

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

**CRM-A-840-MA of 2013 (O&M)
Date of Decision: 02.07.2015**

Ramesh Chand

.....Applicant

Vs.

Hari Ram and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. J.P.Sharma, Advocate
for the applicant.

Mr. Manoj Kumar Sangwan, DAG, Haryana.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J.

Instant application under Section 378 (4) of the Code of Criminal Procedure ('Cr.P.C.' for short) seeking leave to appeal, is directed against the judgment of acquittal dated 7.5.2012 passed by the learned Chief Judicial Magistrate, Narnaul, whereby accused-respondents No. 1 to 5 were acquitted of the charges framed against them, in a complaint case under Sections 323/324/506/34 of the Indian Penal Code ('IPC' for short), filed at the instance of the present applicant.

Briefly put, facts of the case, as noticed by the learned trial court in para 2 of the impugned judgment, are that applicant-

complainant and accused Hari Ram and Giyarsi were real brothers, having common well and agricultural land. They filed a civil suit in the court, which was pending for 7.1.2005. On 12.12.2004 at about 4:00 P.M., accused Hari Ram and Giyarsi were raising construction on the common land of the well, without getting the same partitioned. On coming to know about the same, the complainant, his wife sheela, their son Laxman and Shankar also reached there and requested them not to raise construction on the land till decision of the partition case. Accused felt offended and gave two lathi blows on left hand of Shankar-son of the complainant. Shankar fell down and when the complainant tried to rescue him, he was also given a lathi blow on his head by Giyarsi. He was given another lathi blow on his head by Hari Ram. Laxman was given farsi blow on his head by Joginder. Giyarsi also gave a lathi blow on his left arm. When Sheela-wife of complainant tried to intervene in order to rescue the complainant, she was given lathi blow on his right arm by Hari Ram. Raju gave a lathi blow on her waist. When Manoj, son of Gayan Chand, Madan, son of Banwari, tried to rescue the complainant, Manoj was given lathi blow on his ankle by Hari Ram. When the complainant was lying on earth, he was given beatings by kick and first blows by Khem Chand and Sheoram. The complainant raised hue and cry. While leaving the spot, accused extended threat that they would kill him in future. The matter was reported to police station Narnaul and rapat No. 17 dated 12.12.2004 was registered but no action was taken by the police, rather challan under Sections 323/325/34 IPC against the complainant and his son was filed by the police. Having been left

with no other option, applicant moved his abovesaid complaint before the Court.

Preliminary evidence was led by the complainant-applicant by examining as many as 5 prosecution witnesses, besides tendering into evidence documentary evidence in the form of Ex.P-1 to P-6. Consequently, the learned trial court summoned all the accused-respondents to face the criminal trial for the offences punishable under Sections 323/506 read with Section 34 IPC. Thereafter, accused appeared before the court and were released on bail. During the pendency of the trial, one accused namely Sheoram died and another accused Raju was declared proclaimed offender. In his pre-charge evidence, complainant examined Rajinder Singh EASI as PW1, examined himself as PW2 and Shankar as PW3. Thereafter, accused were charge sheeted for the commission of offences punishable under Sections 323/34 IPC, vide order dated 2.1.2012. Accused pleaded not guilty and claimed trial.

In his after charge evidence, applicant-complainant examined himself as PW-1 and Shankar as PW-2. Thereafter, statements of the accused under Section 313 Cr.P.C., were recorded. They pleaded false implication and claimed complete innocence. In their defence, accused produced numerous documents in the form of Ex. D1 to D8, as recorded by the learned trial court in para 9 of the impugned judgment.

After going through the evidence brought on record and hearing both the learned counsel, learned trial court came to the conclusion that applicant-complainant has failed to bring home guilt

against the accused persons. Consequently, giving benefit of doubt, all the accused-respondents No. 1 to 5 were acquitted of the charges framed against them, vide impugned judgment of acquittal dated 7.5.2012. Hence this application by the complainant under Section 378 (4) Cr.P.C., seeking leave to appeal.

Learned counsel for the applicant submits that there had been cogent and convincing evidence available on record, which was sufficient to record conviction of respondents No. 1 to 5. However, since the learned trial court has misdirected itself, while passing the impugned judgment of acquittal, the same is not sustainable in law. He further submits that the respondents-accused caused very many injuries which had been duly proved on record by the applicant, by leading reliable evidence. He concluded by submitting that since the learned trial court failed to appreciate the evidence in the correct perspective, the impugned judgment of acquittal has resulted in a serious miscarriage of justice and is liable to be set aside. He prays for allowing the present application.

Having heard the learned counsel for the applicant at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, present one is not a fit case warranting interference at the hands of this Court. To say so, reasons are more than one, which are being recorded hereinafter.

A bare perusal of the impugned judgment would show that learned trial court has discussed, considered and appreciated each

and every relevant aspect of the matter before passing the impugned judgment of acquittal. Applicant-complainant failed to explain the injuries received by the accused-respondents, which cast a serious doubt on the very genesis of the story put forth by the prosecution. Prosecution witnesses were found suppressing some part of the incident, making out a case for giving benefit of doubt to the accused. In this regard, learned trial court rightly followed the law laid down by the Hon'ble Supreme Court in the case of **State of Rajasthan Vs. Madho and others, 1991 (2) RCR (criminal) 463**. Having said that, this Court feels no hesitation to conclude that learned trial court committed no error of law, while passing the impugned judgment and the same deserves to be upheld.

Before arriving at a judicious conclusion, learned trial court recorded cogent and convincing finding in para 14 to 16 of the impugned judgment. Relevant findings recorded in para 15 of the impugned judgment, read as under:-

“Hon'ble Supreme Court of India has held in State of Rajasthan Vs. Madho and others (supra) that accused also received injuries-PWs failed to explain injuries-it casts doubt on genesis of prosecution and given an impression that witnesses were suppressing some part of incident-accused entitled to benefit of doubt. In Harchand Singh's case (supra) wherein it has been held by the Hon'ble Punjab and Haryana High Court that accused acquitted on following grounds:-

- i) FIR lodged after delay of two days.*
- ii) Parties had dispute over inheritance of property contention of accused that they were falsely implicated on account of said dispute.*
- lii) Alleged eye witness not examined-another PW was closed relation of complainant party.*
- iv) Medical officer not put to any clarity as to whether injury which was the only material injury could be caused by a blunt weapon.*
- v) It was darkness at the time of occurrence and it could also have been difficulty to identify the assailants.*

Keeping in view dictum laid down by the Hon'ble Court in the above said judgments coupled with the facts of the present case, it has been observed by this court that it is duty of the complainant to prove the injury on the part of the accused but the witnesses of complainant have denied the injury on the part of the accused party. Perusal of the MLR Ex.D1 to Ex.D6 shows that there was injury on the part of the accused party including grievous injury and FIR No. 219 dated 16.12.2011 under Sections 323/325/34 IPC was got registered in the police station Sadar Narnaul by the accused against the complainant party and challaned Ex.D7. It is paramount duty of the complainant to prove the

injury on the person of the accused party but they refused about the injuries on the part of the accused persons. Moreover, if the complainant witnesses shy away from the reality and do not explain the injuries caused to the respondents herein it casts a doubt on the genesis of the prosecution case since the evidence shows that these injuries were sustained in the course of the same incident. It gives the impression that the witnesses are suppressing some part of the incident. As complainant has stated that incident took place on 12.12.2004 at 4:00 P.M., MLR of the accused party was prepared at 5:30 PM on 12.12.2004. Moreover, complainant has not examined the doctor who conducted the MLR Ex.P2 to Ex.P5 which is serious lacunae on the part of the prosecution. Moreover, there is dispute between the parties regarding the movable property. In these circumstances, accused are entitled for extending of benefit of doubt and in the considered view of this court, the evidence led by the prosecution is not sufficient to convict the accused as there are number of contradictions in the statement of witnesses and no eye witness has been examined by the prosecution, therefore, accused are entitled for benefit of acquittal.”

It is the settled proposition of law that whenever two views

are possible, the view which goes in favour of the acquittal is to be adopted by the courts, as held by the Hon'ble Supreme Court in ***Arulvelu & anr. vs.State represented by the Public Prosecutor and anr. 2009(4) RCR (Crl.) 638.*** The law laid down by the Hon'ble Supreme Court in the case of Arulvelu (supra), has been further reiterated by the Hon'ble Supreme Court in its numerous later judgments, including in the cases of ***Rathinam @ Rahinan Vs. State of Tamil Nadu, 2011 (11) SCC 140, Sunil Kumar Sambhudayal Gupta and others Vs. State of Maharashtra, 2010 (13) SCC 657 and Upendra Pradhan Vs. State of Orissa (Criminal Appeal No. 2174 of 2009 decided on 28.4.2015).*** The relevant observations made by the Hon'ble Supreme Court in para 10 and 11 of its judgment in ***Upendra Pradhan's case*** (supra), which can be gainfully followed in the present case, read as under:-

“Taking the First question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In Narendra Singh and Another v. State of M.P., (2004) 10 SCC 699, this Court has recognized presumption of innocence as a human right and has gone on to say that:

“30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that

suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between 'may be' and 'must be'.

31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such presumption gets stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a Higher Court (see Dhanna v. State of M.P., Mahabir Singh v. State of Haryana and Shailendra Pratap v. State of U.P.) which had not been adhered to by the High Court. Xxx xxx xxx

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33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimla Bai although is shrouded in mystery but benefit thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld."

(Emphasis Supplied)

11. The decision taken by this Court in the aforementioned case, has been further reiterated in

State of Rajasthan v. Raja Ram, (2003) 8 SCC 180, wherein this Court observed thus:

“Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see Bhagwan Singh v. State of M.P.) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and

substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.” (Emphasis Supplied)

Therefore, the argument of the learned counsel for the appellant that the High Court has erred in reversing the acquittal of accused appellant, stands good. The Additional Sessions Judge was right in granting him benefit of doubt. The view which favours the accused/appellant has to be Page 16 16 considered and we discard the opposite view which indicates his guilt. We are also of the view that the High Court should not have interfered with the decision taken by the Additional Session Judge, as the judgment passed was not manifestly illegal, perverse, and did not cause miscarriage of justice. On the scope of High Court’s revisional jurisdiction, this Court has held in Bindeshwari Prasad Singh v. State of Bihar, (2002) 6 SCC 650, “that in absence of any manifest illegality, perversity and miscarriage of justice, High Court would not be justified interfering with the concurrent finding of acquittal of the accused merely because on re-appreciation of evidence it found the testimony of PWs to be reliable whereas the trial Court had taken an opposite view.” This happens to be the situation in

the matter before us and we are of the view that the High Court was wrong in interfering with the order of acquittal of Upendra Pradhan passed by the Additional Sessions Judge.”

During the course of arguments, learned counsel for the applicant could not point out any jurisdictional error or patent illegality in the impugned judgment passed by the learned trial court, so as to convince this Court to take a different view than the one taken by the learned trial court. In such a situation, no interference is warranted at the hands of this Court and the impugned judgment deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present application is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference is made out.

Resultantly, present application stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

02.07.2015
Ak Sharma