

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

**CRR No. 672 of 2013 (O&M)
Date of Decision: 6.8.2015**

Bhoop Singh

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. S.K.Verma, Advocate
for the petitioner.

Mr. Ashish Yadav, Additional A.G. Haryana.

Mr. Mukul Yadav, Advocate
for respondents No. 2 to 5.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J.

Instant criminal revision petition is directed against the impugned judgment dated 5.12.2012 passed by the learned Additional Sessions Judge, Bhiwani, whereby criminal appeal filed by the petitioner against the impugned judgment of acquittal dated 21.5.2010 passed by the learned Judicial Magistrate 1st Class, Charkhi Dadri, was dismissed and acquittal of the respondents-accused was upheld.

Briefly put, facts of the case, as noticed by the learned trial court in para 2 of its impugned judgment, are that on 23.10.2001, upon receiving a VT message regarding admission of injured Bhoop

Singh in General Hospital, Dadri, Head Contable Balbir Singh reached the hospital and after obtaining opinion of the concerned doctor, recorded statement of complainant Bhoop Singh, wherein, he alleged that on 22.10.2001 at about 9:00 P.M., when he was sitting in the street in front of his house, Sunil s/o Smt. Lali, R/o Kadma, who was nephew (Bhanja) of village Changroad, came there on his motorcycle marka Suzuki A/F and struck the motorcycle directly against the complainant. Dinesh son of Chhotu R/o Changrod was the pillion rider of that motorcycle. He just asked Sunil whether he would kill her. On his saying so, Sunil gave a fist blow on his face near his right eye and Dinesh, who was armed with an iron rod, gave its blow which hit his nose and face near right eye. In the meantime, Dinesh's brother Manoj and Nihal s/o Lal Chand, residents of Changrod also reached at the spot. Manoj caught hold of him from behind and Nihal Singh, who was armed with a lathi, gave its blow on his right foot and thigh. Then, Nihal Singh gave a bite on the thumb of his right hand. Thereafter, he raised the alarm Maar Diya-Maar Diya, upon which his brother Ramesh and Mahender Singh s/o Rameshwar, residents of Changrod, rushed to the spot and rescued him from the clutches of the accused, otherwise, they would have inflicted more injuries to him. Grudge of the accused for causing injuries was that about two/three months prior to the incident, Dinesh had struck his Maruti car against him but that matter was solved in the village itself. It was alleged by the complainant that on the previous day, he could not reach the hospital due to lack of means of conveyance but on that day, he had come to the hospital alongwith

his brother Ramesh and got himself admitted there for treatment. He prayed for taking legal action against accused. On the basis of aforesaid statement Ex.PA, initially, DDR No. 20 dated 23.10.2001 was recorded and later on, after receiving medical report of the injured, formal FIR No. 307 dated 27.11.2001 was registered and criminal law was set into motion. During investigation, statements of witnesses under Section 161 Cr.P.C., were recorded, rough site plan of place of occurrence was prepared and accused, except Nihal, were arrested. After completion of other formalities of the investigation, report under Section 173 Cr.P.C., was prepared and the accused were sent to the court to face trial.

Copy of the challan alongwith documents attached therewith was supplied to the accused by the learned trial court, as required under Section 207 Cr.P.C. Charges for commission of offence under Sections 323/325 read with Section 34 IPC were framed against the accused, except Nihal Singh. Accused pleaded not guilty and claimed trial. Thereafter, accused Nihal Singh was also summoned by the learned trial court, while exercising its powers under Section 319 Cr.P.C. Charges for the abovesaid offences were also framed against the additional accused Nihal Singh, vide a separate order, to which he also pleaded not guilty and claimed trial.

In order to substantiate the charges framed against the accused, prosecution examined as many as 7 PWS, besides tendering into evidence documentary evidence. After closing of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. They denied all the allegations, alleged

false implication and claimed complete innocence. Accused-respondents also examined 6 Dws, besides producing on record documentary evidence in the form of Ex. D1 to D4, in their defence evidence.

After hearing learned counsel for both the parties and going through the evidence brought on record, learned trial court came to the conclusion that prosecution has failed to prove its case and could not bring home guilt against the accused. Consequently, accused were acquitted of the charges framed against them, vide impugned judgment of acquittal dated 21.5.2010. Feeling aggrieved, complainant filed his appeal which also came to be dismissed by the learned Additional Sessions Judge, Bhiwani, vide judgment dated 5.12.2012. Hence this criminal revision petition.

Learned counsel for the petitioner vehemently contended that both the learned courts have misdirected themselves while passing their respective impugned judgments of acquittal. He further submits that prosecution has brought on record cogent and convincing evidence, which was sufficient to record conviction of the respondents-accused. However, since the learned courts below have miserably failed to appreciate the documentary as well as oral evidence in the correct perspective, the impugned judgments are liable to be set aside. He prays for setting aside the impugned judgments, by allowing the present petition.

Per contra, learned counsel for the respondents-accused submits that prosecution has miserably failed to prove its case. No evidence worth acceptance was produced by the prosecution before

the learned courts. He further submits that both the learned courts have proceeded on a factually correct and legally justified approach, while passing their respective impugned judgments and the same deserve to be upheld. He prays for dismissal of the present petition.

Similarly, learned counsel for respondents-State, while endorsing the arguments raised by learned counsel for the respondents-accused, 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 rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, present one is not 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 learned courts have considered each and every relevant aspect of the matter, before arriving at their respective judicious conclusions. The evidence led by the prosecution was rightly not found sufficient to record conviction. The impugned judgments have not been found suffering from any patent illegality or perversity and the same deserve to be upheld.

It is the settled proposition of law that whenever two views are possible, the view which goes in favour of the acquittal is to be

adopted by the courts, as held by 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 further 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 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 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 reappreciate 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.”

During the course of arguments, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality in either of the impugned judgments passed by both the learned courts, which may warrant taking a different view by this Court. In such a situation, no interference is warranted at the hands of this Court and the impugned judgments 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 criminal revision is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, instant criminal revision petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

6.8.2015
Ak Sharma