

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-213-MA-2015 (O&M)

Date of decision:- September 23, 2016

Ishwar Singh

.....Applicant..

Vs.

Satbir Singh and others

....Respondents..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Ashwani Bura, Advocate
for the applicant.

JASPAL SINGH, J.

Vide this judgement, this Court shall dispose of application under Section 378 (4) of the Code of Criminal Procedure preferred by Ishwar Singh seeking special leave to appeal against the judgment of acquittal dated November 17, 2014 passed by Judicial Magistrate Ist Class, Kaithal, in criminal complaint RBT No. 575/2013, dated 18.07.2009/17.09.2013, captioned as ***“Ishwar Singh vs. Satbir Singh and others”***, under Sections 323, 382, 392, 458, 506, 218 IPC and Sections 25 of Arms Act, Police Station Butana.

2. The facts giving rise to the instant lis are that on the intervening night of 4/5.6.2009 the complainant was sleeping

alongwith his family members. After hearing some noise he woke up and found that Satbir Singh was standing near the almirah after opening it and two persons were in sahan. He raised a noise and caught Satbir Singh. However, other two persons fled away after crossing the boundary wall. After hearing his noise his brother Birj Lal and his wife Bala Devi came there. On seeing them, Satbir Singh caused injury to the complainant with butt of desi katta (Revolver) and ran away from the spot after taking an amount of ₹70,000/-.

3. On the strength of preliminary evidence adduced by complainant-applicant, respondents-accused were summoned to face trial under Sections 323, 382, 506 IPC and Section 25 of Arms Act. Thereafter, the complaint was listed for pre-charge evidence, during which, complainant examined as many as 2 witnesses. Mohinder Singh Kundu, Assistant, SBI, Pundri has been examined as CW1 and complainant himself examined as CW-2. But this pre-charge evidence was closed by order.

4. Similarly, on the basis of pre charge evidence adduced by the applicant on finding a *prima facie* case under Section 323, 382 and 506 IPC against the accused, they charge sheeted, to which they pleaded not guilty and claimed trial.

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. However, no defence evidence was led by them.

6. After hearing learned counsel for the parties and appraisal of evidence brought on record by the parties, respondents/accused were acquitted of the charge vide judgment of acquittal dated November 17, 2014.

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 November 17, 2014.

8. The contention of learned counsel for applicant is that the judgment of acquittal dated November 17, 2014 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 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.

9. After bestowing due consideration to the afore-said submissions made by learned counsel for applicant 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 applicant/appellant.

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. Adverting to the facts of the case in hand, the story put forth by the applicant/appellant is that on the intervening night of 4/5.06.2009 when he was sleeping alongwith his family members accused barged into his house. On hearing noise he woke up and raised noise, which attracted his brother Brij Lal. At that time accused stole away an amount to the tune of ₹70,000/- from an Almirah and he was also given injuries. No doubt, complainant has made a statement which is also corroborated by Brij Lal. But their statements do not inspire confidence, especially, in view of the fact that in the cross-examination of Brij Lal, it has emerged that at the place of occurrence, his wife as well as the children of applicant/appellant were also present. But to the utter surprise neither the wife of Brij Lal nor the grown up children of the complainant were examined by the complainant to fortify his version.

16. Not only this, it has also come on record that when Brij Lal reached at the place of occurrence in the house of his brother his

children were sleeping in their room and further that complainant sustained injuries on his left wrist and left leg. But despite the fact that complainant is alleged to have sustained injuries, he did not opt to get him medically examined. It is also strange that on hearing hue and cry only the wife of Brij Lal had come forward and the children continued to sleep. Further, no photograph of the alleged broken almirah was also clicked and placed on record by the complainant, to corroborate his version. In the absence of MLR of the complainant it cannot be said that he, in fact, sustained injuries. The other factors discussed above also creates suspicion with regard to the story put forth by the complainant.

17. Here it would be pertinent to mention that after the occurrence, complainant moved an application Mark A/Ex.PC to the police in which the name of one of the accused Satpal did not figure but while filing the complaint, he was also dragged as one of the accused by slapping that he also committed the offences alongwith other accused. Subsequent addition of Satpal as an accused, while lodging the complaint, puts a serious dent in the story put forth by the complainant and creates a doubt upon the veracity not only of the complainant but also his brother Brij Lal.

18. Thus, this Court is of the considered view that non-examination of complainant from the Medical Officer, non production of any photograph of the broken almirah, non-examination of the wife

of Brij Lal as well as children is making all material improvements just to implicate Satpal coupled with each other makes the case highly doubtful and suspicious. Moreover, the witnesses are also closely related to each other and as such, it is otherwise not safe to rely upon their testimonies, especially, in view of the above narrated factors.

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.

September 23, 2016

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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*