

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRR No.1133 of 2015
Date of Decision : 24.8.2015

Agya Singh

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. H.N.S. Gill, 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, at the instance of the complainant, is directed against the impugned judgement dated 20.1.2015 passed by the learned Additional Sessions Judge, S.A.S. Nagar (Mohali), whereby two appeals filed by the State of Punjab, as well as by the present petitioner-complainant, were dismissed and the impugned judgement of acquittal dated 24.7.2013 passed by the learned Judicial Magistrate Ist Class, S.A.S. Nagar (Mohali) was upheld.

Brief facts of the case, as noticed by the learned Additional Sessions Judge in para 2 of his impugned judgement, are that police machinery was set into motion when on 25.4.2001 appellant Agya Singh moved a complaint to SHO, P.S. Sohana averring that he is resident of village

Bharatpur. He and his brother Umrao Singh are married to Swaran Kaur and Pritam Kaur daughters of Punjab Kaur wife of Hari Singh. Punjab Kaur owned 19 acres of land as well as baras, goharas situated within the village abadi. After the death of Punjab Kaur her entire property was inherited equally by his wife Swaran Kaur and sister-in-law Pritam Kaur. One bara measuring 2K-14M is also co-shared by Swaran Kaur and Pritam Kaur but after the death of Pritam Kaur her share in the said bara was inherited by her two sons Budh Singh and Darshan Singh sons of Umrao Singh from whom he purchased their share through a registered sale deed on 3.10.2000. In the aforementioned 2K-14M of abadi land he has placed a ruri where his family also bakes cow dung cakes. By installing iron channels he had encircled that bara with barbed wire. He has kept his residence at Chandigarh but on the intervening night of 24/25 April 2001 he visited his brother Umrao Singh. At about 11.00 a.m. he heard that the dogs had been barking upon which he and his brother climbed the roof of their house and saw 10-12 persons dismantling the barbed wire and putting the barbed wire in a Sumo vehicle. One Maruti car was also parked nearby. He could identify Sukhwant Singh, Sukhjit Singh sons of Atma Singh, Baljinder Singh son of Sukhwant Singh, Amar Singh son of Ram Kishan. They were accompanied by 6-7 more persons. Sukhwant Singh and his son Baljinder Singh were carrying a gandasa. He woke up his neighbourer Sarpanch Gurmail Singh who also accompanied them to the roof top and saw the entire occurrence. He also noted registration number of both the vehicles and in this way the barbed wire along with the iron angles was stolen. On the above said statement of complainant Agya Singh, an FIR under Sections 379, 447, 149, IPC was registered. During the course of investigations all the accused were arrested and after completion of investigations a challan was presented before

the learned trial Magistrate on 6.1.2004.

Challan having been presented, 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 was charge sheeted, to which they pleaded not guilty and claimed trial. With a view to prove its case, prosecution examined as many as 5 Pws, besides producing on record other documentary evidence.

On closer of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating evidence brought on the record was put to the accused. They denied the allegations, alleged false implication and pleaded complete innocence. In their defence, accused produced one DW, besides producing other documentary evidence on record.

After hearing learned counsel for both the parties and going through the evidence brought on 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. Accordingly, accused were acquitted of the charges framed against them, vide impugned judgement of acquittal dated 24.7.2013. Feeling aggrieved, prosecuting agency as well as the complainant filed their separate appeals but both the appeals came to be dismissed by the learned Additional Sessions Judge, S.A.S. Nagar (Mohali), vide common impugned judgement dated 20.1.2015. Hence this criminal revision petition, at the hands of the complainant.

Learned counsel for the petitioner submits that the learned courts below proceeded on legally misconceived and factually incorrect approach, while passing their respective impugned judgements. There was cogent and

convincing evidence available on record, which was sufficient to record the conviction of the accused-respondents. However, since the learned courts below failed to appreciate the cogent evidence in the correct perspective, 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, by allowing the present criminal revision.

Having heard learned counsel for the petitioner 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, instant one has not been found to be a fit case, warranting any interference at the hands of this court, while exercising its inherent jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

A combined reading of both the impugned judgements passed by the learned courts below would show that the learned trial court as well as the learned appellate court considered and rightly appreciated each and every relevant aspect of the matter. Documentary as well as oral evidence was correctly appreciated and cogent findings were recorded by both the learned courts below, before arriving at their respective judicious conclusions. None of the learned courts below have been found to have committed any error of law, while passing the impugned judgements. Having said that, this court feels no hesitation to conclude that none of the impugned judgements has been found suffering from any cogent illegality and the same deserve to be upheld.

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, hardly any scope is left for this court to interfere. In these circumstances, it can be safely concluded that the impugned judgement does not suffer from any illegality and the same deserves 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 (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
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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 reappraise 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, 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, with the above said observations made, the present petition stands dismissed, however, with no order as to costs.

24.8.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE