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

CRM-A-11-MA of 2013 (O&M)

Date of decision: January 13, 2015

Anoop Kumar

.....Applicant

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate
for the applicant.

Mr. V.P.S. Sidhu, AAG Punjab.

Mr. A.S. Rai, Advocate
for respondents No.2 and 3.

SABINA, J

Respondents No.2 and 3 had faced trial in FIR No.135 dated 21.07.1998, under Sections 326, 324, 452, 380, 148, 149 of Indian Penal Code, 1860 ('IPC' for short), registered at Police Station City Moga. Trial Court vide judgment/order dated 24.07.2008 ordered the conviction and sentence of the respondents No.2 and 3 qua commission of offence punishable under Sections 452, 326, 324 IPC. Respondents No.2 and 3 preferred an appeal before the Appellate Court against their conviction and sentence. The Appellate Court vide impugned order dated 18.10.2012 ordered the acquittal of the respondents No.2 and 3. Hence, the present application under Section 378 (4) of Code of Criminal Procedure, 1973 for grant of leave to appeal by the applicant.

Learned counsel for the applicant has submitted that

the Appellate Court has erred in ordering the acquittal of respondents No.2 and 3. In fact, prosecution had been successful in proving its case. Respondent No.2 had inflicted injury on the person of the complainant.

Learned counsel for the respondents No.2 and 3, on the other hand, has opposed the application and has submitted that on 21.07.1998, applicant had inflicted injuries on the person of respondent-Rachhpal Singh. Although, in the said case, cancellation report had been submitted by the police, but in a private complaint filed by respondent-Rachhpal Singh, applicant alongwith his other co-accused have been ordered to be summoned to face the trial qua commission of offence punishable under Sections 324, 326, 323, 148, 149 IPC vide order dated 14.10.2014.

The Appellate Court while ordering the acquittal of the respondents No.2 and 3, has held as under:-

16. *Learned counsel for the appellants Rachhpal Singh and Jagdev Singh has argued that from the evidence on the file it is admitted fact that Ram Mohan had got property on lease from Nachhattar Singh father of accused Rachhpal Singh and regarding that matter civil litigation was pending. He has pointed out that injured Anoop Kumar was admittedly working with Ram Mohan for the last 20 years and he has admitted that he is working at petrol pump of Ram Mohan. Defence counsel has argued that as per prosecution case occurrence of the present case took place at 9:30 P.M. On 21.07.1998 and statement of injured Anoop Kumar was recorded at 10 P.M. On 22.07.1998. He has argued that MLR of Anoop Kumar, injured, which is Ex.PC, clearly shows that he was conscious at that time and when he was taken to the hospital he was in position to make statement and he*

had signed the MLR in very fine manner whereas the Investigating Officer got the opinion of doctor regarding fitness of Anoop Kumar at 12.10 A.M. On 22.07.1998 and doctor declared him unfit to give statement, which is clear from Ex.PW5/B showing that Investigating Officer was hand-in-glove with complainant and Ram Mohan and delay in recording FIR was utilized for concocting false story. Counsel for the appellants has also argued that from the evidence adduced on the file in defence evidence it has been proved that Rachhal Singh accused was injured at 8:30 P.M. On 21.07.1998 before the occurrence of present case and MLR of Rachhpal Singh is mark-X on the file. Counsel for the appellants has argued that from the FIR Ex.DW1/A it is clear that this FIR was recorded on the directions of Punjab State Human Rights Commission after the inquiry was conducted by SP (D) regarding injuries inflicted to Rachhpal Singh accused by Ram Mohan, Anoop Kumar and others. From this FIR it is also clear that occurrence of causing injuries to Rachhpal Singh had taken place at 8.30 .M. on 21.07.1998 which is prior to the occurrence of the present case.

17. *Counsel for the appellants Rachhal Singh and Jagdev Singh has further argued that PW1 Anoop Kumar injured has stated in his cross-examination his neighbour had reached at the time of occurrence and that neighbour has not been cited as witness. Even pW2 Kavita wife of complainant has stated that 5-10 neighbours reached the place of occurrence but none of these neighbours was cited as eyewitness. From the evidence given by PW1 injured/complainant Anoop Kumar and PW2 eyewitness Kavita it is clear that it does not inspire confidence as PW1 has admitted that he remained in custody for 8-10 days in case regarding causing injuries to Rachhpal Singh. He has also admitted that he is employee of Ram Mohan and that there is litigation between Nachhattar Singh father of accused Rachhpal Singh and Ram Mohan.*

He has also admitted that he is party in one of those cases. PW1 has also admitted that his tenant was also at the spot but she has also not been examined. PW2 Kavita has stated in her cross-examination that she was shown all the accused when she came to the court and she was not knowing any of the accused except accused Rachhpal Singh and Jagdev Singh. She has also stated that she did not give names of accused in her statement recorded to the police but from her statement under Section 161 Cr. P.C. it is clear that names of all the accused are mentioned therein. Counsel for the appellants has also pointed out that Investigating Officer PW5 has also admitted that inquiry was conducted against him on the complaint of Rachhpal Singh accused and on the complaint of Rachhpal Singh FIR was registered against Ram Mohan, Anoop Kumar and others. So, it is clear that prosecution has examined only Anoop Kumar and his wife Kavita but Preeti, the only independent witness, who admittedly was present at the time of occurrence, has not been examined by prosecution for the reasons best known to it. It is also clear that Anoop Kumar being employee of Ram Mohan was an interested witness and it is also proved on the file that occurrence regarding causing of injuries to Rachhpal Singh by Ram Mohan, Anoop Kumar and others has taken place prior to time of alleged occurrence of this case, which has rendered the case of prosecution highly doubtful.

18. Counsel for the appellants has also pointed out that Investigating Officer PW5 has admitted in his cross-examination that no weapon of offence was taken into possession during investigation of this case. Counsel for the appellants has argued that when weapon of offence was not taken into police possession during investigation it has rendered the prosecution story unbelievable. In this regard, reliance can be placed on case of **Gurnam Singh Vs. State of Punjab, 1997(2)**

***Recent Criminal Reports 471**, in which it has been held by Hon'ble Punjab and Haryana High Court when there were allegations that accused killed the deceased with gun shot but gun and pellets were not recovered and there was no explanation for non recovery of gun and pellets, and it was also not shown to whom gun belonged, it was held that prosecution story was not believable. In the present case also it is clear that weapons of offence i.e. Gandasas and Dangs have not been recovered or taken into possession during investigation, which has also rendered the case of prosecution doubtful.”*

The reasons given by the Appellate Court while ordering the acquittal of the respondents No.2 and 3 are sound reasons. The Appellate Court has taken in consideration that the occurrence had taken place at 09:30 PM on 21.07.1998 and the statement of the applicant was recorded at 10:00 PM on 22.07.1998. However, in defence, it has been established that respondent-Rachhpal Singh had suffered injuries on 21.07.1998 at 8:30 PM and FIR was registered in this regard on the directions issued by the Punjab State Human Rights Commission. Thus, respondent-Rachhpal Singh had suffered injuries in an occurrence prior to the occurrence in question on the same day. It also transpired that applicant had remained in custody for 8-10 days in the case relating to injuries suffered by respondent-Rachhpal Singh. Moreover, applicant was working as an employee of Ram Mohan with whom, father of respondent-Rachhpal Singh was having litigation.

Their lordships of the Supreme Court in **Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748**, held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

A Division Bench of this Court in **State of Punjab v. Hansa Singh, 2001 (1) RCR (Criminal) 775**, while dealing with an appeal against acquittal, has opined as under:

“We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble Supreme Court in *Ashok Kumar v. State of Rajasthan*, 1991(1) SCC 166, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.”

To the same effect is the ratio of the judgments of the Supreme Court in **State of Goa v. Sanjay Thakran (2007) 3 SCC 755** and in **Chandrappa v. State of Karnataka, (2007) 4 SCC 415**.

Similarly, in **Mrinal Das & others v. The State of Tripura, 2011 (9) Supreme Court Cases 479**, the Supreme Court, after looking into various judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

“8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption

of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons”, for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed”

Hence, no ground is made out to grant leave to file an appeal. Accordingly, this application is dismissed.

January 13, 2015
m.singh

(SABINA)
JUDGE