

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1041-MA of 2013.
Date of decision: 25.05.2015.

Gurdial Singh

.... Applicant/Appellant

Versus

Piara Singh and others

.... Respondents

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. Gulzar Mohd., Advocate for the applicant/appellant.

Mr. H.S. Ghuman, Advocate for the respondents.

PARAMJEET SINGH, J. (ORAL)

The instant application has been filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the impugned judgment dated 24.09.2013 passed by learned Judicial Magistrate Ist Class, Phillaur whereby complaint filed by applicant/complainant (hereinafter referred to as 'complainant') under Sections 452, 427, 323, 326, 148, 149 of the Indian Penal Code has been dismissed and respondents-accused (hereinafter referred to as 'accused') have been acquitted of the charge framed against them.

Brief facts of the case are that a complaint was filed by the complainant under Sections 452, 427, 323, 326, 148, 149 of the Indian Penal Code alleging that on 02.02.2008 at about 12.30 p.m. the complainant was present in his house. All the accused criminally trespassed into his house with deadly weapons in order to cause

injuries on his person and to cause loss to the property of the complainant. At that time, Dilbag Singh armed with Kirpan, accused Rachhpal Singh and Balkar Singh armed with Gandasi and accused Malkiat Singh armed with dang, raised lalkara that complainant should be taught a lesson for not delivering the possession of property. With this accused Dilbag Singh gave a Kirpan blow on the person of complainant which hit on right hand thumb on proximal phalanx on anterior lateral side. Accused Rachhpal Singh gave gandasi blow from its reverse side on the person of complainant which hit on the back lower side of complainant. Accused Malkiat Singh gave dang blow on the person of complainant which hit on the left shoulder joint. Accused Balkar Singh broke house hold articles lying in the house of complainant and caused loss to the tune of more than ₹10,000/-. It has been further averred that on raising raula by the complainant, Santokh Singh and Jaswinder Singh came there and saved the complainant from the clutches of accused. All the accused ran away after committing the offence. Thereafter the complainant was got admitted in Primary Health Centre, Jandiala where he was medico legally examined. Complainant approached the police station concerned for taking action against the above named accused but no action was taken by the police against the accused. Hence, the present complaint was filed.

On the basis of preliminary evidence, accused were ordered to be summoned to face trial for the commission of offences punishable under Sections 452, 427, 323, 326, 148, 149 of the Indian Penal Code.

In pre-charge evidence, the complainant Gurdial Singh himself appeared into witness-box as CW1 besides examining Jaswinder Singh as CW2, Santokh Singh as CW3, Dr. Ashok Kumar as

CW4 (wrongly marked as CW1), Dr. Jasbir Singh as CW5 (wrongly marked as CW4). On the basis of pre-charge evidence, accused were charge-sheeted for the commission of offences under Sections 148, 452, 323, 326, 427 read with Section 149 of the Indian Penal Code, to which, they pleaded 'not guilty' and claimed trial.

Statements of accused under Section 313 Cr.P.C. were recorded wherein they pleaded complete innocence and false implication.

The trial Court, after appreciating the evidence, acquitted all the accused from the charges framed against them, vide impugned judgment dated 24.09.2013. Hence, this application for grant of leave to appeal.

I have heard learned counsel for the applicant and gone through the impugned judgment.

The trial Court, after appreciating the evidence on record, observed as under:-

“31. In the present case after hearing the parties and perusing the record it shows that in the present case accused have been charged sheeted for the offence punishable under section 148, 452, 326, 323, 427 read with section 149 of IPC. Complainant has alleged that on 02.02.2008 at about 12:30 p.m., all the accused were armed with deadly weapons when they entered into the house of complainant and they caused injuries to the complainant. Complainant appeared as CW-1 after summoning of accused persons and he deposed as per his case. In his cross-examination he stated that he filed this present complaint after about a month or one and half month. He did not give any statement to the police nor he told to anyone to register FIR. Copy of the M.L.R. is produced. He also stated that his statement was never recorded in the police station but he stated that his statement was recorded in the fourth month.

32. CW-2 Jaswinder Singh is stated to be eye witness to the occurrence alleged by the complainant. In his evidence he deposed that he saw the accused persons at the time of causing injuries to the complainant, whereas CW-1 Gurdial Singh says in his evidence that both CW-2 Jaswinder Singh and CW-3 Santokh Singh came to the spot when he raised raula which creates doubt regarding presence of these witnesses at time of occurrence. Complainant CW-1 also stated that no injury was caused to any of the witnesses which fact was duly corroborated by CW-2 Jaswinder Singh as well as CW-3 Santokh Singh.

33. Complainant specifically stated in his evidence that he did not go to police station nor he gave any intimation in the police station. He also did not give any complaint to the panchayat. He also stated in his evidence that he went to police and tried to give written complaint, but his complaint was not taken by the police. However, he did not produce any copy of such complaint. CW-2 Jaswinder Singh and CW-3 Santokh Singh also stated that none of them gave any information to the police. CW-2 Jaswinder Singh stated that Gurdial Singh gave information to the police. He even stated that police came to see the spot where his statement was recorded. CW-3 Santokh Singh stated that he never went to police station with Gurdial Singh.

34. In the present complaint it is specific plea of the complainant that after the occurrence, he went to police station and police assured him for necessary action but nothing was done in the matter. When he deposed in his evidence, he stated the same version. CW-2 Jaswinder Singh admitted that the information was given to police, but CW-3 Santokh Singh remained silent about the said fact. When complainant himself stated that he went to police station he could easily brought the record pertaining to action taken in his matter, but the entire case is silent on the said point.

35. As per the complainant and witnesses the quarrel was lasted in one or two minutes. CW-2 Jaswinder Singh in

his evidence stated that accused persons ran away from the spot after one or two minute after his arrival there. He also stated that he and Santokh Singh both went to the spot simultaneously and they also stated that no injury was caused to both of them, but 3-4 injuries were caused to Gurdial Singh which fact was corroborated by Gurdial Singh also. The version of these witnesses is very doubtful. This fact cannot be believed that both the witnesses remained present at the time of occurrence and they saw the accused persons causing injuries as mute spectators. This fact weakens the story of the complainant.

36. CW-3 Santokh Singh stated in his evidence that there is one plot of Piara Singh in which he has raised construction of boundary wall and gate is installed by him. Version of the complainant is that Piara Singh raised Lalkara to teach lesson to him for taking possession of the said plot. If the possession of the said plot has already been with Piara Singh there could be no occasions for him to raise lalkara. It is not possible that a quarrel takes place for 2-3 minutes. Neither anyone of the family of the complainant was present at home nor anyone from the neighbors came at the spot.

37. Complainant also stated that he went to the police station when he was discharged from the hospital. He stated that he was admitted in the hospital on 02.02.2008 and that he was discharged from the hospital on 13.02.2008 which date he has mentioned as 15.02.2008 in his complaint. Complainant examined CW-4 Dr. Ashok Kumar but the said medical officer did not stat any where that complainant was admitted in the hospital on 02.02.2008 when he was examined by the said doctor nor he stated any where in his evidence that complainant was discharged at the time, as alleged by the complainant.

38. Further, learned counsel for the accused argued that no offence under section 326 of the IPC is made out as medical officer has also stated that tendon was only cut and there was no fracture of bone. While perusing the evidence on record it shows that CW-4 Dr. Ashok Kumar is

examined who deposed that after examination on the person of complainant he found three injuries, one of which was incised wound on the right hand thumb which, after obtaining X-ray opinion, was declared as grievous injury. Further CW-5 Dr. Jasbir Singh is examined who stated that injured Gurdial Singh was admitted in OPD Civil Hospital on 06.02.2008 and after his examination said witness gave his report which was proved as EX.D-5. As per the said documents there is no mention that bone is fractured and only mention regarding tendon is given.

39. One more document Ex. CWI/5 is on record. These documents show that on the report of X-ray where it is specifically mentioned that there is no fracture. Even CW-4 Dr. Ashok Kumar stated in his evidence that possibility of causing of injuries no. 2 on the hard surface cannot be ruled out. Even he admitted the fact that there was no fracture of the bone. It is principle of criminal jurisprudence that complainant has to prove his case against the accused persons beyond the reasonable doubt and his version must be trust worthy.

40. The version of the complainant is that he remained in hospital from 02.02.2008 to 13.02.2008 or 15.02.2008, though there is no any document on record. CW-4 Dr. Ashok Kumar stated that at the time of examination of patient Gurdial Singh was well oriented to the place which means that he could understand the situation. CW.-5 Dr. Jasbir Singh deposed that he conducted the X-ray film of the complainant Gurdial Singh but no such X-ray films were produced at any time in the evidence. This witness also stated that complainant was an OPD patient and was not admitted in the hospital. He also admitted that he has not mentioned the extent of fracture and that only tendon of the thumb was cut which is not part of bone and same was repaired which fact was also corroborated by CW-4 Ashok Kumar who also stated that there was no fracture at the thumb. CW-4 Ashok Kumar stated in his evidence that he gave his opinion that the injury no. 1 was grievous for the reason that tendon was

cut.

41. As per. clause seven of section 320 of IPC, hurt is grievous when it is 'fracture or dislocation of a bone or tooth'. Further as per clause eight section 320 of the IPC says hurt is grievous in case 'any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits'. In the present case complainant himself stated that he remained in hospital for about 11 days or 13 days without any document to that effect which fact is falsified by the version of CW-5 Dr. Jasbir Singh that he was conscious at the time of examination by him. Other two injuries are, one is imprint abrasion and other is swelling.

42. Further the version of the complainant regarding causing of injuries can be considered only when the story of the complainant regarding house trespass is proved. To prove the said version complainant himself deposed and examined Jaswinder Singh and Santokh Singh. Complainant admitted in his evidence that accused Piara Singh has also instituted an FIR against him in which both the Jaswinder Singh and Santokh Singh are accused. No other independent witness has corroborated the version of the complainant. Rather, complainant and his witnesses categorically stated that no other person came at the spot nor any person was present at the house of the complainant at that time which version is itself on the fact of it is not believable in the circumstances when house of the complainant is situated within the village and time of occurrence is allegedly of 12:30 p.m. Complainant was having the onus to prove his possession regarding the house where allegedly incident took place, but he did not produce any such evidence on record in the absence of which the version regarding the house trespass cannot be believed. Further story regarding the inflicting of injuries is also doubtful in the presence of above said circumstances and medical evidence on record and same is not proved beyond any doubt.

43. Accused persons were also charged sheeted for

the commission of offence punishable under section 427 of the IPC that they were alleged to have made destruction of the articles at the house of the complainant. Complainant stated in his complaint that the articles more than amount of ₹10,000/- were broken by the accused Balkar Singh which fact he deposed in his evidence also. In his cross-examination he stated that he did not produce any list of those articles nor has produced any photographs ,of the same. CW-2 Jaswinder Singh also stated the same version in his examination-in-chief. Further CW-3 Sanotkh Singh stated that the articles were containing Fridge, Television along with other articles.

44. Mere, station of oral version does not prove the version of the complainant when the story of the complainant itself remained doubtful. Complainant could have produce corroboratory evidence in support of his plea. If version of the 'complainant is believed that the came back to his home after 15 days but he did not produce any such document which has further weakens the story of the complainant.

45. Learned counsel for the accused argued that there is huge delay of filing of the present complaint. As per file the complainant has alleged the occurrence of dated 02.02.2008 and the present complaint has been filed on 09.03.2008 after a delay of about one month and seven days. But there is no any cogent explanation for having caused such long delay in filing the present complaint. The delay caused in filing the complaint is also fetal to the case of the complainant in this case and the above said circumstances show that the said delay was caused only to fill' up the lacuna in the story of the complainant.

46. From the discussions made above, this court is of the opinion that complainant has not been able to prove the case against the accused as alleged by him. It is not proved that accused persons trespassed into the house of complainant and caused him grievous and simple injuries and also caused damaged to household articles of complainant.

47. In view of my above said discussions, the complainant has not been able to bring on record the existence of entire circumstances which are sufficient to prove its case beyond the shadow of reasonable doubt. Accordingly, by giving benefit of doubt, the accused Piara Singh, Dilbag Singh, Rachhpal Singh, Malkiat Singh and Balkar Singh are acquitted from the charges framed against them under section 148, 452, 326, 323, 427 read with section 149 of IPC. Bail bonds and surety bonds of 'all the accused stand discharged from their liability. File be consigned to the record room after due compliance.'

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 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.(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 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 counsel for the applicant 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, application for leave to appeal is dismissed on merit.

May 25, 2015.
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(PARAMJEET SINGH)
JUDGE