

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 20.07.2015

1. CRR-3305-2010

Hardial Singh

... Petitioner

Vs.

State of Punjab and anr.

... Respondents

2. CRR-159-2011

Hardial Singh

... Petitioner

Vs.

State of Punjab and ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. R.V.S. Chugh, Advocate
for the petitioner.

Mr. K.D. Sachdeva, Addl. AG, Punjab.

Mr. Harsh Garg, Advocate for
Mr. Kulwinder Singh, Advocate
for respondent No.2 (in CRR-3305-2010).

Mr. Rajbir Singh, Advocate
for respondent No.2 (in CRR-159-2011).

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.

These two connected criminal revision petitions are being

decided together by this common order, as both revision petitions are directed against the same impugned judgment. However, for the facility of reference, facts are being culled out from CRR-3305-2010.

Brief facts of the case, as recorded by the learned Additional Sessions Judge in para 2 of the impugned judgment dated 11.01.2010, are that on 10.06.2001, SI Sukhdev Singh along with police party of Police Station, Budhlada, was present near Bus Stand, Budhlala. Complainant Hardial Singh got recorded his statement Ex.PW5/A, whereby he reported that he was resident of Village Kulrian. He owned 17 killas of land. His father and sisters owned 20 killas of land. He was in possession of entire 37 killas of land. He was doing cultivation. In May, 2000, he purchased his tractor Farmtrac in place of his old tractor and he purchased this tractor through Paramjit Singh, who was working as Salesman with Kissan Tractor Dealers, Branch Bareta. He purchased this tractor after hypothecating his land with Punjab National Bank, Kulrian and after obtaining loan. At that time, copies of Jamabandi, Khasra Girdawaris were procured by Paramjit Singh from the Revenue Patwari of area Kulrian. He also accompanied him. He purchased this tractor mark Farmtrac after getting loan sanctioned and he was in possession of the tractor. He was in the habit of consuming liquor. It was his bad habit and weakness. Paramjit Singh used to arrange liquor from complainant and serve it to the complainant. He took advantage of illiteracy of the complainant and obtained copy of Jamabandi for his excess land. He also got obtained thumb-impressions of the complainant on forms of Land Mortgage Bank, Budhlala. He got sanctioned a loan of Rs.3,85,000/- in the name of complainant from Land Mortgage Bank, Budhlada by fraud. He also arranged bill for

Rs.3,20,000/- for new Sonalika tractor and got issued cheque to Ballam Singh after obtaining one bill from M/s Kissan Automobiles, Budhlada. He also procured two bills for new trailer and two sets of cultivators, other agricultural implements by obtaining bills from Karnal Agriculture Works, Budhlada for Rs.65,000/- and got issued cheque for Rs.65,000/- and delivered to Hardial Singh. The complainant alleged that he had neither purchased new Sonalika tractor nor purchased the trolley and cultivators. Complainant came to know about this fact when he received letter from Land Mortgage Bank, Budhlada demanding payment of installments. He made inquiry from the appellants and consulted the file. It surfaced that at the time of getting loan for Farmtrac Tractor, Paramjit Singh (appellant) got obtained his thumb impressions on other forms. He has played fraud with the complainant. Ballam Singh and Hardial (appellants) were also in hand with him. Complainant also came to know that Paramjit Singh after purchased tractor on the basis of abovesaid documents, further sold it.

On the basis of abovesaid allegations, investigation was conducted and report under Section 173 (2) of the Code of Criminal Procedure ('Cr.P.C.' for short), was filed. The accused was supplied the copies of the documents, including the challan, as required under Section 207 Cr.P.C. Having found a prima facie case against the accused, they were charge-sheeted. However the accused pleaded not guilty and claimed trial.

In order to substantiate the allegations levelled against the accused, the prosecution produced as many as 13 PWs, besides producing other relevant documentary evidence on record. 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 who denied the prosecution version, pleaded false implication and claimed complete innocence. However, no evidence was led by the accused in their defence.

After hearing the 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 the guilt against the accused. Consequently, the learned Judicial Magistrate 1st Class, Budhlada recorded the conviction of the accused and they were accordingly sentenced vide impugned judgment of conviction and order of sentence of even date i.e. 29.02.2008.

Feeling aggrieved, convicts filed their appeals which came to be allowed by the learned Additional Sessions Judge, Mansa vide impugned judgment dated 11.01.2010. Their conviction was set aside and the accused were acquitted of the charges framed against them. Hence these two revisions petitions, at the hands of complainant Hardial Singh. One revision petition has been filed against the impugned judgment of acquittal and the other has been filed regarding the superdari of tractor. Gurmail Singh-respondent in in CRR-3305-2010 was held entitled for the custody of the tractor, vide the same impugned judgment dated 11.01.2010, passed by the learned Additional Sessions Judge, Mansa.

Learned counsel for the petitioner submits that the learned trial Court rightly convicted the accused-respondent and the learned Additional Sessions Judge have illegally set aside the judgment of conviction. He further submits that since the learned Additional Sessions Judge failed to appreciate

true factual aspect of the matter as well as principles of law applicable thereof, the impugned judgment was liable to be set aside. Regarding custody of the tractor, he submits that petitioner was registered owner of the tractor. The learned Additional Sessions Judge misdirected himself, while treating Gurmail Singh-respondent as person entitled for custody of the tractor, only by way of an affidavit. Respondent-Gurmail Singh was not the registered owner, because of which custody of the tractor should not have been given to the petitioner. He prays for allowing both the petitions.

Per contra, learned counsel for the respondents submit that the impugned judgment of acquittal was based on correct appreciation of facts of the case as well as the relevant provisions of law applicable thereof. Regarding the custody of the tractor, they submit that since the petitioner has sold the tractor to Gurmail Singh for due consideration, the learned Additional Sessions Judge rightly held Gurmail Singh as person entitled for custody of the tractor. They pray for dismissal of both the revision petitions.

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 in view of the peculiar facts and circumstances of the cases, CRR-159-2011 against judgment of acquittal is liable to be dismissed whereas CRR-3305-2010, regarding custody of the tractor, deserves to be allowed, for the following more than one reasons.

A bare perusal of the impugned judgment regarding acquittal of the respondents in CRR-159-2011 would show that the learned Additional Sessions Judge has appreciated each and every relevant aspect of the matter,

while passing the impugned judgment. This Court has found no reason to disagree with the cogent findings recorded by the learned Additional Sessions Judge, granting acquittal to the accused-respondents namely Paramjit Singh, Ballam Singh and Hardial Singh son of Maghar Singh.

During the course of hearing, learned counsel for the applicant failed to point out any patent illegality or jurisdictional error in the impugned judgment, so as to enable this Court to take a different view than the one taken by the learned first appellate Court. Further, 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 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)**.

Now coming to CRR-3305-2010 regarding custody of the tractor, this Court has found that the learned Additional Sessions Judge as proceeded on a misconceived approached, while holding respondent-Gurmail Singh

entitled for custody of the tractor. It has gone undisputed on record that it was petitioner Hardial Singh son of Ishar Singh, who was registered owner of the tractor in question. Had the tractor been sold by the petitioner to respondent-Gurmail Singh on the basis of affidavit, there would have been no difficulty for the respondent to get the ownership of the tractor transferred in his name, by following the procedure for the said purpose. However, he did not do so. In fact, there was a strong reason for respondent-Gurmail Singh not to do so because he was not the true owner of the tractor.

Further, the learned Additional Sessions Judge has also ignored another material aspect of the matter that any disputed vehicle can be released on superdari, only in favour of the registered owner thereof, until and unless an exceptional case is made out to the contrary. There is another important and relevant factor for consideration in this regard. Since the petitioner Hardial Singh was suffering from the vice of addiction to liquor, respondent-Gurmail Singh took undue benefit of the said situation. It is pertinent to note here that so far as the criminal liability of the accused was concerned, the prosecution would always be under obligation to prove its case beyond reasonable shadow of doubt and the prosecution failed to do so in the present case. However, so far as the civil liability of the parties was concerned, same yardstick cannot be applied. In this regard, registration of the vehicle would be of paramount importance and it was admittedly in favour of the petitioner, he being the registered owner of the tractor in question.

Further, when a pointed question was put to learned counsel for the respondent-Gurmail Singh in this regard, as to how he could claim the ownership of the tractor simply on the basis of an affidavit of the petitioner

and why he did not make an effort to get the registration changed in his name, he had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that it not was the respondent-Gurmail Singh but the petitioner Hardial Singh who was entitled for release of tractor on superdari in his favour, being a registered owner thereof.

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 impugned judgment of acquittal deserves to be upheld. Consequently, CRR-159-2011 is dismissed.

However, since petitioner Hardial Singh son of Ishar Singh has been found entitled for release of tractor on superdari, he being the registered owner, his CRR-3305-2010 is hereby allowed and the impugned judgment is set aside only to the abovesaid limited extent, regarding custody of the tractor. Petitioner Hardial Singh is declared entitled for custody of the tractor.

Resultantly, with the abovesaid observations made, both the abovesaid criminal revision petitions stand disposed of, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

20.07.2015
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