

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2345-2013 (O&M)
Date of decision: 19.10.2015

Asha Rani

... Petitioner

Vs.

State of Punjab and anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. A.P.S. Sidhu, Advocate for
Mr. Surinder Garg, Advocate
for the petitioner.

Mr. P.S. Bajwa, DAG, Punjab.

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.

Feeling aggrieved against the impugned judgment dated 17.12.2012 passed by learned Principal Magistrate, Juvenile Justice Board, Sri Muktsar Sahib, whereby accused-respondent No.2 was acquitted, complainant-petitioner has approached this Court, by way of instant criminal revision petition.

Brief facts of the case, as recorded by learned trial Court in para 2 of the impugned judgment, are that on 25.07.2008, a ruqa was received from Doctor Jagdeep Chawla with regard to admission of Naresh Kumar son of Bakhtawar Lal resident of Camp Ward No.4, Malout Mandi. On that, ASI

Sham Lal along with HC Lakhwinder Singh and others reached Civil Hospital, Malout where doctor stated that the injured had been referred. On the same day, one QST was received from SHO, P.S. Cantt Bathinda regarding the admission of abovesaid Naresh Kumar, in Adesh Hospital, Bathinda. On this, ASI Sham Lal along with HC Lakhwinder Singh reached at Adesh Hospital, Bathinda where Dr. Supinder Kaur, Adesh Hospital, Bathinda declared the injured Naresh Kumar unfit to make the statement. On returning to police station, ASI Sham Lal made rapat No.29 dated 25.07.2008 in the Rojnamcha. On 27.08.2008, one QST was received from the SHO, PS Cantt., Bathinda to the effect that injured Naresh Kumar had died. Then ASI Sham Lal along with HC Lakhwinder Singh, HC Surjit Sing and other police officials after obtaining the ruqa from SHO, P.S. Cantt. Bathinda reached Adesh Hospital, Bathinda, where Asha Rani wife of Naresh Kumar resident of Camp, Malout got her statement recorded before ASI to the effect that she was married with Naresh Kumar son of Bakhtawar Lal resident of Malout about eight years ago and was blessed with son aged about five years. Her father-in-law had already died prior to her marriage. Her husband Naresh Kumar was running tea stall at Tehsil Road, Malout. Her brother-in-law Raj Kumar had also died prior to her marriage. Her brother-in-law Sham Sunder is plying Auto Rickshaw. Prior to her marriage, both the abovesaid brother-in-laws were residing separately with their families in their separate houses. Her mother-in-law Bharawan Bai was residing with them and they alone were got treating her, who had died about three months ago. Prior to the death of her mother-in-law, she executed a

registered Will regarding her residential house in favour of her husband Naresh Kumar and after the death of her mother-in-law, her Jethani (sister-in-law) along with her son Baggu @ Vijay Kumar, Kaptan @ Ajay Kumar and her brother-in-law Sham Sunder son of Bakhtawar Lal, his wife Naresh Kumari, Gora @ Anil Kumar and Sonu @ Sunil Kumar sons of Sham Sunder were quarreling with regard to the property and both the abovesaid families in order to occupy their house placed their articles in it. In this regard, they informed Panchayat and neighbours that her brother-in-laws and sister-in-laws and their sons were occupying their house by placing the articles therein. The respectable tried to pacify them but in vain and due to this setback, her husband consumed some poisonous substance i.e. Sulphas tablets on 25.07.2008 at about 10.00 AM and foam was oozing from his mouth. After arranging the vehicle, she got her husband admitted in Civil Hospital, Malout from where the doctor after giving the first aid, referred him to Adesh Hospital, Bathinda, who had died under the treatment during the previous night. On the basis of the abovesaid statement, formal FIR under Section 306 IPC was got registered. Thereafter, ASI Sham Lal along with other police officials after obtaining the dead body of Naresh Kumar from Adesh Hospital, Bathinda and after filing the inquest report, sent the dead body to Civil Hospital, Bathinda for post mortem under the supervision of HC Lakhwinder Singh and HC Surjit Singh. After got conducting the post mortem of the dead body, the same was handed over to his heirs against receipt. During investigation, report of Chemical Examiner had been received in which Aluminum Phosphide Insecticide, Phosphine in the

contents of Exhibit-II Phosefine, a constituent of Aluminum Phosephide in the contents of Exhibits of III & VI were detected. On 04.01.2009, the articles placed by the accused in the house of Asha Rani were recovered. Juvenile Sonu @ Anil Kumar, Naresh Kumar, Prem Rani have been granted bail by the Hon'ble High Court on 08.12.2008 and they were released on bail after joining them in the investigation. On 12.09.2008, accused Kaptan @ Ajay Kumar had been arrested under Rules. Accused Sham Sunder had been arrested on 30.12.2008 and accused Vijay Kumar had been arrested on 16.01.2009 under Rules. Accused Anil Kumar had died due to sinking in the canal. During investigation, statements of the witnesses were recorded. On completion of other necessary formalities of the investigation, the challan was presented in the Court. During pendency of trial, accused Sunil Kumar was declared juvenile by the Court of Addl. Sessions Judge, Sri Muktsar Sahib vide order dated 28.04.2010 with a direction to bifurcate this challan and present a separate challan of Sunil Kumar before Juvenile Justice Board, Muktsar and accordingly, the final report was presented in the Court.

The challan having been presented against the accused-juvenile, 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 was charge-sheeted for the offence under Section 306 of the Indian Penal Code ('IPC' for short). Accused pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined as many as 12 PWs, besides producing on record other relevant documentary evidence. On

conclusion of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. All the incriminating material brought on record, was put to the accused. He denied the allegations levelled by the prosecution, alleged false implication and pleaded complete innocence. In his defence, accused did not lead any 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 failed to bring home the guilt against the accused-juvenile. Accordingly, he was acquitted of the charge framed against him vide impugned judgment of acquittal dated 17.12.2012. Hence this petition.

Learned counsel for the petitioner submits that the prosecution brought cogent and convincing evidence on record, which was sufficient to record conviction of the accused person. However, since the learned trial Court has failed to appreciate the evidence in correct perspective, the impugned judgment has resulted in miscarriage of justice. He prays for setting aside the impugned judgment, by allowing the present criminal petition.

Having heard the learned counsel for the petitioner, 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, 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 one, which are being recorded hereinafter.

A bare reading of the impugned judgment would show that the learned trial Court has discussed, considered and appreciated each and every relevant aspect of the matter, before arriving at a judicious conclusion. Oral as well as documentary evidence was appreciated in the correct perspective. Having said that, this Court feels no hesitation to conclude that the learned Court has 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 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 trial Court was well-justified on facts as well as in law, in 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

19.10.2015
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