

2024:PHHC:168576



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

243

CRR 3094 of 2016

Date of Decision: 04.11.2024

Surinder Kaur

...Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Ashok Bhardwaj, Advocate, for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

Mr. Gagandeep Grewal, Advocate
for respondents No. 2, 3 and 4.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present revision petition against the judgment dated 25.05.2016 passed by the Court of Additional Sessions Judge, Sangrur, whereby, the respondents No. 2 to 4 were ordered to be acquitted.

2. The FIR in the present case was registered on the basis of the statement made by Surinder Kaur, petitioner, who alleged that she was resident of village Sharon and was a house wife. At about 11.30 a.m., on 13.01.2014, the petitioner along with her daughters Avtar Kaur, Jagvir Kaur and Manvir Kaur were present in their house. The masons were working in her house. Mohinder Kaur wife of Late Gurmukh Singh resided in the neighbourhood. Her daughter

Rajwinder Kaur was cleaning the drain in the street. Manvir Kaur, the daughter of the petitioner, was about to leave on her bicycle for the fields and Rajwinder Kaur, her brother Harwinder Singh @ Buta and their mother Mohinder Kaur were standing there. On seeing Manvir Kaur, Rajwinder Kaur accused started complaining her that they have scattered garbage in front of their house. Buta Singh started abusing her. On hearing the noise, petitioner and her daughters Avtar Kaur and Jagvir Kaur came in the street. Chamkaur Singh son of Inder Singh was also standing in the street. Manvir Kaur tried to stop Buta, but Buta Singh picked up a kahi lying there and tried to hit Jagvir Kaur. The petitioner intervened and came in between them. Chamkaur Singh caught hold the kahi from Buta and Buta inflicted a fist blow on the lips of the petitioner. As a result, one tooth each from the upper jaw and lower jaw were dislocated. Rajwinder Kaur pushed the petitioner and she fell on the ground and suffered injury on her left knee. Rajwinder Kaur gave a fist blow on the right side of chest of petitioner. As a result, she suffered internal injury. Buta Singh picked up a brick and inflicted a blow on the right hand of the petitioner. Avtar Kaur stepped forward to save the petitioner. Buta Singh inflicted a fist blow on her nose. He inflicted another fist blow above the right eye of Avtar Kaur. The petitioner and others raised "raula" of "bachao bachao" and Bhim Singh son of Darshan Singh was attracted at the spot and saved the complainant party. Then all the accused ran away with their weapons. The motive behind the occurrence was that

the water from the house of the complainant party passes through drains in front of the house of the accused. The respondents No. 2 to 4 threw garbage in the street and used to ask the complainant party to clean the drain in front of their house. Both the injured were taken to Civil Hospital, Sangrur. The opinion of the doctor regarding the injuries were obtained. Injury No.4 on the person of Surinder Kaur, petitioner was declared grievous. On 27.01.2014, FIR under Sections 323,325,34 IPC was registered against the respondents No. 2 to 4. They were arrested on 28.01.2014. The brick used in the fight was recovered. On completion of investigation, challan was prepared and presented in the trial Court.

3. After the presentation of the challan, the charge was ordered to be framed against the respondent No. 2 to 4 under Sections 323, 325 and 34 IPC, to which, they pleaded not guilty and claimed trial.

4. During the course of trial, the prosecution examined 07 witnesses, namely, Surinder Kaur as PW1, Avtar Kaur as PW2, Dr. Virinder Singh as PW3, Dr. Prabhjot as PW4, Ramandeep Kumar as PW5, ASI Karamjit Singh as PW6 and Dr. Jasleen Kaur as PW7.

5. After the closer of the prosecution evidence, the statements of respondents No. 2 to 4 were recorded under Section 313 Cr.P.C. and they denied their involvement in the crime. Rajwinder Kaur, respondent/accused had taken a plea that they were falsely implicated due to a dispute regarding a portion of land. The husband

of the petitioner was having more land than his share and the land was of superior quality. She had not caused any injury to the petitioner and Avtar Kaur as alleged. Similar pleas were raised by other accused also. Initially, the respondents No. 2 to 4 were ordered to be convicted for the offence punishable under Sections 323, 325 read with Section 34 IPC. Respondent No. 2-Harwinder Singh @ Buta was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 1000/- under Section 325 IPC and for six months and to pay a fine of Rs. 500/- under Section 323 IPC alongwith default stipulations whereas respondents No. 3 and 4, namely, Mahinder Kaur and Rajwinder Kaur were sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1000/- under Section 325 read with Section 34 IPC and for six months and to pay fine of Rs.500/- under Section 323 IPC alongwith default stipulations, however, on appeal they were acquitted by the appellate Court. Challenging the verdict of acquittal passed by the appellate Court, the petitioner has filed the present petition before this Court.

6. Learned counsel for the petitioner contends that the appellate Court had drawn wrong inference from the evidence led by the prosecution. The learned Court failed to appreciate that the petitioner had narrated the allegations, as levelled in the FIR and her testimony was duly corroborated by the statement of PW2 Avtar Kaur. Even, Dr. Prabhjot PW4 had examined the petitioner and found the following injuries:-

“Injury No.1. Multiple abrasions present over dorsum of right hand. Patient was advised for X-ray and ortho opinion.

Injury No.2. Abrasion present over left knee. Bleeding present. Movement normal.

Injury No.3. Complaint of pain in right side of chest. No external injury present.

Injury No.4. Alleged history of blunt injury over mouth. On examination clotted blood is present over socket of upper left incisor and over lower central incisor”.

7. Still further, injury No. 4 on the person of the petitioner was declared to be grievous in nature by PW7 Dr. Jasleen Kaur and the offence under Sections 323 and 325 IPC stood proved against the respondents No. 2 to 4. Still further, the appellate Court had completely ignored the evidence led by the prosecution witnesses and passed the judgments on minor inconsistencies in the statements of the witnesses.

8. On the other hand, learned counsel appearing on behalf of the respondents No. 2 to 4 submits that the impugned judgment is based on correct appreciation of evidence and the findings are liable to be upheld by this Court.

9. I have heard learned counsel for the parties and perused the record carefully.

10. 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."

11. 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."

12. In the present case, as per the prosecution case Chamkaur Singh was present at the spot, who was an independent witness. He was also present at the hospital, when the statement of the

complainant was recorded by the police. Apart from that, Roop Singh and Bhan Singh were also working in the house of the petitioner. However, none of the independent witnesses was examined by the prosecution. Thus, the appellate court had rightly observed that testimonies of PW1 Surinder Kaur and PW2 Avtar Kaur were not supported by any independent witnesses, even though, such witnesses were admittedly present at the place of the occurrence.

13. Still further, the trial Court had discussed the medical evidence in the present case in detail and rightly held that the medical evidence did not support the ocular version of the present case. As mentioned above, Surinder Kaur PW1 had suffered 04 injuries on her person:-

“Injury No.1. Multiple abrasions present over dorsum of right hand. Patient was advised for X-ray and ortho opinion.

Injury No.2. Abrasion present over left knee. Bleeding present. Movement normal.

Injury No.3. Complaint of pain in right side of chest. No external injury present.

Injury No.4. Alleged history of blunt injury over mouth. On examination clotted blood is present over socket of upper left incisor and over lower central incisor”.

14. Injury No. 4 was rightly was caused by Harvinder Singh @ Butta, respondent No. 2 by giving a fist blow on the mouth of Surinder Kaur. Surinder Kaur was referred to a dentist and PW3

Dr. Virinder Singh prepared the MLR Ex.PC and found the following injuries:-

- “(i) That teeth present in the oral cavity were 5,4/2,3,5 in the upper jaw and 4,3,2/2 in the lower jaw;*
- (ii) That chief complaint of missing of left upper and lower central incisors:*
- (iii) That on probing socket of upper left central incisor was empty and deep while socket of lower left central incisor was shallow and filled with blood.*
- (iv) That left upper 2,3 and lower 2/2 were mobile in nature;*
- (v) That oral hygiene was poor;*
- (vi) That on closing of mouth lower teeth touched the upper edentulous ridge;*
- (vii) That no mark of injury was present in relation to missing teeth that is upper and lower left central incisors;*
- (viii) That IOPA of missing teeth showed the missing of both incisors with shallow cavity means bone loss of alveolar socket was there”.*

15. As per Dr. Virinder Singh PW3, the oral hygiene of the complainant was found to be poor and she was an old lady aged about 62 years. There was no corresponding mark of injury present in relation to the missing teeth. There were total 05 teeth in the upper jaw and 4 teeth in the lower jaw. Some of the teeth were mobile in nature and the mobility was due to old age.

16. Apart from that PW6 ASI Karamjit Singh also stated in his testimony that at the time of recording of the statement of injured/complainant, the teeth were not missing from the jaw of the complainant but the same were in moving condition. Even, no brick or tooth was found from the place of the alleged occurrence. Apart from that, as per the version of the prosecution, the injuries were caused with a fist blow by Harwinder Singh @ Buta, but there was no corresponding mark of injury on the lips.

17. Apart from that, I have carefully perused the findings recorded by the appellate Court and the appellate Court has correctly observed that there was old enmity between both the sides and the prosecution version seemed to be exaggerated. Still further, while passing the impugned judgment, the appellate Court has correctly appreciated the evidence in the light of the settled law.

18. Consequently, the present revision petition is meritless and is liable to be dismissed.

19. Dismissed.

04.11.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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