

In the High Court of Punjab and Haryana at Chandigarh

Crl. Misc. No. A-1059-MA of 2014
Date of Decision: 16.01.2015.

Jai Pal (L.R. of deceased Savitri)

.....Applicant

Versus

Roshan Lal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. S.K.Gupta, Advocate
for the applicant.

SABINA, J.

Respondents had faced trial in a complaint filed by Savitri (since deceased) under Section 323/149, 506 of the Indian Penal Code, 1860. Trial Court vide order dated 5.10.2012 ordered the acquittal of the respondents. Hence, the present application under Section 378(4) of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) praying for leave to appeal by the applicant.

During trial, complainant Savitri died and applicant Jai Pal was impleaded as her legal representative.

I have heard the learned counsel for the applicant and have gone through the record available on the file carefully.

Case of the complainant, in brief, was that she was selling vegetables in front of SCF No. 38, Sector-26, Grain Market, Chandigarh. Husband of the complainant was a tenant under Pritam Singh. Roshan Lal-accused was also a tenant of Pritam Singh. After the death of the owner, accused started threatening the husband of the complainant to dispossess her from the

platform. Civil suit was filed by the husband of the complainant against respondents No. 1 and 2. However, on a statement made by respondents No. 1 and 2 that the complainant would not be dispossessed except in due course of law, the suit was got dismissed as withdrawn. On 11.10.2000, complainant and her husband were going to their house in a rickshaw. Respondents No. 1 and 2 came from behind and hit the rickshaw of the complainant. As a result of this, complainant and her husband suffered injuries and were removed to the hospital for treatment. Complainant had filed the petition under the Motor Vehicles Act, 1988 and she was awarded compensation to the tune of ₹ 35,000/-.

The Trial Court while ordering the acquittal of the respondents held that the original complainant had died during trial and her husband was brought on record being her legal heir. Rajbir son of the complainant was examined as an eye witness but the fact that he had witnessed the accident, was not disclosed by complainant Savitri Devi. Husband of Savitri Devi did not appear in the witness box. The eye witness mentioned in the complaint namely Bharat and Munshi Ram, were not examined by the complainant, during trial. The medical record qua the injuries suffered by the complainant, was also not proved on record. It was also admitted by Rajbir CW-1 that there was lot of litigation pending between the complainant and accused Roshan Lal and Shashi Bhushan. Hence, the Trial Court rightly came to the conclusion that the complaint in question appeared to be a motivated one as the parties had previous enmity.

Learned counsel for the applicant has failed to point out any misreading of evidence by the Trial Court which would warrant

interference by this Court. The reasons given by the Trial Court while ordering the acquittal of the respondents, are sound reasons and call for no interference.

Their lordships of the Supreme Court in **Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748**, held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

A Division Bench of this Court in **State of Punjab v. Hansa Singh, 2001 (1) RCR (Criminal) 775**, while dealing with an appeal against acquittal, has opined as under:

“We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble Supreme Court in *Ashok Kumar v. State of Rajasthan*, 1991(1) SCC 166, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.”

To the same effect is the ratio of the judgments of the Supreme Court in **State of Goa v. Sanjay Thakran (2007) 3 SCC 755** and in **Chandrappa v. State of Karnataka, (2007) 4 SCC 415**.

Similarly, in **Mrinal Das & others v. The State of Tripura, 2011 (9) Supreme Court Cases 479**, the Supreme Court, after looking into various judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

“8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons”, for doing so. If the order is

“clearly unreasonable”, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed”

No ground is made out to grant leave to file an appeal.

Accordingly, this application is dismissed.

**(SABINA)
JUDGE**

January 16, 2015
Gurpreet