

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRR No.3970 of 2012
Date of Decision : 11.9.2015

Surjan Singh

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. Pardeep Rajput, Advocate for the petitioner.
Mr. K.D. Sachdeva, Addl. A.G., Punjab.
Mr. B.S. Jaswal, Advocate for respondents no.2 and 3.

...

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

RAMESHWAR SINGH MALIK, J

Feeling aggrieved against the impugned judgement dated 7.9.2012 passed by the learned Additional Sessions Judge, Tarn Taran, whereby appeal of the respondents-convicts against the judgement of conviction dated 2.3.2012, passed by the learned Judicial Magistrate Ist Class, Patti, was allowed, complainant has approached this court by way of instant criminal revision petition.

Brief facts of the case, as noticed by the learned Sessions Judge in para 2 of the impugned judgement, are that this case was registered on the statement Ex.PA given by the complainant Surjan Singh on 3.8.2008, who in his statement stated, that he is resident of village Bhaini Massa and he is putting

the residence in the fields. They were five brothers and three have died. He and Jaga Singh are alive. He was having two sons and his son Harjit Singh has already expired. On 30.7.2008 at about 4.00 pm., he and his son Dilbagh Singh were coming from their relations to their house on motor cycle TVS Star, which was being driven by his son Dilbagh Singh and when they reached nearby the Behak of Baljit Singh Fauji son of Amar Singh Jatt, resident of bhaini, Baljit Singh armed with Dattar, his servant Dilbagh Singh son of Charan Singh Mazbi by caste resident of Bhikhiwind armed with Takua and son of Dilbagh Singh empty handed came from the opposite side and stopped the motor cycle of the complainant. Dilbagh Singh gave a Lalkara that they will take the possession of land from Surjan Singh. Baljit Singh gave a Dattar blow which hit him on the right side of his head. Dilbagh Singh gave a Takua blow which hit him on his left hand. Baljit Singh gave Dattar blow from the reverse side which hit him on the right elbow. His son came forward to rescue him upon which Dilbagh Singh gave a Takua blow from the reverse side which hit him on his left eye and second blow of Takua given by him, hit his back. Both of them raised raula Maar Ditta Maar Ditta, upon which the assailants ran away from the place of occurrence alongwith their respective weapons. Sukha Singh son of Sardool Singh, his cousin resident of Bhaini, also came at the place of occurrence, who saved the complainant and his son from the clutches of the accused. The motive behind the occurrence was that there was some dispute of land between the parties. The case was registered against the accused vide FIR Ex.PW4/F.

After conclusion of the investigation, challan was presented by the investigating agency. Copy of the challan alongwith documents attached therewith was supplied by the learned trial court to the accused, as envisaged under Section 207 Cr.P.C. Finding a prima facie case against the accused, they

were charge sheeted for the commission of offences punishable under Sections 323, 324, 325, 341, 506 read with Section 34 IPC. Accused pleaded not guilty and claimed trial.

With a view to substantiate its allegations, prosecution examined as many as 4 PWs, besides producing on record the relevant documentary evidence. On closure 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. However, they did not lead any defence evidence.

After hearing learned counsel for the parties and going through the evidence brought on the record, the learned trial court came to the conclusion that the prosecution has brought home the guilt against the accused, by proving its case beyond reasonable shadow of doubt. Accordingly, conviction of the accused-respondents was recorded, vide judgement of conviction dated 2.3.2012. Thereafter, vide order of sentence dated 2.3.2012, the accused were sentenced as under :-

“ Accused Baljit Singh U/s 325/34 of IPC, R.I. for a period of three years and Rs.2,000/- as fine
In default, R.I. for a period of one month.

U/s 324/34 of IPC, R.I. for a period of three years and Rs.1,000/- as fine. In default, R.I. for a period of one month.

U/s 323/34 of IPC, R.I. for a period of one year and Rs.1,000/- as fine.

In default, R.I. for a period of one month.

U/s 341/34 of IPC, R.I. for a period of one month and Rs.500/- as fine.

In default, R.I. for a period of one month.

U/s 506/34 of IPC, R.I. for a period of one year.

Accused Dilbagh Singh

U/s 325/34 of IPC, R.I. for a period of three years and Rs.2,000/- as fine

In default, R.I. for a period of one month.

U/s 324/34 of IPC, R.I. for a period of three years and Rs.1,000/- as fine

In default, R.I. for a period of one month.

U/s 323/34 of IPC, R.I. for a period of one year and Rs.1,000/- as fine.

In default, R.I. for a period of one month.

U/s 341/34 of IPC, R.I. for a period of one month and Rs.500/- as fine.

In default, R.I. for a period of one month.

U/s 506/34 of IPC, R.I. for a period of one year.”

However, the sentences were ordered to run concurrently. Amount of fine was deposited.

Both the convicts-respondents filed their appeal against the above said judgement of conviction and order of sentence. After hearing learned counsel for the parties, learned Sessions Judge allowed the appeal, vide impugned judgment dated 7.9.2012. Hence, this revision petition, at the instance of the complainant.

Notice of motion was issued.

Learned counsel for the petitioner, while referring to the medical evidence, injuries suffered and the order of sentence, submits that the respondents-convicts were not liable to be acquitted. He further submits that since the learned Additional Sessions Judge has failed to appreciate the offences committed by the respondents-convicts, the impugned judgement is liable to be set aside. He prays for setting aside the impugned judgement, by allowing the present petition.

On the other hand, learned counsel for respondents no.2 and 3 submits that impugned judgement is just one and deserves to be upheld. He prays for dismissal of this 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 in the given fact situation of the present case, noticed herein above, instant one has not been found to be a fit case, warranting interference at the hands of

this court, while exercising its revisional jurisdiction. To say so, reasons are more than, which are being recorded hereinafter.

A bare perusal of the impugned judgement passed by the learned Additional Sessions Judge, Tarn Taran, would show that each and every relevant aspect of the matter has been considered and appreciated in the correct perspective before arriving at a judicious conclusion. The cogent reasons given by the learned Additional Sessions Judge, allowing the appeal of respondents no.2 and 3 have not been found to be suffering from any patent illegality. Having said that, this court feels no hesitation to conclude that the learned first appellate court committed no error of law, while passing the impugned judgement and the same deserves to be upheld.

Before arriving at a judicious conclusion, learned Additional Sessions Judge recorded well convincing and cogent findings, taking into consideration all the relevant factors for the purpose of allowing the appeal of respondents no.2 and 3. In this regard, the observations made by the learned Additional Sessions Judge in paras 13 to 15 of the impugned judgement, which deserves to be noticed here, read as under :-

“ It is to be seen that medico-legal reports of the injured have not been proved on record by the prosecution and as such the ocular version of the injured with regard to the injuries in question has remained uncorroborated. Without the medical evidence, it cannot at all be said that the accused caused the injuries to the injured or that the said injuries fall within the ambit of Sections 323, 324 or 325 IPC and as such the accused cannot be convicted and sentenced for the said offences.

Next question arises with regard to the attraction of provisions of Section 341 IPC. In order to attract the provisions of Section 341 IPC, there should be wrongful restraint of any person. In the case in hand, the complainant Surjan Singh in his statement Ex.PA on the basis of which, the case was registered against the accused and in his statement when he appeared in the courts as PW1, he has stated that the assailants came from the opposite side and stopped the motor cycle of the complainant. He never has stated that he was wrongfully restrained moving from there. In these circumstances, it cannot at all be said that the accused have committed the offence punishable under Section 341 IPC.

Next question arises with regard to the attraction of provisions of Section 506 IPC. Not even a single word has been uttered by the complainant in this regard in his statement Ex.PA got recorded by the police and in his statement recorded in the court. He never has stated that the accused ever threatened him for any injury, reputation of property. So, in these circumstances, it can easily be said that the prosecution utterly has failed to prove the case against the accused for offence punishable under Section 506 IPC.”

It is the settled principle of law that whenever two views are possible, the view which goes in favour of acquittal is to be adopted by the court. It is not even argued case on behalf of the petitioner that the above said view taken by the learned Additional Sessions Judge was not one of the two

possible views. Thus, the impugned judgement deserves to be upheld, for this reason as well.

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 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."

A bare glance on the above said findings recorded by the learned Additional Sessions Judge would leave no room for doubt that the learned Additional Sessions Judge proceeded on a factually correct and legally justified approach, while allowing the appeal of respondents no.2 and 3. Further, during the course of arguments, learned counsel for the petitioner could not point out any factual error, patent illegality or jurisdictional error in the impugned judgement passed by the learned Additional Sessions Judge, so as to enable this court to take a different view than the one taken by the learned court below. In this view of the matter, it can be safely concluded that the learned Additional Sessions Judge has not exceeded his jurisdiction, while passing the impugned judgement and the same deserves to be upheld, for this reason also.

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 criminal revision petition has been found to be misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above said observations made, instant criminal revision petition stands dismissed, however, with no order as to costs.

11.9.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE