

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

CRM-A-1076-MA-2013
Decided on : 23.03.2015

Amar Singh

... Applicant/Applicant

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE PARAMJEET SINGH

Present : Mr.Jasbir Rattan, Advocate for the petitioner.
Mr.K.S.Sidhu, DAG, Punjab.

- 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 ?

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 08.05.2013 passed by learned Sub Divisional Judicial Magistrate, Dhuri whereby learned Sub Divisional Judicial Magistrate, Dhuri has acquitted the accused-respondents.

Brief facts of the case are that a complaint was filed by the complainant against the accused under Sections 323, 295-A, 452, 341, 506 and 34 IPC on 14.09.2010 in which the complainant has averred that he is an Amritdhari Singh and the accused are related to each other accused no.2 is the wife and accused no.3 is the son of accused no.1. Complainant further averred that on 03.09.2010 at about 3.45 p.m., he was present in his Moduwala field and irrigating his agricultural property from his motor connection, where accused came on motorcycle. Complainant further

averred that the accused started asking to give water from his motor for irrigation of their property, but that the complainant showed his inability, at which they became angry. Complainant further averred that accused no.3 Gagandeep Singh who was armed with a kahi carved out a water course towards his fields with the kahi, at which the complainant reached the motor room to to switch off the electric motor. Complainant further averred that accused no.2 raised lalkara at which accused no.1 Gurmail Singh armed with a soti entered into the motor room and caught the complainant from his beard and tried to pull out the complainant from the motor room and gave kick blows in the stomach of the complainant. Complainant further averred that accused no.1 then pulled out the complainant from the motor room and that accused Gagandeep Singh then gave kahi blows to the complainant, who tried to save himself and that the kahi hit him between the little finger and ring finger of the right hand. Complainant further averred that accused Gurmail Singh then gave soti blows to the right side of the head of the complainant and the left thigh of the complainant. Complainant further averred that accused no.2 encouraged the accused no.1 and 3 to kill the complainant. Complainant further averred that accused no.1 and 3 pushed the complainant in the water course and removed the Gatra and crushed the same with their feet and used filthy words for it and also pulled out the hair from the beard of the complainant. Complainant further averred that he then raised alarm and that in the mean while Pritam Singh, Bura Singh came at the spot and saw the occurrence and rescued the complainant and that Sukhpal Sigh then took the complainant to Dhuri to get him medico legally examined. Complainant further averred that the motive behind the attack

was the the accused demanded water to irrigate their agricultural land from the complainant to which the complainant did not agree. Complainant further averred that the police came to the hospital but his statement was not recorded and rather a clandra u/s 107/151 Cr.P.C. was presented and hence the instant complaint.

On the basis of preliminary evidence, notice of accusation for commission of an offence punishable Sections 323, 295-A, 452, 341, 506 and 34 IPC was served upon the accused-respondents to which they pleaded “not guilty” and claimed trial.

The complainant, in order to prove its case, examined Jagdev Sharma, Draftsman as CW1, Dr.Narinder Kumar as CW2. Complainant himself stepped into the witness box as CW3 and examined Pritam Singh as CW4, Vinod Kumar as CW5, Sukhpal Singh as CW6 and AMHC Sarbjit Singh as CW7.

Thereafter, the accused-respondents were summoned under Sections 323, 506 and 34 IPC vide order dated 16.08.2012.

The trial Court, after appreciating the evidence, acquitted the accused respondents, vide impugned judgment dated 08.05.2013. 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:-

“17 Having heard both the sides at length, I find myself agreeing with the arguments of the ld. Defence counsel. The version of the complainant is that the accused

came at the spot and then asked for water for the purpose of irrigation from the complainant to which the complainant did not agree and that then accused no.3 carved out a water course with the kahi with which he was armed and that the complainant then went to the motor room to switch off the motor, where accused no.1 Gurmail Singh entered the motor room and caught the complainant from his beard and tried to pull out the complainant from the motor room and gave kick blows in the stomach of the complainant and that then accused no.1 Gurmail Singh pulled out the complainant from the motor room where accused no.3 Gagandeep Singh gave blow with Kahi to the complainant and then accused no.1 Gurmail Singh gave blow with soti on the right side of the head of the complainant and on the left thigh of the complainant and that then accused no.1 and 3 pushed the complainant in the water course. However, it is to be noticed that firstly complainant in his cross examination stated that prior to his falling in the water course, he only suffered injuries by way of sticks and that he thereafter fell unconscious and regained consciousness after about half an hour. Further CW2 Pritam Singh in his cross examination firstly disclosed that he is related to the complainant and then went on to state that he did not know as to how many injuries were received by Amar Singh and what was the seat of injuries. Further, it is to be noticed that CW4 Dr.Narinder Kumar clearly stated that injury no.3 on the person of the complainant could not have been caused by a kahi. Furthermore, it is to be noticed that CW5 Sukhpal Singh, who is the eye witness and also the son of the complainant, in his cross examination brought forth a completely new version and stated that the entire occurrence had taken place in the water course. He further stated that accused own no land their motor. Thus, the conclusion which can be derived from all the above instances is that firstly the doctor has completely ruled out that injury no.3 on the person of the complainant could have been caused by a kahi as alleged by the complainant. Further, it is to be seen that the alleged eye witness CW5 Sukhpal Singh has stated that no occurrence took place in or near the motor and that the entire occurrence had taken place in the water course, which is in complete contradiction to the entire version of the complainant as elucidated by him in his complaint and examination in chief. Furthermore, it is to be seen that it has also come forth in the evidence that accused own no land near the

motor of the complainant and thus the motive also completely fails as when there is no land of the accused near the motor of the complainant, the question of asking for water from the motor of the complainant does not arise. All the above contradictions and improvements raised a grave shadow of doubt on the version put forth by the complainant and thus, giving the benefit of doubt to the accused, they are hereby acquitted of all the charges framed against them. Their bail bonds and surety bonds stands discharged. File be consigned to the record room."

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.

[Paramjeet Singh]
Judge

23.03.2015
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