

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-152-MA-2016
DECIDED ON: FEBRUARY 24, 2016

Bant Ram

.....Appellant...

VERSUS

Shamsher Singh and others

....Respondents...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Ms. Mannat Anand, Advocate for
Mr. Deepak Saini, Advocate,
for the appellant.

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.

Instant appeal has been directed by Bant Ram-appellant feeling dissatisfied with the judgment of acquittal dated September 19, 2015 passed by Id. Judicial Magistrate Ist Class, Kurukshetra whereby all the respondent-accused have been acquitted.

2. In nutshell, the case of the appellant is that the corrals (baras) of the complainant-appellant as well as that of accused persons adjoins each other and a dispute in respect of north western wall of the complainant's corral is already pending in the civil court as the accused-respondents intended to demolish the said wall to carve out a passage. The accused-respondents also demolished some portion of the wall by way of cutting a kikkar tree. On December 26, 2009

when the complainant-appellant started to raise construction, all the accused persons came there and started pelting bricks. As a result of which, the complainant as well as his brother suffered multiple injuries with bricks.

3. While assailing the judgment of acquittal dated September 19, 2015, it has been contended by learned counsel for the appellant that the ld. Magistrate has ignored and disbelieved the deposition of the injured-appellant Bant Ram as well as that of the eye witnesses namely Bhagwan Dass, Megh Nath, Naib Singh and Shiv Nath while passing the judgment of acquittal, which necessitated the filing of instant appeal. There is cogent and convincing evidence that the appellant as well as his brother sustained injuries at the hands of respondents-accused. The ld. Magistrate has granted the benefit of doubt and acquitted the respondents-accused simply on the ground that the complaint was lodged after the expiry of approximately 1½ month after the incident and no plausible explanation has been furnished in this regard. Ld. Magistrate has also not taken into consideration that there is no unexplained delay on the part of the appellant. In fact, immediately after the occurrence, appellant-complainant got recorded his statement to the police officials and a DDR No. 23 dated December 26, 2009 was incorporated but subsequent thereto, the police did not take any action being in collusion with the respondent-accused. Thus, the appellant was constrained to lodge a complaint in the Court of Jurisdictional Magistrate. The another factor which was in the mind of ld. Judicial Magistrate while acquitting the respondent-accused is that the appellant has failed to examine any independent witness to corroborate his deposition, which is absolutely against the settled principles of law. When the victim has himself appeared and narrated all the incident without any contradiction then, no independent witness is

required because under Section 134 of the Indian Evidence Act, it is the quality of evidence which matters and not the quantity of evidence. Apart from it, ld. Magistrate has given much importance to the minor contradictions appearing in the statements of various witnesses. Moreover, as far as sustaining of injuries by the appellant-complainant as well as his brother is concerned that speaks in volumes and stand proved by the medical evidence. Thus, the judgment of acquittal is not sustainable in the eyes of law and is liable to be set aside. Consequently, the respondents-accused are liable to be punished for the commission of offence, for which they have been charge-sheeted to face trial by the ld. Magistrate.

4. After bestowing due consideration to the aforesaid submissions made by learned counsel for the appellant and appraisal of evidence as well as impugned judgment of acquittal, this Court is not in agreement with the various submissions made by learned counsel for the appellant.

5. At the very out set of the arguments, it would be appropriate to mention that it cannot be forgotten that in case of acquittal, there is a double presumption of innocence in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial court. According, to the general principles regarding the scope and power of appellate court while dealing with an appeal against the order of acquittal. It is well established by now that the appellate court has full power to review, re-appreciate and

reconsider the entire evidence upon which the order of acquittal is founded. But at the same time, appellate court must bear in mind that in case of acquittal, there is double presumption in favour of the accused as has been referred to above. At the same time, if two reasonable conclusions are possible on the basis of evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court as has also been observed by the Hon'ble Apex Court in case titled as ***“Chandrappa and others vs. State of Karnataka”***, 2007(2) RCR (Criminal) 92, which has subsequently relied upon by the Hon'ble Apex Court while rendering pronouncement in case ***“Murugan and another vs. State represented by Public Prosecutor Madras, Tamil Nadu and another”***, 2008 (4) RCR Criminal 906.

6. Adverting to the facts of the case in hand, admittedly the respondents have been acquitted vide impugned judgment dated September 19, 2015. No doubt on the strength of preliminary evidence brought on record by the appellant, respondents were summoned to face trial under Sections 323, 427, 452, 148 and 506 IPC but after appraisal of entire evidence available on record, respondents-accused were acquitted.

7. Here, it would be pertinent to mention that mere deposition of an injured is not suffice to base the conviction of a person, unless, it is corroborated by other evidence i.e. medical and ocular. In the case in hand, the entire case of the prosecution is based upon the oral testimony. Even, FIR No. 124, dated 28.12.2009 was also registered against the appellant-complainant as well as his relatives, in which, the appellant as well as his one of the relatives were prosecuted. There is a simple allegation unfolded by the appellant-complainant as well as that of Bhagwan Dass that the injuries are sustained by

them while the respondents pelted brickbats but there is no specific allegation against any of the respondents. There are vague and indefinite allegations. Even, it can be said that appellant-complainant as well as Bhagwan Dass improved their versions by alleging that respondents No. 1 to 3 gave brick blows to the appellant-complainant hitting on his left knee, chest and fingers of left hand. The statements of witnesses examined by the appellant-complainant also suffered from material contradictions, which doubts the basic version of prosecution. Thus, in such circumstances, it would not be appropriate for this Court to disturb the findings of the acquittal recorded by the Id. trial court simply for the reasons that the different view/conclusion is possible, especially, in the circumstances that the appellant-complainant as well as one of his relatives have already faced the trial in respect of the same occurrence, which fact can be said to have been concealed while lodging the instant complaint before the Id. Magistrate.

8. In the light of what has been discussed above, this Court does not find any merit in the instant appeal. As such, the same is dismissed whereby the judgment of acquittal is upheld.

FEBRUARY 24, 2016
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(JASPAL SINGH)
JUDGE