

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-795-MA-2014 (O&M)

Date of decision:- May 04, 2015

Mange Ram

.....Applicant..

Vs.

Ajay Singh

....Respondent..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Tribhuvan Dahiya, 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?

JASPAL SINGH, J.

Vide this judgement, this Court shall dispose of application under Section 378 (4) of the Code of Criminal Procedure read with Section 482 Cr.P.C. preferred by Mange Ram seeking special leave to appeal against the judgment of acquittal dated February 01, 2013 passed by Judicial Magistrate Ist Class, Charkhi Dadri, District Bhiwani, in criminal complaint No. 630-C1-RBT of 2007/2010, dated 14.02.2007/05.10.2010, captioned as "Mange Ram vs. Ajay Singh", under Sections 323, 506, 458 and 452 IPC.

2. The facts giving rise to the instant lis are that Mange Ram-applicant-complainant preferred a complaint fully reflected in

para No. 1 of this judgment, on the allegation that on November 05, 2006 at about 9:00/10:00 P.M., he along with his son was present in his plot and was about to sleep. Ajay Singh accompanied by 2/3 other persons barged into his plot and twisted the hand of his son. He also dealt FAWARA blow on the back of his son-Bhupinder Singh. At the time, he also extended threats to kill him as well as his son, in case, civil suits filed against him and his family members were not withdrawn. When hue and cry was raised, respondent-accused slipped away from the spot. On the next day, complainant got medico legally examined his son-Bhupinder Singh and also reported the matter, but no action was taken by the police. Thus, he was constrained to lodge complaint in the Court of Id. Jurisdictional Magistrate.

3. On the strength of preliminary evidence adduced by complainant-applicant, respondent-accused was summoned to face trial under Sections 323, 452 and 506 IPC and after securing his presence, complaint was listed for pre-charge evidence, during which, complainant examined C. Anup Singh as CW-1, who proved copy of DDR dated November 06, 2006 (Ex.CW1/A). Bhupinder Singh, injured appeared in the witness-box as CW-2 and reiterated the contents of complaint. Complainant also examined Dr. S.C. Gupta, SMO, who had medico legally examined Bhupinder Singh. He proved the copy of MLR (Ex.CW3/1). Beside this, complainant himself appeared in the witness-box as CW-4 and placed reliance on

the complaint.

4. After hearing learned counsel for the complainant as well as accused, respondent was charge-sheeted to face trial under Sections 452, 323 and 506 IPC, to which he did not plead guilty and opted to claim trial. Thereafter, complainant, his son and Dr. S.C. Gupta were also presented for cross-examination and closed his evidence.

5. On conclusion of the complainant's evidence, when incriminating circumstances appearing in it were put to respondent-accused for eliciting his explanation as required under Section 313 Cr.P.C., he denied the same, pleaded innocence and complained of false implication. However, he did not like to adduce evidence in defence.

6. After hearing learned counsel for complainant as well as defence, accused-respondent was acquitted of the charge holding that complainant has failed to prove his case, vide impugned judgment dated February 01, 2013.

7. Feeling dissatisfied against the acquittal of respondent-accused, applicant-complainant preferred instant application seeking special leave to appeal to challenge the judgment/order of acquittal dated February 01, 2013.

8. While assailing impugned judgment of acquittal dated February 01, 2013, it has been ebulliently argued by learned counsel for applicant that same is absolutely against the evidence available

on file and settled canons of law. Ld. trial court has ignored and disbelieved the cogent and trustworthy evidence adduced by complainant. Rather, it can be said that mis-appreciation of evidence has resulted into miscarriage of justice. While passing, impugned judgment/order, no cogent reason has been assigned by Ld. trial court. Rather, trial court has clearly overstepped its jurisdiction in inventing the farcical reasoning while acquitting respondent-accused. The minor contradictions have given much importance, which were otherwise negligible. Mere fact that litigation was earlier going on between the parties does not *ipso facto* mean that no occurrence took place especially in view of the fact that as per MLR Bhupinder Singh-injured, who is none else but the son of complainant, sustained as many as 4 injuries on his person. There is also nothing on record to suggest that injuries appearing on the person of Bhupinder Singh are the result of friendly hands or are manipulated one. Acquittal of respondent is absolutely against the evidence available on file and is unjustified. There are sufficient grounds for permitting applicant to prefer an appeal against the judgment/order of acquittal.

9. This Court has given an anxious thought to the submission made by learned counsel for applicant but finding the same to be of no legal substance.

10. Before proceeding to delve deep on the merits of the submission made by learned counsel for applicant, it would be

desirable to consider the scope and jurisdiction of an appellate court to interfere with an order of acquittal.

11. Section 378 of the Code of Criminal Procedure provides that the complainant or aggrieved person may prefer an appeal to the High Court against an order of acquittal but sub-section 3 of Section 378 of the Code of Criminal Procedure explicitly envisages that no appeal under subsections (1) and (2) shall be entertained except with the leave of the High Court which is a stage between an order of an acquittal and consideration of the judgment by the Appellate Court on merits as in the case of a regular appeal. It depicts that a judgment of acquittal is annexed with a definite value, which cannot be ignored by the Court. A presumption of innocence attached to an accused stands further fortified or reinforced by an order of acquittal. No doubt, Appellate Court, is empowered to re-appreciate, review and re-consider evidence before it but this power is required to be exercised keeping in view relevant principles of law relating to review, reweighing and re-appreciating of evidence in order to come to independent conclusions. The scope of interference by an Appellate Court in an order of acquittal was laid down by the Hon'ble Apex Court in case ***Sanwat Singh v. State of Rajasthan***; 1961 SCR (3) 120 as follows:-

“The foregoing discussion yields the following results:(1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid

down in Sheo Swarup case afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons", are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified."

12. This principle was further reiterated by the Hon'ble Supreme Court in case **Govindaraju @ Govinda v. State by Sriramapuram P.S. and another**; AIR 2012 SC 1292.

13. In the light of the aforesaid observations, it is evident that there is no embargo in law to re-appreciate, re-look, re-weigh, re-view or re-consider the entire evidence which is the foundation of an acquittal. On scanning of the evidence on record, if acquittal is found to be erroneous, perverse and against settled cannons of law, it should be set aside.

14. Now, this Court has to appraise and inspect carefully whether impugned judgment of acquittal suffers from any illegality,

infirmity or is founded on an erroneous appreciation of the evidence or is perfectly justified.

15. The case of applicant-complainant as per deposition of PW-4 Mange Ram is that on November 05, 2006, at about 9:00/10:00 P.M., he along with his son was about to sleep in the plot where respondent is alleged to have jumped in, accompanied by 2/3 unknown person and twisted the hand of his son Bhupinder Singh. He also allegedly extended threats to his life as well as of his son and dealt a **FAWARA** blow on the back of his son. On raising hue and cry by them, accused-respondent Ajay Singh as well as other unknown person ran away from the spot.

16. Occurrence in this case is alleged to have taken place on November 05, 2006 at about 9:00/10:00 P.M. whereas injured is alleged to have been medico-legally examined on the next day. There is no explanation in this regard. Similarly, no written complaint was also lodged with the police about the occurrence prior to filing of a regular complaint before Id. Jurisdictional Magistrate. As per the version of injured-Bhupinder Singh as well as his father Mange Ram, respondent-accused is alleged to have twisted the hand of Bhupinder Singh and dealt a FAWARA blow on his (Bhupinder Singh's) back. There are as many as 4 injuries, as per MLR. How the other injuries have appeared, there is no evidence. Moreover, there is also no corresponding injury as per the MLR, so far as twisting of hand is concerned.

17. It is also pertinent to mention here that there is a categorical admission of Bhupinder Singh as well as his father Mange Ram that several criminal as well as civil litigations are pending in between them. Not only this, it has also been admitted by them that complainant is having grudge against respondent-accused since 2001 when the father of respondent-accused was elected as Sarpanch of the village Gram Panchayat. Complainant has even gone further while admitting in his cross-examination that though previous litigations were pending between him and father of respondent-accused, but as respondent-accused was an active member of his family, this complaint was filed qua him. In view of the pendency of 3/4 cases between the parties and clear cut admission of complainant and his son that respondent-accused is an active member of his family, it can be safely inferred that instant complaint is nothing but a concoction, just to exercise pressure upon respondent-accused. There is also nothing on record to suggest that why injured-Bhupinder Singh was not rushed to the hospital for his treatment as well as medico legal examination immediately and why complainant opted to get the injured examined on the next day.

18. Here, it would also not out of place to mention that a FAWARA blow was allegedly given on the back of injured-Bhupinder Singh by respondent-accused but to the utter surprise, there is no such corresponding injury of any incised nature. Indisputably, a FAWARA is an agricultural instrument/tool having sharp margins and

certainly, it would have left an incised wound on the back of injured-Bhupinder Singh. Moreover, testimonies of Bhupinder Singh-injured and his father Mange Ram PW-4 do not inspire confidence especially in the circumstances that litigation is going on between them since 2001.

19. In the light of what has been discussed above, it can be said that Id. trial court has rightly concluded that complainant has failed to prove his case beyond reasonable shadows of doubt. This Court is also of the considered view that impugned judgment/order of acquittal dated February 01, 2013, does not suffers from any illegality or infirmity and it calls for no interference by this Court.

20. Resultantly, finding no merit in the instant application, same is dismissed.

(JASPAL SINGH)
JUDGE

May 04, 2015
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