made out. Accordingly, the present application is dismissed, and leave to appeal is declined.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

15.03.2024
Ajay Prasher

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