

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRR No.3403 of 2012
Date of Decision : 1.9.2015

Satish Kumar Sanghi

.....Petitioner

Vs.

Babu Lal and others

.....Respondents

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. Ashwani Bhardwaj, Advocate for the petitioner.

...

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

RAMESHWAR SINGH MALIK, J

Present criminal revision petition, at the instance of the complainant, is directed against the impugned judgement dated 20.7.2012 passed by the learned Additional Sessions Judge, Narnaul, whereby appeal of the State against the judgement of acquittal dated 17.8.2010 passed by the learned Chief Judicial Magistrate, Narnaul was dismissed, upholding the acquittal of respondents.

Briefly put, facts of the case, as recorded by the learned Additional Sessions Judge in para 2 of his impugned judgement are that Satish Kumar complainant had sown wheat and mustard crop in his field bearing Khewat No.1696 Khatoni No.2440 Khasra no.7993//99/3/1. He alleged that after thrashing the crop, padari of mustard and tura of wheat was lying in the field which was set on fire by Babu Lal and Shyam Lal sons of Sultan Singh and

they also raised a threat to kill him. As per complainant, civil suits regarding the land between him and Sultan Singh were pending,, hence, assailants had come to their fields.

The challan having been presented against the accused, copy thereof alongwith documents attached therewith, was supplied to the accused as required under Section 207 Cr.P.C. A prima facie case was found to be made out and accordingly, the accused were charge sheeted by the learned trial court. Accused pleaded not guilty and claimed trial.

In order to substantiate its case, prosecution examined as many as four 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.

After hearing learned counsel for both the parties and going through the evidence brought on the record, the learned courts below came to the conclusion that the prosecution has failed to bring home the guilt against the accused. Evidence produced was not found sufficient to record conviction. Accordingly, accused were acquitted of the charges framed against them, vide impugned judgement of acquittal dated 17.8.2010. State filed an appeal against the judgement of acquittal, which also came to be dismissed vide impugned judgement dated 20.7.2012. Hence, this revision petition under Section 401 Cr.P.C., at the hands of the complainant.

Learned counsel for the petitioner submits that the learned courts below have misdirected themselves, while passing the impugned judgements of acquittal. He further submits that the prosecution has produced cogent and

well convincing evidence, which was sufficient to record the conviction of the accused-respondents. However, since the courts below miserably failed to appreciate the evidence brought on the record, in the correct perspective, the impugned judgements have resulted in miscarriage of justice and the same are liable to be set aside. He prays for allowing the instant petition.

Having heard 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 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 judgements of acquittal would show that the learned courts below have examined, considered and appreciated all the relevant aspects of the matter, in the correct perspective, before recording their 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 courts below cannot be said to be perverse in any manner and the impugned judgements deserve to be upheld.

Before acquitting the accused persons of the charges framed against them, the learned trial court recorded its cogent and well convincing findings in para 21 and 22 of the impugned judgement, which deserve to be noticed here and the relevant part thereof reads as under :-

“ PW-1 the Investigating Officer has proved the FIR and endorsement and admitted in his cross examination that

he did not verify the revenue record. PW-4 the complainant alleged that the incident took place on 24.5.1999, when he went to collect padari of mustard and tura of wheat in his field, both accused Shyam Lal and Babu Lal came abusing him and set the padari and tura on fire. PW-3 is stated to be spot witness. As per his statement, both the accused persons were having sticks with something tied on it whereby they set fire but it is not so deposed by complainant himself. Even the application moved to police does not mention so. PW-3 in his cross examination stated that he and Satish Kumar did not try to put off the fire. The incident is alleged to have taken place on 24.5.1999 and PW-3 admitted that it takes about one and half hour to reach at the police station but no report was lodged by complainant about the incident on 24.5.1999. He stated in his application that due to the threat given by accused, he went back and could not go to report the matter to the police. If there was such threat, it was subsisting the next date also when the matter was reported to the police. He did not mention the time of occurrence in his application and delay in reporting the matter is hence not explained satisfactorily.

In view of the above discussion of the entire prosecution evidence led on record, prosecution has failed to prove the complainant was in possession of the land where the alleged incident took place. The damage to the property i.e. the tura of wheat and padari of mustard lying on the land

in dispute is not proved to be of complainant so as to further establish that accused persons damaged the property of complainant or raised threat of criminal intimidation to him. Hence it can be safely held that the charges levelled against the accused are not proved beyond any shadow of doubt which is the cardinal principle of criminal jurisprudence and both accused are acquitted of the charges levelled against them.”

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, which have been further affirmed by the first appellate court, hardly any scope is left for this court to interfere. In these circumstances, it can be safely concluded that the impugned judgements do not suffer from any illegality and the same deserve 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 judgements have not been found to be suffering from any illegality, the same deserve to be upheld.

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, in the impugned judgements of acquittal, so as to convince this court to take a different view than the one taken by the learned courts below, therefore, no interference is warranted at the hands of this court. Thus, the impugned judgements deserve 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 petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

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

1.9.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE