IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.3855 of 2014 (O&M)
Date of decision : 20.12.2016

Balbir Singh ..Petitioner

Versus

Kitab Singh and others ..Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R.S. Budhwar, Advocate for the petitioner.

Mr. Baldev Singh, Advocate for respondent Nos.1 to 3.

Mr. Neeraj Poswal, AAG, Haryana

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JITENDRA CHAUHAN, J. (Oral)

The instant revision petition has been filed for setting aside the judgment dated 26.09.2014, passed by the Additional Sessions Judge, Kaithal (for short 'the appellate Court'), whereby the appeal filed by private respondents against the judgment of conviction dated 02.03.2012 and order of sentence dated 05.03.2012, passed by the Judicial Magistrate 1st Class, Kaithal (for short, 'the trial Court') vide which the private respondents were convicted under Sections 323 and 324 of the Indian Penal Code (for short 'the IPC') in FIR No.188 dated 11.11.2005 registered under Sections 148, 323, 324 and 506 IPC read with Section 149 IPC at P.S. Kalayat, was allowed and the private respondents were acquitted of the charge.

The learned counsel for the petitioner states that the learned

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appellate Court has erroneously set aside the well reasoned judgment passed by learned trial Court ignoring the fact that the unloading the bricks at the disputed land to fill the foundation of the manure pits in question, the private respondents committed breach of the terms and conditions of the compromise reached in the brotherhood panchayat, whereby it was decided that the construction/possession over the disputed manure pits be taken over after the demarcation of the same by the Revenue officials. The learned appellate Court has wrongly relied upon the Ex.DB and Ex.DF as the private respondents had purchased the land in question subsequent to the date of occurrence i.e. 11.11.2005. Respondent No.2 had boarded the train at 2.30 p.m. from Narwana and the incident took place at 12.30 p.m. and there were two hours for him to board the train. Therefore, it was possible for him to board the train even after the incident. Thus, the impugned judgment is absolutely against the facts and deserves to be set aside.

The learned counsel for respondent Nos.1 to 3 and learned State counsel have supported the impugned judgment passed by learned appellate Court. Vide enquiry report Ex.DA and admission of PW1-Sarup Singh, it is duly proved that respondent No.2 was posted on fair duty at the time of alleged occurrence. Meaning thereby, respondent No.2 was not present at the spot. As per the opinion of the treating doctor, the injuries suffered by the petitioner's party could be caused by friendly hand or by falling on hard surface.

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I have heard the learned counsel for the parties and perused the entire record on file.

In **State of UP Vs. Ram Sajivan and others**, 2010 (1) SCC 529, the Hon'ble Supreme Court of India, observed as under:-

> *"In the case of **Raj Narain v. State of U.P. & Others** [Criminal Appeal Nos. 891-892 of 2002 decided on 18.09.2009], this Court reiterated the aforesaid view and held that even if two views are reasonably possible, one indicating conviction and other acquittal, this Court will not interfere with the order of acquittal. However, this Court will not hesitate to interfere with such order if the acquittal is perverse in the sense that no reasonable person would have come to that conclusion, or if the acquittal is manifestly illegal or grossly unjust."*

Furthermore, it has been held in ***C. Antony Vs. K.G. Raghavan Nair***, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

The dispute arose when the petitioner had obstructed the private respondents to unload the bricks to fill the foundation on the land in question. In the compromise reached in the brotherhood panchayat i.e. the Panchayati Faisla, it was decided that the possession of land between the petitioner and private respondents was to be exchanged on 11.11.2005, after

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the demarcation by the Revenue officials. However, the same has not been placed on record what to say of proving it. The said document is attached with the connected file. The learned counsel for the petitioner has not adduced any evidence to prove the said Panchayati Faisla and its terms and conditions. As far as the presence of respondent No.2 on the spot, statement of PW1-Sarup Singh and enquiry report Ex.DA, whereby he was found innocent and was exonerated in the police enquiry, it is duly established that he was not present at the place of occurrence. Further as per the control room he was present on the fair duty. There are many lacuane in the prosecution case as the prosecution witnesses have made contradictory statements qua the roles of respondent Nos.2 and 3. The allegation of the petitioner that his tooth was broken in the said incident becomes doubtful as he has not brought on record any dental opinion or documentary evidence in this regard. In his cross examination PW1-Sarup Singh had deposed that police had visited the spot after 5-7 days of the incident. However, PW-SI Prem Singh stated that he had visited the spot on the same day. As per the testimony of PW5-Dr. Pavneesh Aggarwal the possibility of the self inflicted injuries or by falling on the hard surface with sharp edged object cannot be ruled out. The medical record reveals that the opposite party have also suffered injuries.

In view of foregoing discussion, this Court feels that the learned Addl. Sessions Judge, has rightly held that the alleged incident was

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a free fight and it is not established that who was the aggressor party or that he has opened the attack. Hence, this Court does not find any ground to interfere with the impugned judgment of acquittal passed by the appellate Court.

Consequently, the present revision petition fails and is, hereby, dismissed.

20.12.2016 **(JITENDRA CHAUHAN)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No

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