

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-844-MA-2016
DECIDED ON: SEPTEMBER 29, 2016

Suresh Sood

.....Applicant/Appellant...

VERSUS

Karnail Kaur & another

....Respondents...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Samrath Sagar, Advocate,
for the applicant.

JASPAL SINGH, J.

Instant application has been directed by Suresh Sood-applicant/appellant feeling dissatisfied with the judgment of acquittal dated February 25, 2016 passed by Id. Judicial Magistrate Ist Class, Moga whereby the respondents-accused have been acquitted.

2. Brief facts giving rise to the instant *lis* are that complainant's father Dev Dutt took a shop situated at Akalsar Road, Moga on rent in the year 1989 from Jeet Singh, who executed a rent deed in favour of Dev Dutt in the year 1989, which was also got registered from Sub Registrar, Moga. It is further submitted that complainant's father Dev Dutt started a business in the said shop under the name and style of M/s Jagdish Steel Works and since then they are in possession of above-said shop. Accused threatened them to dispossess from the said shop and also to demolish the said shop. Thereafter, Dev Dutt filed a civil

suit in the Court. It has further been averred in the complaint that on August 03, 2011 in the morning, one person namely Manjit Singh met them and told them that on August 02, 2011 when he was passing near their shop, he saw the accused while dismantling the lantern of the roof of their shop with hammer.

3. The contention of learned counsel for applicant is that the judgment of acquittal dated February 25, 2016 is not sustainable in the eyes of law and the 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 the complainant. Even, the documents placed and proved on record were also not taken into consideration by learned trial Court by learned trial Court while rendering the judgment of acquittal. Mis-appreciation of evidence has resulted into miscarriage of justice. Thus, it is necessary for the applicant/appellant to prefer an appeal.

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 outset 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 February 25, 2016. No doubt on the strength of preliminary evidence brought on record by the appellant, respondents were summoned to face trial under Sections 427 and 506 IPC but after appraisal of entire evidence available on record, respondents-accused were acquitted.

7. From the evidence available on file it has emerged that on August 03, 2011 when complainant and his father Dev Dutt came to their shop, one Manjit Singh s/o Raghbir Singh disclosed them about the entire occurrence. Undoubtedly, both i.e. complainant as well as his father Dev Dutt were not present at the spot at the time of occurrence and they cannot be termed to be an

eye witnesses. Similarly, in the complaint as well as in his preliminary evidence, Suresh Sood-complainant has only disclosed about Manjit Singh. But to the utter surprise, said Manjit Singh also remained away from the witness box. The non-examination of Manjit Singh puts a serious dent in the case of complainant. As far as PW- Subash Chander is concerned, firstly, his presence at the spot has neither been shown in the complaint nor he has been examined as a witness in pre charge evidence. He was just a passer-by when the accused were allegedly dismantling the lantern of the roof of the shop with hammer. At the most, it can be said that accused suffered extra judicial confession, which is otherwise a weak type of evidence and requires appreciation with a great appeal of care and caution. The statement of Subash Chander does not find corroboration from any independent reliable evidence. From the evaluation of entire evidence, facts and circumstances, this Court is of the considered view that there is no reason what to talk of any sound reason to meddle with the findings recorded by learned trial Court.

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.

SEPTEMBER 29, 2016
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>