

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

CRM-A-646-MA-2011

Date of decision : 23.04.2015.

Rajesh Kumar

.....Petitioner

Versus

Chuni Lal and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Rajesh Arora, Advocate for appellant.

Mr. B.S. Guliani, Advocate for respondent.

DARSHAN SINGH, J.

The present appeal along with an application under Section 378 (3) of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') for leave to appeal has been filed by complainant-appellant Rajesh Kumar against the judgment of acquittal dated 11.06.2011 passed by the learned Special Judge, Gurgaon.

2- The brief facts of the prosecution case are that on 03.12.2006, all the accused, in furtherance of their common intention, criminally trespassed into the plot of the complainant, who belongs to

Harijan caste. The accused hurled abuses in the name of his mother and sister. The plot is owned and possessed by the complainant since prior to the year 1947. He has stored garbage, dung cake hill and fuel woods and has also erected a shed to tether cattle. The accused damaged and uprooted the pegs and also threatened him to kill. The complainant was beaten by the accused. He was medico legally examined.

3- On the basis of the private complaint, filed by the appellant, the accused-respondents were summoned vide order dated 06.03.2007 by the learned Judicial Magistrate to face trial for the offences punishable under Section 3(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter called the 'Act') and Sections 148, 149, 323, 324, 452 and 506 of the Indian Penal Code, 1860 (in short 'IPC'). The case being exclusively triable by the Special Court, was committed to the Court of Sessions.

4- The charges were settled against the respondents. They pleaded not guilty to the charges.

5- In order to substantiate its case, prosecution examined seven witnesses.

6- In their statements under Section 313 Cr.P.C., they pleaded innocence and false implication.

7- On appreciation of evidence on record and the contentions raised by learned counsel for the parties, the accused-respondents were acquitted of the charges by the learned trial Court. Hence, this application along with the appeal.

8- Learned counsel for the applicant-appellant contended that the accused-respondents have criminally trespassed into the plot owned by the complainant and have also assaulted him. The case of the prosecution was established from the ocular as well as medical evidence. Thus, the judgment of acquittal rendered by the trial Court is perverse and has resulted in miscarriage of justice.

9- On the other hand, Mr. B.S. Guliani, Advocate, learned counsel for respondent contended that there was no evidence with the appellant that he was the owner in possession of the plot in dispute, rather respondent Chunni Lal and Raghu Nath were the owners in possession of the plot in dispute. There is delay of more than one month in filing the complaint. There are material contradictions in the statements of the witnesses and material improvements have been made. Thus, he pleaded that the impugned judgment of acquittal does not suffer from any legal infirmity.

10- I have duly considered the aforesaid contentions.

11- The law is well settled with respect to the appeal against acquittal. Under the Indian Criminal Jurisprudence, the accused has two fundamental protections available to him in a criminal trial. Firstly, he is presumed to be innocent till proved guilty and secondly, he is entitled to a fair trial and investigation. Both these facts attained even greater significance where the accused has a judgment of acquittal in his favour. The judgment of acquittal enhances the presumption of innocence of the accused. The High Court can exercise the power of jurisdiction to

reverse an order of acquittal in the cases where it finds that the lower Court has obstinately blundered or has through incompetence, stupidity or perversity reached such distorted conclusion as to produce a positive miscarriage of justice. The Hon'ble Supreme Court in case **Murugesan and others Vs. State through Inspector of Police 2013(1) RCR (Criminal) 791** has laid down that if two reasonable conclusions are possible on the basis of evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court. A possible view denotes a conclusion which could reasonably be arrived at regardless of the fact whether it is agreed upon or not by the higher Court and irrespective of the correctness or otherwise of such opinion. So long as the view taken by the trial Court can be reasonably found, it should not be interdicted and the High Court should not supplant its own view over the view of the trial Court.

12- In view of the aforesaid ratio of law, we are to examine the case in hand. In the instant case the occurrence is alleged to have taken place on 03.12.2006 but the complaint has been filed on 03.01.2007. There is delay of one month in filing the complaint. This delay in filing the complaint has not been satisfactorily explained.

13- The basic reason for this occurrence is the dispute of the plot. The complainant has alleged that he is owner in possession of the plot in dispute since prior to the year 1947. The learned trial Court has categorically mentioned that the complainant did not produce any document regarding ownership and possession over the plot in dispute. If

the possession of the appellant over the plot in dispute is not proved so, there can be no question of any criminal trespass by the respondents in the disputed plot and his version that he was assaulted by the accused due to that dispute is rendered unreliable.

14- The appellant has also admitted his signatures on the compromise effected between the parties. The learned trial Court has also categorically mentioned that the judgment of the civil Court Ex.PK shows that accused Chunni Lal and Raghu Nath were proved to be the owner of the disputed plot. So, the very basis of this occurrence stands washed away.

15- Various improvements have been made by the complainant in his statement, which further renders his statement unreliable. Thus, keeping in view the aforesaid discussion no case is made out for grant of leave to appeal against the impugned judgment of acquittal.

16- Thus, the application filed by the appellant under Section 378(3) Cr.P.C. for grant of leave to appeal against the impugned judgment of acquittal is hereby dismissed.

17- Consequently, the appeal also stands dismissed.

Dated: 23.04.2015

sunil yadav

**(DARSHAN SINGH)
JUDGE**