

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

CRA No.AS-25 of 2015

Date of decision: 5.5.2016

State of Punjab

..Appellant

Vs.

Bikramjit Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE A.B.CHAUDHARI

Present: Mr.R.S.Randhawa, Addl.AG Punjab for the appellant.

Mr.R.S.Bains, Advocate for the complainant.

Mr.Pawan Girdhar, Advocate for complainant Harjit Singh.

A.B.CHAUDHARI, J.(Oral)

This is an appeal filed by the State of Punjab against the judgment and order dated 24.12.2009 passed by Additional Sessions Judge, Hoshiarpur in CRA No.6 of 2007 by which the Appellate Court reversed the judgment and order of conviction made by the trial Judge on 5.3.2007 in IPC challan No.65/1999 for the offence under Sections 325/323/149/147 IPC.

Harjit Singh complainant/informant/the injured has also filed CRA No.AS-25 of 2015 against the same judgment and order made by the Appellate Court on 14.5.2010. In support of the appeal filed by the State, learned Addl.AG Punjab vehemently contended that the order of acquittal recorded by the lower Appellate Court is

perverse and will have to be set aside and judgment & order of the conviction of the trial court is required to be restored. According to him, the learned lower Appellate Court has given importance to the minor discrepancies in the evidence of the prosecution witnesses. The lower Appellate Court should have had regard for the fact that the evidence was tendered almost 6 years after the date of the incident. Therefore, it was not legal and proper to rely upon minor discrepancies and to discard judgment of the trial Court who had the opportunity to see demeanor of the witnesses in the witness box. He, therefore, contended that the appeal filed by the State deserves to be allowed.

On the contrary, learned counsel for the accused persons supported the impugned lower Appellate Court's judgment and order of acquittal. He has submitted that the view taken by the trial Court cannot be said to be impossible or perverse. According to him even though the evidence was recorded 6 years after the date of incident the discrepancies pointed out by the learned lower Appellate Court cannot be said to be of minor nature. According to him, the learned lower Court had considered the evidence of injured persons and found that the evidence of the witnesses was not even nearer to the corroboration. The Appellate Court has therefore, taken a possible view of the matter on evidence and therefore, the judgment and order of the acquittal need not be interfered with.

I have heard learned counsel for the rival parties for quite sometime. I have perused the impugned judgment and order made

by the lower Appellate Court so also of the trial Judge. With the assistance of the counsel for the rival parties this Court has seen the reasons recorded by both the courts below. I find support from the judgment of the lower Appellate Court that it has carefully scanned the evidence of the witnesses who were examined by the prosecution. Instead of recording separate reasons, it would be appropriate if I quote the reasons given by the lower Appellate Court in paragraphs 14 and 15 of the judgment.

14&15 “Complainant Harjit Singh and his wife Harbans Kaur are material witnesses who were examined by the prosecution to prove the ocular version of the occurrence. However, statement of Harjit Singh complainant is self contradictory on material points. In his statement Ex.PA recorded by the police on 22.5.1998, which is the first version of the occurrence, he stated that:-

“Satpal Singh gave two fist blows on his face which hit on his left and right cheek. Daljit Singh gave fist blows on his head and he fell down. When he was lying on the earth, Bikramjit Singh gave leg blows on his chest.”

In his statement recorded in the court on 19.11.1999 he is giving contradictory version. He has stated that Bikramjit Singh and Satpal Singh caused him blows on his face, while Dharam Singh caught hold him from his waist. When he fell down on the ground Bikramjit Singh stood on his chest and gave him kick blows. When subjected to cross examination, he stated that Bikramjit Singh gave fist blows on his face. He did not count the fist blows, but it might be hundred. Satpal Singh also gave 10/12 fist blows. Both of them were giving fist blows

jointly. Dharma Singh caught hold him from his waist, but did not give any injury.

When complainant, Harjit Singh was examined on 16.9.2005 i.e. after summoning of accused Dharam Singh, Manjit Singh, Daljit Singh and Satpal Singh, he gave different version. He stated that Dharam Singh gave fist blows on his head. His version is totally silent regarding giving of fist blows on his head by Daljit Singh as well as the fact that Bikramjit Singh stood on his chest.

Statement of Harbans Kaur is also contradictory regarding giving injury on her person with datar. In her statement recorded in the court, she stated that Bikramjit Singh gave datar blow from its reverse on her left wrist, where as in her statement recorded before SDM (which is Ex.DB on the file) she has stated that accused Dharma gave reverse datar blow on wrist of her arm as a result of which her arm was fractured. In such circumstances, when she admitted in her statement before the court of SDM Dasuya that datar blow from reverse side was given on her wrist by the accused Dharma, it is difficult to accept her contradictory version regarding giving of datar blow on her wrist by accused Bikramjit Singh. Further, although she has given her version as per prosecution story in her examination in chief as tutored to her, but she failed to face the test of cross examination successfully. She refused to give answers to the questions put to her by defence counsel by giving vague replies. She stated that she does not want to say anything that whether she fell down from her face side, back side or from left or right side. She does not want to state anything because whatever she had to say, she has said in her examination in chief.”

In addition what I find is from the lower Appellate Court's

judgment in para 18 there was enmity due to pending civil litigation between the parties which in my opinion, is a good reason to make overall assessment of the entire evidence to find out as to whether the appellants were really guilty or not. The lower Appellate Court, in my opinion, therefore, has correctly sifted the evidence and come to the conclusion that the prosecution had not discharged its burden of proof.

In paragraphs 26 and 30 of judgment in ***Brahm Swaroop and another Vs. State of U.P. 2010(7) Supreme 549***, Apex Court has stated thus in relation to the power of the High Court to interfere with the judgment of acquittal.

26. “It is established in law that the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be more, the probable one. While dealing with a judgment of acquittal, the appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law.

Similarly, the incorrect placing of the burden of proof may also be a subject matter of scrutiny by the appellate court. The court of appeal may not interfere where two views are possible for the reason that in such a case it can be held that prosecution failed to prove the case beyond reasonable doubt and accused is entitled for benefit of doubt. (Vide: Balak Ram & Anr. v. State of U.P., 35 AIR 1974 SC 2165; Allarakha K

Mansuri v. State of Gujarat, 36 (2002) 3 CC 57; Raghunath v. State of Haryana, 37 (2003) 1 SCC 398; State of U.P. v. Ram, Veer Singh & Ors., 38 AIR 2007 SC 3075; S.Rama Krishna v. S.Rami Reddy (D) by his LRs & Ors., 39 AIR 2008 SC 2066; Sambhaji Hindurao Deshmukh & Ors. v. State of Maharashtra, 40 (2008) 11 SCC 186; Arulvelu & Anr. v. State, 41 (2009) 10 SCC 206; Perla Somasekhara Reddy & Ors. v. State of A.P., 42 (2009) 16 SCC 98; and Ram Singh alias Chhaju v. State of Himachal Pradesh, 43 (2010) 2 SCC 445).

30. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference with the decision of the trial court in a routine manner, where the other view is possible should be avoided, unless there are good reasons for such interference.”

In the result, I find that both these appeals will have to be dismissed.

Hence, I make the following order.

Order

CRA Nos.AS-24 and 25 of 2015 filed by Harjit Singh complainant are dismissed.

5.5.2016
Meenu

(A.B.CHAUDHARI)
JUDGE