

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

**CRA-S-1179-SB of 2014 (O&M)
Date of Decision: 5.5.2015**

Madan Singh

.....Appellant

Vs.

Harpal Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. J.P.Sharma, Advocate
for the appellant.

- 1. Whether Reporters of 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?**

RAMESHWAR SINGH MALIK J.

CRM No. 8638 of 2014

Applicant seeks condonation of delay of 54 days in filing the accompanying appeal.

After hearing the learned counsel for the applicant, instant application is allowed for the reasons stated therein. Delay of 54 days in filing the present accompanying appeal is condoned.

CRM stands disposed of.

Present appeal is directed against the judgment of acquittal dated 11.12.2013 passed by the learned Additional Sessions, Narnaul, whereby the accused-respondent was acquitted of the charges framed against him under Sections 323/341/506 of the Indian Penal Code ('IPC' for short) and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC/ST Act' for short).

Brief facts of the case, as recorded by the learned trial court in para 2 of its impugned judgment of acquittal, are that on 7.4.2013 Madan Singh son of Chandu Ram, Sarpanch of village Kheri, came in the police station and submitted a written complaint stating therein that on 7.4.2013, he along with Vikram son of Jairam Singh and Netarpal Singh son of Banwari Lal was coming towards his village, after having a meeting in the village Mandir regarding village fare. It was further alleged that on the way, when he started from the shop of Nand Lal son of Matadin, caste Mahajan after purchasing Biri, Harpal Singh, who was sitting on the shop, caught hold of his hand from behind and started abusing him. It was further alleged that Vikram Singh got him freed and after that he took him aside and requested him to leave, assuring him to take care of the accused. It was further alleged that during the occurrence, Mann Chand Son of Ram Kumar also reached at the shop. When he started from his house, Harpal Singh threatened him to kill. As he moved some paces from the shop, Harpal Singh again rushed to him and threatened him to kill by holding his collar. He also tried to kill him by pressing his neck with his hands. After that, he cried loudly.

On hearing his hue and cry, Vikram Singh, Mam Chand and Lala Ram Yadav rushed to them and saved him from the clutches of Harpal Singh. It was further alleged that he again gave him abuses by saying Dedh Chamar. After reaching his house, he made a telephone call to the police station.

On returning call, he was instructed by the police to reach them in the police station. He prayed for taking action against Harpal Singh son of Jagdish, resident of village, Kheri. On the basis of contents of complaint, FIR under Sections 323/341/506 IPC and Section 3 (10) of the SC/ST Act, was registered at police station. Preliminary investigation was conducted. Rough site plan was prepared. Statements of witnesses were recorded. Accused was arrested and after completion of the investigation, challan against the accused was prepared by Station House Officer, Police Station, Ateli and the same was presented before the court.

After presentation of the report under Section 173 Cr.P.C., copy thereof alongwith documents attached therewith was supplied to the accused, as per the requirement of law. Since a prima facie case was found against the accused, charges were framed against him for the commission of offence punishable under Sections 323/341/506 IPC and 3 (10) of the SC/ST Act. Accused pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined following
9 Pws:-

PW1 : Madan Singh

PW2 : SI Suresh Chand

PW3 : Satbir Singh
PW4 : Anil Constable
PW5 : Maamn Chand
PW6 : Mahesh Kumar ASI
PW7 : Jaswant ASI
PW8 : ASI Jagdish Chander
PW9 : Jaipal Singh DSP

Besides examining the abovesaid PWs, other relevant documentary evidence was also produced by the prosecution. After closure of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. Accused alleged false implication and claimed innocence. He opted to lead evidence in his defence, but did not lead any defence evidence.

After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that prosecution has failed to bring home guilt of the accused. The evidence led by the prosecution was found insufficient for recording conviction. Accordingly, the accused was acquitted of the charges framed against him, by the impugned judgment of acquittal dated 11.12.2013. Hence this appeal.

Learned counsel for the appellant vehemently contended that the prosecution has brought on record cogent and well convincing evidence, which was sufficient to record conviction of the accused-respondent. He further submits that learned trial court misdirected itself, while not appreciating true facts as well as evidence available on record. He concluded by submitting that since

the impugned judgment of acquittal has resulted in serious miscarriage of justice, the same is liable to be set aside. He prays for allowing the present appeal.

Having heard the learned counsel for the appellant at considerable length, after careful perusal of the record of case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that present one is not a fit case, warranting interference at the hands of this Court, while exercising its appellate jurisdiction. To say so, reasons are more than one, which are being recorded hereinafter.

A bare perusal of the impugned judgment of acquittal would show that the learned trial court has recorded its cogent findings before arriving at a judicious conclusion. Each and every relevant aspect of the matter has been discussed in detail by the learned trial court, so as to support its positive findings recorded, which deserve to be upheld.

Arguments raised by the learned counsel for the petitioner seems to be attractive at the first blush but on deeper consideration thereof, the same have been found without any substance, hence not worth acceptance. It is so said, because the evidence led by the prosecution was rightly found insufficient. Having said that, this Court feels no hesitation to conclude that learned trial court committed no error of law, while passing the impugned judgment and the same deserves to be upheld, for this reason also.

The conclusion arrived at by the learned trial court has been found, as a matter of fact, a judicious one. Positive findings recorded

by the learned trial court in para 29 to 32 of its judgment in support of the conclusion arrived at, deserve to be referred to and the relevant part thereof, reads as under:-

“Challan has been filed against the accused under sections 323/341/506 IPC and 3 (X) SC/ST Act after adding section 3 (x) SC/ST Act . However, FIR was registered under Sections 323/341/506 IPC was made out. Matter was investigated by PW7 ASI Jaswant Singh. PW7 Jaswant Singh deposed that he investigated the matter and recorded the statement under Section 161 Cr.P.C. and also prepared rough site plan. Jaipal Singh DSP appeared as PW9 and he deposed that he investigated the case. However, with the challan statement of Mam Chand, Lala Ram, Vikram and Nand Lal recorded under Section 161 Cr.P.C. have been attached. But it is clear from the statements attached with the challan that these statements were recorded by ASI Jaswant Singh on 10.4.2013. As per the challan the matter was handed over to Jaipal Singh DSP (HQ) for investigation of the case on 4.6.2013 but there is no statement of eye witness or the complainant recorded by Jaipal Singh DSP (HQ), Narnaul. Statement of Mahesh Kumar ASI was recorded by DSP on 14.6.2013 but his statement is related to demarcation.

Statements of Satbir MHC and Anil Constable were also recorded by DSP on 14.6.2013 but these police officials are formal witnesses as they were not present at the time of occurrence.

Even if it is taken that the investigation conducted by Jaswant Singh ASI was verified by DSP Jaipal Singh, even then it cannot be said that verification by DSP means investigation by DSP.

Investigation in this case is inconformity with the rules 7 of SC/ST Rules. Since DSP did not investigate the case, total investigation is perfunctory. Investigation by police officer of the rank of DSP is mandatory. But in the present case as per the own admission of PW ASI Jaswant Singh the investigation was conducted by him.

Even if contradictions in the statement of witnesses are ignored, this court is of the view that and prosecution has failed to prove beyond reasonable doubt that the accused uttered caste related words with intention to humiliate him. As held in the case of Pishora Singh versus State of Punjab 2002 (2) Criminal Court Cases 153 (P & H) the act of uttering caste related words should be done with intent to humiliate but it is not the case of the prosecution that the caste related words were uttered with intent to humiliate him. Mere uttering the words regarding caste is not sufficient to attract the provisions and intention of humiliating or insulting a member of a scheduled caste is necessary. Accordingly prosecution has failed to prove its case beyond reasonable doubt that the accused has committed the offence under Section 3 (x) of SC/ST Act.

The prosecution case is also that the accused has committed the offence under sections 323, 341 and 506 IPC. As held above, there are contradictions in the statements of witnesses and alleged eye witnesses namely Vikram Singh and Lala Ram have not been examined by the prosecution. The shop-keeper Nand Lal has also not been examined. The statement of PW5 is not believable as his statement is totally contradictory to the statement of PW1. Statement of PW1 is also not believable as he himself

deposed in cross-examination that the dispute started between him and the accused at the time when complainant PWI asked Harpal for his ration card and Harpal did not give his ration card and as per PWI instead of giving his ration card he misbehaved with him. He has not mentioned all these things either in the complaint on the basis of which FIR was registered or disclosed elsewhere except in his cross-examination. So the story put forward by the complainant/prosecution is not believable as he himself has concealed the material thing from where the dispute arose.”

It is the settled proposition of law that whenever two views are possible, the view which goes in favour of the acquittal is to be adopted by the courts, as held by the Hon'ble Supreme Court in ***Arulvelu & anr. vs.State represented by the Public Prosecutor and anr. 2009(4) RCR (Crl.) 638.***

The law laid down by the Hon'ble Supreme Court in the case of Arulvelu (supra), has been reiterated by the Hon'ble Supreme Court in its numerous later judgments including in the cases of ***Rathinam @ Rahinan Vs. State of Tamil Nadu, 2011 (11) SCC 140, Sunil Kumar Sambhudayal Gupta and others Vs. State of Maharashtra, 2010 (13) SCC 657 and Upendra Pradhan Vs. State of Orissa (Criminal Appeal No. 2174 of 2009 decided on 28.4.2015).*** The relevant observations made by the Hon'ble Supreme Court in para 10 and 11 of its judgment in ***Upendra Pradhan's case*** (supra), which can be gainfully followed in the present case, read as under:-

“Taking the First question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In Narendra Singh and Another v. State of M.P., (2004) 10 SCC 699, this Court has recognized presumption of innocence as a human right and has gone on to say that:

“30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between ‘may be’ and ‘must be’.

31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such presumption gets stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a Higher Court (see Dhanna v. State of M.P., Mahabir Singh v. State of Haryana and Shailendra Pratap v. State of U.P.) which had not been adhered to by the High Court. Xxx xxx xxx

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33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimla Bai although is shrouded in mystery but benefit thereof must go to the appellants as in the event of there being two possible views, the

one supporting the accused should be upheld.”
(Emphasis Supplied)

11. The decision taken by this Court in the aforementioned case, has been further reiterated in *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180, wherein this Court observed thus:

*“Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see *Bhagwan Singh v. State of M.P.*) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.”* (Emphasis Supplied)

Therefore, the argument of the learned counsel for the appellant that the High Court has erred in reversing the acquittal of accused appellant, stands good. The Additional Sessions Judge was right in granting him benefit of doubt. The view which favours the accused/appellant has to be considered and we discard the opposite view which indicates his guilt. We are also of the view that the High Court should not have interfered with the decision taken by the Additional Session Judge, as the judgment passed was not manifestly illegal, perverse, and did not cause miscarriage of justice. On the scope of High Court's revisional jurisdiction, this Court has held in Bindeshwari Prasad Singh v. State of Bihar, (2002) 6 SCC 650, "that in absence of any manifest illegality, perversity and miscarriage of justice, High Court would not be justified interfering with the concurrent finding of acquittal of the accused merely because on re-appreciation of evidence it found the testimony of PWs to be reliable whereas the trial Court had taken an opposite view." This happens to be the situation in the matter before us and we are of the view that the High Court was wrong in interfering with the order of acquittal of Upendra Pradhan passed by the Additional Sessions Judge."

During the course of arguments, learned counsel for the applicant could not point out any jurisdictional error or patent illegality in the impugned judgment passed by the learned trial court, so as to convince this Court to take a different view than the one taken by the learned trial court. In such a situation, no interference is warranted at the hands of this Court and the impugned judgment deserves to be

upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered opinion that present application is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference is made out.

Resultantly, instant application stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

5.5.2015
Ak Sharma