

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-3955-SB-2013

Date of decision: 30.07.2015

Bahadur Singh

... Appellant

Vs.

State of Haryana and ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ashok Kumar Jindal, Advocate
for the appellant.

YES/NO 1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK J.(ORAL):

Instant appeal, at the instance of the complainant, is directed against the impugned judgment of acquittal dated 27.09.2013, passed by learned Addl. Sessions Judge, Narnaul, whereby accused-respondents were acquitted of the charges framed against them.

Brief facts of the case, as recorded by learned trial Court in para 1 of its judgment, are that the prosecution case in nutshell was that application Ex.PW8/A was moved by the complainant to the police on 11.01.2013. The complainant in his application Ex.PW8/A stated that he was resident of Village Khurd Bhushan. He was having two daughters and deceased Sawran Kumar was his son. The marriage of deceased Sawran Kumar was solemnized with Dhanpati about 15-16 years ago. Several time

matrimonial discord occurred between them but later on they were settled with the intervention of the relatives. For last one year on account of matrimonial discord Dhanpati had filed a Court case against his son and in the aforesaid Court case his son had to go to jail. For last few days, the brother- in-laws of his son i.e. Jaswant and Dharmender and Mosera Sasur (wife's mother brother-in-law) his son for grabbing the property and money of his son were harassing and threatening him. In this regard, the Sarpanch of his village Ram Kishan and Rameshwar Parshad tried to intervene and tried to get the matter compromised, but the brother-in-laws of his son for building pressure said that Sawran Kumar would have to go to jail. On that occasion, Jaiparkash did not allow the matter to be compromised. His son (deceased Sawran Kumar) had to go to jail. On that day, he and his wife Savitri Devi came to Court where Sawran Kumar met his brother-in-law Jaswant. When Sawran Kumar was scolded by Jaswant then his son said that he has become frustrated. Both the brother-in-law of his son and Dhanwant said that things would go as per their choice. Thereafter, the dead body of his son Sawran Kumar was found between the Railway line of Mirjapur Bacchod and Narnaul. Sawran Kumar on the Railway line had committed suicide on account of his brother-in-laws and Mosera Sasur. On the personal search of his son a suicide note was found. On the aforesaid suicide note his son has accused his brother-in-laws and Dhanwant for his suicide. Earlier they kept waiting in view of the Panchayat decision, now they have fully inquired the matter. His son has committed suicide by coming under train on 06.11.2012 under frustration, torture and harassment inflicted on him by his brother-in-laws i.e. Jaswant, Dharmender, Dhanwant, Jaiparkash Master and Sanwat

Singh etc. are responsible. On the basis of the aforesaid application, FIR Ex.PW14/A, under Section 306 IPC was registered. After the conclusion of the investigation, the above named accused persons have been sent by the Police Station, GRPS, Rewari to stand trial for committing offence under Section 306/34 IPC.

A prima facie case having been found, the accused were charge-sheeted, to which they pleaded not guilty and claimed trial. In order to substantiate its case, prosecution examined as many as 18 witnesses, besides producing the relevant documentary evidence. On conclusion of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. They alleged false implication and claimed complete innocence. In their defence, accused produced their documentary as well as oral evidence.

After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the prosecution had failed to bring home the guilt against both the accused. Accordingly, the accused were acquitted of the charges framed against them vide impugned judgment of acquittal dated 27.09.2013. Hence this criminal appeal against acquittal, at the hands of the complainant.

Learned counsel for the appellant submits that the learned trial Court has failed to appreciate the true factual as well as legal aspect of the matter, while passing the impugned judgment. He submits that the prosecution has brought on record cogent and convincing evidence which was sufficient to record conviction of the accused. However, since the learned trial Court has failed to appreciate the evidence available on record in

the correct perspective, the impugned judgment as resulted in miscarriage of justice. He prays for setting aside the impugned judgment, by allowing the present appeal.

Having heard the learned counsel for the appellant at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed hereinabove, instant one has not been found to be a fit case warranting interference at the hands of this Court, for the following more than one reasons.

A bare perusal of the impugned judgment of acquittal would show that the learned trial Judge has not only discussed in detail each and every relevant aspect of the case but also appreciated all the relevant evidence available on record, in the correct perspective, before arriving at a judicious conclusion. In fact, the prosecution has failed to prove its case. Since the impugned judgment of acquittal has not been found suffering from any patent illegality, the same deserves to be upheld.

During the course of arguments, learned counsel for the appellant failed to point out any patent illegality or jurisdictional error in the impugned judgment, so as to enable this Court to take a different view than the one taken by the learned trial Court. Further, it is the settled proposition of law that whenever two views are possible, the view which goes in favour of acquittal, is to be followed by the courts. In this view of the matter, it is unhesitatingly held that the impugned judgment of acquittal is well justified on facts as well as in law and the same deserves to be upheld, for this reason

as well.

The view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in the case of **Arulvelu & anr. vs. State represented by the Public Prosecutor and anr. 2009(4) RCR (Crl.) 638**. The relevant observations made by the Hon'ble Supreme Court in para Nos.39, 40 and 41 in the case of Arulvelu (supra) read as under:

“In Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450, a two Judge Bench of this Court of which one of us (Bhandari, J.) was a member had an occasion to deal with most of the cases referred in this judgment. This Court provided guidelines for the Appellate Court in dealing with the cases in which the trial courts have acquitted the accused. The following principles emerge from the cases above:

- 1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*
- 2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.*
- 3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the*

demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

40. This Court in a recently delivered judgment State of Rajasthan v. Naresh @ Ram Naresh 2009 (11) SCALE 699 again examined judgments of this Court and laid down that "An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused. This Court has dealt with the scope of interference with an order of acquittal in a number of cases."

41. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial

court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law.”

The law laid down by the Hon'ble Supreme Court in Aruluvelu's case (supra) has also been followed by a Division Bench of this Court in the case of **State of Haryana v. Aman Kumar and another 2012 (3) RCR (Cr1.) 330** and judgment dated 2.11.2012 passed by this Court in **CRM-A-284-MA-2011 (Baljeet Singh v. State of Punjab and others)**. Further, the view taken in Aruluvelu's case (supra) has been reiterated by the Hon'ble Supreme Court in many 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 paras 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 xxx xxx 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 Page 16 16 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."

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in **Arulvelu's** case (supra), it is unhesitatingly held that the learned Additional Sessions Judge was well-justified on facts as well as in law, for passing the impugned judgment of acquittal and the same 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 view that the present appeal is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, the instant appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

30.07.2015
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