

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

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**CRM-A-1115-MA-2015 (O&M)
DATE OF DECISION:09.01.2017**

UJJAGAR SINGH**... Appellant****V.****KAMALJIT KAUR AND ORS.****... Respondents****CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present: Mr. Vinod Kumar, Advocate
for the appellant.

ANUPINDER SINGH GREWAL, J. (ORAL)

This application has been preferred under Section 372 read with Section 378 (4) Cr.P.C. for permission to file appeal against the judgment dated 27.04.2015 passed by learned Sub Divisional Judicial Magistrate, Mukerian, whereby the respondents/accused No.1 to 7 have been acquitted under Sections 452, 323, 506, 341, 342, 427, 148 and 149 IPC.

The complaint had been filed by Ujjagar Singh wherein it was stated that on 11.09.2011 at 10:00 a.m. when he was away to Mukerian and his wife and daughter were alone, the accused entered his house without the consent of his wife. Accused No.1 exhorted his co-accused to teach a lesson to the complainant's family for not allowing them to carve out a passage in the land comprising khasra No.171. Thereupon all the accused persons thrashed the wife of complainant and gave her fists and kick blows which rendered her unconscious. His daughter raised alarm which attracted his neighbours who rescued his wife from the clutches of the accused. The trial Court after examining the witnesses produced by the complainant, had come to the conclusion that there are serious doubts in the case set out by the complainant

and vide order dated 27.04.2015, all the accused were acquitted of charges framed against them.

I have heard learned counsel for the petitioner.

The case was registered against the accused by complainant-Ujjagar Singh who had deposed before the trial Court. In his testimony before the trial Court, it was admitted by the complainant that he was not present at the time of occurrence as he was away to Mukerian. His evidence has thus been held to be a hearsay evidence which by itself could not have form the basis of conviction of the accused.

Furthermore, Surjit Singh, CW-4 also admitted during cross-examination that he never saw the occurrence. Even the testimony of the complainant's wife Karmo Devi, who had appeared as CW-3, does not appear to inspire confidence as although it is stated by her as well as in the complaint that she had received injuries and fell un-conscious, she was not medically examined and no report in this regard has been produced before the trial Court. Karmo Devi has also not been able to ascribe the role of the each accused, who are alleged to have been given her beatings. She has only vaguely leveled allegations against the respondents which are general in nature that all the accused had given her beatings.

It is well settled that the appellate Court would interfere with the finding of acquittal even if on reappreciating the evidence it is to take another view. The presumption of innocence of accused is further reinforced by an order of acquittal. Reference can be made to the judgment of Hon'ble Supreme Court of India in the case of **Prem Singh v. State of Haryana, (2013) 14 SCC 88** wherein it was held:-

“7. In a recent decision in Murugesan v. State this Court had the occasion to consider the broad principles of law governing the power of the High Court under Section 378 of the Code of Criminal Procedure, 1973. The summary of the relevant principles

of law set out in para 21 of the judgment may be extracted hereunder:

“21. A concise statement of the law on the issue that had emerged after over half a century of evolution since Sheo Swarup is to be found in para 42 of the Report in Chandrappa v. State of Karnataka. The same may, therefore, be usefully noticed below:

‘42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, ‘substantial and compelling reasons’, ‘good and sufficient grounds’, ‘very strong circumstances’, ‘distorted conclusions’, ‘glaring mistakes’, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of ‘flourishes of language’ to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

“13. The parameters within which the High Court was required to exercise its powers under Section 378 of the Code while hearing the State’s appeal have already been noticed. If a conclusion with regard to the innocence of the accused is reasonably possible on the basis of the evidence and materials on record the High Court ought not to have disturbed the findings recorded by the trial Court, even if, on a re-appreciation of the evidence, it was inclined to take

a different view. So long the view taken by the trial Court was a possible view the exercise of the appellate power of the High Court under Section 378 CrPC would remain circumscribed by the well- settled parameters.”

Therefore, in the facts and circumstances of the case, the view taken by the trial Court in acquitting the accused is a plausible one which would not warrant interference in appeal.

In the result, the application for leave to appeal stands dismissed.

January 09, 2017

SwarnjitS

(ANUPINDER SINGH GREWAL)
JUDGE

Note:	Whether speaking/reasoned	:	Yes / No
	Whether reportable	:	Yes / No