

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

CRR-1305 of 2014 (O&M)
Date of decision : 07.02.2017

Mahant Dutt Gir

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Kunal Dawar, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. Ankush Singla, Advocate for respondent Nos.2 to 5.

JITENDRA CHAUHAN, J.

The instant revision petition has been filed by the complainant-petitioner, impugning the judgment dated 16.02.2012, passed by learned Sub Divisional Judicial Magistrate, Ellenabad (for short, 'the trial Court'), whereby the respondent Nos. 2 to 5 were acquitted of the charges by extending benefit of doubt and the judgment dated 19.03.2014, passed by learned Additional Sessions Judge, Sirsa (for short, 'the Appellate Court') whereby, the appeal filed by the respondent/State was dismissed and the accused-respondents were acquitted in FIR No.275 dated 02.05.1997, registered under Section 435 read with Section 34 of the Indian Penal Code at Police Station Rania.

Brief facts of the case as noticed by learned trial Court in the opening paragraphs of the impugned judgment dated 16.02.2012, read as

under:-

“The above titled complaint under Sections 435/34 IPC was filed by the complainant inter-alia on the allegations that Dera Shivala, Rania, of which the complainant Mahant Dutt Gir is Mahant has 60 acres of land out of which 36 acres of land is under the occupation of the tenants and remaining 34 acres of land is under self cultivation of Shivala. Sahab Ram accused was also a tenant over the land of Shivala. On 23.4.1997 Sahab Ram accused after harvesting his wheat crop standing in Killa Nos.21 and 22 with the combine, set the straw of those killas on fire. The remaining accused Lachhman, Vinod and Naresh were also present with Sahab Ram. After putting the fire in the straw accused spread the burning straw in the aforesaid land and at that time wind was blowing fast, as a result of which wheat crop of Mahant standing in the adjoining eight acres of land also caught fire and was completely burnt. The occurrence was witnessed by Balwant Singh who was working as tractor driver and Karan Singh who was supervising the fields of Mahant. The wheat crop of Hans Raj standing in two killas as well as of Prabhu Dayal standing in seven kanals were also burnt in the incident. Many persons gathered at the spot but could not control the fire. Thereafter, all the four accused ran away from there. The complainant Mahant Gir was out of station and he was informed about the fire by his workers. He returned and on the next day reported

the matter to the police and DDR No.44 dated 24.4.2007 was recorded. On 2.5.1997 FIR No.275 under Sections 435/34 IPC, Police Station : Rania was registered against the accused. After investigation, police submitted cancellation report. Thereafter, the complainant filed the present protest petition.

2. Vide order dated 17.2.2000 all the accused were discharged. However, the complainant preferred a revision petition against the order dated 17.2.2000 vide Judgment dated 30.3.2001 passed by learned Addl. Sessions Judge, Sirsa, in the said revision petition, the order dated 17.2.2000 was set-aside and the matter was sent back to learned Trial Court with the directions to consider the matter afresh on charge in the light of the observations made in the Judgment dated 30.3.2001. The accused persons challenged the judgment dated 30.3.2001 before Hon'ble High Court, but their revision was dismissed vide order dated 24.7.2002 passed by Hon'ble High Court."

Pre-charge evidence was recorded and on the basis thereof, accused were charged under Sections 435/34 IPC vide order dated 06.09.2011, to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Hans Raj, eye-witness as PW1; Karan Singh son of Prem Singh, eye-witness as PW2; Mahant Dutt Gir, complainant as PW3; Krishan Lal, AVRK, D.C. Officer Sirsa as PW4; Sh. O.P. Saluja, SDO, DHBVN, Rania, who produced report Mark 5/A of fire incident as PW5; and Ashok Kumar, Patwari, who

produced reports Ex.PW-3/31, PW-3/31/A i.e. assessment of loss as PW6.

When examined under Section 313 Cr.P.C., the accused pleaded innocence and false implication. In defence, the accused examined Manohar Lal as DW1; Pal Singh son of Hari Singh as DW2 and Radhey Sham Patwari as DW3.

After hearing learned counsel for the parties and perusing the evidence brought on record, learned trial Court acquitted the accused of the charges framed against them.

Feeling aggrieved, the complainant/petitioner went in appeal before learned Appellate Court, which was also dismissed vide impugned judgment dated 19.03.2014.

Hence the present revision petition.

It is contended that learned Courts below erred in not appreciating the fact that the accused had a motive to cause harm to the complainant/petitioner inasmuch as the petitioner had filed ejectment petitions against the accused before the Court of SDO(Civil), Ellenabad. The learned Court further fell in error in not appreciating the explanation tendered by the petitioner that delay in reporting the matter was on account of his being not in town as he had gone to Head Dera Balak at Hisar on the day of occurrence. He came to know about the incident only on the next day when he returned from Dera and got lodged DDR No.44 at P.S. Rania on 24.04.1997. The matter was probed by SDM, Tehsildar, SDO (Electricity) and subsequently, FIR No.275 under Sections 435/34 IPC, at PS Rania was registered. He further contends that the cancellation report was filed by the police under political pressure. The accused took a contradictory stand in

their statements recorded under Section 313 Cr.P.C., as on one hand, they have taken the plea of alibi and on the other hand, they have stated that the wheat crop of the petitioner caught fire due to electric short circuit.

On the other hand, learned counsel for the accused-respondents contended that the complaint of the petitioner has been rightly rejected as no cogent evidence was produced by him to prove guilt of the accused beyond reasonable doubt. Eye-witness Balwan was not examined whereas, another eye-witness, Hansraj, PW1, did not support the case of the prosecution.

I have heard learned counsel for the parties and perused the case file.

In the instant case, the complainant has named his driver, Balwan, as one of the witnesses to the alleged occurrence. However, for the reasons best known to the complainant/prosecution, said witness has not been examined. Karan Singh, PW2, though supported the case of the complainant but his evidence has not been found to be cogent and sufficient to prove the case of the prosecution. Despite the fact that learned trial Court recorded a finding that the accused set on fire wheat straw in their fields, there is no evidence on record to prove that the said act was done with the intention to set on fire the adjoining fields which fact was required to be proved in order to attract the rigors of Section 435 IPC. Furthermore, the evidence of PW5, OP Saluja, SDO, also could not prove that the accused had intentionally set on fire their wheat straw to cause damage to the crop in the adjoining fields. The appropriate remedy for the complainant would have been to proceed for recovery of compensation after proving the loss suffered if any, in accordance with law.

In ***State of Rajasthan vs Shera Ram @ Vishnu Dutta, (2012) 1***

SCC 602, Hon'ble the Supreme Court has held as under:-

“13. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the

accused under our criminal justice system but once the prosecution has proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that the accused is guilty then the court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon misappreciation of evidence or apparent violation of settled canons of criminal jurisprudence.”

It is a settled law as has been held in **C. Antony Vs. K.G. Raghavan Nair, 2002(4) R.C.R. (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 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.

In the present case, the complainant has failed to prove his case beyond a reasonable shadow of doubt.

Accordingly, finding no merit in the instant revision petition, the same is hereby dismissed.

07.02.2017
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No

