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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Date of decision: December 12, 2017
CRA-S-1236-SBA of 2005**

State of Punjab

.....Appellant

Versus

Inderjit Singh and others

.....Respondents

CRR No.849 of 2005

Shamsher Singh Parmar

.....Petitioner

Versus

State of Punjab and others

.....Respondents

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

Present: Mr. Dhruv Dayal, Sr. DAG Punjab
for the appellant-State (in CRA-S-1236-SBA of 2005).

None for the petitioner (in CRR No.849 of 2005).

Mr. J.S. Virk, Advocate for
Mr. K.S. Dadwal, Advocate
for the respondents (in CRA-S-1236-SBA of 2005).

A.B. CHAUDHARI, J (Oral)

By this common order, above said appeal as well as revision
petition would be disposed of.

The present appeal, i.e. CRA-S-1236-SBA of 2005 and
revision petition, i.e. CRR No.849 of 2005 were filed by the State of Punjab
and the complainant-Shamsher Singh Parmar in respective cases, against
the judgment dated 24.11.2004 passed by Judicial Magistrate IInd Class,
Hoshiarpur acquitting the respondents for the offences under Section 323,
342, 325, 34 of Indian Penal Code, 1860.

In support of the appeal, learned State counsel in CRA-S-

1236-SBA of 2005 vehemently argued pointing out my attention to Para 9 of the impugned judgment which is the crux of the reasons for recording acquittal. According to him, learned trial Judge has not at all legally and correctly applied the principles regarding appreciation and marshalling of evidence that was tendered before him and has by merely making statements of the basis of criminal jurisprudence recorded the order of acquittal. He submitted that the trial Court has rejected the prosecution case on one of the grounds that the statement was recorded by the police of the injured and the eye-witness on the next day and therefore, there was delay which was unexplained. He, further argued that except writing a mere sentence that PW1 and PW5 were interested witnesses, the trial Court has not given any reason as to why testimony of even interested witnesses could be rejected. He, therefore, submitted that the judgment impugned is *sans* any reasons much less the reasons required for recording of order of acquittal or writing the judgment in the criminal case.

Per contra, learned counsel for the respondents opposed the appeal and revision petition and supported the impugned judgment and the reasons recorded in Para 9 thereof. He prayed for dismissal of the present appeal as well as revision petition.

I have perused the impugned judgment recorded by the learned trial Court. Para 9 of the impugned judgment reads thus:-

“9. I have heard the learned APP for the State and learned defense counsel and have gone through the file, statements of the witnesses, documents, very carefully. The incident was occurred on 1.11.1999 at 3.30 p.m. and according to prosecution, the police came to the spot immediately, but no statement of the injured or any eye witness, was recorded by

the police. The statement of complainant was recorded on 02.11.1999, but the prosecution has failed to explain the reasons of this delay. PW1 and PW5 are interested witnesses, whereas PW3 has deposed that the possibility of causing injuries to complainant by fall from scooter cannot be ruled out. Moreover, the factum of civil as well as criminal litigation between the complainant and accused is admitted fact. It is the prosecution, who is legally bound to prove its case beyond any reasonable shadow of doubt by leading cogent, reliable and trustworthy oral as well as documentary evidence. Benefit of doubt always goes to the accused. The prosecution evidence should be of such a nature, which should lead to no other hypothesis except guilt of the accused. Suspicion, however, strong it may be, can not take place of proof. As the prosecution has failed to lead cogent, reliable and trustworthy oral as well as documentary evidence to connect the accused with the alleged offences punishable under Sections 323, 325, 342 read with Section 34 IPC and moreover, benefit of doubt goes to accused. Thus, this court has no option, but to acquit the accused Inderjit Singh and Kirpal Singh, of the charge framed against them, by giving benefit of doubt.”

I have also perused the description recorded by the learned trial Judge in respect of the injuries found by the doctor. It would be appropriate to quote the extract from Paragraph 7 of the impugned judgment in that behalf, which reads thus:-

“7. the injured was medically examined by Dr. S.P. Banga, who has deposed as PW3 that the injuries No.1, 2, 6, 7, 8, 9, 14, 15 were kept under observation, while rest were declared as simple. This witness has proved copy of MLR Ex.PW3/A and pictorial diagram Ex.PW3/B. On receipt of xray examination the injury No.6 was declared grievous vide report Ex.PW3/C. PW6 Dr. Surinder Gangar has proved X-ray report Ex.PW6/A, xray films Ex.PW6/1 to PW6/10. PW7 has

proved memo Ex.PW7/A vide which the helmet and blood stained bushirt was taken into possession by the police. PW4 ASI Rattan Singh has proved the opinion of doctor, as Ex.PW4/A, endorsement Ex.PW4/B, ruqa Ex.PW4/C. Copy of FIR Ex.PW4/D. The learned APP has further argued that the complainant is a senior lawyer and he cannot make a false statement, hence, the prosecution, particularly the complainant has fully proved that the accused with their common intention, caused grievous as well as simple injuries to Shamsher Singh and they had confined him illegally and the accused are liable to be convicted for the offences punishable under sections 323, 325, 342 read with section 34 IPC.”

From the reading of the above paragraph, it is clear that the injuries were duly proved by the doctor and not only that injury No.6 was also declared as grievous apart from the other corroborative evidence that has been stated in the aforesaid paragraph, namely the blood stained bush-shirt and so and so forth. That apart from the sworn testimony of the injured as well as the eye witness whose evidence has been rejected by the learned trial Court for flimsy reasons that PW1 and PW5 are the interested witnesses. The law is well settled that the testimony of interested witnesses cannot be rejected merely because they are the interested witnesses and the trial Court has only to be cautious while making analysis of the evidence of the interested witnesses and find out whether they are speaking truth or not. Therefore, rejection of the evidence of PW1 and PW5 in one line has resulted in the miscarriage of justice. Apart from that the probability that the injury could be caused by fall from scooter recorded by the learned trial Judge is based on no material as against the sworn testimony of the doctor and the medical evidence. In that view of the matter, I think this is a fit case where the trial Judge should be asked to apply mind, appreciate and

marshal the evidence in accordance with law. The trial Judge ought to discuss the evidence of the witnesses in the correct perspective and therefore, should give reasons as to why it would accept or reject the evidence of the witnesses. That is the way the assessment of evidence should have been made. This Court is however, unable to make such assessment as the parties to the present appeal and revision petition may get prejudiced. In that view of the matter, I think it would be appropriate to make an order of remand so that all the parties in the criminal case would get an ample opportunity to advance their arguments before the trial Court.

To sum up, the present appeal as well as revision petition will have to be partly allowed and criminal case will have to be sent back to the trial Court for hearing of the counsel for the parties and thereafter, for writing well reasoned judgment in the light of the observations made above.

The above observations in respect on merits of the matter shall not influence the trial Court and trial Court shall make independent assessment of the evidence of the witnesses who have deposed before the trial Court. In the result, following order is passed:-

ORDER

- (i) CRA-S-1236-SBA of 2005 and CRR No.849 of 2005 is partly allowed;
- (ii) Impugned judgment dated 24.11.2004 passed by Judicial Magistrate IInd Class, Hoshiarpur acquitting the respondents, is set aside and the proceedings of criminal case No.RBT 12/2K are sent back to the trial Court for fresh decision in accordance with law;
- (iii) The respondents shall appear before the trial Court on 10.01.2018. If the respondents do not appear before the trial

Court, the trial Court shall be entitled to issue bailable warrants for securing their presence. Complainant shall also be summoned and is also at liberty to participate in the proceedings;

- (iv) The trial Court shall thereafter, hear all the parties concerned, uninfluenced by any observations made by this Court, while making fresh assessment of the evidence and writing judgment.

**(A.B. CHAUDHARI)
JUDGE**

December 12, 2017

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No