

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

**CRR No.2396 of 2015 (O&M)
Date of Decision: 31.8.2015**

Laxmi Naryanan Sharma

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Sanjay Vashisth, 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.

Present criminal revision petition, at the hands of the complainant, is directed against the judgment of acquittal dated 23.3.2015 passed by the learned Sessions Judge, Narnaul, whereby appeal of respondents No. 2 and 3, against the judgment of conviction dated 7.1.2012 and order of sentence dated 9.1.2012 passed by the learned Chief Judicial Magistrate, Narnaul, was allowed.

Brief facts of the case, as recorded by the learned Sessions Judge in para 2 and 3 of the impugned judgment, are that on 7.11.2006, when ASI Raj Kumar alongwith other police officials were present at Pull Bazar, Narnaul for patrolling duty, complainant Laxmi Narain alongwith S.P.Yadav, Principal Government College,

Narnaul and Surinder Sharma, Lecturer, Government College, met him and presented an application alleging therein that he was permanent resident of Mohalla Kehsav Nagar, Gali No.1 and he was posted as Principal in College. His son Varun aged about 7½ years was studying in 3rd class in Manuj Malti High School, Keshav Nagar, Gali No.3. On 6.11.2006 at about 8:15 AM, he left his son in the school for studying and thereafter, he went to college. At about 2:00 PM, he received information through telephone that condition of Varun was serious and he was admitted in Ram Nursing Home and asked him to reach immediately upon which he alongwith his colleagues reached there where he found his child dead. Navneet Manager, Manuj Malti High School, was present there and he told that his son had fallen from the roof of Bal Bhawan and had died. He and his colleagues kept faith upon him and took it to be the will of God. He made cremation of his son without giving any information to the police. Varun was his only son, therefore, petitioner-complainant, his family members and his colleagues were in shock. On that day, he came to know that Manager of Manuj Malti High School had brought his son Varun for some function to Bal Bhawan and due to negligence of school Manager and teachers, his son Varun was hit by tempo and he died. The tempo was being driven at a fast speed and in a rash and negligent manner and he could identify him if he was brought before him. His son Varun died due to negligence of Manager Navneet, teacher of Manuj Malti High School as well as the driver of tempo. Legal action was sought against the aforesaid persons.

On the basis of aforesaid applications, a formal FIR was registered. Investigation of the case was conducted by ASI Raj Kumar who inspected the place of occurrence and recorded the statements of witnesses. Accused Ramesh Kumar was arrested by SI Surajbhan. Accused Navneet Kumar, Manager of School, was arrested on 19.3.2007. Accused Swati surrendered before the police on 22.3.2007. After completion of investigation, challan under Section 173 of the Code of Criminal Procedure ('Cr.P.C' for short) was prepared and presented before the Court.

Challan having been presented, copy thereof alongwith documents attached therewith was supplied to the accused, as envisaged under Section 207 Cr.P.C. Finding a prima facie case, charge was framed against the accused to which, they pleaded not guilty and claimed trial. With a view to prove its case, prosecution examined as many as 9 PWs, besides producing other relevant documentary evidence.

On conclusion of the prosecution evidence, statements of 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, alleged false implication and pleaded complete innocence. However, accused did not lead any 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 proved its case, bringing home guilt against the accused persons. Consequently,

accused-Ramesh Kumar was held guilty for the commission of offence under Sections 279/304A IPC. Accused-Swati was held guilty for the offence under Section 336 IPC, whereas third accused-Navneet was held guilty for the offences punishable under Sections 201/202/203 IPC, vide judgment of conviction dated 7.1.2012. Convicts were sentenced vide order of sentence dated 9.1.2012. However, after his conviction, accused-Ramesh Kumar since expired, no appeal was filed on his behalf. Feeling aggrieved, convicts filed their appeal which came to be allowed by the learned Sessions Judge, vide impugned judgment dated 23.3.2015. Hence this criminal revision petition.

Learned counsel for the petitioner submits that learned appellate court has misdirected itself, while passing the impugned judgment of acquittal. He further submits that learned trial court rightly appreciated the evidence in support of its cogent findings recorded for conviction of the accused. However, since learned appellate court failed to appreciate the cogent evidence, available on record which was sufficient for recording the conviction of the accused, in the right perspective, the impugned judgment of acquittal has resulted into miscarriage of justice and the same is liable to be set aside. He prays for setting aside the impugned judgment of acquittal, by allowing the present criminal revision 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 arguments advanced, this Court is of the considered opinion that keeping in view the peculiar

facts and circumstances of the case, instant one has not been found 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 one, which are being recorded hereinafter.

A bare reading of the impugned judgment of acquittal would show that each and every relevant aspect of the matter has been discussed in detail and appreciated in correct perspective, before arriving at a judicious conclusion. The learned Sessions Judge recorded cogent findings holding that prosecution has failed to prove its case and the evidence brought on record was not found sufficient to record the conviction. Very many serious and basic discrepancies were found in the case of the prosecution. Motive was found conspicuously missing. Since the guilty intention of the accused was also found lacking in the prosecution case, learned Sessions Judge committed no error of law, while passing the impugned judgment of acquittal and the same deserves to be upheld.

In fact, complainant himself failed to prove the allegations levelled by him. Petitioner levelled factually incorrect and baseless allegations which could not be substantiated by him and the learned appellate court was fully justified in recording the acquittal of the accused-respondents. Having said that, this Court feels no hesitation to conclude that learned Sessions Judge did not exceed his jurisdiction, while passing the impugned judgment of acquittal and the same deserves to be upheld, for this reason also.

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.*

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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 re-appreciate 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 the impugned judgment of acquittal, so as to convince this Court to take a different view than the one taken by the learned appellate court. In such a situation, no interference is warranted at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one, therefore, the impugned judgment deserves 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 petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

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

(RAMESHWAR SINGH MALIK)
JUDGE

31.8.2015
Ak Sharma