

CRM-A-2248-MA-2017 (O&M)

[1]

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

CRM-A-2248-MA-2017 (O&M)
Reserved on 22.07.2024
Date of decision: 30.07.2024

State of Haryana

...Applicant

Versus

Karam Chand and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Argued by: Mr. Manish Dadwal, AAG, Haryana,
for the applicant-appellant.

Mr. Karambeer Singh Randhawa, Advocate for
Mr. Satbir Singh Gill, Advocate
for the respondents.

KARAMJIT SINGH, J.

1. This leave to appeal is directed against judgment dated 19.05.2017 rendered by the Court of Additional Sessions Judge, Sirsa vide which, it acquitted the accused (now respondents), in a criminal case having FIR No.495 dated 23.05.2014 under Sections 307, 323, 341 IPC, Police Station City Sirsa.

2. The facts of prosecution case, in brief, are that complainant Banwari Lal was a tractor driver and on 17.05.2014, his employer (a tractor owner) called him to his house and the complainant was coming back to his house after meeting his employer and on the way at about 11:30 PM, he was intercepted by Bablu @ Suraj, who slapped the complainant upon which the complainant shouted and then Baljit, younger brother of Bablu @ Suraj, also

came there and then both the brothers forcibly took the complainant to their house. Karam Chand father of Bablu @ Suraj and Baljit Singh was present in the house and then all three of them started beating the complainant. In the meantime, Ramesh son of Uday Pal and Billu son of unknown also reached there and they also started thrashing the complainant. One of the accused pushed the complainant as a result of which, head of the complainant struck against wall and he sustained injury. On the next morning, the complainant was found lying outside the main gate of house of his brother from where, he was taken to General Hospital, Sirsa where the concerned doctor conducted medico legal examination of the complainant and then complainant was admitted in a private hospital namely Bombay Neuro Multi Speciality Hospital, Sirsa where the complainant was undergoing treatment till 22.05.2014 and during this period, the concerned doctor declared the complainant unfit to make any statement. Finally, the statement of complainant with regard to aforesaid incident was recorded by the police on 23.05.2014 and consequently, FIR Ex.P-6 was registered against the accused persons. During investigation, the accused persons were arrested. On completion of investigation, challan was presented in the Court of Area Magistrate. The case was committed to the Court of Sessions.

3. On finding a *prima facie* case, the accused (now respondents) were charge-sheeted under Sections 307, 323, 325, 341 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

4. The prosecution in support of its case examined PW-1 complainant Banwari Lal, who supported the version narrated by him in FIR Ex.P-6. PW-2 SI Raja Ram, proved FIR Ex.P-6 and police requests Ex.P-2

and Ex.P-4 seeking opinion of the concerned doctor regarding fitness of the complainant. PW-3 ASI Subhash Chander was author of FIR Ex.P-6 and he also proved endorsement Ex.P-17. PW-4 HC Mohan Lal, proved scaled site plan Ex.P-18 of the place of occurrence which was drawn by him. PW-5 Dhanpat Ram brother of the complainant deposed that on 18.05.2014, Banwari Lal was found lying outside the gate of his house and thereafter, injured Banwari Lal was taken to General Hospital, Sirsa from where, he was shifted to Bombay Neuro Speciality Hospital, Sirsa, he also proved recovery memo Ex.P-15 whereby the shirt which the complainant was wearing at the time of occurrence was taken into possession by the police. PW-6 Dr. Paramdeep Garg proved MLR dated 18.05.2014 Ex.P-19 of the complainant, being the doctor who conducted said medico legal examination in General Hospital, Sirsa. He also proved his endorsement Ex.P-3 and medical opinions Ex.P-10 and Ex.P-14. PW-7 Dr. Sandeep Sihag deposed that on 18.05.2014 at about 02:00 PM, complainant was admitted in their hospital namely Bombay Neuro Multi Speciality Hospital, Sirsa and he proved bed head ticket P-22 and his endorsements Ex.P-23 to Ex.P-27 spanning from 18.05.2014 to 22.05.2014, he also proved his endorsement Ex.P-28 whereby complainant was declared fit to make statement on 23.05.2014. He also proved his medical opinion Ex.P-11 dated 28.05.2014. PW-8 Dr. Santosh Aggarwal proved CT Scan report Ex.P-30 and X-Ray report Ex.P-31 which bear her signatures. PW-9 Dr. Gaurav Mehta proved the X-Ray report Ex.P-32 and PW-10 DSP Mouji Ram who at the relevant time was SHO Police Station City Sirsa, presented the challan against the accused persons in the Court concerned.

5. On conclusion of the prosecution evidence, all the accused were examined under Section 313 Cr.P.C. The accused pleaded false implication and claimed innocence. However, they did not lead any evidence in their defence.

6. After hearing the State counsel and the defence counsel, the learned trial Court acquitted all the three accused (now respondents) namely Karam Chand, Ramesh and Billu vide judgment dated 19.05.2017, while holding that there was unexplained delay of about 6 days in lodging of FIR and that the statements of concerned doctors show that it is a case of manipulation by the complainant and further the accused cannot be convicted on the sole statement of the complainant as the same is not trustworthy rather is surrounded by suspicious circumstances coupled with manipulation.

7. Being aggrieved, the present appeal has been filed by the State.

8. Accused Bablu @ Suraj, who at the time of occurrence was a juvenile, was separately tried and acquitted by the Court of Principal Magistrate, Juvenile Justice Board, Sirsa vide judgment dated 16.02.2017.

9. The State counsel while assailing the impugned judgment has submitted that the complainant while appearing in the witness box as PW-1 narrated the entire occurrence, which took place at about 11:30 PM on 17.05.2014 and at the time of said occurrence, the respondents and other accused persons assaulted the complainant and one of the accused pushed the complainant as a result of which, the head of the complainant struck against wall and thus, the complainant sustained internal head injury, for which he was provided proper medical treatment at Bombay Neuro Multi

Speciality Hospital, Sirsa and during the course of treatment his X-ray and CT scan were conducted as is evident from testimony of PW-7 to PW-9, the concerned doctors, who proved the relevant medical record. The State counsel further submits that before his admission in the aforesaid hospital, the complainant was medico legally examined in Government Hospital Sirsa by PW-6 who proved medico legal report Ex.P-19. It has been further contended that the ocular version given by the complainant, is fully corroborated by the medical evidence. It has been further contended by the State counsel that the delay in lodging of FIR was fully explained by the prosecution and that from the perusal of endorsements Ex.P-23 to Ex.P-27, it is apparent that the complainant was not fit to make statement during the period from 18.05.2014 to 22.05.2014 and resultantly, got recorded his statement Ex.PW-1/A, as he was declared fit to make statement by the concerned doctor vide endorsement Ex.P-23 dated 23.05.2014. The State counsel further submits that oral statement of complainant finds corroboration through medical evidence and the delay, if any, in recording of FIR is fully explained; that the learned trial Court failed to appreciate the facts and circumstances of the case in right perspective and acquitted the respondents by misreading the evidence and that the judgment of acquittal passed by the trial Court being illegal and perverse, is not sustainable and deserves to be set aside.

10. On the other hand, the counsel for the respondents, while supporting the impugned judgment dated 19.05.2017 passed by the learned trial Court, has submitted that the learned trial Court, after going through the entire evidence, rightly came to the conclusion that there was unexplained

delay of about 6 days in lodging of the FIR and the accused are liable to be acquitted on this sole ground and thus, there is no illegality or infirmity in the impugned judgment.

11. We have heard the counsel for the parties and gone through the record of the learned trial Court.

12. In the present case, the respondents were acquitted by the learned trial Court primarily on the ground that delay in lodging of FIR was not properly explained by the prosecution. It is settled position that FIR is to be filed promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same. In case, FIR is lodged promptly, there is no time and opportunity to embellish. Undue or unreasonable delay in lodging the FIR, therefore, may give rise to suspicion, which puts the Court on guard to look for the possible motive and the explanation for delay and consider its effect on the trustworthiness or otherwise of the prosecution version. Undoubtedly, FIR under Section 154 of Cr.P.C, as such could not be treated as a substantive piece of evidence. It can only be used to corroborate or contradict the informant's evidence in the Court. Of course, the delay in lodging the FIR by itself, cannot be regarded as the sufficient ground to draw an adverse inference against the prosecution case nor could it be treated as fatal to the case of prosecution. Recently, the Hon'ble Supreme Court in Criminal Appeal No.2294 of 2010 titled as ***Sekaran Vs. State of Tamil Nadu (2024) 2 SCC 176*** observed as follows:-

“11. We start with the FIR, to which exception has been taken by the appellant urging that there has been no satisfactory explanation for its belated registration. It is trite that merely because there is some delay in lodging an FIR, the same by itself and without anything more ought not to weigh in the mind of the courts in all cases as fatal for the prosecution.

A realistic and pragmatic approach has to be adopted, keeping in mind the peculiarities of each particular case, to assess whether the unexplained delay in lodging the FIR is an afterthought to give a coloured version of the incident, which is sufficient to corrode the credibility of the prosecution version. In cases where delay occurs, it has to be tested on the anvil of other attending circumstances.

If on an overall consideration of all relevant circumstances it appears to the court that the delay in lodging the FIR has been explained, mere delay cannot be sufficient to disbelieve the prosecution case; however, if the delay is not satisfactorily explained and it appears to the court that cause for the delay had been necessitated to frame anyone as an accused, there is no reason as to why the delay should not be considered as fatal forming part of several factors to vitiate the conviction.”

13. Now reverting to the facts of the instant case, having regard to the evidence on record, the incident in question had taken place at about midnight intervening between 17/18.05.2014 and the complainant who on the next morning was found lying in an injured condition in front of house of his brother, was taken to General Hospital, Sirsa where the complainant was medico legally examined by PW-6 Dr. Paramdeep Garg, who proved MLR Ex.P-19. From the perusal of the same, it appears that the complainant was medico legally examined in aforesaid hospital at about 08:20 AM on 18.05.2014 and at that time, the complainant was conscious, co-operative, well oriented and his BP was recorded as 110/76 while pulse rate was 76 per minute. Even the said doctor while appearing in the witness box as PW-6, admitted that at the time of medico legal examination, all the vitals of complainant were found to be stable. PW-6 also stated in his testimony that at that time, patient was conscious co-operative and well oriented having no history of vomiting. PW-6 also gave detail of 5 injuries which were found on person of the complainant, at the time of his medico legal examination, which is as follows:-

“1. Complaint of pain on head with swelling around both eyes, pupils were NSNR. I advise X-ray of Skull and Surgeon opinion.

- 2. Bruise of size 1 cm X 7 cm, two in no. parler to each other over right side of chest. Injury no. 2 was advise for X-ray and Surgeon opinion.*
- 3. Complaint of pain and swelling in left lower arm and hand. I advise X- ray left hand and Surgeon opinion.*
- 4. Complaint of pain and Swelling of right upper arm and right hand with 1 bruise of size 3 cm X 1 cm over right upper arm lateral part. I advise X- ray right upper arm and right hand.*
- 5. Swelling and bruise of reddish blue colour over both ears present. I advise X-ray and ENT Opinion.”*

14. As the complainant was found fully fit and well oriented at the time of his medico legal examination, PW-6 failed to explain as to why subsequently, on the same very day, the patient was declared unfit to make statement by him vide endorsement Ex.P-3, on police request Ex.P-2 dated 18.05.2014.

15. Prosecution further examined PW-7 Dr. Sandeep Sihag who deposed that complainant was admitted in Bombay Neuro Multi Speciality Hospital, Sirsa at about 02:00 PM on 18.05.2014. In his cross-examination, PW-7 admitted that complainant Banwari Lal was conscious and well oriented on 18.05.2014 at the time of his admission in the hospital. He further admitted that the patient was fit to make statement even on 22.05.2014 being conscious and oriented. PW-7 also admitted that as per report dated 22.05.2014 Ex.DG, patient Banwari Lal left the hospital against medical advice, on that day. The witness further admitted that he attested and signed the said report dated 22.05.2014 which was prepared by Dr. Kulwinder Gill, who at that time was running a separate hospital. Undoubtedly, the said report Ex.DG was issued on the letter head of Bombay Neuro Multi Speciality Hospital, Sirsa.

16. From the perusal of MLR Ex.P-19 coupled with statements of PW-6 and PW-7, it is apparent that on 18.05.2014 when complainant

Banwari Lal was firstly taken to General Hospital, Sirsa and thereafter, shifted to Bombay Neuro Multi Speciality Hospital, Sirsa, he was conscious, well oriented and his medical condition was stable even on 22.05.2014, when patient left the hospital against medical advice. Thus, making it clear that endorsements Ex.P-23 to Ex.P-27 whereby the complainant was declared unfit to make statement by the concerned doctors for the period from 18.05.2014 to 22.05.2014, were manipulated by the complainant to gain time to introduce a tainted version, after having due deliberations with the police officials to falsely implicate the accused persons.

17. The concerned doctors while appearing in the witness box as PW-6, PW-7, PW-8 and PW-9 admitted that the X-ray films or CT scan films of Banwari Lal are not available on the judicial record. Further, PW-7 admitted that complainant Banwari Lal told him that he sustained injuries in an accident in the area of Bakhra Mill, Sirsa and accordingly, he sent ruqa Ex.P-29 to the police. From the perusal of the said document, it appears that PW-7 sent information to the concerned police station, that it was a case of accident.

18. Further, during his cross-examination PW-1 complainant Banwari Lal, admitted that he is facing trial in a criminal case having FIR Ex.DC and he was challaned by police vide Ex.DA and the trial Court framed charges against him vide Ex.DB. From the perusal of the aforesaid documents, it appears that on 17/18.05.2014 at about 11:00 PM/12 mid night, complainant Banwari Lal allegedly trespassed into house of Suresh and molested his daughters and when alarm was raised, Banwari Lal tried to fled away through ventilator and while doing so, he sustained injuries but

managed to escape. PW-7 admitted before the trial Court that in aforesaid criminal case titled State Vs. Banwari Lal, he made statement Ex.DH, while appearing in the witness box as DW-3. In the said deposition, PW-7 stated that the possibility of head injury on the person of Banwari Lal being caused due to fall from a height cannot be ruled out. This fact probablises the aforesaid defence which was specifically taken by respondent No.1 Karam Chand in his statement recorded under Section 313 Cr.P.C.

19. In the circumstances, as discussed above, the learned trial Court rightly found that chances of manipulation of entire medical record of complainant Banwari Lal cannot be ruled out. It being so, the ocular version narrated by the complainant does not find any independent corroboration from medical evidence and was thus, rightly disbelieved by the trial Court.

20. The paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice. In appeal against acquittal, an appellate Court has full power to review, re-appreciate and re-consider the evidence, upon which the order of acquittal is founded. However, the appellate Court has to bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is in his favour under the basic principle of jurisprudence that every person shall be presumed to be innocent unless is proved guilty by Court of competent jurisdiction. Secondly, having secured his acquittal, the presumption of innocence of accused is further re-affirmed by the trial Court. In this regard, reference be made to the ratio laid down by Hon'ble Supreme Court in ***Chandrappa and others Vs. State of Karnataka 2007 (2) SCC (Cri) 325.***

21. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In the present case, we are of the view that the learned trial Court considered and appreciated the entire evidence led by the parties and rightly came to the conclusion with respect to both facts and law.

22. In view of the above, we do not find any illegality and perversity in the findings recorded by the trial Court. Accordingly, the present application is dismissed and leave to appeal is declined.

(SUDHIR SINGH)
JUDGE

30.07.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

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