

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRR No.1449 of 2014
Date of decision: 04.02.2015**

Sangeeta

....Petitioner

Versus

Naresh Mehta and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN.

Present: Mr. Parveen Kumar, Advocate
for the petitioner.

JITENDRA CHAUHAN J. (Oral)

This is a revision petition filed by the complainant against the judgment dated 13.2.2014, dismissing the State appeal against the judgment of acquittal passed by the Sub-divisional Judicial Magistrate, Pathankot, vide judgment dated 19.4.2014 in FIR No.88 dated 23.10.2010 under Section 454, 380/34 of the IPC registered at Police Station Division No.2, Pathankot.

Brief facts of the case taken from the judgment of the trial Court are as under:-

“On 09.06.2009, an application bearing No.1499 Misc. was moved by complainant Sangeeta to SSP Gurdaspur on the facts that she is widow and residing at College Road, opposite Soni Hospital,

Pathankot. After the death of her husband she is living with her old and sick father at Pathankot. Her father had also expired recently i.e. on 26.01.2008. The above said their residential house in which she is living along with office etc. was earlier owned and possessed by her father Rattan Chand and after his death, she is owner of her above said property and is living in the above said house. The above said persons filed a civil suit for partition of her above said house against them and the said suit was dismissed by the court of Shri Harinder Singh Gill, vide judgment and decree dated 18.09.2007 copy of which is attached and in the said judgment they are held to be exclusive owner in possession of the above said property. It is also added that a civil litigation which was pending before the Hon'ble High Court of Punjab and Haryana at Chandigarh is decided in their favour on 26.5.2009. That is added here that the persons mentioned above have admitted in the Court that late Sh. Rattan Chand has 7 rooms, one verandah and one kitchen in his possession. After giving the judgment by the court in their favour, the persons mentioned above have taken the possession (most of possession) forcibly and illegally by breaking the locks and opened the doors and the valuable articles lying in the house have been stolen by the above said persons in her absence as she is residing outside 10 months as these persons threatened to kill her whenever she visited the house. They also gave beating to her. They are also threatening to get herself killed through hired person and they have also made an attempt to kill her. They also gave her beatings number of times. The persons

mentioned above in the subject have also threatened to take possession of her house forcibly and illegally. They have also moved an application to the police earlier also against the abovesaid persons. These persons tried to kill her and her brother Gopal Mehta son of Rattan Chand Mehta. These persons are putting pressure upon them to withdraw the case filed at High Court Punjab and Haryana at Chandigarh, which was already decided in their favour on 26.05.2009. The persons mentioned above are threatening to involve them in some false case. The above said persons have also committed theft of her articles. The life of applicant and her brother Gopal Mehta is in danger from the above said persons along with her property. The above said persons are influential persons. They are taking the due advantage of her being widow. Her father and sister had recently been expired and the above said persons are now adamant to kill her and her elder brother Gopal Mehta. Presently, she is not living in her said house.”

After hearing both the sides the learned trial Court held that the prosecution has miserably failed to prove the case against the accused beyond the shadow of doubt. Accordingly, the accused were acquitted of the charge framed against them under Section 454, 380/34 of IPC.

Against the judgment of acquittal, the State filed criminal appeal No.89 dated 15.07.2011, which was dismissed by the learned Additional Sessions Judge, Pathankot.

Aggrieved against the aforesaid judgments of acquittal, the complainant filed this criminal revision No.1449 of 2014.

Learned counsel for the petitioner argued that the learned courts below acquitted the accused mainly on the basis of contradictions in the statements of the prosecution witnesses. He further contended that the findings of both the courts below acquitting the accused is against law and facts.

I have heard the learned counsel for the parties and have gone through the record of the case carefully with their able assistance.

In **Sunil Kumar Vs. State of Maharashtra 2011(1) RCR (Crl.) 57**, the learned Apex Court held as under:-

“It is a well-established principle of law, consistently re-iterated and followed by this Court is that while dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. Even though the appellate court is entitled to consider, whether in arriving at a finding of fact, the trial Court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; the appellate court should not ordinarily set

aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. The trial court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses.

Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The nature of the offence, its seriousness and gravity has to be taken into consideration.

The appellate court should bear in mind the presumption of innocence of the accused, and further, that the trial court's acquittal bolsters the presumption of his innocence. Interference with the decision of the trial Court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference.

In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. A finding may also be said to be perverse if it is 'against the weight of evidence' or if the finding so outrageously defies logic as to suffer from the vice of

irrationality.”

This Court has carefully scrutinized the judgments of both the courts below. There are material discrepancies in the statements of the witnesses which cannot be re-conciled. PW-1, Sangita, complainant stated in her cross-examination that at the time of occurrence she was not residing in the house in dispute and was residing elsewhere and that she had not seen the accused committing the offence and that the fact of incident was disclosed to her by PW-2, Ravinder. On the other hand, PW-2, Ravinder Pal has stated in his cross-examination that when the accused were carrying luggage from the house in dispute. He gave intimation to PW-1, Sangita, who immediately reached there, on reaching there she raised hue and cry and he came to know that the articles have been taken away after breaking open the lock. PW-3, ASI Ashok Kumar, stated in his cross-examination that he did not find any sign or proof regarding breaking open of the bolts and lock of the room. PW-2, Ravinder Pal, admitted that the complainant and the accused are residing in the same house. Both the witnesses have stated that the occurrence took place in the month of January, 2009, but the complaint Ex.PA, has been filed against the accused on 8.6.2009. There is a delay of about five months in lodging of the first information report. No explanation is forthcoming from the prosecution regarding delay in lodging the FIR. Keeping in view the material discrepancies and delay in lodging the FIR, this

Court finds no illegality or infirmity in the judgment of acquittal of both the Courts below. Hence, this revision petition is dismissed in *limine*.

(JITENDRA CHAUHAN)
JUDGE

04.02.2015
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