

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1115-2015 (O&M)
Date of decision: 03.12.2015

Sunil Kumar

... Petitioner

Vs.

Harjinder Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. B.S. Randhawa, Advocate
for the petitioner.

None for respondent No.1.

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

Present criminal revision petition, at the instance of complainant, is directed against the impugned judgment dated 29.09.2014 passed by learned Additional Sessions Judge, whereby appeal of the respondent No.1, against the judgment of conviction dated 13.08.2013, passed by learned Chief Judicial Magistrate, Sangrur, was allowed and his conviction was set aside.

Brief facts of the case, as noticed by the learned Additional Sessions Judge in para 2 of his impugned judgment, are that on 06.12.2008, complainant Brij Mohan got recorded his statement to the police that he was running a tea stall outside Dhuri Gate. They were three brothers. Elder one was

Sham Kumar, younger to him was Sunil and he was the youngest to them. They were doing their business separately. On 05.12.2008, at about 8.00 pm, he and his brother Sunil were going from Church towards Ranbir College. His brother Sunil was ahead of him. A vehicle came at a high speed without front lights and in a rash and negligent manner from the side of Ranbir College. He and his brother were going on left side of road. The driver of the car hit his brother in a rash and negligent manner. He stepped aside and therefore, saved his life, whereby his brother sustained many injuries. He went nearby and read number of vehicle as HR-13-8020. Thereafter, the driver of the vehicle fled away from the spot along with his vehicle. His brother was admitted to Civil Hospital from where he was referred to Rajindra Hospital and from where he was referred to PGI Chandigarh. He came to arrange money and blood for treatment of his brother. On the basis of this statement, case was registered. Rough site plan was prepared. Accused was arrested on 19.12.2008. After completion of investigation, challan was presented in the trial Court.

Challan having been presented against the accused, copy thereof along with documents attached therewith, was supplied to the accused as required under Section 207 of the Code of Criminal Procedure ('Cr.P.C.' for short). A prima facie case was found and accordingly, the accused was charge-sheeted by the learned trial Court for the offences punishable under Sections 279, 338 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 06 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. He denied the allegations levelled by the prosecution, alleged false implication and pleaded complete innocence. However, accused did not lead any defence 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 proved its case, bringing home guilt against the accused. Accordingly, the accused was convicted for the offences punishable under Sections 279 & 338 IPC, vide judgment of conviction dated 13.08.2013. Consequently, the convict was awarded the sentence vide order of sentence of even date i.e. 13.08.2013.

Feeling aggrieved, convict filed his appeal which came to be allowed by the learned Additional Sessions Judge, vide his impugned judgment dated 29.09.2014. Hence this criminal revision petition, at the hands of the complainant.

Learned counsel for the petitioner submits that the learned trial Court rightly convicted the accused. The prosecution has brought on record cogent and convincing evidence, which was rightly found sufficient to record conviction. However, the learned Additional Sessions Judge fell in serious error of law, while passing the impugned judgment of acquittal and the same is liable to be set aside. He further submits that the cogent and convincing evidence available on record against the accused, was not appreciated by the learned Additional Sessions Judge in the correct perspective, because of which the impugned judgment of acquittal has resulted in miscarriage of justice. He prays for setting aside the impugned judgment, by allowing the present criminal revision petition.

On the other hand, learned counsel for the State submits that the

learned trial Court committed a serious error of law, while recording the conviction of the accused. There was no cogent and convincing evidence which could have been said to be sufficient to record the conviction of the accused. This was the reason that the learned Additional Sessions Judge has rightly accepted the appeal of the accused, setting aside the judgment of conviction. He prays for dismissal of the present criminal revision petition.

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 keeping in view the peculiar facts and circumstances of the case, noticed hereinabove, present one has not been 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, which are being recorded hereinafter.

A bare reading of the impugned judgment of acquittal passed by the learned Additional Sessions Judge would show that the documentary as well as oral evidence was appreciated in the correct perspective, before arriving at a judicious conclusion. Evidence brought on record was not found sufficient to record the conviction of the respondents. Having said that, this Court feels no hesitation to conclude that the learned Additional Sessions Judge 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 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 (CrI.) 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 in the judgment dated 2.11.2012 passed by this Court in **CRM-A- 284-MA-2011 (Baljeet Singh v. State of Punjab and others)**.

Reverting 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 Additional Sessions Judge was well-justified on facts as well as in law, for 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

03.12.2015
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