

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRM-A No.97-MA of 2015
Date of Decision : 21.7.2015

Dalwinder Singh

.....Applicant-appellant

Vs.

Dimple Singla

.....Respondent

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. Jagpal Singh, Advocate for the applicant-appellant.

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1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Applicant, by way of instant application under Section 378(4) of the Code of Criminal Procedure ('Cr.P.C.' for short) seeks leave to appeal against the impugned judgement of acquittal.

Brief facts of the case, as noticed by the learned trial court in para 1 of the impugned judgement are that the complaint Dalwinder Singh approached the court with the assertions that Lakhwinder Kaur his wife was admitted in CHC Nihal Singh Wala on 31.5.2011 but as per information taken under Right to Information Act issued by accused Dimple Singola, above said Lakhwinder Kaur was admitted on 2.6.2011 in CHC Nihal Singh Wala. Receipt no.52 dated 20.5.2011 issued by CHC Nihal Singh Wala, original ultrasound report dated 21.5.2011 and X-ray film alongwith envelop bearing name of UK Hospital, Nihal

Singh Wala receipt no.14 and 15 dated 1.6.2011 and OPD Slip dated 3.6.2011 issued by CHC Nihal Singh Wala. Lakhwinder Kaur wife of Dalwinder Singh was suffering from uterus problem that was a gynecological problem. The accused has advised to said Lakhwinder Kaur to get her uterus removed. So she got ready to do so. As per advice of accused, Dalwinder Singh got his wife Lakhwinder Kaur admitted in CHC Nihal Singh Wala to get remove her uterus by operation. On 3.6.2011 accused Dimple Singla, without getting requisite tests before conducting operation of removing of uterus, conducted operation for the said purpose. Without taking requisite tests of the patient Lakhwinder Kaur, which were most essential to be conducted before operation, which was gross medical negligence on the part of accused Dimple Singla. In this manner the accused did not performed her medical duty as a skillful and professional doctor. Every doctor who enters into medical profession has a duty to act with the reasonable degree of care and skill as per medical term implied undertaking. Breach of any such duties amounts to gross medical negligence as due to breach of implied undertaking the life of patient goes in danger and patient often loss his/her precious life and the guilty and negligent doctor was liable for prosecution. The accused had full knowledge that she does not possess requisite skill in operation of uterus removal and she was not competent to deal with such type of cases. However, inspite of this the accused conducted operation of Lakhwinder Kaur resultantly she died within three hours of operation on 3.6.2011 in CHC Nihal Singh Wala. Whereas, before the operation, patient Lakhwinder Kaur was absolutely fit by health. Nothing is on record which may show that she was not fit by health and she was not in position to undergo operation. These facts were clearly showing that the death of patient Lakhwinder Kaur was not natural rather due to gross medical negligence on the part of the

accused. As per report dated 4.8.2011 issued under Right to Information Act, the accused Dimple Singla herself has stated that patient Lakhwinder Kaur was admitted on 2.6.2011 vide CR No.485/11 dated 1.6.2011 that means said Lakhwinder Kaur was admitted on 1.6.2011. The accused made alteration on the date of admission that is 2.6.2011 intentionally, willfully to cheat and defraud his client to conceal her said gross medical negligence. The date of admission was a material fact and any alteration in the same by the accused was material alteration and as per law material alteration comes under the definition of offences under Sections 420, 465, 468 and 471 of the Indian Penal Code. It was pertinent to mention here that the accused has stated in her report under Right to Information Act that above said Lakhwinder Kaur was died on her way to Moga from Nihal Singh Wala. On the contrary to this fact the accused stated in her said report that Patient Lakhwinder Kaur was referred to Civil Hospital, Moga at 4.5. PM on 3.6.2011. If patient Lakhwinder Kaur was referred to Civil Hospital, Moga then how the accused came to know that patient Lakhwinder Kaur died on the way to Moga from Nihal Singh Wala. In fact, this fact was in her knowledge because when the patient Lakhwinder Kaur was sent to Civil Hospital, Moga from Nihal Singh Wala then the accused was sitting in the Ambulance whereby patient Lakhwinder Kaur was being transported. At that time the husband of accused was also going on the car ahead to Ambulance and husband of patient Lakhwinder Kaur was sitting in the car of husband of accused. The accused had come with the patient Lakhwinder Kaur and complainant Dalwinder Singh due to her gross medical negligence made on her part at the time of operation. On reaching at Civil Hospital Moga, the accused performed a drama and asked to the complainant Dalwinder Singh to purchase blood bottle for the patient Lakhwinder Kaur, which was purchased by complainant. It was pertinent to

mention here that in reply bearing no.597/NSW/11 dated 15.11.2011 the accused herself has referred. "Effort was made to revive her by me alongwith other doctors but we were unsuccessful." The reference of these words is clearly showing that something was happened wrong and gross medical negligence was made by the accused, only because of that the accused accompanied at the time of transportation of patient Lakhwinder Kaur from Nihal Singh Wala to Moga and she also compelled to take assistance of other doctors as mentioned in above said bold words. As per record of Civil Hospital, Moga, neither the patient Lakhwinder Kaur was brought in the said hospital nor she was admitted in the same. These facts and circumstances also show that the accused Dimple Singla was trying to conceal her gross medical negligence. After some time of purchasing of blood bottle the accused got cleared the death of patient Lakhwinder Kaur from some unknown doctor of Civil Hospital, Moga. When the complainant requested to conduct post mortem of dead body Lakhwinder Kaur, the complainant was advised to get conduct post mortem of Lakhwinder Kaur on the next day from CHC Nihal Singh Wala, so the complainant Dalwinder Singh put the dead body of Lakhwinder Kaur in the mortuary namely 'Sardarni Sukhninder Kaur Memorial Charitable Hospital, Luhara' and the complainant paid Rs.2200/- as mortuary charges vide receipt no.79 dated 4.6.2011. Complainant Dalwinder Singh requested to the accused to conduct post mortem of dead body of Lakhwinder Kaur then she flatly refused to do so in spite of hot exchange. Even when the complainant went to Civil Hospital, Baghapurana for the post mortem of Lakhwinder Kaur then the Medical Officer of Civil Hospital, Baghapurana, flatly refused and said that until the accused telephonically ask to conduct the post mortem of Lakhwinder Kaur, same will not be conducted. It was pertinent to mention here that in her reply bearing despatch no.597/NSW/11

dated 15.11.2011 the accused herself stated that “facility for conducting post mortem was available only in Civil Hospital, Moga and not at CHC Nihal Singh Wala or CHC Baghapurana.” If it was so then why the accused advised to the complainant to get post mortem from CHC Nihal Singh Wala. The meaning thereby was that the accused wanted to postpone the matter with false advise to avoid her complications which may had come out upon post mortem and to hide her gross medical negligence. At the time of all the above said incidents Basant Singh son of Jeet Singh, resident of Village Baude and Gurmail Singh son of Nazar Singh, resident of village Baude were present with the complainant Dalwinder Singh. At the instance of above said Basant Singh etc. the complainant Dalwinder Singh cremated the dead body of Lakhwinder Kaur as it was deteriorating. On the application of complainant given under Right to information Act, a letter No.436/NSW/11 dated 4.8.2011 alongwith reply of accused Dimple Singla was sent to the complainant. Complainant felt aggrieved and he served a legal notice dated 3.10.2011 to the accused alongwith her department and its higher officials. On receiving legal notice, the department of accused made correspondence with the complainant as well as with the accused and her higher authorities and the higher authorities of the accused were directed to conduct a detailed inquiry, copy of that letter was sent to the counsel of the complainant vide Endst.no.9/118/2011-1/8265 dated 14.12.2011. Thereafter, complainant served a reminder dated 29.5.2012 against not conducting inquiry against the accused as per direction of Head Office of the accused, on the basis of which the head office of the accused had again directed to conduct a detailed inquiry regarding the death of Lakhwinder Kaur and to send a detailed report to the head office of the accused. But the accused was so influential lady that she sat on the order issued from Head Office and influenced to all her higher officers

and they were compelled not to conduct any inquiry regarding the death of Lakhwinder Kaur, which was caused due to gross medical negligence of accused Dimple Singla. After the death of Lakhwinder Kaur, near the gate of Emergency Ward of Civil Hospital, Moga, a hot exchange between the complainant and the accused happened during which the accused threatened to get the complainant killed through Supari Killers, which was offence under Section 506 of the Indian Penal Code. The police did not take any action. Hence, the complainant filed the present complaint.

After leading the preliminary evidence by the complainant-appellant, the learned trial court took the cognizance of the matter and issued the summoning order. Accused-respondent appeared. Having found a prima facie case, the learned trial court framed the charges against the accused. Accused pleaded not guilty and claimed trial.

With a view to prove its case, the complainant produced the documentary as well as oral evidence. On conclusion of the prosecution evidence, the learned trial court recorded the statement of the accused under Section 313 Cr.P.C. All the incriminating material brought on record was put to the accused. Accused alleged false implication and claimed complete innocence.

After hearing learned counsel for both the parties and going through the evidence brought on the record, the learned trial court came to the conclusion that the complainant has failed to bring home the guilt against the accused. Evidence produced was not found sufficient to record conviction. Accordingly, accused was acquitted of the charges framed against her, vide impugned judgement of acquittal dated 31.10.2014. Hence, this application under Section 378 (4) Cr.P.C., at the hands of the complainant, seeking leave to appeal against the impugned judgement of acquittal.

Learned counsel for the applicant submits that the learned trial court has misdirected itself, while passing the impugned judgement of acquittal. He further submits that the complainant has produced cogent and well convincing evidence, which was sufficient to record the conviction of the accused-respondent. However, since the learned trial court miserably failed to appreciate the evidence brought on the record in the correct perspective, the impugned judgement has resulted in miscarriage of justice and the same is liable to be set aside. He prays for allowing the instant application.

Having heard learned counsel for the applicant at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that keeping in view the peculiar facts and circumstances of the present case, no interference is warranted at the hands of this court, for the following more than one reasons.

A bare perusal of the impugned judgement of acquittal would show that the learned trial court has examined, considered and appreciated all the relevant aspects of the matter, in the correct perspective, before recording its cogent findings in favour of accused. The documentary as well as oral evidence brought on record has been rightly appreciated. Relevant principles of law applicable to the peculiar fact situation of the case have been followed. Having said that, this court feels no hesitation to conclude that the view taken by the learned trial court cannot be said to be perverse in any manner and the impugned judgement deserves to be upheld.

It is the settled principle of law that wherever two views are possible, the view which goes in favour of acquittal is to be adopted by the courts. Once the view taken by the learned trial court, has been found, as a matter

of fact, to be one of the possible views and the findings recorded have not been found to be perverse, hardly any scope is left for this court to interfere. In these circumstances, it can be safely concluded that the impugned judgement does not suffer from any illegality and the same deserves to be upheld, for this reason also.

The above said view taken by this court also finds support from the judgement of the Hon'ble Supreme Court in **Arulvelu & anr. vs. State represented by the Public Prosecutor and anr.** 2009(4) RCR (Cr.) 638. The law laid down by the Hon'ble Supreme Court in the case of **Arulvelu (supra)**, has been reiterated by the Hon'ble Supreme Court in its numerous later judgments including in the cases of **Rathinam @ Rahinan Vs. State of Tamil Nadu, 2011 (11) SCC 140, Sunil Kumar Sambhudayal Gupta and others Vs. State of Maharashtra, 2010 (13) SCC 657 and Upendra Pradhan Vs. State of Orissa (Criminal Appeal No. 2174 of 2009 decided on 28.4.2015).**

The relevant observations made by the Hon'ble Supreme Court in para 10 and 11 of its judgment in **Upendra Pradhan's case (supra)**, which can be gainfully followed in the present case, read as under:-

“Taking the First question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In **Narendra Singh and Another v. State of M.P., (2004) 10 SCC 699**, this Court has recognized presumption of innocence as a human right and has gone on to say that:

“30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave

may be, cannot take place of a proof. It is equally well settled that there is a long distance between ‘may be’ and ‘must be’.

31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution. Presumption of innocence is a human right. Such presumption gets stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a Higher Court (see *Dhanna v. State of M.P.*, *Mahabir Singh v. State of Haryana* and *Shailendra Pratap v. State of U.P.*) which had not been adhered to by the High Court. Xxx xxx xxx xxx xxx

33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimla Bai although is shrouded in mystery but benefit thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld.” (Emphasis Supplied)

11. The decision taken by this Court in the aforementioned case, has been further reiterated in *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180, wherein this Court observed thus:

“Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on Page 15

15 the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see Bhagwan Singh v. State of M.P.) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.” (Emphasis Supplied)

Therefore, the argument of the learned counsel for the appellant that the High Court has erred in reversing the acquittal of accused appellant, stands good. The Additional Sessions Judge was right in granting him benefit of doubt. The view which favours the accused/appellant has to be Page 16
16 considered and we discard the opposite view which indicates his guilt. We are also of the view that the High Court should not have interfered with the decision taken by the

Additional Session Judge, as the judgment passed was not manifestly illegal, perverse, and did not cause miscarriage of justice. On the scope of High Court's revisional jurisdiction, this Court has held in Bindeshwari Prasad Singh v. State of Bihar, (2002) 6 SCC 650, "that in absence of any manifest illegality, perversity and miscarriage of justice, High Court would not be justified interfering with the concurrent finding of acquittal of the accused merely because on re-appreciation of evidence it found the testimony of PWs to be reliable whereas the trial Court had taken an opposite view." This happens to be the situation in the matter before us and we are of the view that the High Court was wrong in interfering with the order of acquittal of Upendra Pradhan passed by the Additional Sessions Judge."

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in the cases referred to herein above, it is unhesitatingly held that since the impugned judgement has not been found to be suffering from any illegality, the same deserves to be upheld.

During the course of hearing, learned counsel for the applicant failed to point out any jurisdictional error or patent illegality apparent on the record of the case, in the impugned judgement of acquittal, so as to convince this court to take a different view than the one taken by the learned trial court, therefore, no interference is warranted at the hands of this court. Thus, the impugned judgement deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present application is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference is made out.

Resultantly, instant application stands dismissed, however, with no order as to costs.

21.7.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE