

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revn.No. 470 of 2003

Date of Decision: May 27, 2015

Haribhan son of Saun Singh RamdasiaPetitioner

Versus

State of Punjab and anotherRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Sachin Sharma, Advocate for the petitioner.

Mr.Mikhail Kad, Assistant Advocate General, Punjab.

Mr.PS Ahluwalia, Advocate for respondent No.2.

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TEJINDER SINGH DHINDSA, J.

Learned counsel for the parties have been heard.

2. Kewal Krishan, accused (respondent No.2 herein) faced trial for having committed offence punishable under Section 302 of the Indian Penal Code. He stands acquitted vide judgment dated 18.12.2002 passed by the learned Additional Sessions Judge, Fast Track Court, Sangrur.

3. The instant revision petition preferred by the complainant, namely, Haribhan is directed against the judgment of acquittal.

4. Prosecution version, in brief, was that on 24.9.2001,

Amritpal Singh son of Haribhan, aged about four years, had gone to the shop of accused-respondent No.2 to purchase certain articles. Respondent No.2 is alleged to have taken out a tablet from a container and administered the same to Amritpal Singh. Amritpal Singh is stated to have come back to his house and started vomiting and passing stools and died the following day. Dead body of Amritpal Singh was buried in the Cremation Ground of the village in the presence of the respectables. Complainant Haribhan suffered statement, Exhibit PA, on 23.10.2001 that he had come to know that accused-respondent No.2 had admitted before some respectables of the village that he (complainant) had administered a poisonous tablet to his (respondent No.2's) sister, namely, Rani Devi and, therefore, the accusation was levelled that respondent No.2 had also administered a poisonous tablet to his son Amritpal Singh and as such, had killed him. Motive attributive was that complainant Haribhan used to purchase articles on credit from respondent No.2 and upon demanding money which the complainant could not pay up, respondent No.2 had killed his son. Based upon statement, Exhibit PA, FIR No.136, under Section 302 of the Indian Penal Code was registered. Upon completion of investigation, respondent No.2 was sent up for trial. He was charged under Section 302 of the Indian Penal Code. Prosecution is stated to have examined seven witnesses. Darshan Singh, PW2 and Mohinder Singh, PW3 were the alleged eye witnesses and as per their version, the accused had given a tablet to Amritpal Singh along with a glass of water. Complainant Haribhan, PW1 supported his version as detailed in Exhibit PA. Dr.SS Oberoi,

PW5 was examined and he deposed that upon receipt of report of Chemical Examiner, Exhibit PH, the cause of death was opined on account of poisoning that was due to aluminum phosphide.

5. In defence, accused-respondent No.2 appeared as DW1 and deposed that he ran a 'Kiryana' shop in the village. He further deposed that a number of villagers used to purchase items on credit and that he had also advanced loans to a number of villagers. In his deposition, accused stated that on 1.1.2000 Mohinder Singh, PW3 had borrowed ₹14,000/- from him and executed pronote, Exhibit D5. He further deposed that Darshan Singh, PW2 had borrowed ₹20,000/- from him on 10.6.2000 and executed pronote, Exhibit D8. The defence set up in a nut-shell was that certain people of the village, in order to usurp the money that was due from them, had made an attempt to falsely implicate him in connivance with the police.

6. In the judgment of acquittal, it has been noticed that the evidence of complainant Haribhan, PW1 is only hearsay evidence. The evidence of PW2 Darshan Singh and PW3 Mohinder Singh i.e. the alleged eye witnesses has been viewed as not reliable and trustworthy. In taking such view, the trial Court has reasoned that even though they had stated to having seen the accused-respondent No.2 administering a tablet to deceased Amritpal Singh on 24.9.2001 itself and had become aware of the demise of the child on the very next day, yet they had not informed Haribhan of such aspect till 23.10.2001. Material discrepancies have also been noticed in the deposition of the alleged eye witnesses i.e. PW2 and PW3. Even the report of the

Chemical Examiner, Exhibit PH, whereby aluminum phosphide was found in the viscera of Amritpal Singh has been noticed and it has been reasoned that the smell of sulphas is pungent to such an extent that even the deceased would have been reluctant to consume such a tablet. While acquitting respondent No.2, the trial Court has even discarded the motive attributed by the complainant to the accused. As per Haribhan complainant, the present petitioner, he owed ₹2,500/- to the accused. Trial Court has observed that it would be difficult to believe that for a meagre sum of ₹2,500/-, the accused would go to the extent of killing a four years old child.

7. The extent and ambit of the revisional jurisdiction of the High Court and the exercise thereof in respect of a judgment of acquittal came up for consideration before the Hon'ble Supreme Court in **Akalu Ahir v. Ramdeo Ram, (1973)2 SCC 583**. Paras 8 and 10 of the judgment would be relevant and are extracted hereunder:

“8. This Court, however, by way of illustration, indicated the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision:

(i) Where the trial court has no jurisdiction to try the case, but has still acquitted the accused;

(ii) Where the trial court has wrongly shut out evidence which the prosecution wished to produce;

(iii) Where the appellate court has wrongly held the evidence which was admitted by the trial court to be

inadmissible;

(iv) Where the material evidence has been overlooked only (either) by the trial court or by the appellate court; and

(v) Where the acquittal is based on a compounding of the offence which is invalid under the law.

These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of acquittal."

"10. No doubt, the appraisal of evidence by the trial Judge the case in hand is not perfect or free from flaw and a Court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to re-appraise the evidence for itself as if it is acting as a Court of appeal and then order a re-trial. It is unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village Mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court."

8. In **Satyajit Banerjee v. State of West Bengal, (2005) 1 SCC 115**, the Apex Court had held that while exercising revisional jurisdiction at the instance of the complainant, the High Court

would interfere only in very exceptional cases where it finds a defect of procedure or manifest error of law resulting in flagrant miscarriage of justice.

9. In the considered view of this Court, acquittal of respondent No.2 by the trial Court is based on a full and complete consideration of the evidence and material adduced on record. Cogent reasons have been assigned by the trial Court in support of the judgment of acquittal. The order of acquittal by the trial Court is not to be set aside in revision if the view taken by the trial Court was not an impossible view.

10. No warrant for interference is made out.

11. The revision petition is dismissed and judgment of acquittal dated 18.12.2002 is affirmed.

May 27, 2015
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: *Whether to be referred to Reporter? (Yes/No)*