

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1448-2014

Date of decision: 29.10.2015

Basheshar

... Petitioner

Vs.

Hoshiyar Singh and anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. J.P. Sharma, Advocate
for the petitioner.

Mr. Sansar Kundu, Advocate
for respondent No.1.

Mr. Pardeep Sharma, AAG, Haryana.

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 19.03.2014 passed by learned Sessions Judge, whereby appeal of the petitioner was dismissed, upholding the impugned judgment of acquittal dated 12.02.2013 passed by learned Judicial Magistrate 1st Class, Jind, petitioner has approached this Court, by way of instant criminal revision petition.

The facts necessary for the disposal of the case, as recorded by learned Sessions Judge in para 2 of the impugned judgment, are that on 26.05.2011 on receipt of telephonic information in Police Station City Jind

from Police Post General Hospital, Jind regarding death of Deepak son of Basheshar, resident of Village Thua in a road side accident, Sub Inspector Ram Avtar Singh went to aforesaid Police Post and after obtaining rukka reached General Hospital, Jind where his companion Sumit son of Ram Sharan, resident of Village Thua was found present, who got recorded his statement to the effect that they were two brothers. He was studying in 10+2 class in Senior Secondary School, Jind. On that day i.e. 26.05.2011 at about 1.20 PM after school hours, he along with Sandeep son of Balraj resident of Village Kithana and his co-villager Deepak son of Basheshar were waiting for the bus at turning point of Old Vegetable Market, Jind. In the meantime, a bus bearing registration No.HR-56-1932 of Haryana Roadways, Jind driven at a high speed came from the side of Patiala Chowk, Jind and its driver after reaching near them suddenly stopped it, whereupon Deepak tried to board the bus from the front window, but its driver all of a sudden started the same and as a result thereof, Deepak fell down and the rear wheel ran over his body. Thereafter, he and Sandeep took him to Government Hospital, Jind in a private car, but the doctor declared him dead. The driver of bus bearing registration No.HR-56-1932 while driving his bus at a high speed and in a rash and negligent manner caused the death of Deepak and fled away from the spot along with his bus. He could identify the driver of offending bus, if he was produced before him. Legal action may kindly be taken against the culprit.

On the aforesaid statement of complainant Sumit, a case under Section 279 & 304-A of the Indian Penal Code ('IPC' for short) was registered. The investigation was conducted by Sub Inspector Ram Avatar,

who during investigation conducted inquest proceedings and got subjected the dead body of Deepak to post-mortem examination. He visited the spot, took into possession offending bus and recorded the statements of the concerned witnesses under Section 161 of the Code of Criminal Procedure ('Cr.P.C.' for short). After appearance of evidence against the respondent-accused, he arrested him on 27.05.2011. The investigating officer got the bus in question mechanically examined and after completion of investigation, report under Section 173 Cr.P.C. was presented against him in the Court of learned Illaqa Magistrate.

The police report under Section 173 (2) Cr.P.C. having been presented against the accused, 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 279 & 304-A IPC. Accused pleaded not guilty and claimed trial.

In order to substantiate its case, prosecution examined as many as 09 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. Accordingly, he was acquitted of the charge framed against him vide impugned judgment of acquittal dated 12.02.2013.

Dissatisfied with the impugned judgment of acquittal, victim filed an appeal, which also came to be dismissed by learned Additional Sessions Judge, vide impugned judgment dated 19.03.2014. Hence this criminal revision petition, at the hands of the victim.

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. However, since the learned Courts have failed to appreciate the evidence in correct perspective, the impugned judgments have resulted in miscarriage of justice. He prays for setting aside the impugned judgments, by allowing the present criminal revision petition.

On the other hand, learned counsel for the State as well as learned counsel for the accused-respondent submits that the learned trial Court committed no serious error of law, while passing the impugned judgment. 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 Courts have rightly passed their respective judgments. They pray for dismissal of the present criminal revision petition.

Having heard the learned counsel for the parties, 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 combined reading of both the impugned judgments would show that the learned Courts have discussed, considered and appreciated each and every relevant aspect of the matter, before arriving at their respective judicious conclusions. 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 Courts have committed no error of law, while passing their respective impugned judgments of acquittal 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 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 as well as 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 judgments of acquittal do not suffer from any illegality and the same deserve 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 (Cr1.) 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 Courts were well-justified on facts as well as in law, in passing the impugned judgments of acquittal and the same 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 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

29.10.2015
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