

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-316-MA-2012 (O&M)

Date of decision:- March 28, 2016

Siri Ram

....Applicant..

Vs.

Bal Kishan and others

....Respondents..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Parminder Singh, Advocate
for the applicant.

Mr. Mohan Singh Rana, Advocate for
Mr. Pravindra Singh, Advocate,
for respondents No. 1 to 5.

Mr. Tanuj Sharma, AAG, Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? (√)

JASPAL SINGH, J.

Vide this judgement, this Court shall dispose of application under Section 378 (4) of the Code of Criminal Procedure preferred by Siri Ram seeking special leave to appeal against the judgment of acquittal dated February 22, 2012 passed by Judicial Magistrate Ist Class, Karnal, in criminal complaint No. 47/10, dated 17.01.2006,

captioned as “*Siri Ram vs. Bal Kishan and others*”, under Sections 420 and 120-B IPC, Police Station Butana.

2. The facts giving rise to the instant lis are that Siri Ram is owner in possession of the land in dispute, detailed and described in para No.1 of the complaint. In the month of May, 2004, his son Pala Ram, who is quite a mischievous person, hatched a conspiracy with the remaining accused and brought him to Karnal on the pretext of making an application for obtaining loan and obtained his thumb impressions on some blank papers and also on a register. Since, he was of the age of about 80 years, his eye-sight and hearing capacity was rusticated, therefore, he could not figure out as to what was happening. He later on came to know that a bogus agreement to sell has been brought up, in favour of accused-respondent No.1, on the blank documents, on which he had appended his thumb impressions. Accused-respondents No.3 and 4 are the attesting witnesses of the said forged agreement to sell and this entire design was tailored for clearing liability of accused-respondent No.2 towards accused-respondent No.5, who is none other than the relative of accused-respondents No.1, 3 and 4. Thus, he was constrained to lodge complaint in the Court of Id. Jurisdictional Magistrate.

3. On the strength of preliminary evidence adduced by complainant-applicant, respondents-accused were summoned to face trial under Sections 420 and 120- IPC and after securing his presence, complaint was listed for pre-charge evidence, during which,

complainant examined as many as 8 witnesses. Rampal has been examined as CW1, who testified that complainant Siri Ram is the owner of agricultural land measuring 20K-15M and he never agreed to sell the same to any of the accused and no amount was ever received by him. Accused Pala Ram took along the complainant on the pretext of obtaining a loan against his land, but in connivance with the other accused persons, he got this agreement to sell prepared. He further testified that a Panchayat was convened in the village, in which Sultan and Malkhan admitted that the alleged deal was never struck between them and Siri Ram and they further admitted that in-fact they had landed some money to Pala Ram and the alleged agreement to sell was prepared on behalf of Pala Ram only for clearing his liability. ASI Dharambir Singh has been examined as CW2, who proved report under Section 202 Cr.P.C. prepared by him after investigating the matter. Dr. Yogesh Sharma, SMO GH, Karnala has been examined as CW3, who issued disability certificate Ex.CW3/A to Siri Ram. Complainant himself appeared in the witness-box as CW-4 and placed reliance on the complaint. Dr. G.L. Dhull, SMO, GH, Karnal has been examined as CW5, who conducted pure tone audiometry test of complainant and found that his hearing capacity was impaired by 65%. Jaipal has been examined as CW6, who testified that complainant is the owner of 2 ½ acres of land and he has equally distributed the same amongst his sons.. Ishwar Singh as CW7, who testified that Pal Ram in connivance with Sultan, has got prepared an agreement to sell from Siri Ram on the

pretext of obtaining a loan. Satbir has been examined as CW8.

4. After hearing learned counsel for the complainant as well as accused, respondents were charge-sheeted to face trial under Section 420 read with Section 120-B IPC, to which they did not plead guilty and claimed to be tried. Thereafter, complainant, his son Satbir were also presented for cross-examination and closed their evidence.

5. On conclusion of the complainant's evidence, when incriminating circumstances appearing in it were put to respondents-accused for eliciting their explanation as required under Section 313 Cr.P.C., they denied the same, pleaded false implication and claimed implication. In their defence, accused have examined as many as 6 witnesses.

6. After hearing learned counsel for complainant as well as defence, accused-respondents were acquitted of the charge holding that complainant has failed to prove his case, vide impugned judgment dated February 22, 2012.

7. Feeling dissatisfied against the acquittal of respondents-accused, applicant-complainant preferred instant application seeking special leave to appeal to challenge the judgment/order of acquittal dated February 22, 2012.

8. While assailing impugned judgment of acquittal dated February 22, 2012, it has been ebulliently argued by learned counsel for applicant that same is absolutely against the evidence available on file and settled canons of law. Ld. trial court has ignored and

disbelieved the cogent and trustworthy evidence adduced by complainant. Ld. trial court has acquitted the accused only on the basis of small discrepancies that the complainant in the examination- in-chief has stated that his son Pala Ram asked him to obtain a loan against his land but he had refused him but thereafter Sultan came to him and then Sultan and some other unknown persons accompanied him to Neelokheri. Rather, it can be said that mis-appreciation of evidence has resulted into miscarriage of justice. The minor contradictions have given much importance, which were otherwise negligible. Acquittal of respondents is absolutely against the evidence available on file and is unjustified. There are sufficient grounds for permitting applicant to prefer an appeal against the judgment/order of acquittal.

9. This Court has given an anxious thought to the submission made by learned counsel for applicant but finding the same to be of no legal substance.

10. Before proceeding to delve deep on the merits of the submission made by learned counsel for applicant, it would be desirable to consider the scope and jurisdiction of an appellate court to interfere with an order of acquittal.

11. Section 378 of the Code of Criminal Procedure provides that the complainant or aggrieved person may prefer an appeal to the High Court against an order of acquittal but sub-section 3 of Section 378 of the Code of Criminal Procedure explicitly envisages that no appeal under subsections (1) and (2) shall be entertained except with

the leave of the High Court which is a stage between an order of an acquittal and consideration of the judgment by the Appellate Court on merits as in the case of a regular appeal. It depicts that a judgment of acquittal is annexed with a definite value, which cannot be ignored by the Court. A presumption of innocence attached to an accused stands further fortified or reinforced by an order of acquittal. No doubt, Appellate Court, is empowered to re-appreciate, review and re-consider evidence before it but this power is required to be exercised keeping in view relevant principles of law relating to review, reweighing and re-appreciating of evidence in order to come to independent conclusions. The scope of interference by an Appellate Court in an order of acquittal was laid down by the Hon'ble Apex Court in case ***Sanwat Singh v. State of Rajasthan***; 1961 SCR (3) 120 as follows:-

“The foregoing discussion yields the following results:(1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup case afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as (i) “substantial and compelling reasons”, (ii) “good and sufficiently cogent reasons”, and (iii) “strong reasons”, are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not

only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified.”

12. This principle was further reiterated by the Hon'ble Supreme Court in case ***Govindaraju @ Govinda v. State by Sriramapuram P.S. and another***; AIR 2012 SC 1292.

13. In the light of the aforesaid observations, it is evident that there is no embargo in law to re-appreciate, re-look, re-weigh, re-view or re-consider the entire evidence which is the foundation of an acquittal. On scanning of the evidence on record, if acquittal is found to be erroneous, perverse and against settled cannons of law, it should be set aside.

14. Now, this Court has to appraise and inspect carefully whether impugned judgment of acquittal suffers from any illegality, infirmity or is founded on an erroneous appreciation of the evidence or is perfectly justified.

15. In the instant case, complainant has alleged commission of forgery by pleading that his visual and hearing senses had impaired and his son Pala Ram, hatched a conspiracy with the remaining accused and brought him to Karnal on the pretext of making an application for obtaining loan and obtained his thumb impressions on some blank

papers and also on a register and got prepared agreement to sell. In order to prove disability, complainant has placed on record copies of certificates issued by the Board as Ex. CW.3/A and Ex.CW.5/A.

16. As per these certificates, complainant's visual disability was 75% and his hearing impairment was 65%. However, both these certificates were issued in the year 2006, i.e. after about two years from the execution of the agreement to sell in dispute. Therefore, there is no direct evidence for proving that on the date of execution of the agreement to sell, complainant's visual and hearing senses were impaired. He has categorically pleaded that his son Pala Ram took him to Karnal on the pretext of obtaining a loan. However, when examined as CW4, complainant in his pre-charge evidence has testified in his examination-in-chief itself that when his son Pala Ram asked him to obtain a loan against his land, he flatly refused him, but thereafter, Sultan came to him and told him that they won't let him die, if he obtains a loan. He has further testified that Sultan and some other unknown persons accompanied him to Nilokheri. It is, thus, amply proved that he has very clandestinely exculpated his son Pala Ram. Moreover, the accused, in whose favour the alleged agreement to sell has been executed, has also taken a categoric stand that the instant complaint has been filed by the complainant for usurping the heavy amount of earnest money and for avoiding his liability under the contract.

17. It is also pertinent to mention here that complainant has

specifically pleaded in his complaint that his thumb impressions on some blank papers were obtained by Pala Ram, but in his examination-in-chief, he has testified that his thumb impressions were obtained by accused Sultan, which raises suspicion. There is another aspect of matter. A perusal of Ex.D1, copy of registered cancellation deed No.72 dated 17.5.2002, registered with Sub-Registrar, Nigdhu, makes it ample clear that earlier the complainant had executed a Will in respect of his immovable property in favour of all his sons. However, later on, he cancelled the said Will by executing the above referred cancellation deed, on the ground that all his sons have turned dishonest and he is no more interested in giving his property to them. Execution of a registered Will on 9.9.1999 and execution of cancellation deed on 17.5.2002 makes it crystal clear that the complainant might have been old and illiterate, but was not rustic. On 17.5.2002, when cancellation deed was registered, he was in good health and was competent to execute such deeds. There is nothing on record for proving as to what has happened within a period of two years that his visual and hearing senses became impaired that he could not make out as to what was happening. He has categorically pleaded in his plaint that he was brought to Karnal, whereas the agreement to sell in dispute was prepared at Nilokheri. All these circumstances raises a doubt in the story of complainant.

18. Here, it would also not out of place to mention that as per the complainant, his thumb impressions were obtained on some blank

papers, however, perusal of agreement to sell in dispute reveals that the same has been scribed on a stamp paper. Complainant's thumb impressions are also there under the endorsement of stamp vendor. Therefore, it is clear that all the documents were not blank and it was a stamp paper. He can not plead that being an illiterate, he knew nothing about the stamp paper because earlier also, he had executed a registered Will and a registered cancellation deed. A perusal of agreement to sell in dispute further makes it clear that the line spacing is regular and uniform throughout. Had the agreement to sell in dispute being created on a blank paper bearing thumb impressions of the complainant, then there should have been some evidence in the shape of irregularity in the line spacing. Moreover, it was for the complainant to prove that his thumb impressions were obtained on blank papers and he could have easily discharge his burden by examining a document expert, but no such attempt was made. Beneath the revenue stamp, which bears the thumb impressions of the complainant, word "receipt" has been typed. Complainant's thumb impressions over-lapse the alphabets of word "receipt". A document expert could have easily explained as to whether the word "receipt" was typed above the thumb impressions of the complainant or beneath it. Had it been a case of brought up document, the typist would have definitely cared not to over-lap the sign or thumb impression of any one. However, there is an overlapping and the complainant could have easily prove his version that his thumb

impressions were obtained on blank paper, but no such attempt was made by him. Since, the agreement to sell in dispute has been manually typed, therefore, some irregularity was must to occur if the same was typed after obtaining thumb impressions of complainant on blank papers, but no such irregularity is visible.

19. In the light of aforesaid discussion, this Court does not find any merit in the instant application. As such, the same stands dismissed. Consequently, the accompanying appeal also stands dismissed.

March 28, 2016

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(JASPAL SINGH)
JUDGE