

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

**CRR No. 2887 of 2015 (O&M)
Date of Decision: 17.9.2015**

Sulochana

.....Petitioner

Vs.

Anil and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Bijender Dhankhar, 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.

Instant criminal revision petition, at the hands of the complainant, is directed against the impugned judgment dated 4.5.2015 passed by the learned Additional Sessions Judge, Hisar, whereby criminal appeal filed by the petitioner against the impugned judgment of acquittal dated 18.4.2014 qua respondent No.1-Anil and order dated 21.4.2014 whereby respondent No.2-Sandeep was released on probation, passed by the learned Judicial Magistrate 1st Class, Hisar, was dismissed, while upholding his conviction.

Briefly put, facts of the case, as noticed by the learned Additional Sessions Judge, in para 2 of his impugned judgment, are that a telephonic message was received in the police post, Balsamand with regard to the admission of complainant Sulochna

wife of Balbir Singh in the General Hospital, Hisar, with an alleged history of road side accident. Upon receiving the said information, H.C. Jagbir Singh alongwith EHC Ram Parsad reached at Police Post, General Hospital, Hisar and obtained the medical ruqqa and medico-legal report. They further obtained the opinion of the doctor with regard to the fitness of the injured/complainant for making statement, but the concerned doctor declared the injured unfit for making any statement. Again on 22.1.2009, H.C.Jagbir Singh and EHC Jagdish Chander reached at General Hospital, Hisar and moved an application to the concerned doctor for obtaining the fitness certificate of the injured/complainant Sulochna for making statement. The concerned doctor declared the injured fit for making the statement. Thereafter, statement of the injured/complainant Sulochna was recorded wherein she stated that she alongwith her younger sister namely Birmati was coming from her fields at about 4:00/4:30 P.M., on 21.9.2009. When they both covered the distance of about one acre on the road towards village Telanwali, one motorcycle came and hit her. The motorcycle was being driven at a very high speed and in a rash and negligent manner. Due to this impact, she fell down on the road and received injuries on her back. She recognized the driver of the motorcycle as Sandeep who was the nephew (Bhanja) of one Dharam Singh of her village. When she taunted him by advising him to be careful in riding the motor-cycle, the another person namely Anil son of Dharam Singh (pillion rider of the motorcycle) came down from the motorcycle and twisted her hand and pushed her. Consequent to the said pushing, she fell down

on the road towards her left shoulder and she got received injury on her left shoulder. When she cried for help, her sister Birmati rescued her. Both the accused ran away from the spot. The complainant and her sister reached at their residence and therefrom they visited Government Hospital, Hisar alongwith one Ved Parkash. On the basis of abovesaid statement, a formal FIR under Sections 279/337/323/506 of the Indian Penal Code ('IPC' for short) was registered against the accused persons. After obtaining x-ray report and opinion of the doctor, offence under Sections 325 and 338 IPC were also added against the accused persons. After completion of investigation, challan was presented before the court for the trial of accused persons.

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. A prima facie case was found to be made out against the accused and accordingly, they were charge sheeted for the offences punishable under Sections 279/337/338/323/325/506 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In order to substantiate the charges framed against the accused, prosecution examined as many as 8 PWS, besides tendering into evidence other relevant documents. After closing of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. They denied the allegations, alleged false implication and pleaded complete innocence. Accused-respondents produced on record statement of Birmati recorded under Section 161

Cr.P.C. as Ex.D1.

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 failed to prove its case and could not bring home guilt against accused Anil. Consequently, he was acquitted of the charges framed against him, whereas accused-Sandeep was held guilty, vide impugned judgment dated 18.4.2014. However, learned trial court released accused-Sandeep on probation of good conduct, vide impugned order dated 21.4.2014. Feeling aggrieved, complainant filed his appeal which also came to be dismissed by the learned Additional Sessions Judge, Hisar, vide impugned judgment dated 4.5.2015. 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 prosecution has brought on record cogent and convincing evidence, which was sufficient to record the conviction of accused-Anil, who was wrongly acquitted by the learned trial court. He submits that so far as accused-Sandeep is concerned, although accused Sandeep was rightly held guilty, yet learned trial court misdirected itself while releasing him on probation. 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 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 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 learned trial court, after appreciating the MLR of the injured in the correct perspective, rightly acquitted the accused-Anil, holding that complainant did not disclose anything, to the Medical Officer, about fracture allegedly caused by the push of accused Anil, at the first instance and rightly so, incident being a road side accident. The evidence led by the prosecution was rightly not found sufficient to record conviction against accused Anil. However, in the case of Sandeep, learned trial court found sufficient evidence to record his conviction and it rightly recorded the same, holding that Sandeep was driving the motorcycle in a rash and negligent manner.

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.

Xxx xxx xxx xxx xxx

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.”

So far as order releasing accused-Sandeep on probation while upholding his conviction, was concerned, the same has not been found suffering from any patent illegality. The learned trial court, before releasing the accused-Sandeep on probation, took into consideration all the mitigating circumstances going in favour of the accused including his age. Moreover, accused-Sandeep was not acquitted of the charges framed against him, he was released on probation of good conduct in view of Section 4 of the Probation of Offenders Act.

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 and also the order dated 21.4.2014, passed by both the learned courts, so as to convince this Court to take a different view that the one taken by both the learned courts below. 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

17.9.2015
Ak Sharma