

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 29.10.2015

1. CRR-3890-2014 (O&M)

Hardial Singh

... Petitioner

Vs.

State of Punjab and anr.

... Respondents

2. CRR-3894-2014 (O&M)

Hardial Singh

... Petitioner

Vs.

State of Punjab and anr.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. B.S. Jaswal, Advocate
for the petitioner (s).

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.

This order shall dispose of both these criminal revision petitions bearing CRR-3890-2014 and CRR-3894-2014, as both are arising from the same judgment of acquittal dated 07.05.2014 passed by the learned Additional Sessions Judge, Amritsar, whereby appeals of the convicts-respondent No.2 in both cases, were allowed and judgment of conviction as well as order of

sentence passed by the learned Judicial Magistrate 1st Class, Amritsar were set aside, while acquitting respondent No.2 in both cases.

Brief facts of the case, as noticed by the learned Additional Sessions Judge in para 4 of his impugned judgment, are that complainant Hardial Singh son of Charan Singh, resident of Gali No.2, Habibpura, Amritsar, moved an application against the accused wherein he had stated that Charanjit Kaur owned a house bearing plot No.37, Khalsa Avenue, Amritsar. On 26.03.2002, she executed an agreement to sell for the sale of that building in favour of Dharamjeet Kaur and Dharam Singh for consideration of Rs.9.00 lac after receiving a sum of Rs.7.00 lac as an earnest money and sale deed was agreed to be executed and registered on 26.09.2002. Possession of basement and one room out of the said house was delivered to the purchasers. Accused Charanjit Kaur along with her husband Manjit Singh forcibly entered into the room, possession of which was delivered to the purchasers under the agreement dated 26.03.2002 after breaking open the locks and also threatened them with dire consequences instead of executing a registered sale deed. After getting application of complainant inquired, case was registered. Investigation was pressed into action. Accused were arrested. Statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure ('Cr.P.C.' for short). After completing investigation and other formalities, challan was presented in the Court against the accused.

The police report under Section 173 (2) Cr.P.C. 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. During the course of trial, Manjeet Singh had died and proceedings against him

were abated. A prima facie case was found and accordingly, the accused were charge-sheeted by the learned trial Court for the offences punishable under Sections 420, 506, 34 of the Indian Penal Code ('IPC' for short). Accused pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined as many as 06 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 defence evidence.

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, Charanjit Kaur was acquitted of the charge framed against her under Section 506 IPC and was held guilty for the offence punishable under Section 420 IPC. Accused Daljit Singh was held guilty for the offence under Section 506 IPC, vide judgment of conviction dated 10.09.2011. Consequently, vide order of sentence of even date i.e. 10.09.2011, convict-Daljit Singh was ordered to be released on probation on his furnishing probation bond of Rs.15,000/- with one surety in the like amount for a period of six months and convict-Charanjit Kaur was awarded the sentence for a period of one year for the offence punishable under Section 420 IPC and a fine of Rs.4000/-. In default of payment of fine, she was further ordered to undergo S.I. for 04 months.

Feeling aggrieved, convicts filed their separate appeals which came to be allowed by the learned Additional Sessions Judge, vide his impugned judgment dated 07.05.2014. Hence this criminal revision petition, at the hands of the 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 and the same 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 of acquittal 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 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 appeals 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 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 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 uphold 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 of acquittal 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 (Crl.) 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, in passing the impugned judgment of acquittal and the same 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 the present petitions are misconceived, bereft of merit and without any substance, thus, these must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, both these criminal revision petitions stand dismissed, however, with no order as to costs.

29.10.2015
vishnu

[RAMESHWAR SINGH MALIK]
JUDGE