

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1706-2010

Date of decision: 17.08.2015

Subhash Chand

... Petitioner

Vs.

Raj Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. P.S. Jammu, Advocate
for the petitioner.

Respondent No.1 died.

Mr. Lal Singh Sandhu, Advocate
for respondent No.2.

Mr. Ashish Yadav, Addl. AG, Haryana
for respondent No.3-State.

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 dated 26.10.2009 passed by learned Additional Sessions Judge (Fast Track Court), Sirsa, whereby appeal of the accused-respondents No.1 & 2, against the judgment of conviction dated 07.12.2005 passed by learned Judicial Magistrate 1st Class, Sirsa, was allowed and conviction of the accused-respondents, 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 on 08.12.1997 Subhash Chand came to the police station and moved an application alleging therein that he was resident of Village Ram Nagria and was running a shop of electricity goods under the name of Sharma Electricals, on rent, near the hospital of Dr. Raj Kumar. The said shop was owned by Guran Ditta. It was further alleged that being Sunday, he did not open his shop and had gone to attend the marriage of his cousin. On 08.12.1997 when he came to open his shop, he found that the lock of his shop was lying broken and shutter of his shop was locked with some other lock and the electricity goods were lying in burnt condition near the shop. It was further the case of the complainant that 10/11 days prior to the present occurrence, Guran Ditta had come to him and threatened them to vacate the shop as he had sold the same to someone else. He requested him to give him 4/5 months' time so that he may recover money from different people and may also arrange some suitable place of his business. He had also taken a loan of Rs.50,000/- from Punjab National Bank and at that time, there were articles worth Rs.2.50/3.0 lac in the shop, besides cash of Rs.25,000/-. It was further alleged that during intervening night of 7/8.12.1997, Guran Ditta and his two sons had broken the locks of his shop and had stolen the articles and thereafter set the same on fire. In that way, they caused loss to him to the tune of Rs.3,00,000/-. He had also filed a civil suit in the Court for seeking stay order against Guran Ditta. He further alleged that for about 6/7 days prior to that occurrence, Saligram Ex-Sarpanch had come to his shop for purchasing bulb and at that time, Guran Ditta and his sons had also come there and asked him to vacate the shop failing which, he would be beheaded. On the basis of that application, the present case was registered. Investigation was

started by the police. Police prepared rough site plan. Accused were arrested on 09.12.1997 and their disclosure statements were recorded vide which they got recovered electric articles. Similarly one more accused namely Guran Ditta (since deceased) was also arrested by the police on 12.12.1997. The place of occurrence was also got photographed. After completing the necessary investigation the accused were challaned.

Challan having been presented against the accused, copy thereof along with documents attached therewith, was supplied to the accused as required under Section 207 Cr.P.C. 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 05 PWs, besides producing on record other relevant documentary evidence. During the course of trial, one accused namely Guran Ditta died. 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 457/380/435 and 506 IPC, vide judgment of conviction dated 07.12.2005. Consequently, the convicts were awarded the

sentence vide order of sentence of even date i.e. 07.12.2005.

Feeling aggrieved, convicts filed their separate appeals which came to be allowed by the learned Additional Sessions Judge, vide his impugned judgment dated 26.10.2009. Hence this criminal revision 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 criminal revision petition.

On the other hand, learned counsel for the accused 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 criminal revision 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 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 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 do 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 (CrI.) 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 **Arulevlu'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 criminal revision petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

17.08.2015
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