

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

CRA-AD-16-2021

Date of decision: 15.03.2024

Davinder Singh & Anr.

....Appellants

Versus

State of Punjab & Ors.

....Respondents

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

Present: Mr. Achin Gupta, Advocate for the appellants

Mr. Dhruv Dayal, Additional AG, Punjab.

SUDHIR SINGH, J.

The instant appeal has been preferred against the judgment dated 17.03.2020 passed by the learned Additional District and Sessions Judge, Faridkot, whereby respondents no. 2 to 7 were acquitted of the charges under Section 307, 148 and 149 IPC.

2. Vide order dated 05.07.2022, the Lower Court record was called for. The same was received on 06.12.2022.

3. The prosecution case was that on 03.09.2014, because of the heavy rainfall in the village of the complainant, water had got accumulated and the villagers in order to drain out the water, had dug up the link road between the villages Sangatpura and Sadiq. The said process was objected by the villagers of Ghuduwala. Thereafter, on 10.09.2014 at about 7.00 p.m., when the complainant along with his fellow villagers, namely, Dilbag Singh, Pritam Singh, Aassa Singh, Sikander Singh and Gurjit Singh @

Gora, went to the turn of village Ghuduwala to see the water flow.

The complainant along with Dilbag Singh went to the spot, whereas the remaining villagers went to the house of Sikander Singh. At that time, suddenly, a jeep came from village Ghuduwala in which 8 persons, including respondent Nos. 2 to 7, were sitting. After alighting from jeep, Shamsheer Singh (respondent No.2) raised lalakra that they will stop water flow and will kill the complainant party. In the meantime, Shamsheer Singh (respondent no. 2), Charapreet Singh (respondent no. 3), Yadwinder Singh (respondent no. 4), Harneet Singh (respondent no. 5) and Bindarpal Singh (now deceased) armed with guns & pistols and unknown persons who were armed with kirpan and sticks, with an intention to kill them, directly fired shots from guns and pistols and one bullet hit the complainant on the front side of his left shoulder and some bullets hit on the front side of left leg of Dilbag Singh. On hearing the gunshots, their co-villagers, namely, Panch Pritam Singh, Sikander Singh, Aassa Singh and Gurjit Singh came running at the spot and on seeing people having gathered there, all the accused fled away from the spot, while firing in the air.

4. Based on the aforesaid complaint, FIR No. 66 dated 10.09.2014 under Sections 307, 148 and 149 IPC alongwith Sections 25, 27, 54, 59 of the Arms Act was registered at P.S. Sadiq. After investigation, the chargesheet was submitted, whereafter cognizance was taken. Thereafter, charges were framed against all the accused, to which they pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined fifteen witnesses, namely, Davinder Singh, complainant himself (PW1), Iqbal Singh, Record keeper (PW2), Dilbag Singh, an eye - witness

(PW3), C. Lakhwinder Singh (PW4), Amar Nath, Laundry Supervisor (PW5), Dr. Navreet Kaur, (PW6), Dr. H.S. Sandhu (PW7), Paramjit Singh (PW8), ASI Rattan Lal (PW9), C. Vipin Kumar (PW10), SI Baljeet Singh (PW11), ASI Buta Singh (PW12), Dr. Rajiv Joshi, (PW13), Dr. Ram Gopal (PW14) and Inspector Tejinder Pal Singh (PW15).

6. In support of its case, the prosecution had also produced documentary evidence in the form of Bed Head Ticket (Ex. PW2/A), FIR (Ex. PW4/A), Bed Head Ticket (Ex. PW5/A), sample seal containing pellets recovered (Ex. PW10/A), Sample seal containing clothes of Davinder Singh (Ex. PW10/B), Sample seal containing clothes of Dilbag Singh (Ex. PW10/C), applications to the Doctor (Ex. PW11/A and PW11/B), record of police proceedings (Ex. PW11/C); FIR (Ex. PW11/D), production memos (Ex. PW11/E & F); sample of blood stained earth (Ex. PW11/G); FSL Reports (Ex. PW13/B – Ex. PW13/E), MLR Report (Ex. PW14/A – Ex. PW14/G) and FSL Reports (Ex. PW15/B and PW15/C).

7. The defence has examined two witnesses namely, ASI Victor Masih (DW1) and Dr. Mandeep Kochar (DW2). The defence further produced the documentary evidence in the form of admission record (Ex. DW2/A), entry at Sr. no. 4 (Ex. DW2/B), original OPD slip dated 09.09.2014 (Ex. DW2/C), remaining slips of four pages (Ex. DW2/D), Copy of FIR number 55 dated 03.08.2013 (Ex. DX), copy of FIR number 24 dated 13.05.2020 (Ex. DX/2), copy of FIR number 65 dated 09.09.2014 (Ex. DX/3), copy of Rapat number 28 dated 26.10.2017, Mark A, attested copy of FIR number 21 dated 11.03.2012 (Ex. DX/4), besides other marked documents.

8. The grounds considered by the learned Trial Court for acquitting the Respondent no. 2 to 7 were as under:-

- i) There were contradictions in the statements of PW 1 i.e., the complainant. During his examination-in-chief, he categorically stated that fire of .12 bore rifle had hit on the lower part of his left leg on the backside just below the knee, but during his statement made at first time before the police, there was no mention of any such injury. It was also noticed as to how could a person get an injury on the backside of his leg, when the front side of his leg was stated to be facing the accused.
- ii) The testimony of another eyewitness i.e. PW 3-Dilbag Singh., was also found to be doubtful as he had categorically stated that one of the fire shots hit his left leg below the knee, but he was unable to point out as to who had fired the said shot.
- iii) One Ishinder Singh, who was stated to be present at the spot and was a material witness, was not examined by the prosecution, to corroborate the prosecution version.
- iv) The testimony of PW 15- Inspector Tejinder Pal Singh, clearly showed that when the investigation of the place of occurrence had been conducted, no empty cartridges were found.
- v) Further, no independent witness has been further examined by the prosecution to support their version.
- vi) False implication of the accused was proved on the basis of documentary evidence i.e. copies of FIR No. 55 dated 03.08.2013 (Ex.DX); FIR No. 24 dated 13.05.2020 (Ex.DX/2); FIR No. 65 dated 09.09.2014 (Ex.DX/3); Rapat No. 28 dated 26.10.2017 (Mark-A); FIR No. 21 dated

11.03.2012 (Ex.DX/4), FIR No. 58 dated 30.07.2013 (Mark-B) and FIR No. 98 dated 14.08.2014 (Mark-C).

9. The learned counsel for the appellant, while assailing the judgment of acquittal passed by the trial Court, has submitted that the injuries on the persons of PW1 and PW3 were duly proved from the testimony of PW6-Dr. Navreet Kaur, PW7-Dr. H.S. Sandhu and PW13-Dr. Rajiv Joshi who conducted their medical examination. It is further submitted that when the ocular evidence was supported by the medical evidence, the finding of the trial Court that the prosecution has failed to prove its case, is not sustainable in the eyes of law. Learned counsel would further argue that the prosecution has proved the factum of the accused being part of an unlawful assembly and their having committed the offence in furtherance of the common object. The nature of the weapons carried by the accused and the injuries inflicted by them on the complainant party, also stood proved on record. It was also proved on the record that the accused had been nurturing the grudge against the complainant party on account of the diversion of the accumulated rain water towards their village. It is further submitted that once the eye witness had duly corroborated the prosecution case, non-examination of any independent witness, would not be fatal to the prosecution. However, the trial Court, fell in error of law, while holding that the prosecution did not examine any independent witness.

10. After hearing the submissions advanced by the learned counsel for the appellant and upon marshaling the material available on the record, the following point of determination arise for consideration before this Court:-

“Whether the prosecution was able to establish on record that the accused had committed the crime, especially when there was no source of identification of the accused or their presence at the place of occurrence?”

11. With reference to disclosing the source of identification of the accused person, it is worth noticing that the Investigating Officer, Inspector Tejinder Pal Singh (PW-15) in his testimony before the trial Court admitted that there was no source of electricity/light at the spot, whereas as per the prosecution case the occurrence took place at around 7 p.m., which makes it highly improbable to know the person who had fired the shot and who all were present at the place of occurrence. Further, the investigating officer had categorically deposed that he did not find any empty cartridges at the place of occurrence and that upon an enquiry from about 30 persons living in the surrounding area, he found the factum of the alleged occurrence highly dubious. Furthermore, he also collected the call details of the mobiles of the complainants namely, Davinder Singh (PW1), Dilbagh Singh (PW3) & one Ishinder alongwith the matching mobile tower locations and concluded that no such occurrence had taken place and even the injuries on the said persons were manipulated. The same was also corroborated by the medical opinions of Dr. Rajiv Joshi (PW-12) and Dr. Ram Gopal (PW14). It has been also proved on record that the complainant-Davinder Singh was habitual in lodging false complaints and FIRs.

12. It would also be imperative to state here that there were material contradictions in the statements of Davinder Singh (PW1) and Dilbagh Singh (PW3) with respect to the injuries received. PW1 stated that fire of .12 bore rifle hit on the lower part of his left leg on the backside just below the knee, but in his statement before

the police, there was no mention of any such injury. An emphasis would be required here to note that although PW3 stated that one fire hit on his left leg below the knee, yet a careful perusal of entire examination-in-chief of PW1 reveals that he did not mention anything about any injury being received by PW3. PW3 also stated that one of the fire shots hit on his left leg below the knee, but he was unable to point out as to who had actually fired the shot.

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 persons 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 Surajpal Singh & Ors. Vs. The State, 1952 SCR 193, has held as under:-

"..the High Court has full power to review the evidence upon which the order of acquittal was founded. But it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

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 appeal is dismissed.

(Sudhir Singh)
Judge

(Harsh Bunger)
Judge

15.03.2024
Ajay/ds

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