

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2534-SBA-2004

Decided on: 12.09.2017

State of Punjab

.... Petitioner

Versus

Baldev Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Dhruv Dayal, Sr. DAG, Punjab.

Mr. P.S. Brar, Advocate,
for the respondent.

A.B. CHAUDHARI, J (ORAL)

State being aggrieved by the judgment and order dated 06.04.2004 of acquittal of the accused, had filed the present appeal in this Court.

Learned State counsel vehemently argued that trial Court had relied on the entry in the diary of the accused which could not have been relied upon as the same was a private diary of the concerned Patwari about the delivery of Jamambandi on 10.11.1998 itself.

He further submitted that the trial Court has clearly committed an error also in holding that the defence theory was probable and therefore the trial Court gave the benefit of doubt on probabilities which is wrong and perverse according to him. He, therefore, prayed for conversion of order of acquittal into the one of the conviction. Per contra, learned counsel for the respondent-accused relied upon to the cross-examination of concerned DSP and submitted that the DSP had admitted the entry in the diary of the Patwari about the delivery on Jamabandi on 10.11.1998 itself and, therefore,

the finding recorded by the trial Court that there was no occasion to demand any bribe on the next date. Hence the finding is very well supported by the evidence. He therefore submitted that trial Court has rightly accepted the theory canvassed by the defence on probabilities. He, therefore, prayed for dismissal of the appeal against acquittal.

I have gone through the entire evidence as well as the reasons recorded by the learned trial Court for recording of order of acquittal. The trial Court recorded the following reasons in his judgment:-

That the very improbability of the version of the complainant is even otherwise corroborated from the fact that there is no evidence led by the prosecution regarding the story that the complainant was to mortgage six kanals of his land with one Mukand Singh. Neither any such document of the property, has been proved on the record nor Mukand Singh has been examined to substantiate the same and rather the testimony of PW5 Labh Singh, Assistant Manager, Cooperative Bank, Faridkot, makes it clear and who has stated that as per the loan ledger documents on 02.04.1998 Roop Singh complainant had taken loan for diary purposes by mortgaging his land measuring 06 kanals 10 marlas and has given the khasra numbers of the land as 581/1 and 581/2 out of the total land measuring 08 kanals 10 marlas situated in village Hari Naun and which goes to establish that the complainant had only two kanals of land left in village Hari Naun in his ownership and, therefore, refutes and

rebutts the case of the complainant as per the version set up by him and furthermore, the jamabandi Ex.P1 goes to show that the same has been issued for khasra number 581/1 pertaining to land measuring 06 kanals 10 marlas and as per the entry made thereon in red ink the same has been mortgaged by the co-sharer Roop Singh, complainant in favour of the Punjab Land Mortgage Bank alongwith khasra number 582/2 and which each of the khasra number comes to 06 kanals 10 marlas each i.e. in all measuring 13 kanals and, therefore, the entire land as per this entry measuring 13 kanals owned by Roop Singh out of his share stood mortgaged on 24.03.1998 much prior to the present occurrence and, therefore, to establish that there was no cause for the complainant to have secured a copy of jamabandi for further mortgaging his remaining land.

I find that the aforesaid reasons recorded by the learned trial Judges are sound and based on evidence.

In so far as the defence theory propounded by the defence is concerned, I do not think that the trial Court committed any error in accepting the probabilities furnished by the defence before the trial Court. In Darshan Singh vs. State of Punjab and another (2010) 2 SCC 333, the Court held thereof:-

“In a case of acquittal, if the trial court's view is a possible or plausible view, then the Appellate Court or the High Court would not be justified in interfering with

it. It is the settled legal position that there is presumption of innocence and that presumption is further fortified with the acquittal of the accused by the trial court. The Appellate Court or the High Court would not be justified in reversing the judgment of acquittal unless it comes to a clear conclusion that the judgment of the trial court is utterly perverse and, on the basis of the evidence on record, no other view is plausible or possible than the one taken by the Appellate Court or the High Court.”

I do not think, it is possible to interfere with the order of acquittal. Hence, I make the following order:-

ORDER

CRA-S-2534-SBA-2004 is dismissed.

(A.B. CHAUDHARI)
JUDGE

12.09.2017
Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No