

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

**CRR No. 2808 of 2014 (O&M)
Date of Decision: 25.8.2015**

Jagtar Kaur

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. N.K.Manchanda, 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.

Feeling aggrieved against the impugned judgment of acquittal dated 12.5.2014 passed by the learned Principal Magistrate, Juvenile Justice Board, Ferozepur, complainant has approached this Court by way of instant criminal revision petition, for setting aside the impugned judgment.

Brief facts of the case, as noticed by the learned Juvenile Justice Board presided over by Principal Magistrate, Ferozepur, are that on 12.6.2010, Jagtar Kaur complainant alongwith her mother-in-law Jeeto Bai was cutting fodder in their fields and her brothers-in-law Balwant Singh and Kulwant Singh were present near the motor. Then at about 2:30 P.M., accused Maya Bibi armed with Dang, Makhan Singh armed with Dang, Judge Singh armed with Gandasi and juvenile Darshan Singh armed with Sotta (stick) came on the

spot and raised Lalkara that they should be taught lesson for cutting fodder from the fields. Then Judge Singh gave Gandasi blow to Jagtar Kaur, who raised her left hand to ward off the blow and the Gandasi hit on the little finger of her left hand. Maya Baibi also gave Dang blow on her face and on her right arm and hand. Accused Judge Singh gave blow from the reverse side of Gandasi which hit on the shoulder of Jagtar Kaur and juvenile Darshan Singh inflicted injuries with Sotta (stick) on the person of Jeeto Bai. They raised alaram on which brothers-in-law Balwant Singh and Kulwant Singh came on the spot and thereafter, they took them (complainant & Jeeto Bai) to Civil Hospital, Mamdot, where they were given first aid. With the intervention of the respectables of the village, there was an effort to effect compromise between the parties, but no compromise was effected.

On the statement of the complainant, FIR was registered. The arrest of the juvenile and his co-accused was effected. On completion of the investigation, challan against the co-accused of the juvenile was presented in the court of learned Illaqa Magistrate, whereas Darshan Singh being juvenile, challan against him was presented before the Juvenile Justice Board, Ferozepur.

Challan having been presented, copy thereof alongwith documents attached therewith was supplied to the accused by the learned trial court, as required under Section 207 Cr.P.C. Inquiry regarding age of the delinquent was conducted and he was declared juvenile by the Juvenile Justice Board. Notice of accusation was served upon the juvenile to which, he pleaded not guilty and claimed

trial. In order to prove its case, prosecution examined as many as 6 PWs, besides tendering into evidence documentary evidence. After closing of the prosecution evidence, statement of the juvenile accused were recorded under Section 313 Cr.P.C. All the incriminating material was put to the juvenile. He denied all the allegations, alleged false implication and claimed complete innocence. Juvenile opted to lead his defence evidence and produced on record Ex.D1 to D5.

After hearing learned counsel for both the parties and going through the evidence brought on record, learned Juvenile Justice Board came to the conclusion that prosecution has failed to prove its case and could not bring home guilt against the juvenile. Very many serious discrepancies were found in the case of prosecution. Accordingly, giving the benefit of doubt, juvenile was acquitted of the charge framed against him, vide impugned judgment of acquittal dated 12.5.2014. Hence this criminal revision petition, at the hands of the complainant.

Learned counsel for the petitioner submits that learned Juvenile Justice board has proceeded on a factually incorrect and legally misconceived approach, while passing the impugned judgment. He further submits that cogent and convincing evidence was brought on record which was sufficient to record conviction of the juvenile. However, since the learned Juvenile Justice Board failed to appreciate the evidence available on record, in the correct perspective, the impugned judgment has resulted in serious miscarriage of justice and the same is liable to be set aside. He prays

for setting aside the impugned judgment, 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 contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, present 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 impugned judgment would show that the learned Juvenile Justice Board, has examined, considered and appreciated each and every relevant aspect of the matter, before arriving at its judicious conclusion. It is the settled principle of law that re-appreciation of the evidence is not permissible at the hands of this Court, while exercising its revisional jurisdiction. Having said that, this Court feels no hesitation to conclude that learned Juvenile Justice Board committed no error of law, while passing the impugned judgment of acquittal and the same deserves 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.*

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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 the impugned judgment passed by the learned Juvenile Justice Board, 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 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 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

25.8.2015
Ak Sharma