

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

230**CRM-A-277 of 2020****Date of Decision: 21.03.2024**

Jaimal Singh

...Applicant

Versus

Mohinder Singh and others

... Respondents

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

Present : Mr. Sikandh Mehta, Advocate for
Mr. Deepak Sharma, Advocate, for the applicant.

N.S.SHEKHAWAT, J. (Oral)

1. The applicant has filed the present application under Section 378(4) Cr.P.C. with a prayer to grant special leave to appeal against the judgment dated 02.04.2019 passed by the Judicial Magistrate 1st Class, Rajpura, whereby, the respondents have been ordered to be acquitted in a complaint under Sections 452, 323, 148, 149, 427, 120-B and 506 of IPC, Police Station Rajpura.

2. As per the case of the applicant/complainant, at about 07.30 p.m. on 17.08.2010, the respondents/accused came on their vehicles and were armed with deadly weapons, namely, *Gandasis*, swords and ammunition and entered the house of the applicant/complainant illegally, in his absence. They had locked the wife of the applicant and his children in a room and had damaged household articles inside the house. The applicant/complainant was not at home at that time. The family members of the applicant raised

alarm and Sitta Dass, Mangal Singh and Amar Nath etc., had reached at the spot and on seeing them, the respondents fled from the spot with their respective weapons. While leaving, they also extended threats to the applicant. They also left one Bullet and one Hero Honda motorcycles at the spot. After returning home, the applicant informed the police but no action was taken on the complaint submitted by the present applicant.

3. Learned counsel for the applicant has vehemently argued that in the present case, the eye witnesses Sitta Dass, Mangal and Mohinder had fully supported the case of the prosecution. Even, there was sufficient evidence on record, which clearly proved the involvement of the respondents in the crime. However, the trial Court was erred in appreciating the evidence in the present case and the impugned judgment is unsustainable. Learned counsel further refers to the testimonies of CW1 Surjit Singh @ Sitta Dass and CW2 Mohinder Singh, which were sufficient to establish the case of the prosecution. Even the said witnesses had withstood the test of cross-examination. Learned counsel further contends that the trial Court had wrongly placed reliance on minor discrepancies and the impugned judgment is legally unsustainable.

4. I have heard the learned counsel for the applicant and perused the record.

5. In the present case, the prosecution had examined PW1 Surjit Singh Sita Dass, who deposed that on 17.8.2010 at about 7:30

p.m., the accused Mohinder Singh, Lali, Jagga, Karnail Singh, Rinku, Sita and Tehal Singh came at the spot with deadly weapons with their vehicles i.e. Tata Indica Car, Alto Car and one Bullet Motor Cycle and entered in the house of Jaimal Singh and they confined the applicant/complainant's wife, and his children in a room and started damaging the house hold articles. He further deposed that the accused Mohinder Singh and Pape gave fist blows and slaps to the wife of the complainant and also beaten up his children. They were calling the complainant and his family members by bad names. The complainant was not present at the time. He further deposed that after hearing the hue and cry he along with Mangal Singh and Amar Nath reached at the spot and had seen the incident. He further deposed that when they tried to stop them, then all the accused persons ran away from the spot along with their deadly weapons. The accused left one Indica Car and Bullet Motor Cycle at the spot. PW2 Mohinder Singh is also the eye witness of the occurrence question and supported the version of the complaint and corroborated the statement of PWI Surjit Singh @ Sita Dass. PW3 Bimla Devi is the wife of the complainant, who also supported the version of the complaint and corroborated the statement of the PW1. She deposed with regard to the injuries caused by the accused persons to her and her children. She further deposed that the matter was reported to the police station, but the police did not took any action. PW4 Jaimal Singh is the complainant who reiterated the entire averments of the complaint and deposed that the accused

persons in his absence entered into his house and gave injuries to his wife and children. He further deposed that he moved various applications to the police authorities but all in vain. The witness proved on record applications moved by him to the police authorities Ex. PW4/A to Ex.PW4/C. PW5 Mangal Singh is the eye witness of the occurrence in question who supported the version of the complainant. PW6 Ravinder Singh, Assistant Reader, DSP Rajpura proved on record copy of application dated 28.6.2011 moved by the complainant as well as the report of SHO Sadar as Ex. CW6/A and Ex. CW6/B. CW7 HC Jagat Singh proved on record copies of applications dated 31.8.2010 and 07.09.2010 as Ex. PW7/A & Ex. PW7/B and further proved the investigation report of the same as Ex. PW7/C.

6. Learned counsel for the applicant has also placed reliance on the testimonies of PW1 Surjit Singh @ Sitta Dass, PW2 Mohinder Singh wife of complainant, PW4 Jaimal Singh complainant and PW5 Mangal Singh. However, the trial Court had rightly observed that in their examination-in-chief, the said witnesses tried to support the case of the prosecution, but the falsehood exposed from their cross-examination. In the present case, Jaimal Singh, applicant/complainant appeared as PW4 and admittedly, he had not witnessed the occurrence at all. Still further, the applicant/complainant Jaimal Singh also not stated in his cross-examination that 26 persons had come to his house at the time

of the occurrence. However, at one place, he stated that 26 persons had come whereas at other place, he stated that 15 persons had attacked his family members. Still further, PW3 Bimla Devi admitted that she had not reported the matter to the police. Apart from that, CW3 Amar Nath and CW4 Mangal Dass had come after hearing the hue and cry of the family members of the complainant and no reliance could be placed on their testimonies.

7. Apart from that, one Bullet and one Hero Honda motorcycle were left by the accused at the spot. First of all, no such recovery was made from the spot by the police. Secondly, the accused had left their respective vehicles and had fled from there; this clearly shows that the accused were six in numbers and had to flee from the spot. Apart from that, eye witnesses, who have been examined by the applicant clearly stated that in their cross-examination that they had not entered into the house of the applicant/complainant and had seen the incident from the nearby street. Still further, the trial Court had recorded the detailed reasons, while recording the judgment of acquittal in the present case. I have perused the impugned judgment passed by the trial Court and find no reason to deviate from the findings recorded by the trial Court.

8. It has been held by the Hon'ble Supreme Court in the matter of **“Bhaskarrao and others Vs. State of Maharashtra”, 2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** 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. v. 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 PW2 and PW6 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 reappraisal, 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 reappraisal 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 characterized 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."

15. In *Ramesh Babulal Doshi v. State of Gujarat*, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867, this Court observed:

"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."

9. From the above referred discussion and the law laid down by the Hon'ble Supreme Court, it can be safely concluded that the impugned judgment passed by the learned trial Court is based on sound reasons and there does not seem to be any illegality or perversity in the appreciation of the evidence by the trial Court.

10. Sequally, the application sans merit and is accordingly ordered to be dismissed.

11. All pending applications, if any, are disposed off, accordingly.

21.03.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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