CRA-S-1216-SBA-2004

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1216-SBA-2004
Date of decision: 01.04.2015

State of Haryana

.... Appellants

Versus

Gurmail Singh and others

.... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1) *Whether Reporters of the local papers may be allowed to see the judgment?*
2) *To be referred to the Reporters or not?*
3) *Whether the judgment should be reported in the Digest?*

Present: Mr. Rajesh Gaur, Addl. A. G. Haryana.

Mr. Sandeep Kotla, Advocate,
for the respondents.

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PARAMJEET SINGH, J.

The present criminal appeal has been preferred against the judgment dated 25.11.2003 passed by the Additional Sessions Judge, Panchkula whereby appeal preferred by the respondents-accused (for brevity, 'accused') against judgment of conviction dated 18.09.2003 and order of sentence dated 19.09.2003 passed by the Chief Judicial Magistrate, Panchkula has been accepted and accused have been acquitted of the charges framed against them.

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Brief facts of the case are to the effect that on 06.09.1994 at 10.20 p.m., Shanti Devi wife of Dharampal got her statement (Ex.PE) recorded with the police on the basis of which an entry was made in the daily diary register. As per the said statement, at 9.00 p.m, on 06.09.1994, the complainant was present at her house. Her husband and her son had gone to take bath at the tap near Khera. Accused-Mohana, Piara and Bhirgu entered the house of the complainant, armed with *lathis* and *dandas* and proclaimed that they were to get the house vacated from the complainant. The complainant answered that the house would not be vacated as long as the owner of the house does not ask them to vacate the same. On this, accused Mohan had given a blow on the forehead of complainant with a grass cutting sword. Accused Piara gave a lathi blow on the head of complainant. Accused Bhirgu gave fist blows on the chest of complainant. At that time, three other accused Gurmail, Maru and Ramesh had also arrived at the spot. Gurmail caught the complainant in an embrace while Maru gave a lathi blow on the right arm of complainant and accused Ramesh gave a danda blow on the back and thighs of complainant. On the hue and cry of complainant, her husband Dharampal and her son Satbir reached the spot and they saw the entire occurrence and rescued the complainant. The accused left the spot giving a threat that she had been saved on that day and they would see her on the next available opportunity. The cause of dispute was a water tap. The accused wanted to take water from the tap without their turn and before the others used the same. On the basis of the said statement,

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formal FIR was registered. Investigation was set into motion. The accused were arrested. After completion of investigation, challan was presented in the Court for trial.

On finding a prima facie case, charges under Sections 323 and 325 read with Section 34 of the Indian Penal Code were framed by the trial Court, to which the accused pleaded "not guilty" and claimed trial.

In support of its case, the prosecution examined Satbir as PW 1, Dr.B.S.Singla as PW 2, Head Constable Shiv Kumar as PW 3, Dr. Raman Kumar Gupta as PW 4, complainant-Shanti Devi as PW 5 and Head Constable Labh Singh as PW 6.

Statements of accused under Section 313 Cr.P.C. were recorded. All the incriminating evidence appearing against the accused was put to them. They denied the same and pleaded false implication.

The trial Court, vide judgment of conviction dated 18.09.2003, convicted all the accused under Sections 323 and 325 read with Section 34 of the Indian Penal Code and vide order of sentence dated 19.09.2003, sentenced them as under:

Sr. No.	***Offence***	***Sentence***
1	Section 323 IPC	Rigorous imprisonment for a period of six months and fine of Rs.500/- each, in default of payment of fine, to undergo simple imprisonment for fifteen days.
2	Section 325 IPC	Rigorous imprisonment for a period of one year and fine of Rs.500/- each, in default of payment of fine, to undergo simple imprisonment for fifteen days.

Against that, the accused preferred appeal before the

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Additional Sessions Judge, Panchkula, who accepted the appeal and set aside the judgment of conviction and order of sentence passed by the trial Court and acquitted the accused of the charges framed against them. Hence, this appeal.

I have heard learned counsel for the parties and perused the record.

The lower Appellate Court, after appreciating the evidence on record, observed as under:

> *"8. In this case the injuries on the person of complainant Shanti Devi were proved by Dr. Raman Kumar Gupta appearing as PW 4. He has proved his report Ex.PW 4/A and has testified that Smt. Shanti Devi was examined by him on 6.9.94 and she was having the following injuries on her person:*
>
> 1. *A lacerated wound 1½ cm x 1Rs2 cm into skin deep on forehead, fresh bleeding was present;*
> 2. *Abrasion 2 cm x 2 cm on chest, 4 cm below the thyroid cartilage;*
> 3. *Lacerated wound 2 cm x ½ cm on base of right thumb fresh bleeding present;*
> 4. *Abrasion 1 cm x 1 cm on right lower arm on back in lower one third, associated with swelling around abrasion, advised X-ray right lower arm A.P. Lateral referred to C.H.C. Kalka;*
> 5. *Abrasion 3 cm x 2 cm on right hypochondrium associated with tenderness, advised X-ray chest, A.P. View, referred to C.H.C.Kalka.*
>
> *Injuries no.1, 2 and 3 were simple while injuries no.4 and 5 were kept under observation. The probable duration of injuries was within six hours. The weapon used was blunt. The copy of MLR shows that the examination was conducted at 11.30 p.m. on 6.9.94. PW 2*

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Dr. B.S.Singla had radiologically examined Shanti Devi on 13.9.94 and he had found a fracture in the lower end of the ulna bone. He proved his report mark A.

9. The occurrence in question is alleged to have taken place on 6.9.94 at about 9.00 p.m. The matter was reported to the police by Shanti Devi at about 10.20 p.m. on the same day and she was medicolegally examined at about 11.00 p.m. However, the FIR in this case was registered only on 19.10.94 after the receipt of report of radiologist which showed a fracture of the ulna bone. The submission of the defence counsel that there was a delay of more than one month in registration of case and so the prosecution case should not be believed, is absolutely meritless. Merely because the FIR was registered after one month can be of no consequence in this case. The matter was reported to the police within 1½ hours of the occurrence and even the medicolegal examination was conducted within 2½ hours of the said occurrence. Merely because the police kept on waiting for the report of radiological examination and thereafter registered the case would not affect the prosecution case.

10. Similarly submission of the defence counsel that prosecution case should not be believed in the absence of any independent witness is again meritless. The testimony of an injured witness is always placed at a higher pedestal than the other witnesses; as his presence at the spot cannot be doubted. Moreover, it is also recognised that the injured would ordinarily not leave out the real assailant. So the testimony of injured can be sufficient for conviction if found to be cogent and reliable. Merely because the complainant's testimony is not corroborated by any other

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witness would not defeat the prosecution case.

11. Thirdly, it was argued by the defence that the investigating agency did not recover the weapons of offence and the blood stained clothes and also did not collect blood stained earth from the place of occurrence. The said evidence is only corroborative evidence. If the direct testimony of the injured and eye witnesses is found to be convincing and reliable then the aforesaid omission in the investigation of the case would not adversely affect the prosecution case.

12. Lastly, it has been argued that the number of injuries on the person of the complainant and the number of accused involved in this case by itself shows that some innocent persons have been roped in. This argument of the defence certainly has merit. A perusal of the aforesaid medical evidence shows that the complainant had only five injuries on her body. She has roped in as many as six persons. She alleges that all the said six persons had trespassed into her house and they were all armed and had arrived with a common intention to cause injuries to her. It is most unnatural and improbable that members of such an unlawful assembly which is bent upon causing injuries to a person would inflict just one injury each on the complainant. The police investigations found that only two of the said six accused were actually involved in this occurrence and so the challan was filed only against Gurmail Singh and Mohan Lal. The remaining four accused were kept in column number 2. Thereafter the court had summoned the remaining four accused under section 319 Cr.P.c. after recording the evidence. The statement of complainant recorded in this case also shows

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that she has made various improvements in her statement. All these facts cast a doubt regarding the reliability of the version given by the complainant. A serious doubt creeps in that some of the persons involved in this case were innocent and have been unnecessarily roped in. If the actual culprits could be segregated from the innocent persons, then there would be no difficulty in convicting the actual culprits. However, if it is not possible to segregate, then all the accused become entitled to acquittal. In the present case it is not possible to segregate the actual assailants from the persons who have been falsely roped in. So, all the accused would be entitled to benefit of doubt. So, for this reason this appeal has to be accepted and the accused have to be acquitted of the charges framed against them. Appeal file be consigned to record room. Trial Court record be sent back."

The Hon'ble Supreme Court in ***Muralidhar @ Gidda & Anr. vs. State of Karnataka*** 2014(2) RCR (Criminal) 507 has held as under:

*"10. **Lord Russell in Sheo Swarup vs. King Emperor [AIR 1934 Privy Council 227]** highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said, "the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at*

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by a Judge who had the advantage of seeing the witnesses." The opinion of the Lord Russell has been followed over the years.

11. As early as in 1952, this Court in Surajpal Singh v. State; {AIR 1952 SC 52], while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed, "the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in ***Tulsiram Kanu v. State; [AIR 1954 SC 1], Madan Mohan Singh v. State of U.P.; [AIR 1954 SC 637], Atley v. State of U.P.; [AIR 1955 SC 807], Aher Raja Khima v. State of Saurashtra; [AIR 1956 SC 217], Balbir Singh v. State of Punjab; [AIR 1957 SC 216], M.G. Agarwal v. State of Maharashtra; [AIR 1963 SC 200], Noor Khan v. State of Rajasthan; [AIR 1964 SC 286], Khedu Mohton v. State of Bihar; [(1970) 2 SCC 450], Shivaji Sahabrao Bobade v. State of Maharashtra; [(1973) 2 SCC 793], Lekha Yadav v. State of Bihar; [(1973) 2 SCC 424], Khem Karan v. State of U.P.; [(1974) 4 SCC 603], Bishan Singh v. State of Punjab; [(1974) 3 SCC 288], Umedbhai Jadavbhai v. State of Gujarat; [(1978) 1 SCC 228], K. Gopal Reddy v. State of A.P. ; [(1979) 1 SCC 355], Tota Singh v. State of Punjab [1987(2) R.C.R.***

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(Criminal) 35: (1987) 2 SCC 529], Ram Kumar v. State of Haryana; [1994(3) R.C.R.(Criminal) 631 : 1995 Supp (1) SCC 248], Madan Lal v. State of J&K; [1997(4) R.C.R.(Criminal) 89: (1997) 7 SCC 677], Sambasivan v. State of Kerala; [1998(2) R.C.R.(Criminal) 693 : (1998) 5 SCC 412], Bhagwan Singh v. State of M.P.; [2002(2) R.C.R.(Criminal) 593 : (2002) 4 SCC 85], Harijana Thirupala v. Public Prosecutor, High Court of A.P.; [2002 (3) R.C.R.(Criminal) 861 : (2002) 6 SCC 470], C. Antony v. K. G. Raghavan Nair; [2002(4) R.C.R. (Criminal) 750 : (2003) 1 SCC 1], State of Karnataka v. K. Gopalakrishna; [2005(2) R.C.R.(Criminal) 20 : (2005) 9 SCC 291], State of Goa v. Sanjay Thakran; [2007(2) R.C.R.(Criminal) 458 : (2007) 3 SCC 755] *and* ***Chandrappa v. State of Karnataka; [2007(2) R.C.R. (Criminal) 92: 2007(1) Recent Apex Judgments (R.A.J.) 841: (2007) 4 SCC 415].*** *It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the*

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> *witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."*

Learned State counsel has failed to show any error in law or on facts on the basis of which interference can be made by this Court in the judgment under challenge.

As such, instant appeal is dismissed being devoid of merits.

(PARAMJEET SINGH)
JUDGE

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