



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRA-AD-302-2023

Date of Decision:-03.09.2024

Harpreet Singh.

.....Appellant.

Vs.

State of Punjab & Ors.

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Pratham Sethi, Advocate,
Amicus Curiae for the Appellant.

Mr. Mohit Kapoor, Senior DAG Punjab.

JASJIT SINGH, J.

Today case was fixed for final arguments but none had appeared on behalf of the appellant. The present appeal is pending since 2023. In such circumstances, Mr. Pratham Sethi, Advocate who is present in Court in some other matter, is appointed as Amicus Curiae to assist the Court on behalf of the applicant. Registry is directed to pay requisite amount to the learned Amicus Curiae, as per rules.

2. The present appeal has been filed against the judgment of acquittal dated 19.04.2023 passed by Additional Sessions Judge, Tarn Taran.

3. Briefly stated the facts of the prosecution story are that the FIR was registered on the basis of the statement of the complainant/injured

Harpreet Singh son of Pishora Singh who stated that he was an agriculturist.



On that day, at about 05:00 P.M., he along with his mother Charanjit Kaur and his daughter Heavenpreet Kaur had gone to the clinic of Doctor Iqbal Singh alias Jony at Pringri road Harike to take medicine. His mother and daughter went inside the clinic whereas he kept waiting outside on his motorcycle. His friend Gursahib Singh alias Sabu son of Kabal Singh, resident of Pringri Road Harike, also came there and they were talking. In the meantime, a Swift car of white colour being driven by Sukhjinder Singh alias Sukhdev Singh, resident of Harike, came there. Harman Singh alias Jodha son of Gurbachan Singh was sitting on front seat beside the driver seat whereas Malkeet Singh son of Gurbachan Singh, resident of Harike, and two unknown persons were sitting on the back seat of the car. Two motorcycles model Platina and Splendor also came there. The Platina motorcycle was driven by Fateh Singh son of Sukhdeep Singh and, the pillion rider was Yadwinder Singh alias Yadu son of Darbara Singh, residents of Harike. On the Splendor motorcycle two unknown persons were sitting. Thereafter, Yadwinder Singh alias Yadu took out a Pistol from his dub and raised a lalkara exhorting others to teach him (complainant) a lesson for picking up a quarrel with them. Thereafter, all the persons sitting in the car came out with their respective weapons. Yadwinder Singh alias Yadu fired a gunshot from his Pistol upon him (complainant) with an intention to kill him and the shot hit his left bicep. An unknown person gave a blow with rod which hit on his right wrist. Thereafter, Fateh Singh gave a blow with a wooden log that hit on the right bicep. His friend Gursahib Singh alias Sabu came forward to save him and then Malkeet Singh fired with a gunshot from his Pistol at Gursahib Singh which hit on the left side of his stomach. In the meantime, his mother Charanjit Kaur came outside from the clinic and she fell on him (complainant). Harman Singh alias Jodha gave threats to kill them. They



raised an alarm and thereafter all the accused ran away from the spot with their respective weapons on their vehicles. His cousin namely Kirpal Singh reached at the spot and arranged a vehicle and shifted them to Guru Nanak Dev Super Specialist Hospital at Tarn Taran. On the basis of this statement the FIR no.63 dated 02.05.2020 case was registered for the offences punishable under Sections 307, 325, 323, 148, 149, 188, 269 of IPC, 51-B of Disaster Management Act, 2005 and Sections 25, 27 of Arms Act. Investigation was pressed into service and after the completion of investigation the challan against the accused was committed to court of Sessions where charges came to be framed under Sections 307, 323, 325, 506, 148, 149 IPC and Sections 25 & 27 of Arms Act.

4. In order to prove its case, the prosecution examined HC Pargat Singh (PW-1), Complainant Harpreet Singh (PW-2), Charanjit Kaur (PW-3), Surjit Singh (PW-4), Gursahib Singh (PW-5), Iqbal Singh (PW-6), Amrinder Singh (PW-6/A), Doctor Jagdeep Singh (PW-7), SI Paramjit Singh (PW-8), SI Hardial Singh (PW-9), Doctor Sandeep Singh (PW-10), Retired ASI Talwinder Singh (PW-11), Doctor Anoop Kalia (PW-12). Thereafter prosecution evidence was ordered to be closed.

5. In their statement recorded under Section 313 Cr.PC the accused denied the entire prosecution case and pleaded their innocence. They tendered in defence evidence the copy of the FIR No.66 dated 27.09.2019 under Sections 323, 325, 506, 34 IPC registered at P.S. Harike and same is Ex.DZ.

6. Based on the evidence led, the accused/respondents no.2 to 4 were acquitted by the court of by the court of Additional Sessions Judge, Tarn Taran vide judgment dated 19.04.2023.

7. It is the aforementioned judgment of acquittal which is under



challenge in the present appeal.

8. The learned Amicus Curiae for the appellant contends that the judgment of acquittal has been recorded on conjectures and surmises. The Trial Court had not considered the evidence on record in its proper perspective. The judgment of acquittal was passed in a hasty manner and there was ample material to suggest that the accused persons exercised influence on the said court. CCTV footage had not been taken into consideration which would show that the occurrence had taken place as per the prosecution case. He, therefore, contends that the judgment of acquittal of the accused/respondents no.2 to 4 be set aside.

9. The Counsel for the State while supporting the case of the appellant contends that the impugned judgment was not based on proper appreciation of the evidence on record and, therefore, judgment of acquittal was liable to be set aside.

10. We have heard counsel for the parties and have gone through the lower Court record.

11. From the testimony of the complainant/injured Harpreet Singh it comes out that he is an unreliable witness in describing the manner in which the alleged incident has taken place. The Complainant was confused about the persons who had participated in this occurrence. Firstly he has not owned his statement (Ex.PA) recorded by him before the police on the basis of which this FIR was registered. For instance in this statement (Ex.PA) the complainant had recorded that a Swift car, that came at the spot, was being driven by Sukhjinder Singh and beside him on the front seat Harman alias Yodha was sitting. On the backside of car seat Malkit Singh son of Gurbachan Singh was sitting along with two unidentified persons. But in his statement made in the court as PW-2 he has deposed that the Swift car was



being driven by one Balram Singh alias Ballu and not by Sukhjinder Singh. Beside Balram Singh alias Ballu on the front seat was sitting Manjit Singh alias Manu and not Harman alias Yodha. He deposed that on the rear seat of car were sitting Nishan Singh and Simar and not Malkit Singh son of Gurbachan Singh with two unidentified persons. Balram Singh alias Ballu was found innocent during the police investigation and no challan has been filed against him which totally belies even this materially improved version of the complainant.

12. Further in his statement (Ex.PA) the complainant had recorded that two motorcycles i.e. Splendor and Platina had arrived at the spot. He stated that the motorcycle Platina was being driven by Fateh Singh and Yadwinder Singh alias Yadu was riding pillion and on the second motorcycle two unidentified boys were riding. However, in his testimony in court he has not stated if two motorcycles had arrived at the alleged spot as earlier stated by him. He deposed that Sukh was driving the motorcycle and Yadwinder Singh alias Yadu was sitting as a pillion rider and exonerated Fateh Singh all together. On the contrary, he deposed that he did not know even Malkit Singh son of Gurbachan Singh, Harman Singh alias Yodha, Sukhjinder Singh and Fateh Singh and said that they were not involved with the other named accused persons and he had never seen them earlier.

13. The complainant was got declared hostile by the Additional Public Prosecutor for State and was subjected to a lengthy cross examination but he refused to own his statement (Ex.PA) on the basis of which the present FIR was lodged. He deposed that this statement (Ex.PA) was recorded in his name and is the correct statement about the occurrence dated 01.05.2020 and his cousin Kirpal Singh had also witnessed his statement (Ex.PA). However, in the cross examination conducted by the learned



defence counsels he said that his cousin Kirpal Singh was not present when his statement was recorded by the police.

14. The complainant in his statement (Ex.PA) had alleged that Harman Singh alias Yodha caused injuries to his mother but in his cross examination by the counsel for State he denied the same. He even went to the extent and deposed that even his minor daughter aged 1½ years was caused injuries. This fact he had never disclosed in his statement (Ex.PA). He has even denied recording his supplementary statement dated 14.06.2020 as he deposed that after 01.05.2020 he never got recorded any statement and he had not met the police after 01.05.2020.

15. The Mother of the complainant Charanjit Kaur (PW-3) also did not utter anything as to who had fired gunshot on her son. She also deposed that when she came out of the clinic her son had received gunshot injuries on his left bicep and Yadwinder Singh alias Yadhu was standing nearby armed with a pistol and four/five other persons were also present armed with Dasta, Iron Rod, etc. and were giving beatings to her son and also caused injury to her. She did not depose if her granddaughter was also caused injuries as per the improvement made by the complainant in his statement. She stated in her cross examination about the material improvement made by her in replacing the names of the accused persons namely Manjit Singh alias Manu, Nishan Singh and Yadwinder Singh mentioned by her in her statement recorded before police but was duly confronted and she admitted that names of Manjit Singh alias Manu and Nishan Singh were not got recorded in her statement.

16. Importantly, she alleged that Yadwinder Singh alias Yadhu was holding a pistol but no such alleged pistol was ever recovered from Yadwinder Singh in this case. Had the complainant been hit by a bullet fired from a pistol and it had no exit wound then it would have been detected by



Doctor Jagdeep Singh who medically examined the complainant. However, the doctor deposed that no foreign body was found during MLE. He deposed that the treatment of the injured was conducted at Guru Nanak Dev Super Specialist Hospital Tarn Taran and the record of even that Hospital did not mention regarding any foreign bodies in the injured. Doctor Sandeep Singh from the board of doctor also deposed that they had physically examined the injured and that no bullet was recovered by the board of doctors.

17. Surjit Singh (PW-4) is an independent eye witness cited by the prosecution and has not supported the version of the complainant or his mother as he deposed that on date 01.05.2020, he was at his village and was working in his fields and had not gone towards Pringri Road Harike. He had not witnessed any occurrence on that day. He did not identify the accused present in the court, and had seen them for the first time in the court. He was declared hostile at the request of the Additional Public Prosecutor for the State and was cross examined at length by him but this witness refused to toe the line of the prosecution.

18. In so far as the testimony of the other injured Gursahib Singh (PW-5) is concerned, he has stated that the gunshot which hit his left hip was fired by Malkit Singh son of Gurbachan Singh. However, the complainant in his testimony has denied the presence and involvement of Malkit Singh son of Gurbachan Singh in this occurrence. This witness has falsely alleged firing upon him by Malkit Singh and this is also evident from the fact that Doctor Jagdeep Singh who had medically examined him has stated in his examination-in-chief that he observed only one injury i.e. abrasion with a lacerated wound with swelling over the left side of inguinal region and it was declared simple in nature and the kind of weapon used to cause the injury was a blunt object/weapon.



19. Furthermore, PW-5 in his examination-in-chief has deposed that the Swift car was being driven by some unknown person whom he does not know. He stated that some other unknown persons were sitting in the car. One motorcycle being driven by some unknown person came there and Yadwinder Singh alias Yadhu was sitting behind. He also denied if two motorcycles had come to the spot as alleged by complainant in his statement (Ex.PA) and later on disowned by him. As per him Yadwinder Singh alias Yadhu also caused gunshot injury to him. This application is not supported by anyone else including the complainant and his mother or by this witness in his statement made to police and he has made major improvements herein. He deposed that he did not identify any other person, present in the court, as he had not seen them earlier. He deposed that he did not know Manjit Singh alias Manu son of Amarjit Singh, Balram Singh alias Ballu, Simar, Sukh, Malkit Singh son of Gurbachan Singh, Harman Singh alias Yoda, Sukhjinder Singh and Fateh Singh and had not seen them at the spot on that day. Apart from this he had not seen any other occurrence because he had gone away from the spot due to the gunshot injury.

20. He was declared hostile at the request of the Additional Public Prosecutor for State and was cross examined at length by him but this witness refused to toe the line of the prosecution. He reiterated that he had not named any other person in his statement made to the police except that Yadwinder Singh had caused a gunshot injury to him. However, firing of a gunshot by Yadwinder Singh on him is not recorded in his statement made to the police. He was also confronted and he denied if in order to save Harpreet Singh his mother Charanjit Kaur had fallen upon him or that the assailants also caused injuries to her. He also denied recording of the presence of Kirpal Singh, cousin of complainant, at the spot. In cross



examination conducted by the defence counsels he admitted that he had not moved any complaint against Yadwinder Singh alias Yadhu for having fired upon him with a pistol as now being alleged by him by way of a material improvement. He admitted that he had no enmity with Yadwinder Singh alias Yadhu. He stated that he had never accompanied the police to the spot for investigation.

21. Doctor Iqbal Singh (PW-6), another eye witness cited and outside whose clinic the alleged incident took place, also deposed that he had seen Yadwinder Singh alias Yadhu at the spot but had not seen Yadwinder Singh alias Yadhu causing any injury to anybody as he was busy in his shop with his patients. He was declared hostile at the request of Additional Public Prosecutor and was cross examined at length by him but this witness refused to toe the line of the prosecution. He denied having made any statement to the police in this case or having witnessed any such incident.

22. To the similar effect is the testimony of another cited eye witness namely Amrinder Singh (PW-6/A) who also deposed that on 01.05.2020 at about 5.00 P.M. he was at Amritsar for his personal work and returned to his house from Amritsar on 02.05.2020. He did not know the accused present in the court and that they had not injured any person in his presence. He deposed that he has seen the accused for the first time in the court. He knew Harpreet Singh son of Pishora Singh being his co- villager. He was declared hostile by the Additional Public Prosecutor and was cross examined at length but this witness refused to the line of the prosecution.

23. The Oral testimony of the complainant is contradictory to the medical evidence as Doctor Jagdeep Singh, who had medically examined the injured complainant, that no foreign body was found during the MLE and



also injury no.2 was tenderness and swelling over the left leg below the knee but the complainant injured was not deposing about it. As per the Doctor Jagdeep Singh all the injuries on the person of Gursahib Singh were simple and caused by a blunt weapon. Doctor Sandeep Singh deposed that all board members agreed that the injury on the person of Gursahib Singh was suggestive of a bullet injury over left side of abdomen. This witness then deposed that no bullet was recovered by the board of doctors. In view of the above discrepancies it is apparent that the entire version of the prosecution becomes doubtful.

24. Further, Investigating Officer SI Paramjit Singh in his cross-examination stated that as per his investigation only Yadwinder Singh was found present and that assailants namely Sukhjinder Singh son of Sukhdev Singh, Harman Singh, Yodha Singh Gurbachan Singh, Malkiat Singh son of Gurbachan Singh, Fateh Singh, were not found present at the spot. He stated that these above said persons were implicated by complainant Harpreet Singh due to enmity. It also came in his investigation that they had not caused any injury as stated by the complainant in his statement. The Complainant had also not named Nishan Singh and Manjit Singh as accused in his statement and during his investigation they both were not found to be accused. In view of this statement the question of the alleged recoveries from these accused persons later on basis of their disclosure statements does not arise and planting of the same cannot be ruled out. Such iron rod, wooden handle or Baseball Bats are commonly and easily available as admitted by SI Hardial Singh as well. The pistol alleged to be used, if any, was never recovered from accused Yadwinder Singh. As per ASI Talwinder Singh the alleged parcel of empty cartridges and live cartridge were never sent to the ballistic expert or FSL. He admitted that anyone having an arms



license could purchase such cartridges from the market and stated that nothing was recovered from the accused.

25. From the evidence as discussed and produced by the prosecution apparently, the medical evidence did not corroborate the ocular evidence. The Complainant is an unreliable witness as he himself is not clear as to who were the assailants who might have caused injuries to him or Gursahib Singh. The complainant has not been able to decide which of the statements made by him are to be owned by him. He disowned his statement recorded before police and even the supplementary statement and in the court came up with an entirely different version and has substituted the accused persons. Further other material eye witnesses have also refused to support the version of the complainant. No pistol was recovered from the accused Yadwinder Singh. The prosecution failed to recover blood stained materials from the place of occurrence. There is absence of independent evidence corroborating the statement made by the complainant.

26. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon'ble Supreme Court in ***Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427*** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the



benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

27. In view of the aforementioned discussion and keeping in view the law laid down in ***Kallu @ Masih & Ors. Case (supra)***, we find no reason to interfere with the well reasoned judgment of acquittal passed by the court of Additional Sessions Judge, Tarn Taran. Therefore, the appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

September 03, 2024
Vinay

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