A GANPAT

v.

STATE OF HARYANA & ORS.

(Criminal Appeal Nos. 279-281 of 2002)

SEPTEMBER 27, 2010

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[P. SATHASIVAM AND R.M. LODHA, JJ.]

Penal Code, 1860 – ss. 148, 302, 325, 324, 323 r/w s. 149 – Prosecution for murder and for causing injuries – In the C *incident, injuries sustained by the prosecution-witnesses as well as accused persons – Contradiction in the police-statement of complainant and FIR version, regarding number of accused participating in the incident – One of the accused, in his statement u/s. 313 stated that complainant party was* D *the aggressor – I.O. not recording the statement of the injured accused – Conviction by trial court – Acquittal by High Court – On appeal, held: In view of the testimony of PWs, the presence of the complainant at the scene of occurrence was doubtful – In the facts of the case, the complainant party was* E *the aggressor – High Court rightly acquitted the accused.*

Appeal – Appeal against acquital – Principles to be followed – Discussed.

Respondent-accused were prosecuted for having F **caused death of one person and for causing injuries to others. The prosecution case was that eleven accused persons attacked the victim party armed with weapons. PW12 (the appellant-complainant) in his police-statement named only four of the accused. The complainant lodged** G **FIR wherein he named eleven accused. Challan was filed by the police naming only four of the accused out of the eleven accused. On the application of the complainant u/s. 319 Cr.P.C., the rest of the seven accused were also charged. All the eleven accused were charged u/ss. 148,**

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302, 325, 324, 323 r/w. s. 149 IPC. The trial court convicted the accused. High Court acquitted all the accused. Therefore, the instant appeals were filed by the appellant-complainant.

Dismissing the appeals, the Court

HELD: 1. The following principles have to be kept in mind by the appellate court while dealing with appeals, particularly, against an order of acquittal:

(i) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded and to come to its own conclusion.

(ii) The appellate court can also review the trial court's conclusion with respect to both facts and law.

(iii) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons may set aside the judgment of acquittal.

(iv) 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.

(v) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc., the appellate court is competent to reverse the decision of the trial court depending on the materials placed. [Para 5] [408-B-F]

Madan Lal vs. State of J & K (1997) 7 SCC 677; *Ghurey*

A *Lal vs. State ofU.P.* (2008) 10 SCC 450; *Chandra Mohan Tiwari vs. State of M.P.* (1992) 2 SCC 105; ***Jaswant Singh vs. State of Haryana*** (2000) 4 SCC 484, relied on.

2.1. From the analysis of the statement of prosecution-witnesses (PWs 12 and 13), various details about the injuries sustained by the prosecution witnesses as well as the accused spoken to by the doctor (PW-3), categorical assertion of A-2 in his statement u/s. 313 Cr.P.C., conduct of I.O. (PW-14) in not recording statements of the injured accused who were also present in the same hospital when he visited to record the statement of injured complainant party, it is clear that two groups of people clashed *inter se* with weapons causing injuries to each other, and thus, it is held that the complainant party was the aggressor and in the absence of definite material and explanation from the prosecution side, the High Court is right in acquitting all the eleven accused. [Para 12] [411-G-H] [412-A]

2.2. It is clear from the evidence of prosecution-witnesses as well as the defence that A2, A-3 and A-11 also sustained injuries. Among these persons, A-2 sustained grievous injuries by the use of *ghandasa.* There is no proper explanation by the prosecution about the injuries sustained by the accused. Further, there is no definite evidence as to the place of occurrence. A-2 in his statement recorded u/s. 313 Cr.P.C. stated to the effect that the complainant party was the aggressor. [Para 9] [410-B-C]

2.3. According to Pws 12 and 13, the accused had inflicted injuries on them and blamed them for being the aggressor and having caused the death of the deceased and for inflicting injuries to others. PW-12 was confronted with his statement made before the police wherein he had not mentioned the names of seven

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persons said to have participated in the commission of the crime. The only explanation for omission of those names was that of nervousness. The very same person, who made a complaint to the police, mentioned all the names of the accused persons and assigned specific role for each one of them. [Para 7] [409-E-F]

2.4. The statement of PW-13 also makes the presence of PW-12 at the spot to be doubtful. Though PW-13 has denied the suggestion that he was under the influence of alcohol at the time of occurrence, the same was falsified by the version of the doctor (PW-3). PW-3, in his statement, has noted that the injured (PW13) was under the influence of alcohol at the time of first arrival. [Para 8] [409-G-H] [410-A]

Case Law Reference:

(1997) 7 SCC 677	**Relied on.**	**Para 5**
(2008) 10 SCC 450	**Relied on.**	**Para 5**
(1992) 2 SCC 105	**Relied on.**	**Para 5**
(2000) 4 SCC 484	**Relied on.**	**Para 5**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 279-281 of 2002.

From the Judgment & Order dated 1.5.2001 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 647-DB of 2000 in Criminal Appeal No. 657-DB of 2000 and in Criminal Revision Petition No. 475 of 2000.

Rohit Sharma, Akshat Goel, Abhijat P. Medh, S. Gowthanan, Ashubhtiy for the Appellant.

K.B. Sinha, Roopansh Purohit, Kamal Mohan Gupta, Kawaljit Kochar, Ashok K. Sharma, Kusum Chaudhary for the Respondents.

A The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. These appeals are directed against the common judgment and final order dated 01.05.2001 passed by the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal Nos. 647 and 657 of 2000 and
B Criminal Revision Petition No. 475 of 2000 whereby the High Court allowed the appeals and acquitted all the eleven accused persons of the charges framed against them and dismissed the Criminal Revision filed by the appellant herein.

C 2. The case of the prosecution is as under:

(a) Four-five days prior to the date of occurrence i.e. 25.10.1992, there was a dispute between Mohinder Singh PW-13, who is the son of Shambhu (the deceased) and
D Madan Lal and Sat Pal, the accused, who used to run Kiryana shop in the village, over payment of price of crackers. But, later on, the dispute was settled between them with the intervention of villagers and Mohinder Singh paid an amount to the accused as the price of the
E crackers.

(b) On 25.10.1992, at about 9.00 p.m., when Mohinder Singh, after having meals, was going to his Garhi (outer house), he found eight persons, namely, Sat Pal, Pala Ram, Madan Lal, Jai Kumar, Ram Prakash, Rajesh, Ram
F Bhaj and Jai Singh standing there and they were armed with gandasis and lathis. Sat Pal raised a lalkara that Mohinder Singh should be taught a lesson for making less payment for crackers and he gave a gandasi blow on his right leg. Mohinder Singh shouted for help and on hearing
G the same, Ishwar – his brother came there. Pala Ram gave gandasi blows repeatedly from its reverse side on Ishwar's chin and jaw and Madan Lal gave two lathi blows on his face and Jai Kumar gave lathi blows on his hands and chest. On hearing the calls for help, Shambhu-the

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deceased came to the spot. Rajesh and Ram Bhaj, who were standing in front of the house of Chandan came there with lathis and Ram Bhaj gave a lathi blow on the head of Shambhu and Rajesh gave a lathi blow on his legs. In the meantime, Ishwar's wife – Murti Devi also came there and Naresh and Jai Singh gave lathi blow on Murti Devi. A B

(c) Ganpat (PW-12)-the complainant (appellant herein), who was standing at a distance of 10 yards from the place of occurrence, shouted "Naa Maro Naa Maro". Thereafter, Ganpat brought a tractor from his house with the help of his son Shri Pal for taking the injured to the hospital. When they were lifting the injured persons, Mohan Lal gave one gandasi blow on his right arm and Rajesh gave a lathi blow on the back of his right hand palm and Ram Prakash gave a lathi blow on his left shoulder. Thereafter, Shri Pal, Chappa and Satta and other persons came there and rescued them and all the injured persons were taken to Primary Health Centre, Nissing. Dr. Sanjiv Grover, PW-3 examined the injured persons. Ishwar and Shambhu were referred to General Hospital, Karnal. Thereafter, Mohinder Singh and Murti Devi were also referred to the same hospital. Dr. Sanjiv Grover sent the ruqa to the in-charge, Police Station, Nissing on 26.10.1992 at 00:10 a.m. but due to inadvertence he mentioned the time as 12:10 a.m. On receipt of ruqa, ASI Ram Karan – PW-14 went to Primary Health Centre to inquire about the condition of the injured and came to know that the injured persons have been referred to General Hospital, Karnal. Then, on 26.10.1992, at 01:15 p.m., the ASI recorded the statement of Ganpat-the appellant herein in General Hospital, Karnal and a case was registered and a formal FIR was recorded at 2:30 p.m. under Sections 148, 149, 323, 324, 325 Indian Penal Code (hereinafter referred to as 'IPC'). He could not record the statement of Shambhu as he was not fit for making statement. After taking the clothes of the C D E F G H

A injured persons into possession, he went to the scene of occurrence and prepared rough site plan and lifted blood stained earth. Thereafter, the accused were arrested and the weapons were also recovered.

B (d) On 09.11.1992, Shambhu died and the case was converted to that under Sections 148, 302, 323, 324, 325 read with Section 34 Indian Penal Code (hereinafter referred to as "IPC"). On 12.03.1993, challan was filed by the police in the Court, mentioning only the names of four accused out of the 11 accused, whose names were C mentioned in the FIR. On 09.04.1993, Ganpat (PW-12), the appellant herein filed an application under Section 319 of the Criminal Procedure Code (hereinafter referred to as "Cr.P.C.") for summoning the other seven accused. The trial Court, vide order dated 12.05.1993, allowed the D application and summoned the other seven accused persons to face trial along with the four accused. Vide order dated 22.03.1994, the trial Court ordered for framing of charges against all the 11 accused persons for offences under Sections 148, 302, 325, 324, 323 read with Section E 149 IPC.

(e) The prosecution examined 15 witnesses. After recording the evidence, the trial Judge convicted Pala Ram, Sat Pal Madan Lal, Ram Prakash, Rajesh, Ram Bhaj F and Jai Kumar for the offence under Section 148 IPC and sentenced them to undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/- each, in default of payment of fine, each of them was ordered to undergo further rigorous imprisonment for three months. They were further convicted under Section 302 read with Section 149 G IPC and sentenced to undergo rigorous imprisonment for life. They were also convicted under Section 325 read with Section 149 IPC and were sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/- each. In default of payment of fine, each of them was H

ordered to undergo further rigorous imprisonment for three months. All of them were further convicted under Section 324 read with Section 149 IPC and sentenced to undergo rigorous imprisonment for six months and further they were convicted under Section 323 read with Section 149 IPC and each of them was sentenced to undergo rigorous imprisonment for four months. Mohan Lal was convicted under Section 324 IPC and sentenced to undergo rigorous imprisonment for six months, Naresh, Ramesh Chand and Jai Singh were convicted under Section 323 IPC and were sentenced to undergo rigorous imprisonment for four months. The substantive sentences of imprisonment were ordered to run concurrently.

(f) Against the abovesaid order, Jai Singh, Ramesh, Naresh and Mohan Lal filed Criminal Appeal No. 647 of 2000 and Pala Ram, Sat Pal, Madan Lal, Ram Prakash, Rajesh, Ram Bhaj and Jai Kumar filed Criminal Appeal No. 657 of 2000 and Ganpat- the complainant and the appellant herein filed Criminal Revision Petition No. 475 of 2001 before the High Court of Punjab & Haryana for not holding guilty four of the eleven accused, namely, Jai Singh, Ramesh, Naresh and Mohan Lal under Sections 302/149 IPC. Vide judgment dated 01.05.2001, the High Court allowed the appeals and acquitted all the eleven accused persons and dismissed the criminal revision petition filed by the appellant herein. Challenging the judgment of the High Court, the appellant/complainant has preferred these appeals by way of special leave petitions.

3. Heard learned counsel for the appellant as well as the respondents.

4. The only point for consideration in these appeals is whether there is any ground for interference against the order of acquittal by the High Court. This Court has repeatedly laid down that the first appellate court and the High Court while dealing with an appeal is entitled and obliged as well to scan

A through and if need be re-appreciate the entire evidence and arrive a conclusion one way or the other.

5. The following principles have to be kept in mind by the appellate court while dealing with appeals, particularly, against an order of acquittal:

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(i) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded and to come to its own conclusion.

C (ii) The appellate court can also review the trial court's conclusion with respect to both facts and law.

(iii) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate

D reasons may set aside the judgment of acquittal.

(iv) 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

E reason for interference.

(v) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts,

F etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed. [Vide *Madan Lal vs. State of J & K,* (1997) 7 SCC 677, *Ghurey Lal vs. State of U.P.,* (2008) 10 SCC 450, *Chandra Mohan Tiwari vs. State of M.P.,* (1992) 2 SCC 105, *Jaswant Singh vs. State of Haryana,* (2000) 4 SCC

G 484].

6. With these principles, let us examine whether interference is required in the impugned order of the High Court acquitting all the eleven accused. It is not in dispute that the

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incident occurred on the night of 25.10.1992. Among several witnesses examined on the side of the prosecution, material witnesses relied on by the trial court and the High Court are: A

Ganpat PW-12/complainant/appellant herein, Mohinder Singh PW-13, Investigation Officer PW-14 and Dr. Sanjiv Grover PW-3, who treated injured witnesses/accused. B

7. Before the trial court as well as the High Court, the accused took up the plea that they were innocent and there was danger to their life and the complainant party was the aggressor. We have already adverted to the relevant fact that C there was dispute between the accused and the complainant party regarding the payment of price of crackers. A Panchayat was convened and the amount of the price of crackers was fixed by the Panchayat and still Mohinder Singh was demanding the price and he himself used force and caused D harm to the accused party. We perused the evidence of PWs 12 and 13. It is true that both of them sustained injuries in the clash. According to them, the accused had inflicted injuries on them and blamed them for being the aggressor and having caused the death of Shambhu and for inflicting injuries to others. E A perusal of the oral testimony of Ganpat PW-12 who was confronted with his statement made before the police wherein he had not mentioned the names of seven persons who is said to have participated in the commission of the crime. The only explanation for omission of those names was that of F nervousness. It is useful to refer that the very same person who made a complaint to the police mentioned all the names of the accused persons assigned specific role for each one of them.

8. We also verified the statement of Mohinder Singh PW-13 wherein he claimed that Ganpat PW-12 reached the spot G when he and Ishwar had already received the injuries. This also makes the presence of PW-12 at the spot to be doubtful. Though PW-13 has denied the suggestion that he was under the influence of alcohol at the time of occurrence the same was

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A falsified by the version of Dr. Sanjiv Grover PW-3. In his statement, he has noted that the injured Mohinder Singh was under the influence of alcohol at the time of first arrival.

9. It is also clear from the evidence of prosecution witnesses as well as the defence that Satpal A2, Madan Lal A-3, Jai Kumar A-11 also sustained injuries. Among these persons, A-2 sustained grievous injuries by the use of ghandasa. There is no proper explanation by the prosecution about the injuries sustained by the accused. Further, there is no definite evidence as to the place of occurrence. It is also relevant to note the statement of accused Satpal A-2 recorded under Section 313 of the Cr.P.C. After denying several questions, as regard to the last question about the alleged incident as set out by the prosecution, he explained before the Addl. Sessions Judge on 15.07.2000. The relevant question and answer is as follows:-

"Q.20. Have you to say anything else?

Ans. The facts of this case are that on the day of occurrence Mohinder PW came at the house of Jai Kumar in drunken condition and started abusing him. I and Madan were also present there being his nephew and also on account of Diwali festival. Jai Kumar and his wife stopped them from abusing and thereafter Mohinder PW went back and after sometime he came along with Shambu deceased, Ganpat and Ishwar Singh. Mohinder PW gave a gandasi blow on my head and I fell down on the ground. Thereafter Jai Kumar and his wife Kitabo Devi came forward to save me and then all of them started causing injuries to them as well as to Madan Lal and me. Jai Kumar etc. also caused injuries to the complainant in their self defence. Initially I, Pala Ram, Madan Lal and Jai Kumar were challaned and remaining accused were found to be innocent because all the eye witnesses including the complainant Ganpat and injured witnesses related to

deceased, had stated in their statement under section 161 Cr.P.C. that only four persons i.e. myself, Pala Ram, Madan and Jai Kumar were responsible for the death of Shambu and remaining accused were not named by them at all. The matter was placed before Panchayat also in which the complainant party had admitted that seven persons have been wrongly named. In fact the complainant party was aggressor and they entered the house of Jai Kumar and caused injuries to me, Madan, Jai Kumar and Kitabo Devi."

10. If we consider the above assertion by A-2 and the evidence of PWs 12, 13 as well as Dr. Sanjiv Grover PW-3 about the injuries sustained by the persons belonging to the complainant's and accused party, the conclusion of the High Court that the complainant party was the aggressor cannot be ignored.

11. It is also relevant to note the evidence of I.O. PW-14. His evidence shows that after the occurrence when he visited the hospital, he noticed not only the injured witnesses but also the injured accused. He admitted that Madan Lal A-3 and Satpal A-2 have sustained injuries and he also admitted that he had not recorded their statement as to in what manner they sustained injuries. Though he answered that they refused to make statement, admittedly he had not taken any action against them for refusing to make statements.

12. From the analysis of the statement of prosecution witnesses PWs 12, 13, various details about the injuries sustained by the prosecution witnesses as well as the accused spoken to by Dr. PW-3, categorical assertion of Satpal A-2 in respect of question No. 20 under Section 313 of the Cr.P.C., conduct of I.O. PW-14 in not recording statement of the injured accused who were also present in the same hospital when he visited to record the statement of injured complainant party, it is clear that two groups of people clashed *inter se* with

A weapons causing injuries to each other, we hold that the complainant party was the aggressor and in the absence of definite material and explanation from the prosecution side, the High Court is right in acquitting all of them.

B 13. In the light of the above discussion, we find no merit in the appeals. On the other hand, we are in entire agreement with the conclusion arrived at by the High Court. Consequently, all the appeals are dismissed.

K.K.T. Appeals dismissed.