

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

CRM-A-602-MA-2014

Decided on : 23.03.2015

Kamal

... Applicant/Applicant

Versus

Harjit Singh and others

... Respondents

CORAM : HON'BLE MR.JUSTICE PARAMJEET SINGH

Present : Mr.D.S.Gurna, Advocate for the applicant-appellant.
Mr.K.S.Sidhu, DAG, Punjab.

- 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 ?

Paramjeet Singh, J. (Oral)

The instant application has been filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the impugned judgment dated 01.02.2014 passed by learned Sub Divisional Judicial Magistrate, Dera Bassi whereby learned Sub Divisional Judicial Magistrate, Dera Bassi has acquitted the accused-respondents of the charge framed against them in the complaint filed under Sections 352, 342, 148, 149 and 506 IPC.

Brief facts of the case are that a complaint was filed by the complainant against the accused under Sections 352, 342, 148, 149 and 506 IPC in which the complainant has averred that the complainant Kamal wife of Kanwarjit Singh is permanent resident of Street No.2/3 Preet Nagar, Gulabgarh Road, Dera Bassi and complainant is residing in the said house being owner in possession along with her two children namely Beena and Ajay Kumar. Gurjit Singh alias Titu and his brother Harjit Singh i.e. accused

persons along with their party men, namely Prem Singh, Jagjit Singh, Kala, Charanjit Singh, Amar Singh and Amritpal Singh started harassing the complainant. In fact Gurjit Singh alias Titu has a malafide intention and he comes in a naked condition whenever the complainant comes out of her house and openly calls the complainant and says that she should become his wife, but, in fact he wants to grab the property of complainant. Husband of the complainant namely Kanwarjit Singh is N.R.I. and is living in USA and all the accused persons have formed a group and are unnecessarily harassing the complainant and her children with a malafide intention. Earlier also accused Gurjit Singh alias Titu and Harjit Singh colluded with their family members and harassed the complainant and her children, as such, complainant lodged a report in P.S.Dera Bassi on 6.10.03 which was registered against Harjit Singh and Gurjit Singh and their family members u/s 341, 354 etc. of IPC but, the accused persons are having some political affiliations and had formed a group to harass her and her children and are bent upon to cause wrongful loss to the complainant and her children. On 19.12.2013, at 11.00 P.M. all the accused persons came in front of the house of the complainant in form of unlawful assembly, armed with deadly weapons i.e. iron rods and brick bats and threatened the complainant to open the door of her house to fulfill their bad desire and the intention of Gurjit Singh @ Titu, his brother Harjit Singh and other accused persons. The accused persons threw brick bats on the doors of the house of the complainant and they even broke open the wire knitting of the door of the house of the complainant and used criminal force against the complainant and her children and also threatened that complainant and her daughter

should come out of her house and they will forcibly remove complainant and her children with mala fide intention. The accused persons remained present in front of the house of the complainant for half an hour and did not allow the complainant and her children to move in any direction. The accused persons also gave provocation to the complainant and her children with malafide intention to assault them as and when they come out of their house and also gave dirty abuses in the name of mother and sister to the complainant and her children. Then the complainant gave a telephone call to Gurdev Singh, her relative, who went to the police station along with his wife Ravinder Kaur, but the police came late with Gurdev Singh and Ravinder Kaur and when the police reached in front of the house of complainant, then instead of taking action against the accused, allowed the accused to run away and just caught Charanjit Singh @ Beera and Harjit Singh and took them to the police Station. The accused persons while going back threatened the complainant to teach a lesson to the complainant and to kill her and her children. The police did not lodge the complaint of complainant, but recorded DDR No.37 dated 20.12.03 as per their own choice. The complainant and her children were even harassed earlier and they moved applications to higher authorities. Amritpal Singh is President of local Congress Unit and other accused are also members of the Congress party and as such police did not take any action against them. The police kept on assuring the complainant to take action against the accused, but they had not taken any action and finally on 24.02.04 refused to take any action against the accused and hence the present complaint was filed.

The complainant, in preliminary evidence herself stepped into

witness box as CW1 and also examined CW-2 C.Tarsem Singh No.2013; CW-3 Ajay Kumar son of complainant; CW4 Gurdev Singh, eye witness; CW-5 Lajwanti eye witness.

Thereafter, the accused-respondents were summoned to face trial for offence punishable under Sections 342, 148, 149 IPC vide order dated 24.08.2009.

Thereafter, on the basis of pre-charge evidence adduced by the complainants, charge-sheet dated 20.09.2013 for offence punishable under Sections 294, 342, 506, 148 read with Section 149 IPC was served upon the respondent. The respondent pleaded not guilty and claimed trial.

The trial Court, after appreciating the evidence, acquitted the accused respondents, vide impugned judgment dated 01.02.2014. 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:-

“15 In the case in hand, accused persons were served with a charge sheet on 20.09.2013 under Sections 342, 294, 506, 148 read with Section 149 of IPC on the allegations that on 19.12.2001 at about 11.00 P.M. in the area of Preet Nagar, Gulabgarh Road, Dera Bassi, all the accused being members of unlawful assembly armed with deadly weapons commit offence of rioting and in furtherance of common object of said unlawful assembly wrongfully restrained Kamal and her daughter Beena and also used filthy language to the complainant and her children and even criminally intimidated the complainant and issuing threats to complainant to kill her and her children.

16. In order to prove the said allegations in the precharge evidence prosecution/complainant examined CW-1

Lajwanti who deposed in her examination in Chief that she was informed by Gurdev Singh on telephone from the house of complainant about the occurrence. The accused threw brick bats on the door of complainant and when she reached at the spot the fight was over and she knew some of the accused present in the court. She further deposed that even after the occurrence accused Titu and all the other accused stand naked in front of the complainant just to harass her. But in her cross-examination she deposed that even Ram Sarup was present at the spot and accused Amritpal, Prem Singh, Jagdish and Amar Nath were also present at the spot, but, nobody spoke ill towards the complainant in her presence. Then she further deposed in her cross-examination that she received a telephonic call at 11 P.M. from Gurdev Singh and Gurdev Singh picked her from her house within 5 minutes and both of them went to the police station and during the entire night they remained at the police station and came back at 6-7 in the morning. She further deposed when she reached the police station, then accused Kala, Titu, Surjit and Jagjit Chani and other accused whose name she do not remember were present in the police station at 6—7 A.M. in the morning, she went back to her home and she was told about the occurrence by Gurdev Singh. Then complainant Kamal herself stepped into witness box as CW2 and deposed that on the night of 19.12.03 the accused armed with rods, sticks came to her house and committed the offence by breaking her gate the wire knitting of the door and then she called upon Gurdev Singh on the phone who came at the spot with PCR van along with his wife and Lajwanti and accused Harjit and Charanjit were taken to the police station. She further made a material improvement and deposed that the accused were in drunkard condition, but the police had not got them medically examined and registered a DDR but had not taken any action against the accused. But, in her cross-examination she deposed that application Mark-CI was written by her regarding the occurrence and in the same it is mentioned that accused were armed with sticks, brickbats and iron rods and when she was confronted with the said application where the same fact is not mentioned. She further deposed that she made a telephone call to SHO, P.S.Dera Bassi and DSP Dera Bassi but they had not responded, but SHO, PS Dera Bassi after receiving the call had not come to the spot. She further deposed that Gyrdev Singh brought to the police station and then Ravinder Kaur subsequently brought Lajwanti. She

further deposed that she had mentioned in her complaint that photographs were clicked at the spot, but she was confronted with the same, where it is so recorded. She further admitted that Mark-C2 does not bear her signatures. She also admitted that she had withdrawn present complaint against Prem Singh, Amrit Pal Singh and Jagjit Singh. She further deposed that Lajwanti was not present at the time of occurrence, but she was called by her and accompanied her to police station. She further deposed that some of the companions as mentioned in the application mark C1 are sons of sister of Harjit Singh, but she do not remember their names. She further deposed that Ram Sarup and Balak Ram also accompanied the accused at the time of occurrence. She further deposed that Surjit Singh was standing in his house after removing all his wearing apparels before 19.12.03 also and he even after 19.12.03 kept standing without clothes. And then she deposed that after filing of the complaint and during her stay at Dera Bassi accused never stood without clothes at his house and Surjit Singh is having his wife, two daughters and his mother in his family at the time of the alleged occurrence. She further deposed that accused were also having Kirpan in their hand and later on deposed that Kirpan was not there in the hands of any accused. CWP3 Ajay Kumar also deposed on the lines of story of the complainant and deposed that his mother gave a call to his relative Gurdev Singh who came at the spot along with Ravinder Kaur , Lajwanti and the police. He further deposed that he made a call to Gurdev Singh who also informed Lajwanti and then further deposed that Gurdev Singh first took them to the police station and then went to the house of Lajwanti on his scooter. CW4 Avtar Singh proved on the file copy of the FIR No.258 dated 6.10.03 and DDR No.37 dated 20.12.03 regarding the present matter.

17. *These are, in all the witnesses examined by the prosecution/complainant to prove the allegations against the accused that on 19.12.03 all the above named accused formed an unlawful assembly armed with deadly weapons and committed the offence of rioting and throw brick bats and hit the gate of the house of the complainant with iron rod and also used filthy language and issued dirty abuses to the complainant and her children. She also made a reference that accused Gurjit Singh @ Titu used to stand in naked condition in front of complainant*

whenever she comes out of her house. But the said allegation has no relevance in the present matter as she further submitted that regarding the same she has already got an FIR dated 6.10.03 registered against the accused. In the case in hand the occurrence is dated 19.9.03 but the present complaint was filed on 17.2.04 i.e. after gap of about two months, but the complainant submitted that on the date of occurrence she informed the police and a DDR no.37 dated 20.12.03 was registered by the police, which is proved on file as Ex.CW4/B but, perusal of the said DDR shows that the same was registered at the written complaint moved by the complainant in which she just nominated accused Charanjit Singh, Titu, Sarabjit Singh, Beera, Kala Deep and other persons whose name she do not know and just submitted that the accused broke the front door and entered inside her house and threatened that they will take away the daughter of the complainant and she called up DSP Dera Bassi on her phone and narrated the entire occurrence, but SHO had not picked up her phone, whereas in the complaint filed in the court she has nominated 8 accused namely Prem Singh, Jagjit Chand, Gurjit Singh, Harjit Singh Kala, Charanjit Singh, Amar Singh and Amritpal Singh but, skipped names of Sarabjit Singh and Deep and rather nominated Prem Singh, Jagjit Chand, Harjit Singh, Amar Singh and Amritpal Singh, whereas there is no reference of said persons in the DDR which was registered promptly after the commission of the offence at the written complaint moved by the complainant and even in the DDR accused Charanjit and Beera are shown as two different persons but in the complaint they are shown as same person. Further the complainant who appeared in the witness box as CW2 but nowhere deposed on oath that the submissions made in the DDR are wrong and the same has not been properly recorded by the police. The said contradiction gave merit to arguments of the Ld. Defence counsel that the nomination of names of the accused in the complaint are result of conscious manipulation and further gave merit to the arguments of Ld. Defence counsel regarding delay in filing the present complaint. Further in the case in hand complainant deposed that accused Ram Sarup and Balak Ram were also present with other accused at the time of occurrence but they were not nominated in the present complaint.

18. Further in the case in hand, in order to prove her case she also examined CW1 Lajwanti as eye witness, but she clearly deposed even in her

examination-in-chief that when she came at the spot, the fight was over and she even submitted that few of the accused persons are present in the court, but she had not identified the accused persons specifically. Further in her cross-examination she clearly submitted that she was brought from her house by Gurdev Singh and they directly went to the police station where the accused were already present and they remained at the police station till 6-7 a.m. and Gurdev Singh disclosed the entire occurrence to her, as such the said deposition make the credibility of testimony of CW1 Lajwanti in capacity of eye witness doubtful and make her testimony regarding the occurrence hearsay, which has not value in criminal jurisprudence. Further, the said Gurdev Singh even hadn't stepped into witness box.

19. *Next, in support of the allegations, complainant herself stepped into the witness box as CW2, but she nowhere deposed that at the time of occurrence, accused used any filthy, abusive or obscene words towards her or her children as such the said averment of the complainant made in the complaint is not supported by her in her testimony on oath and even in the DDR Ex.CW4/B she had not mentioned that accused used any obscene/filthy and abusive words towards her. She further deposed in her cross-examination that she informed about the occurrence to ShO, P.S.Dera Bassi as DSP Dera Bsssi had not attended her call whereas in the DDR registered at the written complaint of the complainant she submitted that she narrated the entire occurrence to DSP, Dera Bassi and Sho, Dera Bassi had not attended her call. She further deposed that Gurdev Singh along with Ravinder Kaur came at the spot along with Lajwanti and all of them went to the police station but CW1 Lajwanti deposed that she directly went to the police station with Gurdev Singh and accused were already present there. She also deposed on oath that she made a call to Gurdev Singh and the police and CW3 Ajay, son of the complainant, also deposed in his examination-in-chief that his mother made a call to Gurdev Singh and Lajwati whereas in his cross-examination changed his stand and deposed that he made a call to Gurdev Singh and SHO, P.S. Deri Bassi. Complainant further deposed that Gurdev Singh came at the spot with RavinderKaur and Ravinder Kaur went to the house of Lajwanti and brought her to the spot whereas Lajwanti deposed that she was brought to the police station by Gurdev Singh directly and CW3 deposed that Gurdev Singh first took*

them to the police station and then went to the house of Lajwanti. All the aforesaid contradiction in their testimonies coupled with non examination of Gurdev Singh made the presence of alleged eyewitnesses at the spot and the averments made in the complaint doubtful. Further as discussed above, there is a serious contradiction in the nomination of the accused in the complaint and the DDR, Ex.CW4/B, which was registered at the first instance on the complaint moved by the complainant, which shows that the complainant had consciously adopted pick and choose policy in nominating the accused in present complaint which is filed after a delay of about 2 months and the said fact along with contradictions in the testimonies of complainant witnesses, discussed above, make the story of complainant doubtful. Further in the DDR Ex.CW4/B she has nowhere deposed that the accused were armed with any weapon and moreover, as discussed above, she nowhere deposed on oath that the said DDR was not properly recorded and further the same was record at the written complaint moved by her which reduced the possibility of false recording of the DDR. Further the complainant has also placed on file a complaint Mark-CI allegedly moved by her against the accused in which she has nominated accused Amrit Pal and Prem Singh Darji as prime accused regarding the occurrence that took place at 11.00 P.M. on 19.12.03.

20. *Next, in the case in hand the complainant has not specifically attributed the weapons and any overt act to any of the accused and further there are several material contradiction in the testimony of the complainant and the other witnesses, which stike at the roots of the story of the complainant and make the entire story doubtful as even there are contradictions in the nomination of the accused regarding the occurrence as made by the complainant in the present complaint and in the DDR registered by the police on the complaint moved by her regarding the presence occurrence. Further, so far as allegations against the accused are concerned, even the credibility of the testimony of the complainant and the complainant witnesses regarding the same become doubtful due to the contradictions highlighted in the discussion above.*
- 21 *It is established law that the complainant has to prove its case beyond the shadow of reasonable doubt and if there is any doubt then the benefit of the same must go to the accused. Over all complainant evidence does not inspire the confidence of the court. As such, in view of*

what has been discussed above, this court is of the considered opinion that prosecution/complainant has failed to bring home guilt of the accused persons. Accordingly, giving benefit of doubt accused Gurjit Singh @ Surjit , Harjit Singh, Kala @ Ishar Singh and Amar Singh are acquitted of the charge framed against them and complaint stands dismissed. Bail/surety bonds stood discharged. Case property be disposed off as per rules after the period of appeal or revision, if any. File be consigned to the record room after due compilation as per rule.,.”

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.

As such, application for leave to appeal is dismissed on merit.

[Paramjeet Singh]
Judge

23.03.2015
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