

CRM-A-1436-MA of 2014

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

CRM-A-1436-MA of 2014
Date of decision: 13.07.2015

Parvinder alias Pappu

....Applicant

Versus

Sandeep and others

....Respondents

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. Gulzar Mohammad, Advocate, for the applicant.

PARAMJEET SINGH, J.

The instant application has been filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the impugned judgment dated 03.07.2014 passed by learned Judicial Magistrate Ist Class, Phillaur whereby complaint filed by applicant under Sections 323, 341, 354, 452, 506, 427 of the Indian Penal Code has been dismissed and respondents have been acquitted of the charges framed against them.

Brief facts of the case are that a complaint was filed by the applicant-complainant under Sections 323, 341, 354, 452, 506, 427 IPC that on 15.10.2008 at about 7.00 p.m. complainant along with his mother Usha Rani, sisters Kiran Devi and Pinki went to pay offering and worship at Mata Salani Mandir and when they were worshipping in the temple, all the accused came there. Accused Sandeep, Harvinder Kumar, Darshan Lal and Lashkar Singh started teasing and manhandling sisters

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of complainant and they also outraged their modesty by using force. Complainant, his mother and sisters objected to the same. Then, all the accused conspired with each other and started abusing and insulting the complainant, his mother Usha Rani and his sisters Kiran Devi and Pinki. It is further case of the complainant that thereafter complainant, his mother and sisters came to their house. Then, all the accused followed complainant, his mother and sisters. All the accused illegally and forcibly entered in the house of the complainant with the intention to cause injuries to them. Accused started beating the complainant, his mother and sisters with their respective dangs in their hands. They caused injuries on the person of the complainant, his mother and sisters. Worshiper who was already present in the temple came to the house of the complainant on hearing the hue and cry and rescued the complainant. When the worshiper was rescuing the complainant, accused Harvinder Kumar scuffled with the worshiper and fell down on the hard surface thereby receiving injuries on his body. It is further case of the complainant that due to suffering of injuries on the night of 15.10.2008 at the hands of accused, complainant himself got medically examined on 16.10.2008 at Civil Hospital, Jandiala. The matter was reported to the local police. There was no injury on the person of mother and sisters, so, they were not admitted in the hospital. They got medicine of pain killer at home. The police did not take any action against the accused, therefore, the complaint was filed.

The complainant led preliminary evidence and deposed himself as CW-1 and examined CW-2 Kiran Devi, CW-3 Pinki, CW-4

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Usha Rani and CW-4 Dr. Sat Pal and thereafter closed his preliminary evidence. On the basis of preliminary evidence, the trial Court after finding sufficient grounds vide order dated 27.08.2010 summoned the accused to face trial for the commission of offence punishable under Sections 323, 352, 354 read with Section 34 IPC.

On appearance all the accused were admitted to bail.

To prove the allegations, in his pre-charge evidence complainant examined Dr. Sat Pal as CW-1, Parvinder as CW-1 (again marked), Kiran Devi as CW-2 and Usha Rani as CW-3. Thereafter the applicant-complainant closed his evidence.

Finding a prima facie case against all the accused they were charge-sheeted under Sections 323, 352, 354 read with Section 34 IPC vide order dated 04.02.2014 to which they pleaded not guilty and claimed trial.

Thereafter, statements of the respondents/accused under Section 313 Cr.P.C. were recorded by putting them entire incriminating circumstances in evidence against them to which they pleaded not guilty and claimed trial.

The trial Court, after appreciating the evidence, acquitted the respondents/accused of the charges framed against them, vide impugned judgment dated 03.07.2014. Hence, this application for grant of leave to appeal.

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:-

“29. After hearing the parties and perusing the record it shows that in the present case accused have been charged sheeted for the offence punishable under section 323,352,354 read with section 34 of the IPC. It is alleged by the complainant that on 15.10.2008 at about 7:00 p.m in the area of village Mithra all the accused along with their co-accused Harvinder Kumar (since proclaimed offender) in furtherance of common intention of each other caused simple blunt hurt on the person of complainant Parvinder and assaulted to complainant, his mother Usha Rani and his sisters namely Kiran Devi and Pinki and also used criminal force to Usha Rani mother of the complainant and Kiran Devi and Pinki sisters of the complainant intending to outrage their modesty.

30. In order to prove the offence under section 352 of the IPC against the accused persons, it was for the complainant to prove the criminal force by the accused persons against the complainant and his mother and sisters and that the same was done with the intention to cause injuries to the complainant and his sisters and mother. Complainant was also to prove two incident, as alleged by him in his complaint.

31. Case of the complainant is that on 15.10.2008 at about 7.00 p.m when he went to temple of Mata Salemi along with his sisters and mother as a routine and when they were worshipping in the temple, accused came and they started manhandling their sisters and teased them. On objecting the complainant, accused even alleged to have insulted and abused the complainant, his mother and sisters.

32. Another incident alleged by the complainant is of his house where he alleged that he along with his sisters were beaten up by the accused persons. It is also plea of the complainant that the injuries were caused to Harvinder by falling on the hard surface in his house and that matter was

reported to the police, but, no action was taken on that.

33. Complainant himself deposed as per his version after summoning of the accused, but, he did not depose anything regarding causing of injuries to Harvinder. In his cross-examination he stated the fact that he did not go to the police or he made any complaint to the police officials regarding not having taken any action in the matter alleged by the complainant. He even stated that they have no dispute with the accused persons and also that no dispute took place in the temple.

34. CW-2 Kiran Devi is stated to be eye witness as well as injured. However, admittedly there is no M.L.R. of the said injured person and on asking regarding the same, she stated that she was having internal injuries and she was not medically examined. Same version was stated by CW-3 Usha Rani. The case regarding using criminal force against the sisters and mother of the complainant is based only on oral averments, without any medical evidence. It is case of the complainant that at the time of the alleged incident worshipers were present in the temple and when the accused followed the complainant to his home, said worshipers also came to the house of the complainant.

35. However, complainant in his cross-examination stated that there was no one present in the temple at the time of incident. He even stated that he did not get mention anything in his complaint that the persons doing worship in the temple saved the complainant. He further stated one fact that they have no dispute with the accused persons. CW-2 also stated the same fact that no dispute took place in the temple and no one was present at that time nor anyone saw the occurrence in the temple. CW-3 even stated that at the time of filing of the present case, she got mentioned that the occurrence was witnessed by the pujari of the temple. They did not gave the names of that pujari. At the time of filing of the case, they

were knowing the names of that Pujari. He also stated that at the time of occurrence, there was no pujari in the temple. The version of the complainant regarding presence of people in the temple is falsified by himself as well as witnesses examined by the complainant.

36. Then comes the fact of the examination of an independent witness. Complainant stated that occurrence took place at home was witnessed by three persons namely Sita, Aujla Baba and Sonu along with other persons. But, he could not tell the names of those persons. Same version was corroborated by CW-2 Kiran Devi and CW-3 Usha Devi in their cross-examination. CW-2 Usha Rani even stated that the said witnesses have already been died. However, she stated that she cannot produce the death certificate of those persons. CW-1 Parvinder stated that at the time of filing of the present complaint, he gave names of those persons. CW-2 Kiran Devi however sated that they did not mention the names of those persons at the time of institution of present case. Both the complainant Parvinder and CW-2 Kiran Devi stated that said persons told them to give their names as witnesses when they filed the present case. But they forgot to mention the same. Non examination and even non mentioning of these persons when the present complaint was filed further weakens the versions stated by the complainant.

37. Further, in the present case admittedly the alleged occurrence is of dated 15.10.2008, whereas the present complaint has been filed on 31.07.2009 after a delay of about nine and half months. This fact is admitted by all the witnesses. But, there is no explanation regarding the delay caused in institution of the present case, which fact again hit to the case of the complainant.

38. Complainant CW-1 Parvinder and CW-2 Kiran Devi stated that the information of the occurrence is stated by them was given to the police immediately, but, no action was taken

by the police. Complainant in his cross-examination categorically stated that he never go to the police nor police visited the hospital nor he or his mother and sisters ever gave any statement to the police. He even stated that he did not give complaint regarding non registration of the case regarding the occurrence alleged by him. CW-2 stated that police visited the hospital and told the police regarding causing of injuries by the accused persons. Then police even recorded their statements. She even stated that they gave an application to the police on the next day of the occurrence, but, they have no copy of the same. CW-3 stated that her statement was recorded by the police and even she signed the same. Her son did not give any statement to the police nor he informed the police. She also stated that her son showed the clothes to the police. The version regarding giving of information or taking of any action by the police as stated by these witnesses does not corroborate with each other. If any information was given to the police or any application was given to the police after the occurrence, complainant could easily produce or summon the record regarding the said proceedings, but, complainant and witnesses stated that they cannot produce any such document. In these circumstances, the fact as averred by the complainant to have given information to the police again is not proved, particularly, when there is delay of more than nine months in filing the present case.

39. To prove the present case complainant was also to prove the motive behind the causing of the alleged occurrence. The entire complaint is silent regarding the same. Complainant as well as witnesses categorically admitted that they have no dispute with the accused persons. They admitted one fact of the pendency of one criminal case against the complainant, his brother and his father which was instituted by the accused persons at the time of filing of the present complaint. Even said fact finds no mention in the complaint. If there was no

any motive behind causing of the alleged occurrence, as stated by the complainant, there is no explanation of reason for commission of incident as alleged by the complainant, which fact also hit the case of the complainant. In such case even no any intention can be inferred on the part of the accused to commit the said alleged act.

40. *Further, complainant examined CW-1 Dr. Sat Pal who deposed regarding finding of injuries on the person of the complainant on his examination on 16.10.2008 at about 9.30 a.m. Total six injuries have been mentioned by this witness and all those injuries were stated to have been caused with blunt weapon. When this witness was cross-examined he stated that on 16.10.2008 another patient Gurpreet son of Ram Lubhaya were also got admitted by Jit Ram. Said Jit Ram is father of the present complainant Parvinder. He also stated that injuries found on both Parvinder and Gurpreet is of the same weapon, of the same duration and of the same time, which fact further creates doubt in the version of the complainant. There is no explanation as to who is the said Gurpreet and how he suffered injuries at the same time when Parvinder complainant suffered injuries.*

41. *CW-3 stated that said Jit Ram is not the witness in the present case. The M.L.R Ex.CW/A also shows that the complainant was taken to hospital by said Jit Ram. These facts could have been explained by the said Jit Rain only who is not examined.*

42. *The discussions made above shows that entirely new facts have come on record during the cross-examination of the witnesses examined by the complainant. The complainant also alleged that he suffered the injuries at the hands of the accused persons and that accused persons used criminal force and assaulted him and his mother and sisters for causing injuries. The above said facts clearly shows that the occurrence as alleged by the complainant is not proved.*

Though, the medical evidence on record proves one fact that the injuries were suffered by the complainant, but, it does not proved the case of the complainant beyond any doubt that the said injuries were caused by the present accused persons as all the facts stated by the complainant in his complaint even falsified by himself as well as by the deposition of other witnesses examined by the complainant.

43. The facts mentioned above also do not show any intention on the part of the accused persons for using any criminal force as alleged by the complainant. Even CW-2 Kiran Devi sister of the complainant admitted that Darshan Singh accused is father of accused Harvinder and Lashkar Singh is his grand father. It is very improbable story that in the premises of the temple which is situated adjoining to the village, the accused persons who are father, son and grand father outraged the modesty of the sisters and mother of the complainant and that too in the circumstances when complainant himself alleged that the said occurrence took place in the presence of worshipers and denial of the presence of those worshipers in their cross-examination.

44. In view of the discussions made above the complainant has not been able to prove that any criminal force has been used by the accused persons or that any act of outraging the modesty of complainant and his sisters and mother has been done by the accused persons. Even the fact regarding making of assault, as alleged by the complainant or using of criminal force is not proved nor the fact regarding causing of the injuries has been proved beyond any reasonable doubt against the accused persons.

45. In view of my above said discussions, the complainant has not been able to bring on record the existence of entire circumstances which are sufficient to prove its case beyond the shadow of reasonable doubt. Accordingly, by giving benefit of doubt, the accused Sandeep, Darshan Lal and

Lashkar Singh are acquitted from the charges framed against them under section 323, 352, 354 read with section 34 of IPC. Bail bonds and surety bonds of all these accused stand discharged from their liability. File be consigned to the record room after due compliance and same be revived as and when accused Harvinder Kumar is apprehended by the police or he himself surrenders in the Court.”

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 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.

Dismissed.

(Paramjeet Singh)
Judge

July 13, 2015
R.S.