

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2257-2007

Date of decision: 23.09.2015

Dr. Umesh Mehta

... Petitioner

Vs.

Kali Ram and ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. P.K. Chaudhary, Advocate for
Mr. Pankaj Bali, Advocate
for the petitioner.

Mr. Parveen Sharma, Advocate for
Mr. Arvind Singh, Advocate
for respondents No.1 & 2.

Mr. Ashish Yadav, Addl. AG, Haryana.

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 criminal revision petition, at the instance of complainant, is directed against the impugned judgment of acquittal dated 08.06.2007, whereby accused-respondents were acquitted of the charges framed against them.

Brief facts of the case, as noticed by the learned trial Court in paras 2 & 3 of the impugned judgment, are that on 17.10.2002, the complainant Dr. Umesh Mehta, moved a complaint before SI Bhagat Singh. It

was alleged therein that when the complainant was going on his scooter to take round of his ward after attending the Caesarean Section and a patient, the complainant was stopped by two persons of Dr. Vandana Bhatia, in front of gate falling towards police lines. They pulled the racket carried by the complainant and started beating him with racket and sticks, severely. The accused broke the racket and left their motor cycle No.HR-4-5904, on the spot. The case properties were handed over to the police by the complainant. Legal action was called for against the assailants.

An FIR was got registered. Investigation proceeded. Site plan with correct marginal notes was prepared. Medical record was collected. Statements of the witnesses were recorded. Case property was taken into police custody. Accused were arrested. After completion of usual formalities of investigation, challan under Section 173 of the Code of Criminal Procedure ('Cr.P.C.' for short) was presented in the Court for commencement of trial.

The challan having been presented, copy thereof along with documents attached therewith, was supplied to the accused, as envisaged under Section 207 Cr.P.C. A prima facie case was found to be made out and accordingly, the accused were charge-sheeted for the commission of offences under Section 332, 353, 506, 427 read with Section 34 of the Indian Penal Code ('IPC' for short). Accused pleaded not guilty and claimed trial.

With a view to prove the charges framed against the accused, prosecution examined as many as 04 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 the allegations, alleged false implication and pleaded complete innocence.

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 failed to prove its case, by bringing home guilt against the accused. Accordingly, the accused were granted the benefit of doubt and were acquitted of the charges framed against them, vide impugned judgment of acquittal dated 08.06.2007. Hence this criminal revision petition, at the hands of the complainant.

Learned counsel for the petitioner submits that the learned trial Court misdirected itself, while passing the impugned judgment of acquittal. He further submits that the prosecution has fully proved its case. Documentary as well as oral evidence brought on record, was sufficient to record conviction of the accused-respondents. However, since the learned trial Court miserably failed to appreciate the cogent evidence in the correct perspective, the impugned judgment of acquittal has resulted in miscarriage of justice. He prays for setting aside the impugned judgment, by allowing the present criminal revision petition.

On the other hand, learned counsel for the accused-respondents vehemently opposes the present petition, contending that the learned trial Court was well within its jurisdiction to pass the impugned judgment of acquittal, which was based on true appreciation of facts as well as the evidence available on record. He prays for dismissal of the present criminal revision petition.

Endorsing the arguments raised by learned counsel for the accused-respondents No.1 & 2, learned counsel for the State submits that the impugned judgment deserves to be upheld and the present petition is liable to be dismissed.

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 totality of facts and circumstances of the case, noticed hereinabove, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than, which are being recorded hereinafter.

A bare perusal of the impugned judgment of acquittal would show that the learned trial Court has examined, considered and appreciated all the relevant aspects of the matter, before arriving at its judicious conclusion. Well-reasoned and cogent findings were recorded in support of the impugned judgment of acquittal. The evidence brought on record was rightly not found sufficient to record the conviction of the accused-respondents. Having said that, this Court feels no hesitation to conclude that the learned trial Court 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 trial Court 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 obtaining in the present case and respectfully following the law laid down by the Hon'ble Supreme Court and this Court, in the cases referred to hereinabove, it is unhesitatingly held that the learned trial Court was fully justified on facts as well as in law, while passing the impugned judgment. Since the impugned judgment has not been found suffering from any patent illegality, the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioner failed to point out any jurisdictional error or patent illegality apparent on the record of the case, so as to convince this Court to take a different view than the one taken by the learned trial Court. Under these circumstances, it can be safely concluded that petitioner is not entitled to invoke the revisional

jurisdiction of this Court, because re-appreciation of evidence is not permissible, at the hands of this Court, while exercising its revisional jurisdiction, therefore, the impugned judgment of acquittal 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 criminal revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

23.09.2015
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