

CRM-34533-2019
in/and
CRM-A-2636-2019

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

CRM-34533-2019
in/and
CRM-A-2636-2019
Date of Decision: 22.03.2024

KULBIR SINGH

...Applicant

Versus

KASHMIR SINGH AND OTHERS

...Respondents

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

Present : Mr. B.B.S. Randhawa, Advocate
for the applicant.

HARSH BUNGER, J.

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This is an application filed under Section 5 of the Limitation Act for condonation of delay of 58 days in filing the application seeking special leave to appeal.

For the reasons mentioned in the application, the same is allowed and delay of 58 days in filing the application seeking special leave to appeal is condoned.

Criminal Misc. Application is, accordingly, disposed of.

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The instant application seeking leave to appeal is preferred against the judgment dated 21.05.2019 passed by the learned Additional Sessions Judge, Gurdaspur, whereby respondents No.1 to 3 have been acquitted of the charges under Sections 307, 323 read with Section 34 of the Indian Penal Code.

2. Vide order dated 19.05.2022, the lower Court record was called for and the same was received in this Court.

3. The prosecution case, as per the complaint of complainant-Kulbir Singh (PW-1), is that he is running a restaurant by the name of M/s Khera International Restaurant, Jalandhar Road, Batala and prior to the occurrence, the accused came to his restaurant and tried to consume liquor, which was objected to by the complainant and he did not allow them to do so. On this, the accused felt insulted and left the restaurant after threatening the complainant of dire consequences. On 03.10.2010, at about 02:30 p.m., when the complainant was going towards village Tatle and reached near the turning of village Tatle, at that time one white Zen car bearing No.PB-58-C-0786 came from behind, which was being driven in a very rash and negligent manner and tried to push the bike of the complainant on a side but the complainant escaped. Complainant further alleged that the same car blocked his way and the accused Kashmir Singh armed with hockey, Balwinder Singh armed with hockey and accused Jagir Singh armed with pistol with two unidentified persons came out of the car. Jagir Singh is alleged to have raised *lalkara* to kill the complainant as he had stopped them from consuming the liquor in his restaurant. It was alleged that all the accused encircled the complainant and then accused Balwinder Singh gave a hockey blow hitting on complainant's back and he fell down. Accused Kashmir Singh gave hockey blow near his left knee joint and other unidentified persons caused injuries with hockey on his back. The complainant, in order to save his life, tried to run away from the clutches of the accused. It was stated that the father of the complainant namely, Piara Singh along with Parminder Singh, who were coming from village

Tatle, saw the entire occurrence and raised hue and cry. Then Jagir Singh, with an intention to kill the complainant, fired from his pistol towards the head of the complainant, which passed touching in between his right shoulder and right side of the neck. When the witnesses raised hue and cry, all the accused ran away from the spot with their respective weapons while threatening to kill the complainant as and when they get the opportunity. The father of the complainant and witnesses took the complainant to Civil Hospital, Kahnuwan, where he was medically examined. As per the complainant, the matter was reported to the police; however, the police did not take any action against the accused persons. Accordingly, the complaint was filed before the Court.

4. In the preliminary evidence, the complainant examined the following witnesses :-

<i>Sr. No.</i>	<i>Witness name</i>	<i>Examined as</i>
<i>1</i>	<i>Piara Singh</i>	<i>CW1</i>
<i>2</i>	<i>Complainant</i>	<i>CW2</i>
<i>3</i>	<i>Dr. Gopal Raj, Medical Officer</i>	<i>CW3</i>
<i>4</i>	<i>Parminder Singh</i>	<i>CW4</i>

Thereafter, the accused were summoned under Sections 307 and 323 read with Section 34 of the Indian Penal Code, vide order dated 05.04.2012. The case was, thereafter, committed to the Court of Sessions vide order dated 26.08.2016.

5. Finding a *prima facie* case against the accused persons under Sections 307, 323 read with Section 34 of the Indian Penal Code, they were charge sheeted, to which, they pleaded not guilty and claimed trial.

6. To prove its case, the prosecution/complainant examined PW1-Kulbir Singh (complainant), PW2-Piara Singh and PW3-Dr. Gopal Raj. In support of its case, the prosecution had also produced evidence in the form of Exhibits, which are as under :-

<i>Sr. No.</i>	<i>Exhibit/s</i>	<i>Document</i>
<i>1</i>	<i>PA</i>	<i>Photocopy of complaint</i>
<i>2</i>	<i>PB</i>	<i>Photocopy of testimony of Kulbir Singh-complainant.</i>
<i>3</i>	<i>PC</i>	<i>Photocopy of testimony of Piara Singh.</i>
<i>4</i>	<i>PW3/A</i>	<i>Original MLR Record</i>
<i>5</i>	<i>PW3/B</i>	<i>Pictorial diagram</i>
<i>6</i>	<i>PW3/C and PW3/D</i>	<i>Original letters, constituting the Board of Doctors and their final opinion.</i>

Thereafter, the statements of the accused underSection 313 of the Code of Criminal Procedure, were recorded, wherein the entire incriminating evidence was put to them. They denied the same and pleaded their innocence and false implication.

7. Accused-Jagir Singh stated that he had been a permanent resident of Amritsar since 1983 and he joined as an Income Tax Officer at Batala on 30.04.2010 and retired on 30.11.2011 and continued to reside at Amritsar. He stated that he was out of India from 23.09.2010 upto 01.10.2010, when he returned to India after visiting Europe. He produced a copy of his passport, which showed his return to India on 01.10.2010. Jagir Singh further stated that he owned a car having Miami gold colour and he never possessed any car of white colour. He stated that 02.10.2010 and 03.10.2010 were Saturday and Sunday, respectively and being holidays, he never visited Batala on the said dates. He categorically stated that he had

been falsely implicated as he had passed an assessment order of income tax and levied income tax to the tune of Rs.2,62,678/- upon Kuldeep Singh (brother of complainant-Kulbir Singh). He also stated that he was not having any fire arm in the year 2010 and that he was granted Arms licence on 17.02.2014 and the weapon was purchased on 07.08.2014.

Accused(s)-Balwinder Singh and Kashmir Singh stated that they were posted as SDOs in P.S.P.C.L and certain raids were conducted on the premises of the complainant’s restaurant and fines were imposed upon him because of which they had been dragged into a false case.

8. In defence, the accused examined the following witnesses :-

W. No.	Name of Witnesses	Nature of Testimony
DW-1	Circle Assistant Vijay Kumar, City Division, PSPCL Batala.	Record qua accused Kashmir Singh and Balwinder Singh
DW-2	ASI Satnam Singh No.2555/BTL, P.S. Sekhwan	Roznamcha dated 06.10.2010 rapt no.08.
DW-3	Inspector Nirmal Singh No.273/BR, Incharge Narcotic Cell, Gurdaspur	For recording statement of complainant.
DW-4	HC SohanLal No.2807/BTL, P.S. City Batala.	Record of FIR No.13 of 2003 and FIR No.16dated 04.10.2009, P.S. City Batala.
DW-5	HC Jodha Singh No.2419/BTL, P.S. Rangar Nangal	Record FIR No.73 dt. 26.08.2001, FIR No.70 dt. 01.08.2014, FIR No.38 dt. 02.06.2008, FIR No.60 dt. 10.08.2008, FIR No.16 dt. 01.03.2013.
DW-6	Jaspal Singh	A co-villager and Member Panchayat of village Tatle.
DW-7	SDO Gurcharan Singh, West Sub Division, Batala	Theft of electricity of Kulbir Singh C/o Khera International Hotel, in the account no.MF-33-1472/NRS and date of checking to be 26.09.2017.
DW-8	ASI Hardeep Singh No.1965/BTL, P.S. Civil Lines Batala	Register of FIR No.240 dated 28.08.2006 P.S. Civil Lines, under Section 447, 427 IPC, FIR No.29 dated 07.02.2014 under Section 307 IPC etc.

The defence produced the evidence in the form of Exhibits,
which are as under :-

Sr. No.	Name of the defence witness	Exhibit/s	Document
1	DW-1 Circle Assistant Vijay Kumar, City Division, PSPCL Batala	D1	Certificate issued by Addl. S.E.
2	-do-	D2	Attested copy of service record of Balwinder Singh.
3	DW-2 ASI Satnam Singh, P.S. Sekhwan	DW2/A	Roznamcha dated 06.10.2010, Rapt No.8, registered by ASI Nirmal Singh, P.S. Sekhwan.
4	DW-4 HC SohanLal, Police Station City Batala	DW4/A	Attested copy of FIR No.13 of 2003
5	-do-	DW4/B	Attested copy of FIR No.16 dated 04.10.2009.
6	DW-5 HC Jodha Singh, P.S. Rangar Nangal	DW5/A	Attested copy of record FIR No.73 dated 26.08.2001
7	-do-	DW5/B	Attested copy of the summoned record of FIR No.70 dated 01.08.2014.
8	-do-	DW5/C	Attested copy of record of FIR No.38 dated 02.06.2008
9	-do-	DW5/D	Attested copy of record of FIR No.60 dated 10.08.2008.
10	-do-	DW5/E	Attested copy of record of FIR No.16 dated 01.03.2013.
11	DW-7 SDO Gurcharan Singh, West Sub-Division, Batala	DW7/A	Official record with respect to the checking of the theft electricity of Kulbir Singh C/o Khera International Hotel, Jalandhar Road, Batala in the account no.MF-33-1472/NRS.
12	DW-8 ASI Hardeep Singh, P.S. Civil Lines, Batala	DW8/A	Original FIR register of FIR No.240 dated 28.08.2006, P.S. Civil Lines, under Sections 447 and 427 IPC.
13	-do-	DW8/B	Photocopy of FIR register with respect to FIR No.29 dated 07.02.2014 under Section 307 IPC.

9. After conclusion of the trial, the learned trial Court acquitted the accused persons.

10. The grounds considered by the learned trial Court for acquitting respondents No.1 to 3, are as under :-

“(i) The complainant/PW-1 admitted that he did not inform the police about the first incident in which the accused persons threatened him at his restaurant;

(ii) The complainant also admitted the registration of various FIRs either against him or against his family including his father/Piara Singh/PW-2 and his brother/Kuldip Singh. He admitted the registration of FIR No.166 dated 15.12.2004 under section 419 and 420, FIR No.240, FIR No.60 dated 10.08.2008, FIR No.16 dated 01.03.2013, FIR No.117 of 2013, FIR No.70 dated 01.08.2014 under Sections 353, 186;

(iii) The complainant/PW-1 admitted that a false theft case of electricity was instituted against him;

(iv) The complainant/PW-1 admitted that he is having relation with Sewa Singh Sekhwan, the MLA of his constituency from his maternal side. Even PW-2/Piara Singh admitted this relationship;

(v) PW-2/Piara Singh, father of complainant as well as the alleged eye witness admitted that the staff of PSPCL visited the hotel and penalty was imposed and that accused Balwinder Singh and Kashmir were employees of PSPCL;

(vi) PW-2 further admitted that he had seen the original passport of accused Jagir Singh according to which Jagir Singh entered India on 01.10.2010;

(vii) The testimony of PW3 Dr. Gopal Dass along with the report of Forensic Department of Medical College, gives death knell to the case of the complainant as it has been opined that the injury no.1 appears to have been caused by a fire arm weapon. It has also been opined that

the injuries could have been suffered with friendly hand and the injury no.1 was superficial injury only.

(viii) There are lot of inconsistencies and improbabilities in the oral evidence.

(ix) The motive assigned in this case was too weak for the government servants to commit the offence of attempt to murder.

(x) The defence has been able to prove on record the motive on the part of the complainant to falsely implicate the accused persons.

11. Learned counsel appearing for the applicant/complainant, while assailing the judgment of acquittal passed by the trial Court, argued that there is sufficient material available on record which proves that accused/respondents No.1 to 3, in connivance with each other, had inflicted injuries to the applicant. He submitted that it was apparent from the nature of weapon carried by the accused that they wanted to kill the applicant. He further submitted that there is a complete chain of link evidence establishing the commission of offence by the accused persons and the trial court has wrongly acquitted the accused persons by discarding the prosecution case.

12. Upon consideration of the matter, the following three issues would arise for consideration by this court:-

(i) Whether delay in institution of complaint before the Magistrate has been explained by the prosecution?

(ii) Whether defence evidence can be considered?

(iii) Whether previous animosity between the parties has led to institution of present case?

13. As regards delay in institution of complaint before the Magistrate, it is observed that as per prosecution case, the alleged occurrence

took place on 03.10.2010 at about 2:30 pm. It has come in the statement of PW-2 (Piara Singh) that he alongwith Parminder Singh took Kulbir (injured-complainant) to Civil Hospital Kahnuwan on motorcycle of Parminder Singh and got the injured admitted there and then went to Police Station. PW-2 (Piara Singh) stated that the distance between place of occurrence and police station was 3 kilometres and that between Kahnuwan and place of occurrence was around 7-8 kilometres; whereas between police station Sekhwan and Civil Hospital Kahnuwan, it was around 8-9 kilometres. PW-2 (Piara Singh) further stated that he alongwith Parminder Singh went to Police Station Sekhwan to give information and he reached the police station at about 3:00 pm. According to Piara Singh, at the police station, he gave the information in writing as he was asked to give application in writing, which he got scribed from some private person at the Police station itself. According to PW-2 (Piara Singh), he made a request before the police to register an FIR against the culprits, but no heed was paid to it and thereafter, they moved an application before SSP Batala, a copy of which was attached with the complaint. However, it has come on record that at the time of reconstruction of the file, no such copy was placed on record. It is a matter of record that the complaint came to be filed before the concerned Magistrate only on 16.10.2010.

In *Dilawar Singh v. State of Delhi, 2007 (4) RCR (Criminal)*
115, Hon'ble Apex Court while setting aside the conviction in a matter where complaint was filed after a delay of 23 days; has held that such delay without proper explanations is treated fatal to the case of prosecution as it

affords an opportunity to make deliberations upon the complaint. The Hon'ble Apex Court observed as under:-

*“8. In criminal trial one of the cardinal principles for the Court is to look for plausible explanation for the delay in lodging the report. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the Court at the earliest instance. That is why if there is delay in either coming before the police or before the Court, the Courts always view the allegations with suspicion and look for satisfactory explanation. If no such satisfaction is formed, the delay is treated as fatal to the prosecution case. In **Thulia Kali v. The State of Tamil Nadu, (AIR 1973 Supreme Court 501)**, it was held that the delay in lodging the first information report quite often results in embellishment as a result of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, but also danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. In **Ram Jag and others v. The State of U.P., (AIR 1974 Supreme Court 606)** the position was explained that whether the delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case must depend upon a variety of factors which would vary from case to case. Even a long delay can be condoned if the witnesses have no motive for implicating the accused and/or when plausible explanation is offered for the same. On the other hand, prompt filing of the report is not an unmistakable guarantee of the truthfulness or authenticity of the version of the prosecution.*

9. The complainant has attempted to explain the delay by stating that the matter was reported to the police but the police did not take any action. Such statement can hardly be taken to have explained the delay. It is the simplest of things to contend that the police, though report had been lodged with it, had not taken any steps. But it has to be established by calling for the necessary records from the police to substantiate that in fact a report with the police had been lodged and that the police failed to take up the case... ”

Thus, in the peculiar facts and circumstances of this case, the delay of 13 days in submitting the complaint before the Magistrate has remained unexplained and there are reasons to believe that the complaint (Ex. PA) would have come into existence, after due deliberations.

14. As regards the second and the third issues, which are somewhat connected, it is observed that Section 313Cr.P.C., 1973, confers a valuable right upon an accused to put forth his defence of innocence. It is the duty of the Court to examine the entire material on record to find out whether the defence set up by the accused is a probable one. It is not necessary that an accused must lead evidence in his defence and it is always open to him to demonstrate from the prosecution evidence that his version of the occurrence is probablized from the prosecution evidence itself, and where the accused has also led evidence in defence which is consistent and compatible with the prosecution evidence, the defence set up by the accused would cast a serious doubt on veracity of the prosecution case.

In "*Dudh Nath Pandey v. State of U.P.*" reported in (1981) 2

SCC 166, the Hon'ble Supreme Court has observed as under:

"19. ...Defence witnesses are entitled to equal treatment with those of the prosecution. And, courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses."

In "**State of Haryana v. Ram Singh**" reported in (2002) 2 SCC

426, the Hon'ble Supreme Court has observed as under:

"19.Incidentally, be it noted that the evidence tendered by defence witnesses cannot always be termed to be a tainted one - the defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses on a par with that of the prosecution. Rejection of the defence case on the basis of the evidence tendered by the defence witness has been effected rather casually by the High Court."

It is well established that the defence is not required to prove its case beyond reasonable doubt, rather it is the duty of the prosecution to lead evidence to prove the charges to the hilt. In view of the afore-stated position in law, it is held that the defence evidence can be considered.

15. In the instant case, the respondents-accused got their statements recorded under Section 313 of the Cr.P.C., wherein, accused Jagir Singh denied the incriminating circumstances put to him and pleaded innocence and false implication. He stated that he joined as Income Tax Officer at Batala on 30.04.2010 and retired on 30.11.2011. He further stated that he had been falsely implicated as he had passed an assessment order

of income tax and levied income tax to the tune of Rs.2,62,678/- upon Kuldeep Singh (brother of applicant-Kulbir Singh). It has come on record that the income tax demand against Kuldeep Singh, was made on 31.08.2010 for the assessment year 2008-2009 and the alleged occurrence is of 03.10.2010. Jagir Singh has further proved on record that he was out of India from 23.09.2010 upto 01.10.2010 when he returned to India after visiting Europe. When the afore-said fact is considered in the light of the allegations made by applicant-Kulbir Singh that a few days prior to the occurrence on 03.10.2010, Jagir Singh along with other co-accused had come to his restaurant (M/s Kehra International Restaurant) and they tried to consume liquor, which was objected to by applicant-Kulbir Singh, whereupon, the accused felt insulted and left the restaurant after threatening the applicant-Kulbir Singh, of dire consequences, the falsity of the allegations made in the FIR becomes apparent.

As regards the other accused persons namely, Balwinder Singh and Kashmir Singh, they had got recorded their statements under Section 313 of the Cr.P.C. stating that they were posted as Sub-Divisional Officers in PSPCL and certain raids were conducted on the premises of applicant-Kulbir Singh's restaurant and fines were imposed, on account of which, they had been dragged and falsely implicated. It has come on record by way of defence evidence that on 03.10.2007, an order was passed by the SDO; whereby an assessment of Rs.3,79,450/- was made towards charges for unauthorized use of electricity against applicant-Kulbir Singh and even an appeal against the afore-said order came to be dismissed by the Appellate Authority on 20.12.2008. Apart from that, it has also come on record by

way of defence evidence that various cases had been registered against applicant/complainant-Kulbir Singh and his father (Piara Singh) along with other family members and the said fact had been duly admitted by the complainant-Kulbir Singh during his cross-examination. The relevant extract thereof reads as under :-

“XXXXX by Shri J.K. Khanna, Advocate for accused Jagir Singh.

The police have registered 1/2 cases against me regarding the land disputes. I cannot tell the numbers of FIR. It is correct that a few FIR has been registered against me, my brother and father Piara Singh, but I cannot tell their FIR number. It is correct that an FIR No.166 dated 15.12.2004 under Section 419, 420 was registered against me. Volunteered I was acquitted in that case. It is correct that Janak got registered FIR No.240 against me and Kuldeep Singh, Piara Singh. Volunteered that was against a property dispute. I do not know if any other cases are registered against Kuldeep Singh. It is correct that FIR No.60 dated 10.08.2008 was registered against me and my brother Kuldeep Singh and father Piara Singh. It is correct that FIR No.16 dated 01.03.2013 was registered against me, my brother Kuldeep Singh and father Piara Singh. It is correct that FIR No.117 of 2013 was registered against me, brother Kuldeep Singh and father Piara Singh. It is correct that contempt proceedings against me, my brother and father in civil case were initiated. Volunteered these are relates to land dispute. FIR No.70 dated 01.08.2014 under Section 353, 186 was registered, but I was not named therein. It is incorrect to suggest that I was main accused in that case. I was also known by the name Surjit Singh alias Laddi. Again said, I am named in the aforesaid FIR No.70 dated 01.08.2014.

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...It is correct that Kashmir Singh was working as SDO in P.S.P.C.L. No team headed by Kashmir Singh ever raided in our Hotel. It is correct that a case of electricity theft was recorded against us. Volunteered the said case was false. It is incorrect to suggest that because of my personal vendetta with the accused Kashmir Singh and Balwinder Singh. I have arraigned them in this false complaint just to harass them. I do not know Jagir Singh was posted as Income Tax Officer at Batala. It is incorrect to suggest that he has made assessment of my income because of which I was made to pay a hefty amount to the department or that I arraigned him also accused in this case just to harass him.”

Similarly, Piara Singh (PW2) also admitted the factum of cases registered against him and his family members and also that the staff of P.S.P.C.L had visited their restaurant and penalty was imposed upon the restaurant of applicant-Kulbir Singh (complainant). The relevant extract from the testimony of Piara Singh (PW2) reads as under :-

“...It is wrong to suggest that I am facing criminal trial in the court in five/seven cases. It is correct that staff of P.S.P.C.L visited the premises of our hotel and penalty was imposed to the hotel of complainant. I do not remember if the said penalty was imposed prior to this incident or thereafter. It is correct that the accused Balwinder Singh and Kashmir Singh were employee of P.S.P.C.L.”

xxx

xxx

xxx

“...I know the accused Jagir Singh for the last about 10 years. I cannot tell his place of posting during this period. I cannot tell if any Income Tax access was made by Jagir Singh, the then ITO, against my son

Kuldeep Singh. I cannot tell as to when Jagir Singh was posted in Batala. I cannot tell if he joined as ITO at Batala on 30.04.2010 only. I cannot tell whether he remained posted in Batala prior thereto. I know Jagir Singh as he used to visit Kashmir Singh and Balwinder Singh, who are officials of P.S.P.C.L and their office was near my Clinic at Adda Umarpur. It is incorrect to suggest that he never visited Batala on any day prior to his posting on 30.04.2010. Kashmir Singh and Balwinder Singh were known and close to me because they were posted in the building of PSPCL just adjacent to my clinic. Kashmir Singh remained posted in P.S.P.C.L office building which is near by Clinic and Balwinder Singh also remained posted there.

It is incorrect to suggest that they did not know each other prior to the summoning in this case. I cannot say if Kashmir Singh was never posted in P.S.P.C.L Office from June 2010 to October 2010. Volunteered he remained posted in the said office for couple of years. I cannot admit of deny the posting order of Kashmir Singh, which is Mark-E. I cannot tell any particular year when he remained posted in the said office. It is incorrect to suggest that we have filed the present false complaint against the accused as we apprehended that the raid of P.S.P.C.L Officials in our premises was manipulated by Balwinder Singh and Kashmir Singh accused. It is incorrect to suggest that we have arraigned Jagir Singh accused in this case as he has passed assessment order under the Income Tax Act against my son Kuldeep Singh. It is incorrect to suggest that no such occurrence took place or that I have given a false statement in the court...”

From the perusal of the record, it is evident that sufficient evidence has been led by the defence that the applicant-complainant had a motive to implicate the respondents-accused persons.

16. Further, the prosecution has also failed to prove on record that alleged injury no. 1 suffered by the victim-complainant (Kulbir Singh) was on account of the alleged fire arm injury. It has come on record by way of statement of Dr. Gopal Raj (PW3) that he had not received any opinion from the Forensic Department of Government Medical College, Amritsar. As per Dr. Gopal Raj, SMO, PHC Dorangla, the patient was referred to Government Medical College, Forensic Department for expert opinion regarding injury no. 1 vide Ex. D1/B. He further stated that he gave his final opinion Ex D1/C that kind of weapon used cannot be given and kind of injury no. 1 was declared simple in nature as the patient did not appear before the Forensic Department, Medical College, Amritsar. It has also come on record through statement of Dr. Gopal Raj (PW3) that possibility of self-suffering of injury no. 1 with a hot iron rod cannot be ruled out and the said injury was superficial. The relevant extract from the cross-examination of Dr. Gopal Raj (PW3) reads as under:-

“...I gave my final opinion Ex.D1/C that kind of weapon used cannot be given and kind of injury No.1 was declared simple in nature as the patient did not appear before the Forensic Department, Medical College, Amritsar. The possibility of self suffering of injury No.1 with a hot iron rod cannot be ruled out. It was a superficial injury only. It is incorrect to suggest that I have created MLR in question at the asking of Kulbir Singh to create a false evidence.”

Accordingly, issues No.2 and 3, are answered in affirmative.

Accordingly, we find that the judgment of acquittal passed by the trial Court, cannot be said to be perverse or unreasonable.

17. 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 conclusion 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 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 Mrinal Das versus State of Tripura, (2011) 9 SCC 479, it has been observed 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 reappraise, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour 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.”

18. 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

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compelling grounds.

19. In view of the above, we do not find any illegality and perversity in the findings recorded by the trial Court. Accordingly, the judgment of acquittal passed by the learned trial Court is affirmed; resultantly, the present application is dismissed and leave to appeal is declined.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

March 22nd, 2024
gurpreet

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No