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

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**Criminal Revision No.150 of 2016
Date of Decision: 27.02.2025**

Avtar Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Amit Arora, Advocate,
for the petitioner.

Ms. Himani Arora, AAG, Punjab,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. The instant revision petition has been filed by the petitioner against the judgment of acquittal dated 04.01.2014 passed by the Judicial Magistrate 1st Class, Tarn Taran in Criminal case No.61 of 2009 titled as **State v. Saroop Singh @ Pappu and others**, arising out of FIR No.88 dated 29.10.2008 registered under Sections 325, 452 and 34 of IPC at Police Station Sarai Amanat Khan, District Tarn Taran, whereby the respondents No.2 to 4-accused had been acquitted of the charges as framed against them as well as the judgment dated 15.10.2015 passed by the Appellate Court bearing CIS No. CRA/46 of 2014 titled as **Avtar Singh v. Saroop Singh alias Pappu and others**, whereby the appeal

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filed by the complainant had been dismissed thereby affirming the judgment of the trial Court.

2. For the sake of continuity and coherence, parties shall be referred to hereinafter as per the same nomenclature as given before the trial Magistrate.

3. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of statement recorded by the complainant Avtar Singh on 29.10.2008, alleging therein that on 29.09.2008, the accused Saroop Singh, Gurmej Singh, Sarabjit Singh and Daljit Singh armed with weapons had criminally trespassed into his farmhouse and by making exhortation, had opened an attack upon him and had caused injuries to him. The clamour raised by him, had attracted his wife Manpreet Kaur and sister-in-law Sarabjit Kaur who had rushed for his rescue and then the assailants had fled away while forcibly taking away with them, his grandmother Gurmej Kaur. Investigation proceedings were initiated. The accused were arrested and subsequently they were released on bail. After completion of necessary investigation and usual formalities, challan was presented before the trial Court.

4. Copies of challan were supplied to the accused free of cost. On finding a prima facie case for commission of offences punishable under Sections 325 and 452 read with Section 34 of IPC, the accused had been charge-sheeted accordingly. They pleaded not guilty to the charges and claimed trial.

5. To substantiate its case, the prosecution examined five

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witnesses in all besides placing reliance upon certain documents and thereafter the prosecution evidence was closed by Court order.

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

7. On appraising the evidence produced on record and after considering the contentions raised by both the sides, the learned trial Magistrate acquitted the accused of the charges as framed against them by holding that the prosecution had failed to bring home the guilt of the accused beyond doubt.

8. Aggrieved by the same, the complainant filed aforementioned criminal appeal before the learned Appellate Court which too had been dismissed vide judgment dated 15.10.2015.

9. It is argued by learned counsel for the complainant that the findings given in the impugned judgment as passed by the learned trial Court are not sustainable in the eyes of law as while passing the same, the learned trial Court did not apply its judicious mind and did not appreciate the fact that there was overwhelming evidence on record to prove that the complainant had sustained simple as well as grievous injuries as on 29.09.2008 and those injuries were voluntarily caused by the accused in furtherance of their common intention. It is submitted that a grave error was committed by the learned trial Court by observing that there was delay of 30 days in reporting the matter to the police and the same had not been explained and further that there were some inconsistencies in the statements

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of the witnesses.

10. It is further argued that the learned Appellate Court also failed to appreciate the evidence produced on record in a proper perspective and did not consider the contentions as raised by the complainant in a proper manner. With these broad submissions, it has been urged that the impugned judgments are liable to be set aside, the petition deserves to be accepted and that the accused are liable to be held guilty and convicted for commission of offences for which they had been charge-sheeted.

11. Learned State counsel has raised no serious objections to the contentions as raised by learned counsel for the petitioner.

12. I have heard learned counsel for the parties at considerable length besides perusing the material placed on record.

13. Since challenge is to the judgment of acquittal of trial Court, therefore, before proceeding further and advert to the arguments raised by learned counsel for the petitioner-complainant, it would be useful to review the approach to be adopted while deciding the proceedings 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,

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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, reappraise and reconsider the evidence upon which the order of acquittal is founded.
- ii) The Code of Criminal Procedure puts no limitation,

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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.

14. On applying the aforementioned proposition of law to the peculiar facts and circumstances of the present case, I am of the considered opinion that no reasonable ground has been made out for allowing the revision petition. First of all, there was delay of 30 days on the part of the petitioner-complainant in reporting the matter to the police which had not been explained at all by him while appearing as a witness. Not even this, the petitioner-complainant as well as the witnesses examined by him i.e. PW-2 Manpreet Kaur and PW-3 Sarabjit Kaur who had allegedly reached at the place of occurrence stated in unison that the matter had been reported to the police on 29.09.2008 itself and their statements were also recorded by the police on the same date. They even went to the extent of saying that the police did not meet either of them after 29.09.2008. Their statements to this effect were in total contradiction with the material placed on record which showed that prior to 29.10.2008, the police had not been contacted at all by the complainant or his family members.

15. So far as the delay in lodging of FIR is concerned, the well

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settled proposition of law is that a delayed First Information Report gives rise to suspicion and puts the Court on guard to look for a plausible and acceptable explanation for the delay. The First Information Report is a document of considerable importance. This document is produced and proved in the criminal trial with the avowed object of obtaining the early information of the alleged criminal activity and to have a record of the circumstances before there was time for them to be embellished or forgotten. A quick information report is a towering circumstance that goes a long way to assure the veracity of the prosecution story as in such cases, there cannot be any time to create and deliberate a false case against the accused. It is equally well settled that delay in lodging the FIR quite often results in embellishment which is a creature of afterthought. On account of delay, report not only gets bereft of the advantage of spontaneity, but danger also creeps in of the introduction of colour version, exaggerated account or concocted story as a result of deliberation and consultation. In this case, the delay of 30 days in reporting the matter to the police has not at all been explained by the petitioner in a reasonable manner rather as discussed above, the complainant and his witnesses PW-2 and PW-3 insisted that the matter had been reported to the police on 29.09.2008 itself which belies their version and consequently has rendered the entire prosecution version highly doubtful. The learned trial Court, therefore, rightly observed that the delay in lodging of the FIR had created a serious dent in the prosecution story.

16. Apart from the above, the presence of PW-2 and PW-3 at the time when the occurrence actually took place had also not been proved

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beyond doubt and the statements of complainant and other witnesses are contradictory on that point. The complainant deposed that it was after sustaining of injuries at the hands of the accused that he had raised hue and cry and then PW-2 and PW-3 had reached at the spot but PW-2 and PW-3 deposed to give details of the injuries sustained by the complainant at the hands of the accused to establish their presence at the spot at that time but in view of their inconsistent statements, their presence at that time had not been established and the learned trial Court rightly observed so.

17. Further as per the allegations, the complainant had sustained a grievous injury though PW-4 Dr. Anita who had conducted medico legal examination of the complainant on 29.09.2008 also deposed that as per the X-Ray report, the complainant had sustained a grievous injury but admittedly she had not conducted radiological examination of the complainant and the radiologist did not appear to prove the X-Ray report as well as the X-Ray film. It is well settled proposition of law that in the absence of testimony of the radiologist, the X-Ray film and X-Ray report are also not proved and consequently the factum of grievous injury cannot be considered to be established. For want of examination of radiologist, it could not be concluded that the complainant had actually suffered a grievous injury in order to bring the case under the requirement of Section 320 of IPC. In this context, I place reliance upon the observations made in **Santoo v. State**, 1976 SCC OnLine All 267 and **Gurpreet Singh v. State of Punjab**, 2019 (2) Law Herald 1018.

18. The learned trial Magistrate made a detailed discussion of the

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relevant facts and circumstances while passing the impugned judgment which is a well reasoned one and the learned Additional Sessions Judge/First Appellate Court also upheld the findings as given by the learned trial Court by passing a well reasoned order. 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.

27.02.2025
manju

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No