

CRM-A-187-MA-2013

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-187-MA-2013
Date of decision:13.03.2015

Janak Singh

.... Applicant/Appellant(s)

Versus

Pala Khan and others

.... Respondent(s)

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. F.S.Virk, Advocate for
Mr. P.S.Baath, Advocate,
for the applicant.

PARAMJEET SINGH, J.

The instant application has been filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the impugned judgment dated 19.01.2013 passed by the Special Judge, Fatehgarh Sahib whereby respondents-accused have been acquitted of the charges framed against them in a complaint filed by the applicant-complainant.

Brief facts of the case are that a complaint was instituted by the complainant under Section 323 and 506 of the Indian Penal Code

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(for brevity, 'IPC') and Section 3 (x) of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989 (for brevity, 'the Act') with the averments that he is Ramdasia by caste and as such member of Scheduled Castes as defined in Section 2 of the Act. Accused Nos.1 to 4 belong to Mohamadan caste and accused Nos.5 to 8 belong to Jatt by caste. All the accused know that complainant is Ramdasia by caste, because both the parties are residents of village Jakhwali. On 31.8.2007 at about 8.30 PM, accused No.2 Karamjit Singh alias Kama and accused No.5 Kuldeep Singh alias Golu and one Kala son of Gulzar Singh gave beatings to the son of complainant namely Lakhwinder Singh. A report was lodged in this regard in Police Station Mulepur and complainant is pursuing the said matter. It was further alleged that on 13.9.2007 at 8.00 PM, complainant was called by Pala Khan accused No.1 to attend the Panchayat, which was assembled in Ramdasia Dharamshala. The complainant and his son Lakhwinder Singh went to Dharamshala where all the accused were there and Manga son of Fakira, Lakhvir Singh son of Sardar Singh, Gurmail Singh son of Niranjn Singh (Sarpanch) and Harnek Singh son of Kamail Singh, residents of village Jakhwali were also there. When the complainant reached in Dharamshala, all the accused asked the complainant to make a compromise with accused Karamjit Singh and Kuldeep Singh alias Golu and advised to seek pardon from them and told that he belongs to lower caste. The complainant refused to make compromise and on this account

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accused started saying that " Chamara if you want to stay in the village, he has to make a compromise all the accused abused the complainant by calling the mother and sister of the complainant" and started beating the complainant. The accused insulted the complainant by calling Chamara in public view at public place. The son of complainant Lakhwinder Singh, Manga son of Faquira, Lakhvir Singh, Gurmail Singh and Harnek Singh rescued the complainant from these accused, but they were saying that in future they will kill the complainant and his family. After occurrence, the complainant along with his son went to PS Mulepur, but they refused to record the statement of complainant, therefore, the complaint was filed.

On the basis of preliminary evidence, the accused were ordered to be summoned by Judicial Magistrate First Class, Fatehgarh Sahib vide order dated 07.07.2010 for the commission of offence punishable under Section 323 IPC and Section 3 of the Act.

Since the offence under Section 3 of the Act is exclusively triable by the Special Court, therefore, the complaint was committed.

On finding a *prima facie* case against all the accused, they were charge-sheeted for the offences under Sections 323 of IPC and Section 3 of the Act, to which they pleaded "not guilty" and claimed trial.

To bring home guilt of the accused, the prosecution/complainant examined Harpal Singh, Clerk in the office of

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SDM, Fatehgarh Sahib as PW 1, Lakhbir Singh as PW 3, Harnek Singh as PW 4, Lakhwinder Singh as PW 5, Manga Khan as PW 6 and complainant-Janak Singh himself stepped into witness-box as PW 2. Thereafter, the complainant closed the prosecution evidence.

Statements of accused under Section 313 Cr.P.C. were recorded wherein they pleaded complete innocence and false implication. They took the defence that Karamjit Singh alias Kamma lodged FIR No.94 dated 03.09.2007 under Sections 323/341/448/294/149 IPC against Lakhwinder Singh son of complainant and others and in that case these persons were convicted. Due to this reason, the complainant in connivance with his witnesses instituted the present complaint as a counter-blast.

In their defence, the accused also examined Prem Singh as DW 1, Gurmeet Singh as DW 2, Harwinder Singh, Panchayat Secretary as DW 3, Baljit Singh, Registry Clerk as DW 4 and ASI Baljit Singh as DW 5. Thereafter, the accused closed their defence evidence.

I have heard learned counsel for the applicant and perused the record.

The trial Court, after appreciating the evidence, acquitted the respondents-accused of the charges levelled against them, vide impugned judgment dated 19.01.2013. Hence, this application for grant of leave to appeal.

I have heard learned counsel for the applicant and gone

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through the impugned judgment.

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

“15. After hearing the above said contentions and perusal of record reveal the fact that complainant Janak Singh examining Harpal Singh, clerk office of SDM, Fatehgarh Sahib as PW-1 has summoned record in regard to the fact that complainant Janak Singh belongs to Scheduled caste and he proved the certificate in this regard as EX.PA. Nothing material has been brought in the cross-examination of this witness. Moreover he is a formal witness who has proved the caste of Janak Singh. Complainant Janak Singh himself appearing as PW-2 has narrated the facts, but in his examination-in-chief he has no where specifically deposed to the effect that what has been said in regard to the caste by any of the accused. Complainant has leveled allegations in the complaint, but he has not deposed to prove those very allegations in his examination in chief. Complainant simply alleged that these persons have alleged that they belong to upper caste whereas complainant belongs to lower caste, but these persons have no where abused to the complainant in the name of his caste. As such in the absence of this material evidence from the mouth of complainant, the same cannot be presumed by stretch of imagination. As such material allegation to prove the ingredients of offence under section 3 of the Act is missing from the mouth of complainant.

16. Now turning to cross-examination of complainant, it has revealed that case against him under

section 302/201/34 IPC was registered for causing murder of one Jeet Singh, who was having illicit relations with Jarnail Kaur, his sister-in-law. Complainant alleged that he was acquitted in the case, but doubt has been created on the character of complainant. Complainant in his cross examination denied the fact that present complaint is a counter blast against the accused persons in regard to registration of FIR No.94 dated 3.9.2007 under section 323, 341, 448, 294, 506/149 IPC PS Mulepur. Though complainant has denied this fact, but other material witnesses namely Harnek Singh PW-4 and Lakhwinder Singh PW-5 have confessed the crime and defence also brought the documents EX.D-1 to EX.D-2, which are certified copies of statement of these very alleged eye witnesses. As such admissions of other alleged eye witnesses falsified the stand of complainant. The defence has been able to prove the fact that complainant is deposing falsely in the court on oath, therefore no reliance can be placed on the testimony of such type of complainant.

17. Complainant examining Lakhbir Singh as PW-3 has tried to corroborate his version, but this material alleged eye-witness in his cross-examination firstly admitted the fact that Ranjit Singh son of Gurdial Singh is real brother of Janak Singh complainant. He has further made material admissions in regard to relationship that Lakhwinder Singh is son of Janak Singh complainant and Kuldeep Singh is son of Ranjit Singh. PW-3 has not denied the fact that FIR No.94 dated 3.9.2007 under section 323,341,448,294,506/149 IPC was registered at PS Mulepur against the above said

persons, which amounts to indirect admissions and goes to the root of the matter. PW- 3 in his cross examination also admit the fact that no resolution was passed by the Panchayat in connection with the alleged occurrence. As such these admissions in the cross examination of this witness firstly proves the relationship of other alleged eye witnesses with the complainant . Secondly previous FIR has not been denied by this witness, which is against the witnesses of the complainant and it amounts to indirect admissions. Further confession of Lakhwinder Singh in regard to beating also falsify the entire story. As such deposition of this witness does not inspire confidence in the prosecution story.

18. Leaving aside above aspect, complainant examined Harnek Singh as PW-4 eye witness, who has deposed in regard to the story of complainant, but this very witness in his cross examination denied the fact in regard to registration of case against him as well as Lakhwinder Singh ,Ranjit Singh ,Gurmukh Singh, Kuldip Singh and Rajinder Singh, but later on he has admitted the fact that he has faced criminal trial in the said occurrence. The matter does not ends here, because this very alleged eye witness admitted his statement qua confession of his guilt as EX.D1 and identified his signatures over the same. As per defence, police has visited the spot, but this witness in his cross examination further deposed the fact that he was not present when DSP, Fatehgarh Sahib visited the village in connection with the inquiry in the above occurrence. PW-4 in his further cross examination also admitted the fact that Bhajan Singh is his brother, who has contested the Panchayat election against Ajaib Singh, who is one of

the accused, but he had lost the election to Ajaib Singh. As such this admission in the cross examination of this very alleged eye witness clearly established the fact of enmity with the accused party. Due to setting their score, complainant party has concocted a story to implicate all the accused persons, but real truth behind the scene is that there is political party faction in the village and both the parties belongs to different political factions. The above admissions in the cross-examination of this witness gives support and strength to the version of defence instead of complainant on this account.

19. *Lakhwinder Singh son of complainant also appeared as PW-5 to prove the version of his father set up in the complaint , but unfortunately he is real culprit who has firstly given beatings to accused Karamjit Singh alias Kamma and Kuldeep Singh alias Golu. PW-5 alleged that those persons have given beatings to this eye witness and Panchayat was convened for the purpose of compromise, but they have refused to compromise. On this account firstly his examination in chief is contradictory to the complainant, because complainant specifically deposed that he has agreed for the compromise, whereas this witness deposed that they have refused for the same. As such firstly, it is a material contradiction which goes to the root of the matter. Secondly, story put up by this witness in regard to occurrence on 31.8.2008 has been belied from his own cross examination, because this witness has admitted the fact that he has confessed his crime through statement EX.D-2. PW-5 in his cross examination admitted the fact that case was got registered against him and others bearing FIR No. 94 dated 3.9.2007 under section*

323,341,448,294,506/149 IPC PS Mulepur. He has also admitted his relationship with Ranjit Singh as well as Gurmukh Singh, which shows that they have formed one party. The admission in the cross examination of this witness qua EX.D-2 clearly proves the fact that he has himself confessed that crime in regard to infliction of injuries on person accused namely Karamjit Singh alias Kamma and others.

20. Defence has also brought judgment EX.D-4 on record, which is a material document in view of admissions of PW-5 Lakhwinder Singh and PW-4 Harnek Singh. On perusal of judgment Ex.D-4 it has been proved on record that the alleged occurrence took place on 31.8.2007 at 8.30 PM in the area of village Jakhwali, when accused Lakhwinder Singh, Gurkmukh Singh, Kuldeep Singh and Balwinder Singh wrongfully restrained the complainant namely Karamjit Singh and also caused hurt upon him. The matter does not ends hear (sic. here) because Ranjit Singh, Balwinder Singh, Harnek Singh and Rajinder Singh further committed the house tress pass entering into house of complainant Karamjit Singh and all the accused also abused the female members of the complainant while entering into their house. When these allegations have been confessed by the present witnesses namely Lakhwinder Singh and Harnek Singh before the court of JMIC, Fatehgarh Sahib through statements EX.D-I and EX.D-2, then it is clear that occurrence set up by defence has been proved on record and on the other hand version of complainant has been belied from their own admissions. Moreover such conduct of the witnesses have been proved by the defence in the shape of admissions from documentary

evidence, then no reliance can be placed on the testimony of such type of witness.

21. *Now turning to further cross-examination of PW-5, it has also been brought on record by defence that no member Panchayat was present on the day at the time of occurrence. PW-5 in his cross examination also admitted the fact that he had contested the election of Panchayat in the year 2007-08 and he had lost election to Surjit Singh and Ajaib Singh was supporting to said Surjit Singh in the said election. PW-5 also admitted the fact that Harnek Singh, Manga Khan and Ranjinder Singh are also supporting to him in the said election and Rajinder Singh and Manga Khan are also today present in the court room. As such these admissions prove the fact that there is political rivalry between the parties and due to this reason complainant has instituted the complaint to settle the old score though the alleged and recent occurrence has been committed by the complainant party in regard to wrongfully restraining Karamjit Singh and further causing him hurt as well as committing of house trespass. Accordingly false complaint has been brought by complainant party by keeping those witnesses who have already enmity with the accused party. PW-5 in his cross examination also admitted the fact that the police had conducted the inquiry in the village in some other case and in that inquiry present complainant party was found guilty by the police. Accordingly deposition of this witness proves previous enmity as well as false implication of the accused.*

22. *Complainant examining Manga Khan PW-6 has further tried to corroborate their version, but this*

witness in his examination in chief has put up a new story in regard to touching of foot by this complainant, which is not even the case of complainant in the complaint as well as in his own deposition. As such this witness has gone to such an extreme extent, which is merely on the basis of his own imagination. Cross examination of this witness clearly proves the fact that there are two party faction i.e. Akali Dal and second faction is of Congress Party. PW-6 also admit the fact that Ajaib Singh belongs to Akali Dal whereas Ranjinder Singh belongs to Congress Party, who is also present today out side the court room. The above admissions of this witness in his cross examination proves the fact that Rajinder Singh is neither a complaint nor is an accused and nor he has even cited as a witness. As such he is supporting the complainant party to settle his score with the accused party, which belongs to opponent political group. Admissions on the part of PW-6 brings the truth in regard to institution of complaint by the complainant at the instance of one Rajinder Singh, who has not come into picture. Due to this reason the defence set up by the accused is more plausible, reasonable, probable and falsify the stand of complainant. Moreover admissions are the best evidence which impeaches the character of alleged eye witness and proves the case of defence.

23. *Defence examining Prem Singh as DW-1 has got proved the fact that no meeting was called in the Panchayat Dharamshala and in fact a dispute regarding son of Janak Singh complainant came before the Panchayat. DW-1 proved his affidavit EX.D1/A, which has been got attested from Executive Magistrate on 19.10.2010. learned counsel for complainant tried to put*

the material in the mouth of this witness in the cross-examination, but he has specifically denied the fact in regard to alleged occurrence. As such this defence witness has proved the version set up by the defence. Defence examining Gurmeet Singh as DW-2 has further proved the fact that his father Gurmail Singh has also given affidavit EX.D2/B. The deposition of this witness also finds corroboration from Harwinder Singh as DW-3, who is Panchayat Secretary. DW-3 also proved the signatures of the then Sarpanch Gurmail Singh over the affidavit EX.DW2/B. Complainant cross-examined this witness also but nothing has been elicited from his cross examination to prove the version of complainant. Accordingly deposition of both defence witnesses proved the fact that the alleged occurrence brought by complainant is false and concocted story, which is counter blast to the previous litigation. Defence examining Baljit Singh, Registry clerk , as DW-4 has further got proved documents EX.DW1/A and EX.DWI/B. The defence examining ASI Baljit Singh as DW-5 has proved the fact that he remained reader with DSP, Sub Division Fatehgarh Sahib from 2005 to 2009. DSP seen the original application moved by Karamjit Singh son of Hazura Singh, the alleged accused and proved the fact that inquiry has been conducted on this application. After completion of inquiry report was given by DSP and proved copy of same as EX.DW5/A. DW-5 appeared in his official capacity and worked under DSP who has given the report after recording statement of parties. From the perusal of report EX.DW5/A it is not in dispute that the present complainant party with the help of local police officials

*have committed excess on the present accused party. When due to this reason case has been got registered against the present complainant party at the instance of Karamjit Singh, then the present false complaint has been instituted. Moreover copy of judgment EX.D-4 further substantiate this inquiry report EX.DW5/A, because judgment is also based on confession suffered by the witnesses of complainant party. As such defence has successfully proved their stand in regard to the fact that present complaint has been instituted by the complainant party only to settle their political scores. Accordingly the law relied upon by learned counsel for complainant in **Chander Kalan Vs. Rameshwar and others, 2010 (4) RCR(Criminal) 687(P&H)** also does not appeals to the facts of the present case.*

24. *Keeping in view the above evidence and discussion, it is clear that the complainant party brought the present complaint with false allegations against the accused party and he himself has not deposed in regard to material allegations of the complaint, which is most essential. As such due to this lack of evidence, the stand of complainant remained unproved over the record. Moreover, it is the duty of the court to sift the chaff from the grain and when it has been done, then admissions from the cross examination of alleged eye witnesses proves the fact that in real sense there is political rivalry in the village. Complainant party has committed excesses on the accused party. When confessed the crime and they have been convicted by the court of law, then later on to settle that scores, they have brought the present complaint with exaggerated and false version. The cross examination of these witnesses of complainant*

reveal the truth and proves the fact that they have deposed against the accused party to settle their old score of political rivalry and to take revenge of their conviction. On the other hand defence with cogent and convincing evidence have proved the fact that the alleged occurrence set up by the complainant is counter blast to the previous litigation.

25. *In the light of these circumstances, it is clear that the story set up by the complainant /prosecution is not only full of certain material contradictions and discrepancies rather it is falsely created, which could be easily thrown out of the court. Further evaluating the evidence, this court is of considered view that accused party have also inflicted injuries, but there is not even single medico legal report on record. If eight persons will inflict any hurt upon a single person then definitely there must be some injuries, which is also lacking on the part of complainant in the present case. Accordingly complainant has brought the present complaint with false, frivolous allegations which does not finds corroboration from reliable and unimpeachable evidence. As such complainant has failed to prove the ingredients of offence under section 3 of the Act and section 323 of IPC beyond shadow of reasonable doubt. It is also golden principal of criminal jurisprudence that benefit of doubt goes in favour of accused and against prosecution.*

26. *As an upshot of this discussion, complainant prosecution has failed to bring home the guilt of all the accused for offence u/s 3 of the Act and under section 323 of IPC beyond shadow of reasonable doubt. Consequently all accused are acquitted of the offence u/s*

3 of the Act and under section 323 IPC by giving them benefit of doubt. Bail bonds and surety bonds of the accused also shall stand discharged. File be consigned to record room after due compilation.”

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

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*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.

13.03.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE