

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

**CRM-A-1062-MA of 2014
Date of Decision: 23.4.2015**

Manjeet Singh

.....Petitioner

Vs.

Gurbachan Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Parminder Singh-I, Advocate
for the applicant.

1. Whether Reporters of 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?

RAMESHWAR SINGH MALIK J.

Present 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 2.5.2014 passed by the learned Chief Judicial Magistrate, Bathinda, whereby complaint, filed by the present applicant-complainant, was dismissed and the accused-respondents were acquitted

Brief facts of the case, as noticed by the learned trial court in para 1 of the impugned judgment, are that the applicant-Manjit Singh filed complaint against accused-respondents under Sections

201/306/107/347 read with Section 120-B of the Indian Penal Code ('IPC' for short), on the allegations that complainant was residing at Bathinda alongwith his wife and children, separate from his mother namely Baljit Kaur, who was residing with younger brother of the complainant. Father of the complainant and accused namely Balwant Singh had retired from service as reader to the learned Sessions Judge, Bathinda. Father of the complainant showing farsightedness had partitioned his property among his sons i.e. the complainant and accused No.1 on 21.06.2000, to avoid any bad blood among his sons at a later stage and same was reduced into writing also. As per the terms of the partition, possession of the properties was also transferred between the parties to the partition.

It was stated that father of the complainant used to reside with respondent No.1 in his house and also used to visit the house of the complainant in a routine manner, as he was suffering from heart problem. Respondent No.1 was not happy with the partition of the property in the manner it was done and he wanted to do away with the partition. It was pleaded that respondents No.1 to 4 used to pressurize said Balwant Singh-father of the complainant, for doing away with the partition to which Balwant Singh was averse. They all used to quarrel with him for the same and this fact was brought to the knowledge of the complainant by his father Balwant Singh.

It was further pleaded that father of the complainant had not executed any Will as he had already partitioned the property between the accused No.1 and the complainant. Balwant Singh suffered neurogenic shock and fell ill. Accused No.1 got him admitted

to civil hospital, Bathinda on 24.04.2006 for medical treatment. On seeing his condition to be serious, the doctors in civil hospital Bathinda referred Balwant Singh to higher medical institute for further treatment. Respondent No.1 knew that his father was a heart patient and his condition was serious, so he conspired with Harvinder Singh accused. Buta Singh son of Lal Singh and Labh Singh son of Harbans Singh, resident of Dhobiana Road, Bathinda heard the accused Gurbachan Singh and Harvinder Singh conspiring with each other in civil hospital, Bathinda on 24.04.2006 that they will take Balwant Singh to house instead of taking him to some higher medical institute and will get executed a Will from him for the gain of respondent No.1. Respondent No.6 was attesting witness of the Will and she also connived with other accused in execution of the Will alleged to be executed by Balwant Singh. Respondent No.1 got discharged his father from civil hospital, Bathinda on his own risk and took him to his house. Respondents No.1 to 4 badly pressurized Balwant Singh and threatened him with dire consequences. Respondents No.1 to 4, in connivance with accused No.5, got prepared a computerised Will and got the same executed from Balwant Singh under coercion on 26.04.2006, whereby accused persons got deprived the complainant from inheritance of his father.

Thereafter, on 26.04.2006, in the evening respondent No.1 instead of taking Balwant Singh to some higher medical institute, took him to Delhi Heart Hospital, Bathinda where he died on 27.04.2006. It was further stated that respondent No.1 was a radiographer in civil hospital, Bathinda. Respondent No.1 was well

aware of the serious condition of his father Balwant Singh when he was referred to higher medical institute by the doctors of civil hospital, Bathinda on 24.04.2006 for further management, but he got his father discharged from the hospital and took him to his house and kept him there for two days without proper medicines, willfully knowing fully well that this will adversely affect the condition of Balwant Singh and he will die. On 26.04.2006, he got executed a will from Balwant Singh in his favour forcibly against the wishes of Balwant Singh. Thereafter, on 26.04.2006 evening, he got admitted his father in Delhi Heart Hospital, Bathinda. Due to pressure put on Balwant Singh by the accused persons in connivance with each other and due to the execution of a will from Balwant Singh against his wishes by the accused persons, the serious condition of Balwant Singh got further aggravated and on 27.04.2006 he died. Thereafter, respondent No.1, in connivance with other accused persons, disposed off the dead body of Balwant Singh by performing his last rites without informing any relatives of Balwant Singh including the complainant.

After the death of his father Balwant Singh, complainant visited Delhi Heart Hospital, Bathinda for obtaining the relevant medical record with regard to his father, but he was informed by Dr.Naresh Goyal of said hospital that Gurbachan Singh son of Balwant Singh had already obtained the medical record and same cannot be issued to him. The complainant also moved an application before the police for registration of criminal case against the accused who were responsible for unnatural death of Balwant Singh but no

action was taken, thus, present complaint was filed.

Preliminary evidence was recorded and after finding a prima facie case, learned trial court summoned all the accused, vide order dated 16.4.2008. Thereafter, complainant led his pre-charge evidence. He examined CW1-Dr. Kashmiri Lal Bansal, CW2-Deepak Sharma and CW3-Dr. Naresh Goyal. Complainant himself appeared as CW4. He also examined Dr. Ashwini Mittal as CW5, besides producing on record, the documentary evidence. After producing CW6-H.C.Jagdev Singh and CW7-Buta Singh, complainant closed his evidence.

After going through the pre-charge evidence, learned trial court found a prima facie case. Accordingly, charge was framed against the accused persons under Sections 120-B, 107, 347 and 201 IPC, vide order dated 10.5.2013. Charge sheet was served upon the accused persons who pleaded not guilty and claimed trial. After framing of the charge, complainant-Manjit Singh examined himself and stated that his statement recorded on 1.5.2013 be read as his statement. Similarly, other witnesses were also examined reiterating their previous statement recorded.

On closure of the evidence of the complainant, statements of the accused persons were recorded under Section 313 Cr.P.C. All the incriminating material brought on record was put to the accused persons, but they denied the same and alleged false implication. In their defence, accused examined Gurwinder Kaur as DW-1, Mohinder Kaur as DW2, S.S.Sohi, Advocate as DW3. Besides the testimonies of all the abovesaid witnesses, accused produced on

record documentary evidence Ex.D6 and mark-D7 to D9.

After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the complainant has failed to prove his case. Accordingly, the complaint was dismissed and the accused-respondents were acquitted of the charges framed against them, vide impugned judgment dated 2.5.2014. Hence this application.

Learned counsel for the applicant submits that learned trial court misdirected itself while not appreciating the oral as well as documentary evidence in the right perspective. He further submits that complainant has brought on record cogent evidence, which was sufficient to bring home the guilt of the accused-respondents. 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 case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that 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 reading of the impugned judgment of acquittal would show that learned trial court has considered each and every relevant aspect of the matter in the correct perspective, before arriving at a judicious conclusion that the applicant-complainant failed to prove his case. In fact, primarily, it was a property dispute amongst close relatives. Accused-respondents No.1 to 3 were not strangers to the applicant but his own brothers and mother. The applicant-

complainant seems to be a disgruntled son whose only motive was to put unwarranted pressure on his own mother and brothers by way of instant litigation, so as to get more property even beyond his share. Lust knows no limits. It was the unending lust of the applicant-complainant for property, which has forced him to initiate this wholly unwarranted litigation.

Before arriving at a judicious conclusion, learned trial court recorded cogent findings in para 18 to 21 of the impugned judgment, which deserve to be noticed here and the same read as under:-

“The complainant has failed to prove that he was not aware about the death of his father. From the testimony of DW-1 and DW-2, it is found that complainant attended the cremation of his father. During his cross-examination, complainant also admitted that he was present at the time of Bhog and "Antim Ardaas". The certified copy of the suit for declaration and permanent injunction filed by the complainant against Gurbachan Singh and' Sukhmander Kaur wife of Gurbachan Singh has also tendered into evidence as Ex.D5 wherein complainant also stated that last rites of Balwant Singh was also performed by him.

Further in the cross-examination of CW-I Dr.K.L.Bansal it has come on record that on 24.04.2006 patient Balwant Singh was sent back after Eco-consulation and was not advised on that day for

admission in the hospital. In the testimony of Dr.Naresh Goyal CW-3 it has come on record that on 24.04.2006 patient Balwant Singh was brought to him who was under treatment for last few days, for cardiac opinion. He personally saw the patient and his heart was weak. The said witness further stated that patient was advised to take treatment. from local doctor from civil hospital where he was continuing his treatment. Thus, it cannot be said that on 24.04.2006 Balwant Singh was taken to home with malafide intention and to deprive him from necessary treatment intentionally. CW-3 Dr.Naresh Goyal further stated that Balwant Singh was again brought to him on 26.04.2006 and they treated throughout night and in the next morning he had. cardiac arrest and despite all measures he could not revived. Thus, the death of Balwant Singh is found to be natural due to heart disease and old age. Dr.Naresh Goyal also stated in his cross-examination that death of patient was natural.

It has also been the case of the complainant that when accused Gurbachan Singh conspired with accused Harvinder Singh in civil hospital to take Balwant Singh home, at that time their of conversation as heard by Buta Singh and Labh Singh. The said Buta Singh was examined by complainant as CW-7 in pre-charge evidence but he did not support the case

of complainant. He stated that he did not remember what he heard and he did not remember who was talking and about which topic.

During the course of arguments learned counsel for complainant laid stress on the fact that Balwant Singh had already divided property vide family partition on 21.6.2000 which itself shows that the will dated 26.4.2006 was got executed by the accused from Balwant Singh under coercion but the said contention is found to be not convincing. The fact cannot be ignored that after the said family partition will bearing No. 117 dated 6.6.2003 was also got executed by Balwant Singh which was later on got cancelled by him on the same day when subsequent will dated 26.4.2006 executed by Balwant Singh. The writing of cancellation of previous will dated 6.6.2003 has been proved on record as Ex.CW-2/A. In the earlier will dated 6.6.2003 mark-D8 also due share to the daughters and son of complainant Manjit Singh was given. Similarly, in the will dated 26.4.2006 they were also made beneficiaries and inherited the property of Balwant Singh alongwith Gurbachan Singh. In the will mark-D8 it was got mentioned by Balwant Singh deceased that his son Manjit Singh was residing separately and he was not obedient to him and not caring him,”

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.*

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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 order 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

23.4.2015
Ak Sharma