

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 1820 of 2015
Date of decision: 05.12.2015

Roshan Deen

.....Petitioner

Versus

State of Haryana and another

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. P.S.Sullar, Advocate
for the petitioner.

SABINA, J.

Respondent No. 2 had faced trial qua commission of offence punishable under Section 279, 337, 338, 304-A of the Indian Penal Code, 1860 ('IPC' for short) in FIR No. 147 dated 19.9.2008, registered at Police Station Pinjore. Trial Court vide order dated 14.10.2013 ordered the acquittal of respondent No. 2 of the charges framed against him. Aggrieved against the said judgment, respondent No. 1-State preferred an appeal and the same was dismissed by the Appellate Court vide order dated 20.2.2015. Hence, the present petition by the petitioner-complainant.

I have heard the learned counsel for the petitioner and have gone through the record available on the file carefully.

Prosecution story, in brief, is that on 18.9.2008, complainant was travelling along with his family members in car bearing No. HR-02S-0111 from Mansa Devi Complex towards

Pinjore. At about 4.00 P.M., when they reached near a *dhaba* in the area of village Nanakpur, a tipper bearing No. HP-14-A-0790 came from opposite direction and struck against their car. As a result of this, complainant, his wife and children suffered injuries. Son of the complainant, however, succumbed to his injuries.

In the present case, the Trial Court had ordered the acquittal of respondent No. 2 on the ground that the prosecution had failed to prove its case. No test identification parade of respondent No. 2 had been got conducted to substantiate the fact that he was driving the offending vehicle at the time of accident. Respondent No. 2 was not arrested at the spot. In fact, respondent No. 2 was identified for the first time by the eye witness during trial. Learned Appellate Court while upholding the findings given by the Trial Court on merits has held that no test identification parade had been got conducted during investigation to establish the identity of the driver of the offending vehicle. The owner of the offending vehicle had also not been examined to establish the identity of respondent No. 2.

Thus, in the present case, the complainant had not given the description of the driver of the offending vehicle. No test identification parade was got conducted to establish the identity of the driver of the offending vehicle. The driver of the offending vehicle was arrested on 25.9.2008. The owner of the offending vehicle was not examined during trial to establish the identity of the driver. In the facts and circumstances of the present case, the Courts below had rightly ordered the acquittal of respondent No. 2.

Their lordships of the Supreme Court in **Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748**, held

that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

A Division Bench of this Court in **State of Punjab v. Hansa Singh, 2001 (1) RCR (Criminal) 775**, while dealing with an appeal against acquittal, has opined as under:

“We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble Supreme Court in *Ashok Kumar v. State of Rajasthan*, 1991(1) SCC 166, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.”

To the same effect is the ratio of the judgments of the Supreme Court in **State of Goa v. Sanjay Thakran (2007) 3 SCC 755** and in **Chandrappa v. State of Karnataka, (2007) 4 SCC 415**.

Similarly, in **Mrinal Das & others v. The State of Tripura, 2011 (9) Supreme Court Cases 479**, the Supreme Court, after looking into various judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

“8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of

fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons", for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate

court is competent to reverse the decision of the trial
Court depending on the materials placed”

Accordingly, this petition is dismissed.

**(SABINA)
JUDGE**

December 05, 2015

Gurpreet