

THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CRM-A-219-MA of 2017
Date of Decision: September 21,2017

Jai Singh

.....Applicant

Versus

Parveen and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Parminder Singh, Advocate for the applicant

ARVIND SINGH SANGWAN, J.

The respondent had faced trial in criminal complaint No. 29 of 2013 under Sections 323 and 506 of the Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Karnal. The trial Court, vide judgment dated 20.12.2016, ordered the acquittal of the respondent of the charges framed against him. Hence, the present application for grant of leave to appeal under Section 378(4) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') has been filed by the applicant-complainant.

Brief facts of the case are that the applicant-complainant filed the complaint with the allegation that one Mukesh, son of Suraj Bhan had old enmity with the complainant and the matter was compromised. However, he was creating problem and was challaned under Sections 107/151 Cr.P.C. Later the said Mukesh contacted his cousin i.e. respondent-accused, Parveen Kumar to take the revenge and the accused

attacked the complainant and gave lathi blow from his backside and caused the injuries. The complainant's brother and uncle came to his rescue and on seeing them, accused Parveen ran away. Thereafter, the brother of the complainant took him to Government Hospital Nilokheri where he was medico legally examined and the doctor found two injuries on the body of the complainant.

It is further alleged that since the police did not take any action, the present complaint was filed. In the preliminary evidence, the complainant examined himself as CW1 and Ram Pal son of Chattar Singh CW2 and closed the evidence. Thereafter, the accused was summoned to face the trial for commission of offence punishable under Sections 323/506 IPC.

In pre-charge evidence, the complainant appeared as CW2 and one Rampal was examined as CW1. Dr. Gaurav Singh was examined as CW3 and the pre-charge evidence was closed. Thereafter, the accused was charge-sheeted for the aforesaid offences to which accused did not plead guilty and claimed trial. Thereafter, the statement of the complainant was recorded under Section 313 Cr.P.C. in which he denied the allegation and pleaded that he has been falsely implicated. However, no defence evidence was led. The trial Court, thereafter, acquitted the respondent-accused. Operative part of the order of the trial Court is as under:-

“14 As per the complainant, on 04.09.2012 at about 9.00 am, the accused inflicted injuries upon him without any reason and assaulted him due to which he got himself medically examined vide MLR dated 04.09.2012 which

is Ex C2. Complainant has examined himself as CW2 and upon his cross examination, he has admitted that when he and Suvender, Jitender and Mukesh were challaned under Section 107/151 CrPC and 107/150 CrPC then accused Parveen was not present there. He has further admitted that two fights took place one in January 2012 and another in August, 2012 and during both the fights accused Parveen was not present or involved. Now this deposition clearly reveals that at the time when dispute between the complainant and Mukesh took place, the accused was not present. It has not been explained by the complainant that as to why he would inflict injuries upon his person when he himself was not even present when dispute between the complainant and brother of accused took place. Thus this plea of learned counsel for complainant that due to previous enmity, the accused had inflicted injuries upon the complainant not tenable.

15. CW1 is Rampal son of Chattar Singh ,who is real brother of and apart from him no other independent witness has been examined by the complainant. No doubt the testimony of related witness can not be throw away entirety, however, as a rule of prudence ,a due care and caution has to be exercised while taking into consideration the testimony of interested witnesses when

the case of complainant is doubtful and when there is no other independent corroboration to the same. Apart from that CW1 has admitted during his cross-examination that about 5 to 7 persons were present on the spot where the incident took place, however, no private witness as alleged to be present by CW1 has been produced in the present case to depose regarding the actual facts. This also creates doubt in the complainant version.

16. The complainant has further deposed during his cross that he had moved a complaint before the police regarding the incident in question, however, there is nothing on the record to even prima facie show that any complaint was moved by him before the police. The incident is alleged to have taken place on 04.09.2012, however, the present has been led on which means that there is a delay of about seven months which has not been explained by the complainant. In case the occurrence as alleged had actually taken place then the complainant would have immediately informed the police but there is nothing on the record to even prima-facie show that the complainant moved any complaint before the police for registration of the case against the accused before filing the present complaint. No plausible explanation has come forward for such a long delay in filing the present complaint. Thus, the unexplained delay

is fatal to the case of the complainant.

17.As far as medical evidence is concerned,perusal of MLR ExC2 clearly reveals that only pain and swelling has been shown to be experienced by the complainant and no superficial injury is stated to be present by the doctor. Even during his cross examination, CW3 Dr. Gaurav Singla has admitted that the injuries mentioned in the MLR can be sustained by the injured by falling on hard surface. Now, this also creates doubt in the version of complainant as it can not be conclusively held that it was due to the act of accused that complainant has suffered injuries”.

Learned counsel for the applicant has argued that from the statement of CW1, it is proved that the respondent-accused has caused injuries to the complainant. It is also submitted that the complainant has also fully supported his case and the injuries sustained by him are proved from the statement of CW3 Dr. Gaurav Singh, who has produced on record MLR Exhibit C2 and it is, thus, submitted that the guilt of the accused is proved.

After hearing the learned counsel for the applicant and going through the record carefully, I find no merit in the present application.

The occurrence has taken place on 4.9.2012, whereas, the present complaint was filed on 5.4.2013 i.e. after a delay of seven months which has not been explained. Though the complainant as CW2 stated that he has given a complaint to the Police yet no such complaint has been

produced in evidence and, therefore, the delay remained unexplained. Moreover, a perusal of the MLR shows that the injuries reveal pain and swelling experienced by the complainant and no superficial injury was reported by the Doctor.

CW3, Dr.Gaurav Singla, in cross-examination, has admitted that such injuries can be sustained by falling on hard surface and, therefore, the version of the complainant is not supported by the medical evidence. The trial Court, on appreciation of evidence, had rightly held that the complainant has failed to bring home the guilt of the accused beyond doubt.

It has been held by a Division Bench of this Court in **Anil Kumar v. State of Punjab and others, CRA-D-531-DB of 2015**, while dealing with an appeal against acquittal, that order of acquittal interfered with only when there are compelling and substantial reasons for doing so i.e. when the order was clearly unreasonable. There were also no compelling and substantial reasons to interfere with the findings recorded by the trial Court and the trial Court has rightly taken into consideration all the material brought on record.

Similarly, in **Mrinal Das & others v. The State of Tripura, 2011 (9) Supreme Court Cases 479**, the Supreme Court, after looking into various judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

“8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted.

However, if the appeal is heard by an appellate court, being the

final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons”, for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of

ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed.”

In the facts and circumstances, the reasons recorded by the learned trial Court in acquitting the accused are just and proper and there is no merit in the criminal miscellaneous application seeking leave to appeal in terms of Section 378(4) of the Code Criminal Procedure, 1973. Accordingly, the criminal misc. application seeking leave to appeal is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

September 21, 2017
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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No