

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRM No.41142 of 2013 in/and
CRR No.2978 of 2013(O&M)
Date of Decision : 22.9.2015

Joginder Singh

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. Bharat Julka, Advocate for Mr. Amandeep Chhabra, Advocate for
the petitioner.
Mr. M.K. Sangwan, DAG, Haryana.

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

RAMESHWAR SINGH MALIK, J

CRM No.41142 of 2013

Applicants seek condonation of delay of 82 days in filing the revision
petition.

Application is allowed for the reasons stated therein. Delay of 82 days
in filing the revision petition is condoned.

CRM stands disposed of.

CRR No.2978 of 2013

Present criminal revision petition is directed against the impugned
judgement dated 12.3.2013 passed by the learned Sessions Judge, Sirsa, whereby
appeal of the petitioner against the impugned judgement of acquittal dated
1.12.2011 passed by the learned Sub Divisional Judicial Magistrate, Dabwali, was
dismissed and the acquittal of the private respondents no.2 to 5 was upheld.

When the case came up for hearing for the first time on 25.10.2013, it was adjourned to 10.2.2014 on the request made by learned counsel for the petitioner. On 10.2.2014, it was again adjourned on the request made on behalf of the petitioners to 6.5.2014. Thereafter, on 6.5.2014 and 29.9.2014, none came present. In the interest of justice, the case was adjourned to 13.1.2015. Nobody appeared on behalf of the petitioners on 13.1.2015 also. While adjourning the case for 30.3.2015, it was made clear that no further opportunity for addressing the arguments shall be granted to the petitioners. Again, on 30.3.2015 as well as on 4.8.2015, none appeared on behalf of the petitioner. Similar is the position today. The case has been called twice over. Neither anybody has come present nor any request for pass over has been made.

In view of the above, this court is left with no other option, except to proceed further with the case. Accordingly, Sh. Bharat Julka, Advocate, present in the court was requested to assist the court and he has graciously agreed to assist this court.

Brief facts of the case, as recorded by the learned Sessions Judge, Sirsa, in para 2 of the impugned judgement, are that on 7.10.2005, Joginder Singh complainant got recorded his statement to the police to the effect that he was having two brothers namely Mahender Singh and Mukand Singh and they all were having their lands at one place. They have mutually partitioned their land in three portions and they had been cultivating the same as per their mutual settlement 2-3 days prior to 7.10.2005 an altercation took place due to the digging of water course in the fields of his brother. A panchayat was convened and thereafter on 7.10.2005 Sarpanch of the village asked them to come at 4.00 pm. for compromise. On 7.10.2005 around 9.00/10.00 a.m. he was present in his house and his daughter-in-law was also present in his house. The house of three brothers were situated

adjacent to each other. In the meanwhile, Mahender Singh and Gurlabh Singh carrying lathis went to the house of Mukand Singh where Kulwant Singh was sitting under the Neem tree. On finding her alone Mahender Singh and Gurlabh Singh trespassed into her house and Mahender Singh gave a lalkara to teach them a lesson for digging the water course. In the meanwhile, Kulwant Kaur also came there and stated that her husband Mukand Singh had gone to the fields. Mahender Singh pulled Kulwant Kaur from her hair whereas Gurlabh Singh gave a lathi blow on the right elbow of Kulwant Kaur. Gurcharan Singh gave a blow of khapra on Kulwant Kaur. Dalip Kaur was instigating them loudly not to leave her unharmed. Gurcharan Singh gave a blow of Khapra on the left hand of Kulwant Kaur and as a result of which she fell down. Dalip Kaur continued giving kick and fist blows to Kulwant Kaur when she was lying on the ground. She raised alarm, upon which the accused pulled her in the street. In the meanwhile, the complainant along with his daughter-in-law Harmeet Kaur went there and on seeing them the accused fled away from the spot. They called Mukand Singh and then took injured to CHC Goriwala where first aid was given to her and she was referred to Civil Hospital, Dabwali as her condition had deteriorated. Thereafter she was referred to Government Hospital, Sirsa. On the basis of the aforesaid statement, a formal FIR was registered against the accused and the investigation was launched. During investigation, the investigating officer visited the spot and prepared rough site plan of the place of occurrence, recorded statements of the witnesses and arrested the accused and recovered weapon of offence. After completion of investigation, challan was presented in the court against the accused for their trial for the offence punishable under Sections 323, 324, 326, 452, 506 read with Section 34 IPC.

Report under Section 173 Cr.P.C. having been presented, copy thereof alongwith documents attached therewith was supplied to the accused. A prima

facie case was found to be made out and accordingly the accused was charge sheeted for the offences punishable under Sections 323,324,326,452 and 506 read with Section 34 IPC. Accused pleaded not guilty and claimed trial. In order to prove the charges against the accused, prosecution examined as many as 6 PWs, besides producing on record the other documentary evidence.

After 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 the allegations, alleged false implication and pleaded complete innocence. However, the accused did not lead any defence evidence.

After hearing learned counsel for the parties and going through the record, the learned trial court came to the conclusion that the prosecution has failed to prove its case bringing home the guilt against the accused. The evidence brought on record was not found sufficient to record conviction. Consequently, while extending the benefit of doubt to the accused, they were acquitted of the charges framed against them, vide impugned judgement of acquittal dated 1.12.2011 passed by the learned Sub Divisional Judicial Magistrate, Dabwali.

Feeling aggrieved, petitioner filed the appeal against the above said judgement of acquittal and the appeal also came to be dismissed by the learned Sessions Judge, vide impugned judgement dated 12.3.2013. Hence, this criminal revision petition, at the instance 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 complainant has produced cogent and well convincing evidence, which was sufficient to record the conviction of the accused-respondent. However, since the learned 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 setting aside the impugned judgements of acquittal, by allowing the instant petition.

On the other hand, learned counsel for the State submits that since the learned courts below have recorded cogent and convincing findings, while passing the impugned judgements of acquittal, the same deserve to be upheld. He prays for dismissal of the present 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 careful perusal of both the impugned judgements would show that the learned courts below have discussed each and every aspect of the matter, including the documentary as well as oral evidence, in the correct perspective, before arriving at their judicious conclusions. Neither the learned courts below have been found to have exceeded their jurisdiction nor any of the impugned judgements have been found suffering from any patent illegality, so as to enable this court to take a different view than the one taken by the learned courts below. Having said that, this court feels no hesitation to conclude that the impugned judgements deserve to be upheld.

It is the settled proposition of law that whenever two views are possible, the view which goes in favour of the acquittal is to be adopted by the court. The 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 (Crl.) 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 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.”

Reverting back to the fact situation obtaining in 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 the present petition is without any merit. In fact, the revisional jurisdiction of this court is itself a limited one. Until and unless the impugned judgements of acquittal are found to be suffering from any jurisdictional error or patent illegality, there would be hardly any scope for this court to interfere against the judgements of acquittal.

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 wholly 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.

22.9.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE