

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

Crl. Revision No. 595 of 2013 (O&M)

Date of Decision: 14.10.2015

Harnek Singh & Ors.

.. Petitioners

Vs.

State of Punjab & Ors.

.. Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

**Argued by:- Mr. A.D.S. Sukhija, Advocate
for the petitioners.**

Mr. V.P.S. Sidhu, Asstt. AG Punjab.

**Mr. S.S. Siao, Advocate
for respondents No.2 to 4.**

ANITA CHAUDHRY, J.

The petitioners are aggrieved of the judgment dated 13.12.2012 passed by the Additional Sessions Judge, Ludhiana, vide which judgment dated 11.03.2010 passed by Judicial Magistrate Ist Class, Ludhiana, acquitting them, had been set aside and the matter has been remitted to the trial Court for decision afresh as per law after recording the statement of the accused again.

I have heard learned counsel for the parties and have gone through the record carefully.

The petitioners were tried in FIR No. 40 dated

27.05.1999, registered under Sections 323 and 325 read with Section 34 IPC, Police Station Dehlon, Ludhiana for having caused injuries to Nirmal Singh. After the trial, the Court acquitted the petitioners. The complainant Nirmal Singh and others went in appeal. The appellate Court set aside the judgment of acquittal by, inter alia, observing that composite question was put to the accused-respondents while recording their statements under Section 313 Cr.P.C. and the medical evidence coming on record was not put to the accused. After referring to the scope and ambit of provisions of Section 313 Cr.P.C., the appellate Court held as follows:-

"11. In the present case a perusal of the statements of the respondents No.2 to 4 recorded as per provisions of section 313 Cr.P.C. depicts that a common question had been put to each of the respondents no.2 to 4 with regarding to causing of injuries to the injured. A perusal of the question no.1 of the statements goes on to show that the Ld. trial court has put the question of causing grievous hurt to each of the respondents no.2 to 4, whereas the fact remains that the grievous hurt otherwise was attributed to only Karamjit Singh. Again in para no.1 of the statements u/s 313 Cr.P.C., the specific injury attributed to the injured has not been mentioned and even the medical evidence

which has come on record against the respondents No.2 to 4 was not properly confronted to them. Question 1 of the statements of each of respondents no.2 to 4 is in verbatim the same meaning thereby that the respondents no.2 to 4 have not been properly examined."

From the above, it is apparent that while setting aside the impugned judgment the only fact which weighed in the mind of appellate Court is that the statements of accused were not properly recorded under Section 313 Cr.P.C.

Learned counsel for respondents No.2 had placed reliance on **Ganesh Gogoi Vs. State of Assam 2009(4) RCR(Crl.) 561, Gurcharan Singh Vs. State of Punjab 2011(1) RCR(Crl.) 346** and **Shashi Bala Tyagi Vs. Satya Narayan Sharma, 2010(4) RCR(Crl.) 830** to contend that the appellate Court has powers to remand the case for re-trial in case statement of accused under Section 313 Cr.P.C. was not recorded as per law.

The provisions under Section 313 Cr.P.C. were enacted to enable the accused to answer the incriminating evidence coming against him. The appellate Court failed to take into account that it was the appeal by the complainant against acquittal and such plea was available only to the

accused. No such ground was taken by the complainant nor could have been. The trial Court while acquitting the petitioners had decided the case on merits observing that the prosecution had failed to prove its case and not on technical grounds. Thus, respondents No.2 to 4 cannot get any assistance from the case law referred. The appellate Court had gone wrong in remanding the matter to the trial Court for decision afresh.

For the reasons above, present petition is allowed and impugned judgment dated 13.12.2012 passed by appellate Court is set aside. The appellate Court below shall hear the parties again and decide the same in accordance with law without being influenced by any observations made hereinabove.

The parties through their counsel are directed to appear over there on 02.11.2015.

October 14, 2015
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(ANITA CHAUDHRY)
JUDGE