

CRM-A-567-MA-2013

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-567-MA-2013
Date of decision: 11.05.2015

Raj Kumar

.... Applicant/Appellant(s)

Versus

State of Haryana 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. Raj Kapoor Malik, Advocate,
for the applicant.

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 24.04.2013 passed by learned Judicial Magistrate Ist Class, Kaithal whereby complaint filed by applicant under Sections 323, 506, 148, 149, 120-B and 427 of the Indian Penal Code (in short, 'IPC') has been dismissed and respondents no.2 to 6 have been acquitted of the charges framed against them.

Brief facts of the case are that a complaint was filed by the

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applicant-complainant under Sections Sections 323, 506, 148, 149, 120-B and 427 of IPC with the averments that he has taken some agricultural land on lease at village Nand Karan Majra. His fields are being irrigated through a watercourse and there was some leakage of water from the said watercourse. In order to stop the said leakage, he spread the sheet of polythene over the surface and sides of the above said watercourse on 22.07.2009. Respondents no.2 to 6 being the beneficiary of water from watercourse thereafter formed a grudge in their mind against him. On 29.07.2009, at about 8.00 p.m, when he was present in his field, Kishna told him that respondents no.2 to 6 armed with dandas are destroying the polythene sheet covered in the watercourse. On receiving this information, he alongwith Kishna reached the spot and asked respondents no.2 to 6 not to damage or destroy the polythene sheet, but despite that all the accused in his presence as well as in presence of Kishna damaged the polythene sheet. Thereafter, respondents no.2 to 6 after hatching criminal conspiracy, in pursuance of their common object inflicted two injuries to the complainant. All the accused persons also threatened the complainant that he would be killed in future if he spreads polythene sheet again. In this way, respondents no.2 to 6 destroyed the polythene sheet belonging to him worth ₹2,000/-. Due to the fear and late hours, he could not report the matter to the police and in the next morning, he was medico-legally examined at General Hospital, Kaithal and thereafter an application was moved to the Police Station Rajound

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for taking action against respondents no.2 to 6, but the police refused to take any action. Therefore, the complaint was filed.

On the basis of preliminary evidence, respondents no.2 to 6 were ordered to be summoned to face trial for the commission of offences punishable under Sections 148, 149, 323, 427 and 506 of IPC.

In pre-charge evidence, the complainant himself appeared into witness-box as PW 1 besides examining Dr. Anil Aggarwal as PW 2 and Kishna as PW 3. On the basis of pre-charge evidence, respondents no.2 to 6 were charge-sheeted for the commission of offences under Sections 148, 323, 427, 506 read with Section 149 IPC, to which, they pleaded 'not guilty' and claimed trial.

Statements of respondents no.2 to 6 under Section 313 Cr.P.C. were recorded wherein they pleaded complete innocence and false implication.

The trial Court, after appreciating the evidence, acquitted respondents no.2 to 6 from the charges framed against them, vide impugned judgment dated 24.04.2013. 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:-

“13. First of all, as per the allegations levelled in

the complaint, the complainant spreaded the polythene sheet over the surface of watercourse on 22.07.2009, whereas while stepping into witness box as PW-1, the complainant has specifically deposed that he spreaded the polythene sheet over watercourse on 12.07.2009. In this way, there is a material contradiction with regard to the date on which date the polythene sheet was allegedly spreaded over the watercourse to stop the leakage.

14. *Further, as per the complainant, he has taken on lease some agricultural land and adjacent to that land watercourse passed through. In order to substantiate these two facts, no revenue record or watercourse record has been placed on file which could suggest that in fact the complainant had taken on lease some agricultural land and adjacent to that a watercourse runs. As per the complainant he has taken on lease some agricultural land belonging to one Zile Singh, but the said Zile Singh has not been got examined by the complainant to prove these facts.*

15. *Further, as per the complainant after the said incident due to late hours and fear, he could not report the matter to the police and he also did not go for medical help. In his cross-examination, the complainant has deposed that after the incident he went to a doctor namely Pala Ram in his village for treatment and thereafter he self stated that he took some pills. If it was so then the complainant could have got examined the said Pala Ram as witness who could prove the fact that in fact the complainant visited him in connection with his treatment. As per the complainant his brother Ram Niwas took him to the GH, Kaithal on the next day, but the said Ram Niwas has also not been got examined by*

the complainant.

16. *Further, as per the MLR Ex.PW 2/A, there are no external injuries on the person of complainant and there was only complaint of pain in the anterior aspect of the chest wall and there was complaint of pain in abdomen. The said injuries taken in the light of the allegations levelled against the accused persons renders the whole story doubtful. As per the complainant, all the five persons, who were having dandas in their hands attacked him and caused injuries. If five persons having dandas in their hands attack a person even for some seconds, then there must have been present at least some abrasions over the body of person who is so beaten up, but the MLR Ex.PW 2/A does not show even a single abrasion or bruise. In this way the allegations levelled against the accused No.1 to 5 that they were having dandas in their hands while inflicting injuries to the complainant seems to be highly improbable. Further, no specific role has been attributed to any of the accused persons by the complainant or by the alleged witnesses.*

17. *So far as the damage of the polythene sheet is concerned. The complainant has failed to prove on record that he in fact owned any plastic sheet allegedly destroyed by the accused persons. To prove his ownership complainant has relied upon the bill dated 15.07.2009 placed on file as Mark A. Said document cannot in any way be relied upon to be the proof of ownership of the complainant as the same bears no name. Even otherwise none has stepped into the witness box to prove the same.*

18. *As per the complainant on the next day he approached the police but no application has been*

placed on record by the complainant which could suggest that he in fact moved any application to the police of Police Station Rajound regarding the alleged incident. In this way the complainant has failed to prove this case beyond any reasonable shadow of doubt. The arguments of learned counsel for complainant that complainant is not obliged to examine a number of witnesses to prove his case and it is the quality not quantity that matter is fully acceptable, but in the present case there are neither material missing links which have not been proved by the complainant by leading cogent evidence.

19. In view of the above discussion, the submissions of learned defence counsel holds merit and the present complaint deserves to be dismissed. Accordingly dismissed. Accused are hereby acquitted of the charges levelled 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

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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.

11.05.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE