



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

268

CRR-3826-2012

Date of decision: 20th January, 2025

Nawal Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Rajesh Lamba, Advocate for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Ashish Yadav, Advocate for respondents NO. 2 to 6.

MANISHA BATRA, J (ORAL):-

The instant revision petition has been filed by the petitioner against the judgment dated 23.03.2012 passed in Criminal Case No. 707 of 2002 titled as 'State Vs. Bittu and others' arising out of FIR No. 119 dated 05.10.2010 registered under Sections 323, 325 read with Section 34 of IPC at Police Station Farukh Nagar, Gurugram, whereby the accused had been acquitted of the charges as framed against them and judgment dated 29.08.2011 passed in criminal appeal No. 17 of 2011 titled as 'Nawal Singh Vs. State of Haryana and others', thereby dismissing the appeal against the aforementioned judgment.

2. For the sake of continuity and coherence, hereinafter the parties shall be referred to as per their original nomenclature as given at the time of trial.



3. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR had been registered on the basis of statement recorded by the complainant Nawal Singh on the allegations that on 28.09.2002, a verbal altercation had taken place between him, accused Sheesh Ram and one Sarbat as the latter was accusing him of some theft. However, matter had been pacified. On 30.09.2022, at about 8:00 AM, the petitioner was present in his land, when the accused Sheesh Ram accompanied by co-accused Sanjiv, Sunil and Bittu reached there being armed with *lathis* and *fawras*. While proclaiming that they would teach him a lesson for having a scuffle with Sheesh Ram and Sarbat, they opened an attack upon the complainant. The accused Sheesh Ram caught hold of the complainant, accused Sanjiv struck blow with *fawra* on his right leg, whereas accused Sarbat raised a *lalkara* that his legs should be broken. Accused Sunil gave fist blows on his eyes and face. He became unconscious and fell down and then the accused struck blows on his back with *lathis* and fled away. The entire incident was witnessed by PW-2 Mahabir. The injured was rushed to hospital. On the basis of his statement and medical reports, a case under Sections 323 and 325 read with Section 34 of IPC was registered. Investigation proceedings were initiated. After completion of necessary investigation, challan was presented in the Court for trial of accused. Copies of challan was supplied to the accused free of cost. On finding, a *prima facie* case for commission of offence punishable under Sections 323 and 325 read with Section 34 of IPC, the accused had been charge-sheeted accordingly. They pleaded not guilty to the charges and claimed trial.

4. To substantiate its case, the prosecution examined seven



witnesses in all, besides placing reliance upon certain documents and thereafter, prosecution evidence was closed.

5. Statements of accused were recorded under Section 313 of Cr.P.C., wherein they abjurd their guilt and claimed to be innocent. No defence evidence had been adduced.

6. On appraising the evidence produced on record and after hearing arguments advanced by both the sides, the learned trial Magistrate vide order dated 23.03.2011, acquitted the accused of the charges as framed against them by observing that the prosecution had failed to bring him the guilt of the accused.

7. Feeling dissatisfied, the complainant preferred the aforementioned appeal before the Court of learned Additional Sessions Judge, Gurugram which had been dismissed. Aggrieved with the same, the present revision petition had been filed as on 29.11.2012.

8. It is argued by learned counsel for the petitioner that the impugned orders as passed by learned Courts below are liable to be set aside, as the same are not sustainable in the eyes of law. While acquitting the accused, learned trial Magistrate and while affirming the findings of the trial Magistrate, the learned first appellate Court, did not apply their judicious mind and failed to appreciate the evidence produced on record in a proper manner. There was overwhelming medical and oral evidence on record to prove that the complainant had sustained simple as well as grievous injuries as on 30.09.2002 and the same had been voluntarily caused by respondent-accused in furtherance of there common intention. The evidence produced on record by the prosecution was such which could certainly be acted and



relied upon beyond probabilities of all reasonable doubt. However, this fact has been ignored by the courts below. With these broad submissions, it is urged that the impugned orders are liable to be set aside, the petition deserves to be accepted and the respondent-accused are liable to be held guilty and convicted.

9. Learned State counsel has not raised any serious objections to the pleas as taken by the petitioner.

10. *Per contra*, learned counsel for respondents No. 2 to 6-accused has vehemently argued that findings as given by the Courts below are well reasoned and do not warrant any reason. He has argued that the statements of the prosecution witnesses were suffering from material inconsistencies and could not be relied upon beyond doubt and did not prove that the complainant had sustained any injury at the hands of the respondents No. 2 to 6. Therefore, it is argued that the petition is devoid of any merits and it is urged that the same is liable to be dismissed.

11. This Court heard learned counsel for the parties at considerable length and have minutely scrutinized the material placed on record including the trial Court record.

12. Since challenge in this petition is to the judgment of acquittal of trial Court, therefore, before proceeding further and adverting to the arguments raised by learned counsel for the parties, it would be useful to review the approach to be adopted while deciding the appeal against acquittal by the trial Court. In ***Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415***, the Hon'ble Apex Court had observed that it could not be forgotten that in case of acquittal, there is a double presumption



in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent Court of Law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. In ***Atley v. State of U.P., AIR 1955 SC 807***, the approach of the Appellate Court while considering a judgment of acquittal was discussed and it was observed that unless the Appellate Court comes to the conclusion that the judgment of acquittal was perverse, it should not set aside the same. In ***Aher Raja Khima v. State of Saurashtra, AIR 1956 SC 217***, it was observed that for the High Court to take a different view on the evidence “there must also be substantial and compelling reasons for holding that the trial Court was wrong”. In ***Ramesh Babulal Doshi v. State of Gujarat, 1996 SCC (CrL) 972***, the Hon'ble Apex Court while speaking about the approach of the Appellate Court while considering an appeal against the order of acquittal of accused observed that while speaking in judgment over acquittal, the First Appellate Court is required to seek an answer to the question whether the findings of the trial Court are culpably wrong, manifestly erroneous and demonstrably unsustainable. If the Appellate Court answers the above questions in the negative, the order of acquittal should not be disturbed. In ***Chandrappa's case (Supra)***, the Apex Court after referring to a catena of judgments, culled out the following general principles regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal in the following words:-



- i) An Appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
- ii) The Code of Criminal Procedure puts no limitation, restriction or condition on exercise of such power and Appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and law.
- iii) An Appellate Court, must bear in mind that in case of acquittal, there is double presumption in favour of the accused.
- iv) If two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court.

13. After going through the record, I am of the considered opinion that so far as the fact that the petitioner-complainant had sustained simple as well as grievous injuries as on 30.09.2002 is concerned, that the same stood proved from the medical evidence produced on record in the form of testimonies of PW-4 Dr. Subhash Sindhu and Pw-5 Dr. Neena Gathwal. PW-5 Dr. Neena Gathwal had conducted medico legal examination of the complainant as on 30.09.2002 and proved the medico legal report as exhibit PW-5/B, as per which, the complainant had sustained multiple bruises on his upper back, as well as on his upper lip. One stitched wound was found in between the index finger and thumb of his right hand and the left side of his eye was black. Then PW-4 Dr. Subhash Sindhu has deposed that he had conducted radiological examination of the complainant on 01.10.2002 and



proved X-ray report exhibit PW4/A and X-ray films, as per which, a greivous injury in the form of fracture of right leg shaft tibia had been found. The credit of statements of both these witnesses remained unshaken and therefore, there was no reason to disbelive their statements which confirmed the fact that the complainant had sustained simple as well as grievous injuries on his person.

14. Then so far as the allegations that respondents No. 2 to 6 had caused these injuries is concerned, the case of prosecution on this point rested upon the testimonies of PW-1 Nawal Singh and PW-2 Mahabir. So far as the testimony of PW-2 Mahabir is concerned, though in his examination-in-chief, he supported the prosecution version by saying that the respondents No. 2 to 6-accused were found inflicting injuries on the person by him and he had tried to rescue him but during cross-examination, he was confronted with his statement exhibit DA as recorded under Section 161 of Cr.P.C., wherein he had not stated that the respondent-accused Sarbat was also present on the place of occurrence and participated therein. The statement of this witness is in contradiction with the testimoney of the complainant on some material points which have been discussed in detail by the Court of learned Magistrate as well as by the Court of learned Additional Sessions Judge. The contradictions which have been pointed out therein are material and cannot be stated to be minor ones. In the considered opinion of this Court, the learned Courts below had rightly observed that in view of these contradictions, a shadow of reasonable doubt had been created over authenticity of the version of the prosecution and therefore, the guilt of the accused had not been proved beyond doubt and that they were entitled to be



acquitted.

15. On reading of entire material, this Court finds that there is no perversity in the findings recorded by the Courts below and there is no compelling reason to interfere with their judgments. Accordingly, it is held that no ground has been made out to allow the petition and as such, the same is dismissed

[MANISHA BATRA]
JUDGE

20th January, 2025

Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |