

CRM-A-1196-MA-2014

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

CRM-A-1196-MA-2014 (O & M)
Date of decision: 28.04.2015

Malkiat Singh

.... Applicant/Appellant(s)

Versus

Nirmal Singh 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. Sunny K. Singla, Advocate,
for the applicant.

PARAMJEET SINGH, J. (ORAL)

CRM-22724-2014

Having heard learned counsel for the applicant and in view of grounds mentioned in application, delay of 15 days in filing the application for leave to appeal is condoned.

Application stands allowed.

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The instant application has been filed under Section 378(4) of the Code of Criminal Procedure (in short 'Cr.P.C.') for grant of leave to

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appeal against the impugned judgment dated 08.05.2014 passed by the Judicial Magistrate Ist Class, Talwandi Sabo whereby complaint filed by applicant under Sections 505/506/447/323/324/148/149 of the Indian Penal Code (in short, 'IPC') has been dismissed and respondents-accused have been acquitted of charges framed against them.

Brief facts of the case are that a complaint was filed by the applicant-complainant with the averments that on 03.12.2009, at about 4.00 P.M., complainant along with his brothers Baljit Singh and Babu Singh went to their fields near village Jodhpur Pakhar. They came to know that Nirmal Singh, Lachhman Singh, Ram Singh, Darshan Singh and Harnek Singh had demolished the common 'watt' of the field. When they reached on the spot they saw that the 'watt' was demolished. Accused Nirmal Singh, Ram Singh and Lachhman Singh were present in the field when they made complaint to accused regarding this, the accused started fighting with them. Accused Nirmal Singh called his brothers Darshan Singh, Harnek Singh and Gursewak Singh. Darsan Singh was armed with spade, Nirmal Singh was armed with Karsauli and Ram Singh was armed with Hairon. All the other accused were armed with sticks. Accused-Ram Singh stated that they should be taught a lesson for making complaint. Ram Singh gave blow with Hairon on left cheek of Baljit Singh, accused Nirmal Singh gave Karsauli blow on back side of his head. Accused Darshan Singh gave spade blow on right shoulder of his brother Baljit Singh. Harnek Singh gave stick blow on

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right ear of his brother Baljit Singh. Lachhman Singh and Gursewak Singh slapped him as well as his brother Baljit Singh. His brother Babu Singh raised alarm of marta-marta. After that all the accused fled away along with their respective weapons and threatened that next time, they would kill them. His nephew after arranging for vehicle got him and his brother Baljit Singh in Civil Hospital, Maur where they underwent treatment. The police officials got his statement recorded but the same was not as per his version and he had objected to the same. The police officials had registered false case at the instance of accused under Sections 324/34 IPC against him and his brother. The police officials refused to take any action against accused. Therefore, the complaint was filed.

On the basis of preliminary evidence, the respondents-accused were summoned for committing the offence punishable under Sections 323/148 read with Section 149 IPC.

In pre-charge evidence, the complainant, in order to prove his case, examined himself as CW4 besides examining Dr. Avtar Singh as CW 1, Kundan Lal as CW 2, HC Karnail Singh as CW 3, Baljit Singh as CW 5.

Finding, prima facie, the accused were charge-sheeted under Sections 148 and 323 read with Section 149 IPC, to which they pleaded “not guilty” and claimed trial.

Thereafter, statements of the respondent-accused under

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Section 313 Cr.P.C. were recorded wherein they pleaded complete innocence and false implication.

The trial Court, after appreciating the evidence, acquitted the respondents of the charges framed against them, vide impugned judgment dated 08.05.2014.

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:-

“20. As per the facts of complaint and from the evidence of complainant witnesses it is clear that nephew of complainant Nirbhay Singh got them in hospital and Babu Singh brother of complainant was also present on the spot. However, neither Babu Singh eye witness has been examined by the complainant nor Nirbhay Singh who got them admitted in hospital has been examined by the complainant. The best evidence has been withheld by the complainant. Further in complaint it has not been mentioned that Harnek Singh attacked with stick on head of the complainant, however, in his evidence Baljit Singh has stated that Harnek Singh gave stick blow on his head but in complaint he has mentioned that the blow was given on his right ear contrary to medical evidence. As per the evidence of Dr. Avtar Singh, three injuries were caused upon the person of Baljit Singh, however, Malkiat Singh in his evidence has stated that two injuries were caused upon the person of his brother. Baljit Singh in his statement has stated that 4-5 injuries were caused upon

his person. It is also material contradiction which is fatal to the case of the complainant.

21. *In view of my above discussion, the complainant has failed to prove the guilt of accused under Section 148, 323 read with Section 149 IPC beyond the shadow of reasonable doubt. So the accused stands acquitted of the charge framed against them. Case property, if any, is ordered to be disposed of under rules, after the expiry of period of appeal or revision. The case file be consigned to the record-room.”*

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 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

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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.

28.04.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE