

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-524-MA of 2013.
Date of decision: 13.07.2015.

Raghbir

.... Applicant/Appellant

Versus

Som Nath 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. R.S. Budhwar, Advocate for the applicant/appellant.

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 01.12.2011 passed by learned Judicial Magistrate Ist Class, Ambala whereby complaint filed by applicant under Sections 148, 149, 323, 452, 506, 120-B of the Indian Penal Code has been dismissed and respondents have been acquitted of the charge framed against them.

Brief facts of the case are that a complaint was filed by the applicant-complainant under Sections 148, 149, 323, 452, 506, 120-B of the Indian Penal Code alleging that applicant-complainant and his family members during the recent Panchayat elections supported the candidature of Sh. Ram Parkash son of Sh. Kishan Chand for the post of Sarpanch of Village Poanti, Tehsil Barara, District Ambala against Surjeet Singh, who had contested the election against Ram Parkash.

Surjeet Singh was the candidate of aforesaid persons. During the elections, all the above said persons, asked the complainant to vote for their candidate, but the applicant-complainant politely refused to accept their demand, due to which the respondents-accused persons became furious. On 13.08.2005, the applicant-complainant was present in his house, when at about 9.30 P.M., all these persons except respondent/accused No. 7 ASI Narinder Singh, under the influence of liquor came at the house of the applicant-complainant and started giving fists and slaps to the applicant-complainant. The applicant-complainant shouted for help, on hearing the same, son of the applicant-complainant, namely, Ashok Kumar, his wife Baby, Nirmal Kumar and his wife Pakasho reached there and rescued the applicant-complainant. All the respondents/accused persons were hurling filthy abuses to the applicant-complainant. Som Nath gave a kick blow to Baby in her stomach, who was having 8 months pregnancy at that time. The daughter-in-law of the applicant-complainant, namely, Baby immediately fell down and became unconscious. In the meantime, on hearing the noise, various persons from the neighbourhood including Phool Chand son of Sh. Anant Ram, Sunil Kumar son of Sh. Darshan reached there. On seeing the said witnesses and condition of Baby, all the above said persons ran away from the spot and while leaving they openly threatened that today, he has been saved but in future, he will be killed on finding opportunity. The applicant-complainant along with other persons brought Baby to M.M. Medical College, where she remained under treatment, for about 15 days. The applicant-complainant reported the matter to the police of P.S. Mullana. He was assured by respondent/accused No. 7, ASI Narinder Singh that action will be taken as he has lodged the report. Respondent/accused No. 7

had also obtained the thumb impression of the applicant-complainant on 2/3 papers. Thereafter, respondent/accused No. 7 called the applicant-complainant in Police Station Mullana on 15.08.2005 where all the accused were present and in the presence of accused Nos. 1 to 6, the accused No. 7 pressurized the applicant-complainant to compromise the matter with the accused persons. But the applicant-complainant refused to accept this demand of accused No. 7. Thereafter, all the accused talked to accused No. 7 privately on one side of Police Station and went outside the police station. Thereafter, accused No. 7 took the applicant-complainant inside the room and gave fists and kicks blows and threatened him with dire consequences, if he is not ready to withdraw the complainant. The accused No. 7 further threatened that he is the person, who can involve him in some other false cases. The accused persons even after committing the crime used to frequently roam in the village and threatened that they would repeat this act again and nobody can cause harm to them. Therefore, the complaint was filed.

On the basis of preliminary evidence, respondents-accused No. 1 to 6 were ordered to be summoned to face trial for the commission of offences punishable under Sections 323, 452 read with Section 149 IPC.

In pre-charge evidence, the complainant examined Baby as PW1, Dr. Gurmeet Singh as PW2 and himself stepped into witness box as PW3. On the basis of pre-charge evidence, respondents-accused No. 1 to 6 were charge-sheeted for the commission of offences under Sections 323, 452 read with Section 149 IPC, to which, they pleaded 'not guilty' and claimed trial.

Statements of respondents-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 respondents-accused from the charges framed against them, vide impugned judgment dated 01.12.2011. 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:-

"9. From the entire complainant's evidence, the following station emerges:-

a) The version of the complainant's witnesses is at variance.

The witnesses have not contradicted each other in their statements but also contradicted themselves in their statements, which is evident from the following:-

i) PW3 Raghbir complainant deposed that he took his daughter-in-law to Mullana Hospital and doctor asked his daughter-in-law about the injuries sustained to her and she narrated the entire story, upon which doctor asked him that they could not treat her without informing the police. He further deposed that doctor did not treat her daughter-in-law despite repeated request and thereafter, police reached there and recorded his statement and statement of his daughter-in-law. In contradiction PW2 Dr. Gurmeet Singh categorically stated in his cross-examination that he has not told to Baby or her family to go first to police and then only he will treat/examine the patient. He further stated that he has not instructed the patient firstly approached to the police. PW1 Baby remained silent on this aspect in her entire statement.

ii) PW3 Raghbir Complainant stated in his cross-examination that he took his daughter-in-law Baby PW1

to the hospital on motorcycle which was being driven by Hem Raj and he went to the hospital on another motorcycle. In contradiction PW1 Baby in her cross-examination stated that they went to the hospital in a hired car and her mother-in-law & father-in-law were also accompanied her in the car.

iii) The complainant in para No.3 of the complaint stated that accused persons came under the influence of liquor at the house of the complainant and starting giving slaps and fist blows to the complainant. In contradiction PW3 complainant deposed in his statement before the Court that Som Nath came at his house and said that his father was calling him and upon this complainant went to the house of Som Nath where Ajmer, Jagmohan, Ram Nath were already present. He further stated that when Chitru hit his slipper on his head then he ran away from there and reached in his house and accused also chased him and reached at his house and accused also chased him and reached at his house and again gave beatings to him. In contradiction PW1 Baby stated in her statement before court that the accused persons called her father-in-law in the drawing room (Baithak) and gave beatings to him there. Thereafter, her father-in-law came running to his house, upon which all the accused persons also entered into their house while chasing her father-in-law and they also gave beatings to her father-in-law in the house.

iv) In para No.3 of the complaint the complainant has stated that only accused Som Nath gave kick blow to Baby PW1. In contradiction PW1 Baby in her statement stated that all the accused persons present in the court started giving kicks blows in her stomach.

b) The aforesaid contradictions in the statement of witnesses are material and raised a doubt of suspicion in the complainant's case. Their reliability is in doubt and the same can not be relied upon.

c) As per complainant's version accused gave kick blow to Baby PW1 in her stomach who has eight months

pregnancy at that time. PW2 Dr. Gurmeet Singh who medico-legally examined Baby PW1 stated that multiple bruises present over both the Hips of the patient Baby. During his cross-examination PW2 Dr. Gurmeet Singh admitted that patient Baby was pregnant and her entire treatment was done in the hospital regarding pregnancy. He further stated that possibility that multiple bruises were present on the person of the patient Baby was due to pregnancy can not be ruled out. He further admitted in the cross-examination that if anybody hit the abdomen then injury on the hips can not occurred. He further admitted that as per medical science if there is any injury in the abdomen then it can not be found in the hips. He further admitted that no injury was found in abdomen of patient Baby. Hence, the medical evidence and the ocular evidence regarding the injuries allegedly sustained to PW1 Baby are at variance and the ocular version has been contradicted by medical evidence. The creates serious doubt on the version of the complainant which cannot be lightly brushed aside.

10. The alleged quarrel had taken place on 13.08.2005 at about 9:30 P.M. The complainant has filed the present complaint on 29.09.2005 after delay of 45 days. In case, where there is delay in lodging the complaint, the court has to look for a plausible explanation for such delay. The complainant has attempt to explain the delay by stating that the matter was reported to police but that the police did not take any action. Such statement can hardly be taken to have explained the delay. It is the simplest of things to contend that the police, though report had been lodged with it, had not taken any steps. But it has to be established by calling for the necessary records from the police to substantiate that in fact a report with the police had been lodged and that the police failed to take up the case. Neither the complainant produced and proved record of any such complaint made to police nor steps taken by the complainant to to call for records

from police to substantiate such allegations. No plausible explanation has come forward for such a long delay in filing the complaint. Inordinate delay of 45 days in filing the complaint left much time for concoction and deliberation and so held to have generate serious jerks to the complainant case. Moreover, PW3 complainant in his cross-examination stated rather admitted that he made discussion prior to filing of complaint and he also took advise in this regard. Hence, the delay seems to be deliberate and the said unexplained long delay in filing the criminal complaint creates suspicion as to the genuineness of the version of the complainant.

11. The complainant has also failed to examine Ashok Kumar, Phool Chand and Sushil Kumar, eye witnesses of the alleged occurrence which is the best evidence of the alleged incident. Consequently non-examination of the said eye witnesses/independent witnesses amount to serious laps/omission on the part of complainant. No plausible explanation has been given for withholding their examination. Thus, necessary inference is that accused have been extended benefit on account of this serious laps/omission on the part of complainant.

12. In a criminal case mere suspicion, however, strong cannot take the place of proof. Between may be true and must be true there is inevitability a long distance of travel and whole of this distance must be covered by the complainant/prosecution by legal, reliable and unimpeachable evidence before an accused can be convicted. The complainant/prosecution has not covered the same in the present case.

13. In view of the aforesaid findings, I feel no hesitation in saying that complainant has not proved the guilty of the accused beyond all reasonable shadow of doubt. In the said circumstances, I acquit accused persons of the charges framed against them. Their bail bonds and surety bonds stand discharged.

File be consigned to 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. There is also a delay of 470 days in filing the instant application. No cogent reasons have been mentioned in the application for condoning the delay.

As such, application for leave to appeal is dismissed on merit as well on account of delay.

July 13, 2015.
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(PARAMJEET SINGH)
JUDGE