

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34470-2010 (O&M)
Date of decision: 30.09.2015

Krishan Lal

... Petitioner

Vs.

State of Haryana and ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Surender Deswal, Advocate
for the petitioner.

Mr. Ashish Yadav, Addl. AG, Haryana.

Mr. Brijender Kaushik, Advocate for
Mr. Johny Vij, Advocate
for respondents No.2 to 4.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Present petition, at the instance of complainant, is directed against the impugned judgment dated 11.07.2009 passed by learned Additional Sessions Judge, Panipat, whereby appeal of the convicts-respondents No.2 to 4, against the judgment of conviction dated 19.02.2008 and order of sentence dated 20.02.2008 passed by learned Judicial Magistrate 1st Class, Panipat, was allowed and conviction of the respondents No.2 to 4, was set aside.

Brief facts of the case, as noticed by the learned Additional Sessions Judge in para 2 of his impugned judgment, are that Sudesh daughter of

accused Dhanpat was married to Pawan son of Ramesh. After death of Sudesh, a false case of dowry death was got registered by the accused Dhanpat against his brother Ramesh and his family members. The complainant being brother of Ramesh got him bailed out and for this reason, accused Dhanpat and his family members were having grudge against him. On 08.10.2000 at about 7 A.M. when he was going out for morning walk near Grain Market, Samalkha, a Maruti car intersected him from which all the three accused equipped with Danda and hockey sticks, alighted and gave a Lalkara that the complainant would be taught a lesson for helping Ramesh. Accused Dhanpat gave a Danda blow on the right side of his right knee due to which he fell down and accused Ram Gopal gave a hockey stick blow on his mouth, as a result of which one of his upper tooth was broken. Accused Shiv Kumar also gave a hockey blow on his back. They also gave fists and kick blows. On hearing alarm, Ajay son of Suresh and Purshotam son of Prem Chand reached the spot and rescued him from the clutches of the accused. Thereafter all the accused fled away after threatening him with dire consequences of life. Ajay and Purshotam brought him to his house. A message was sent to his brother Ramesh who took him to CHC Samalkha where he was medico legally examined. The doctor concerned sent message to the concerned police station. His statement was recorded by the police, on the basis of which FIR No.313 dated 14.10.2000 under Sections 323, 325, 506/34 of the Indian Penal Code was registered against all the three accused. During investigation, the police tried to arrest the accused but of no avail. Later on he came to know that the FIR had been illegally cancelled by the police, which had necessitated filing of complaint.

Vide order dated 10.10.2002 passed by learned Additional Chief

Judicial Magistrate, Panipat, all the accused were summoned for commission of offence punishable under Sections 323, 325, 506/34 of the Indian Penal Code. A prima facie case was found and accordingly, the accused were charge-sheeted by the learned trial Court. Accused pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined as many as 06 PWs, besides producing on record other relevant documentary evidence. On conclusion of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material brought on record, was put to the accused. They denied all the allegations levelled by the prosecution, alleged false implication and pleaded complete innocence. However, accused did not lead any defence evidence.

After hearing learned counsel for both the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the prosecution has proved its case, bringing home guilt against the accused. Accordingly, the accused were convicted for the offences punishable under Sections 323, 325, 506 read with Section 34 IPC, vide judgment of conviction dated 19.02.2008.

Consequently, the convicts were awarded the sentence vide order of sentence dated 20.02.2008 for a period of one year and to pay a fine of Rs.500/- each for commission of offence punishable under Section 323 IPC. Imprisonment for a period of three years and to pay a fine of Rs.1,000/- each for the commission of offence punishable under Section 325 IPC and to undergo imprisonment for a period of one year and to pay a fine of Rs.500/- each for the commission of offence punishable under Section 506 IPC. In default of payment of fine, the convicts were to further undergo imprisonment for a period

of one month. However, all the sentences were ordered to run concurrently.

Feeling aggrieved, convicts filed their appeal which came to be allowed by the learned Additional Sessions Judge, vide his impugned judgment dated 11.07.2009. Hence the present petition, at the hands of the complainant.

Learned counsel for the petitioner submits that the learned trial Court rightly convicted the accused. The prosecution has brought on record cogent and convincing evidence, which was rightly found sufficient to record conviction. However, the learned Additional Sessions Judge fell in serious error of law, while passing the impugned judgment of acquittal and the same is liable to be set aside. He further submits that the cogent and convincing evidence available on record against the accused, was not appreciated by the learned Additional Sessions Judge in the correct perspective, because of which the impugned judgment of acquittal has resulted in miscarriage of justice. He prays for setting aside the impugned judgment, by allowing the present petition.

On the other hand, learned counsel for the accused-respondents No.2 to 4 submits that the learned trial Court committed a serious error of law, while recording the conviction of the accused. There was no cogent and convincing evidence which could have been said to be sufficient to record the conviction of the accused. This was the reason that the learned Additional Sessions Judge has rightly accepted the appeal of the accused, setting aside the judgment of conviction. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties 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 case, noticed

hereinabove, present one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction. To say so, reasons are more than, which are being recorded hereinafter.

A bare reading of the impugned judgment of acquittal passed by the learned Additional Sessions Judge would show that the documentary as well as oral evidence was appreciated in the correct perspective, before arriving at a judicious conclusion. Evidence brought on record was not found sufficient to record the conviction of the respondents. Having said that, this Court feels no hesitation to conclude that the learned Additional Sessions Judge committed no error of law, while passing the impugned judgment of acquittal and the same deserves to be upheld.

It is the settled principle of law that wherever two views are possible, the view which goes in favour of the acquittal, deserves to be adopted by the Courts. It is not even the argued case on behalf of the petitioner that the view taken by the learned Additional Sessions Judge was not one of the possible views. In this view of the matter, it can be safely concluded that the impugned judgment of acquittal does not suffer from any illegality and the same deserves to be upheld, for this reason also.

The view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in the case of **Arulvelu & anr. vs. State represented by the Public Prosecutor and anr. 2009(4) RCR (CrL.) 638**. The relevant observations made by the Hon'ble Supreme Court in para Nos.39, 40 and 41 in the case of **Arulvelu** (supra) read as under:

“In Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450, a two Judge Bench of this Court of which one of us (Bhandari, J.)

was a member had an occasion to deal with most of the cases referred in this judgment. This Court provided guidelines for the Appellate Court in dealing with the cases in which the trial courts have acquitted the accused. The following principles emerge from the cases above:

- 1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*
- 2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.*
- 3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.*
- 4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.*
- 5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.*

40. This Court in a recently delivered judgment State of Rajasthan v. Naresh @ Ram Naresh 2009 (11) SCALE 699 again examined judgments of this Court and laid down that "An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused. This Court has dealt with the scope of interference with an order of acquittal in a number of cases."

41. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."

The law laid down by the Hon'ble Supreme Court in **Arulvelu's** case (supra) has also been followed by a Division Bench of this Court in the case of **State of Haryana v. Aman Kumar and another 2012 (3) RCR (Crl.) 330** and judgment dated 2.11.2012 passed by this Court in **CRM-A- 284-MA-2011 (Baljeet Singh v. State of Punjab and others)**.

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in **Arulvelu's** case

(supra), it is unhesitatingly held that the learned Additional Sessions Judge was well-justified on facts as well as in law, for passing the impugned judgment of acquittal and the same 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 the present petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

30.09.2015
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