

In the High Court of Punjab and Haryana at Chandigarh

CRM-A-368-MA of 2014
Date of Decision:14.1.2015

Ram Bhagat

---Appellant

versus

Suresh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Mani Ram Verma, Advocate
for the appellant**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

REKHA MITTAL, J.

The present appeal lays challenge to the judgment dated 19.12.2013 passed by the Judicial Magistrate Ist Class, Bhiwani whereby the respondents/accused have been acquitted of the offence charged against them.

Ram Bhagat, appellant filed criminal complaint on the allegations that houses of the accused are adjacent to the fields of the complainant. On 10.8.2007 at about 7.00 a.m., the complainant was in his field of Bajra bearing killa No. 70/14. Suresh, Jai Bhagwan sons of Shish Ram and Jai Bhagwan son of Ram Kumar came in the field to answer call of nature and the complainant asked them not to do so. They called Daya

Nand, Ram Kumar and Shish Ram. Daya Nand gave a lathi blow on his right ankle and Shish Ram gave lathi blow on his left foot. They dragged the complainant on road and Suresh gave fist blows on his chest towards left side. On raising alarm, Sunita and Santosh (sisters), Laxmi (mother), Inder Singh (father) and wife of the complainant came there and saved him from clutches of the accused. He was shifted to General Hospital, Bawani Khera for treatment.

After recording pre charge evidence, the accused were charged for committing offence punishable under Sections 147, 323, 506 read with Section 149 of the Indian Penal Code (in short “IPC”). On conclusion of trial, the accused were acquitted of the offence for the reasons recorded in paras 12 to 17 of the judgment passed by the trial Magistrate.

Counsel for the appellant would submit that the reasoning adopted by the learned Magistrate to hold in favour of the accused cannot stand test of judicial scrutiny as it is based upon mis-appreciation of evidence on record. It is argued that even if there is some discrepancy in the statement of the victim and the medical evidence, the statement of the victim invites primacy over medical evidence unless there is material on record to doubt version of the injured victim.

I have heard counsel for the appellant and perused the records.

Before advertng to the submissions made by learned counsel in the light of allegations and evidence adduced against the respondents, it is appropriate to recall principles culled out by the Hon'ble Supreme Court of India in a recent judgment while dealing with an appeal against order of acquittal under Section 378 of the Code of Criminal Procedure. The Apex

Court in *Basappa vs. State of Karnataka 2014(2) R.C.R.(Criminal) 144* has reiterated the principles laid down by the court in earlier judgment *Chandrappa and others vs. State of Karnataka 2007(2) R.C.R.(Criminal) 92*. Para 15 of the judgment in *Basappa's case (supra)* reads thus:-

“In this context, yet another caution struck by this Court in *Chandrappa and others v. State of Karnataka 2007 (2)R.C.R.(Criminal)92: 2007(1)Recent Apex Judgments (R.A.J.) 841: 2007(4) SCC 415* would also be relevant.

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour

of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

The complainant (victim) deposed that all the accused dragged him on the metalled road to some distance. As per medical evidence, no injury was found on the back of the complainant. The other injuries attributed to the accused are lathi blows given by Daya Nand on his right ankle and Shish Ram on his left foot, which are simple in nature.

The accused produced defence evidence and one of the witnesses examined in defence namely Raj Kumar deposed that the complainant met with an accident and sustained injuries and he took him to his house where family members of the complainant offered him milk and ghee. Another witness Sumer Singh DW3 was examined to depose that the complainant is habitual of making false applications and he had filed complaints against Manohar Lal Sardana, Advocate, his brother Murari Lal and one Gulshan Kumar which were found false. Manohar Lal Sardana DW4 also deposed on oath in regard to making of false complaints against him and his family members.

Keeping in view evidence led by the complainant and the

accused, I do not find any error in appreciation of evidence by the trial court nor can it be held that the judgment of the trial court is based upon no material or it is perverse or view taken by the trial court is wholly unreasonable or there is non-consideration of any evidence or palpable misreading of evidence etc. In this view of the matter, I do not find any reason to intervene.

For the reasons aforesaid, the application for leave to appeal stands dismissed. As a natural corollary, the appeal fails and is accordingly dismissed.

(REKHA MITTAL)
JUDGE

14.1.2015
PARAMJIT