

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

**CRR No.2262 of 2014 (O&M)
Date of Decision: 8.10.2015**

Mehar Chand

.....Petitioner

Vs.

Dharam Pal and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. R.S.Mamli, Advocate
for the petitioner.

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

RAMESHWAR SINGH MALIK J.

CRM-20954 of 2015

Applicant seeks to place on record a copy of the judgment dated 12.7.2012 passed by the learned Chief Judicial Magistrate, Fatehabad.

Learned counsel for the applicant submits that the judgment of the learned trial court attached with the revision petition needs to be replaced with this judgment because the petitioner was complainant in this case whereas Dharam Pal-accused in the present case, was complainant in the cross case, whose judgment has been inadvertently attached with the revision petition. This bonafide mistake has necessitated filing of the present application.

After hearing learned counsel for the applicant, instant application is allowed, as prayed for.

CRM stands disposed of.

Instant criminal revision petition is directed against the impugned judgment dated 14.5.2014 passed by the learned Additional Sessions Judge, Fatehabad, whereby criminal appeal filed by the petitioner against the impugned judgment of acquittal dated 12.7.2012 passed by the learned Chief Judicial Magistrate, Fatehabad, 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 1 and 2 of its impugned judgment, are that complainant-Mehar Chand moved a complaint alleging that he was a resident of Bhodia Khera, Tehsil and District Fatehabad. He was having three sons namely Dharam Pal, Rai Singh and Manohar Lal, besides five daughters. For the last 20 years, his sons were residing separately. His daughter Madina was residing separately in a house constructed on the plot belonging to the complainant in village Bhondia Khera. His wife usually remained ill and his daughter Madina used to take care of her. Besides residential house, the complainant was also having a plot measuring 8 marlas which he gave to respondents No.1 and 2, where they were residing with their family members after constructing house. He gave Rs. 80,000/- to respondent No. 9 for his share in the property. On 14.5.2006, his daughters Madina and Bimla came to meet them. Meanwhile, some one knocked at the door. When he opened the door, the accused alongwith arms entered the house and asked him to vacate the house. The complainant told that they had no concern with the house, however, the accused got annoyed. The accused Dharam

Pal gave a Lalkara to each him a lesson for not vacating the house. The accused Rai Singh caught hold of him. Accused Aslam gave a stick blow which injured his left hand finger. Accused Salim gave a stick blow on his left ankle and accused Sonu gave him stick blow on his left thigh. Jawed gave a stick blow on his right shoulder. On hearing his noise, his daughter and wife came on the spot. They, when tried to rescue him, respondent-Dharam Pal gave a stick blow on the head of his daughter Madina and another blow on her left hand finger. Third blow was given by Manohar Lal on her left shoulder. Accused Kamla pushed Madina on the ground and pulled her ear rings and necklace (Tabizi). Ramjan gave a gandasi blow from reverse side to his wife Sugna which injured her forehead and another blow from gandasi was given on her left hand. Dharam Pal and Kamla pushed Sugna on the ground and pulled her ear rings and necklace (Tabizi). They made noise and his daughter who was sitting inside the room came on the spot and witnessed the incident. The accused fled away from the spot after extending threat to kill. He and his wife fell unconscious. They were got admitted in the hospital. In their absence, accused took straw from their house after breaking the roof and thus caused a loss of the tune of Rs. 16,000/- Police also came to the hospital where they narrated the whole story, however, no action was taken against the accused, rather, they were forced to compromise the matter with the accused. Hence, the complaint was filed to set the criminal law into motion.

After completion of investigation, report under Section 173

(2) Cr.P.C. was prepared and presented before the court against

Dharam Pal and Kamla only. Since accused Kamaldeen was found juvenile, a supplementary challan was presented before the Juvenile Court.

Challan having been presented, copy thereof alongwith documents attached therewith was supplied to the accused, as envisaged under Section 207 Cr.P.C. Having found a prima facie case to be made out, accused were summoned to face criminal trial under Sections 323/325 read with Section 34 of the Indian Penal Code ('IPC' for short) to which, they pleaded not guilty and claimed trial.

In order to substantiate the charges framed against the accused, prosecution examined as many as 5 PWS, besides producing relevant documentary evidence. In the interregnum, an application under Section 319 Cr.P.C. was moved, which was allowed by the learned trial court. 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 pleaded complete innocence. Accused-respondents also examined Sant Lal as DW1.

After hearing learned counsel for both the parties and going through the evidence brought on record, learned trial court came to the conclusion that complainant has failed to prove his 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 12.7.2012. Feeling aggrieved, complainant filed his appeal which also came to be dismissed by the

learned Additional Sessions Judge, Fatehabad vide judgment dated 14.5.2014. 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 complainant 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.

Having heard the learned counsel for the petitioner 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.

The learned trial court specifically recorded the cogent findings on the issue that the incident did not take place in the manner it was projected. There were serious discrepancies in the testimony of the witnesses and medical evidence available on file. Further, the incident took place on 14.5.2006, however, the complaint was filed on 5.9.2006, i.e. after a delay of more than three and a half months, which has gone unexplained. There was not even an endeavour to explain the inordinate delay of more than three and a half months in filing the complaint. Moreover, the complainant concealed the factum of receipt of injuries by other side. In fact, both the parties launched case and cross case on each other as counter blast, so as to put pressure on each other.

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.

XX

XX

XX

XX

AMIT KUMAR
2015.11.30 10:37
I attest to the accuracy and
authenticity of this document

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

8.10.2015
Ak Sharma