

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-966-2013 (O&M)
Date of decision: 29.09.2015

Gurdeep Kaur (dead) through Kala Singh

... Petitioner

Vs.

Lal Singh and ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ajay Kamboj, Advocate for
Mr. P.S. Jammu, Advocate
for the petitioner.

Mr. Inderjit Sharma, Advocate
for the respondents.

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.

Present criminal revision petition, at the instance of complainant, is directed against the impugned judgment dated 06.10.2012 passed by learned Additional Sessions Juidge, Ferozepur, whereby appeal of the convicts-respondents No.1 & 2, against the judgment of conviction dated 17.09.2009 passed by learned Sub Divisional Judicial Magistrate, Jalalabad (West), was allowed and their conviction was set aside. However, respondent No.3 i.e. Santokh Singh was held guilty under Sections 148, 324, 323 read with Section 149 of the Indian Penal Code ('IPC' for short) but he was extended benefit of probation.

Brief facts of the case, as noticed by the learned Additional Sessions Judge in para 2 of the impugned judgment, are that on 29.10.2002 Gurdeep Kaur complainant got recorded her statement with ASI Gurbhej Singh (hereinafter to be referred as the Investigating Officer) to the effect that she was resident of Village Tare Wala and having two sons and two daughters. In the year 1980-81, her husband Kala Singh purchased 1 kanal land from Chaudhary Khiwa Ram for a sum of Rs.2260/- which was within the red line area and the writing to that effect was done on a plan paper and on behalf of Khiwa Ram, the document of sale was signed by his son Surain Singh and they had been residing in the same land since 1980 and had temporary residence at Village Kathgarh. She further alleged that on 28.10.2002 at about 6.15 P.M. she was working in the kitchen of her house and her daughter was sitting in her room and at that time, electric lamp was switched on and omitting light outside the room and at that time accused came on a Eicher Tractor being driven by Neetu and they struck the tractor against the wall of the kitchen. Lal Singh empty handed, Santokh Singh armed with Gandasi, Resham Singh armed with Dang, Bimla Rani, Monika Rani and Harbans Kaur came there and entered into their house along with their weapons. She alleged that Lal Singh raised Lalkara that the women were alone at home and they be thrown out of the house. Then Santokh Singh gave a Gandasi blow hitting her on her left hand and Harbans Kaur gave her a Thappa blow hitting her on her backside and Bimla Rani pulled her hair and on her raising alarm, her daughter Kamlesh Rani who at that time was studying in the room came out for her rescue. She further alleged that Neetu gave her a Dang blow hitting on her head and Resham Singh gave a Dang blow to her daughter which hit her at her left thigh and then all the

accused gave them pulls and pushes and her ear rings also dropped at the place of occurrence. At that time, her husband Kala Singh came and witnessed the entire occurrence and on their raising alarm, all the accused fled away from the spot on tractor trolley along with their respective weapons. Thereafter, her husband after arranging a Jeep got them admitted in Civil Hospital, Jalalabad where they were medico-legally examined. The motive behind the occurrence was that the accused wanted to dispossess them. Upon this statement of the complainant, case was registered. The investigation was carried out, during which accused Harbans Kaur, Bimla Rani and Monika were found to be innocent by the police and they were put in column No.2 of the report under Section 173 Cr.P.C. and challan was presented in the Court only against accused Santokh Singh, Lal Singh, Gurmit Singh and Resham Singh.

The challan 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 were charge-sheeted by the learned trial Court. Accused pleaded not guilty and claimed trial. Accused Harbans Kaur was summoned by the Court vide order dated 25.02.2004 on an application moved by the prosecution under Section 319 Cr.P.C. On appearance of additional accused Harbans Kaur, fresh charge-sheet was framed against the accused to which accused pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined as many as 05 PWs, besides producing on record other relevant documentary evidence. On conclusion of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material brought on

record, was put to the accused. They denied all the allegations levelled by the prosecution, alleged false implication and pleaded complete innocence. However, accused did not lead any evidence in their defence.

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 proved its case, bringing home guilt against the accused. Accordingly, the accused were convicted for the offences punishable under Sections 452, 324, 323, 148, 149 IPC, vide judgment of conviction dated 17.09.2009.

Consequently, the convicts were awarded the sentence vide order of sentence of even date i.e. 17.09.2009, which reads as under: -

Accused Santokh Singh

<i>Under Section 148 IPC</i>	<i>To undergo R.I. for one year Fine NIL</i>
<i>Under Section 452 IPC</i>	<i>To undergo R.I. for one year and to pay a fine of Rs.500/- in default in payment of fine to further undergo R.I. for one month.</i>
<i>Under Section 324 IPC</i>	<i>To undergo R.I. for 6 months fine NIL</i>
<i>Under Sections 323/149 IPC</i>	<i>To undergo R.I. for 2 months fine NIL</i>

Lal Singh

<i>Under Section 148 IPC</i>	<i>To undergo R.I. for one year Fine NIL</i>
<i>Under Section 452 IPC</i>	<i>To undergo R.I. for one year and to pay a fine of Rs.500/- in default in payment of fine to further undergo R.I. for one month.</i>
<i>Under Sections 324/149 IPC</i>	<i>To undergo R.I. for 2 months fine NIL</i>
<i>Under Sections 323/149 IPC</i>	<i>To undergo R.I. for 2 months fine NIL</i>

Resham Singh

<i>Under Section 148 IPC</i>	<i>To undergo R.I. for one year Fine NIL</i>
<i>Under Section 452 IPC</i>	<i>To undergo R.I. for one year and to pay a fine of Rs.500/- in default in payment of fine to further undergo R.I. for one month.</i>
<i>Under Section 324 IPC</i>	<i>To undergo R.I. for 6 months fine NIL</i>
<i>Under Sections 324/149 IPC</i>	<i>To undergo R.I. for 2 months fine NIL</i>
<i>Under Sections 323/149 IPC</i>	<i>To undergo R.I. for 2 months fine NIL</i>

Gurmit Singh

<i>Under Section 148 IPC</i>	<i>To undergo R.I. for one year Fine NIL</i>
<i>Under Section 452 IPC</i>	<i>To undergo R.I. for one year and to pay a fine of Rs.500/- in default in payment of fine to further undergo R.I. for one month.</i>
<i>Under Section 323 IPC</i>	<i>To undergo R.I. for 6 months fine NIL</i>
<i>Under Sections 324/149 IPC</i>	<i>To undergo R.I. for 2 months fine NIL</i>
<i>Under Sections 323/149 IPC</i>	<i>To undergo R.I. for 2 months fine NIL</i>

Harbans Kaur

<i>Under Section 148 IPC</i>	<i>To undergo R.I. for one year Fine NIL</i>
<i>Under Section 452 IPC</i>	<i>To undergo R.I. for one year and to pay a fine of Rs.500/- in default in payment of fine to further undergo R.I. for one month.</i>
<i>Under Section 323 IPC</i>	<i>To undergo R.I. for 6 months fine NIL</i>
<i>Under Sections 324/149 IPC</i>	<i>To undergo R.I. for 2 months fine NIL</i>
<i>Under Sections 323/149 IPC</i>	<i>To undergo R.I. for 2 months fine NIL ”</i>

Feeling aggrieved, convicts filed their appeal which came to be

allowed by the learned Additional Sessions Judge, Ferozepur, vide his impugned judgment dated 06.10.2012. Hence this criminal revision petition, at the hands of complainant.

Learned counsel for the petitioner submits that the learned trial Court rightly convicted the accused. The prosecution has brought on record cogent and convincing evidence, which was rightly found sufficient to record conviction. However, the learned Additional Sessions Judge fell in serious error of law, while passing the impugned judgment of acquittal of respondents No.1 & 2 and releasing respondent No.3 on probation which is liable to be set aside. He further submits that the cogent and convincing evidence available on record against the accused, was not appreciated by the learned Additional Sessions Judge in the correct perspective, because of which the impugned judgment has resulted in miscarriage of justice. He prays for setting aside the impugned judgment, by allowing the present criminal revision petition.

On the other hand, learned counsel for the accused-respondents submits that the learned trial Court committed a serious error of law, while recording the conviction of the accused. 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 Additional Sessions Judge has rightly accepted the appeal of the accused, setting aside the judgment of conviction. He 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 contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed

hereinabove, present one has not been 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, which are being recorded hereinafter.

A bare reading of the impugned judgment passed by the learned Additional Sessions Judge would show that the documentary as well as oral evidence was appreciated in the correct perspective, before arriving at a judicious conclusion. Evidence brought on record was not found sufficient to record the conviction of the respondents. Having said that, this Court feels no hesitation to conclude that the learned Additional Sessions Judge committed no error of law, while passing the impugned judgment and the same deserves 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 Additional Sessions Judge was not one of the possible views. In this view of the matter, it can be safely concluded that the impugned judgment of acquittal does not suffer from any illegality and the same deserves 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 (CrI.) 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 Additional Sessions Judge was well-justified on facts as well as in law, for passing the impugned judgment and the same deserves to be upheld, for this reason as well. He has not been found to have exceeded his jurisdiction in extending the benefit of probation to respondent No.3 namely Santokh Singh.

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 wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Other pending criminal miscellaneous applications are also disposed of, accordingly.

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

29.09.2015
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE