

In the High Court of Punjab and Haryana at Chandigarh

CRR No.2805 of 2014

Date of decision: December 05,2017

Harjinder Singh.....Petitioner

Versus

State of Punjab and another.....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Beant Singh Seemar, Advocate for the petitioner.
Mr.A.S.Gill,Senior Deputy Advocate General, Punjab
Mr.Bhanu Pratap Singh,Advocate for respondent No.2

ARVIND SINGH SANGWAN, J.

Petitioner-complainant-Harjinder Singh has filed the present petition under Section 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) challenging judgement dated 17.1.2013 passed by the trial Court, whereby all the accused were acquitted of the offence under Sections 379 and 411 of the Indian Penal Code, 1860 ('IPC' for short) , in FIR No. 19 dated 18.3.2009 registered at Police Station Hariana, Hoshiarpur as well as the judgement dated 28.5.2014 passed by the appellate Court dismissing the appeal filed by the petitioner-complainant.

Brief facts of the case are that the petitioner-complainant has submitted a complaint dated 24.1.2009 in the Office of Senior

Superintendent of Police, Hoshiarpur stating that the accused-Kulwant Singh, has cut down and stolen 80 eucalyptus trees amounting to ₹1,60,000/-(estimate costs) which planted in his land. On completion of Police investigation, a report under Section 173 Cr.P.C was filed in Court. On the basis of the Police Challan and the other documents, a prima facie case against the accused was made out and he was charge-sheeted under Sections 379/411 IPC vide order dated 26.11.2009 passed by the trial Court. Prosecution in order to prove its case examined complainant as PW2, Head Constable Surinder Singh as PW1, Head Constable Sharanjit Singh as PW3, Sardar Gurbachan Singh, Sarpanch of the village Kantia PS Harian as PW4, Surinder Kaur, Panch of the same village as PW5, Sahil Arora, Patwari Halqa Kantian village chak Samana, PS Haryana as PW6, Gurmail Singh as PW7, Sub Inspector Tirath Ram PS Adampur as PW8,

Trial Court, after recording the statements of accused under Section 313 Cr.P.C, in which he pleaded innocence and false implication, vide the impugned judgment dated 17.1.2013, acquitted respondent-accused of the charges. Thereafter, the petitioner preferred an appeal which was also dismissed by the appellate Court and, therefore, this petition has been filed.

The operative part of the judgment of the Lower Appellate Court reads as under:-

“8 It is well settled that conjecture or suspicion has so ever strong cannot take place of proof. If we go through the penultimate para of the complaint Ex. PW2/C dated 30.9.2008 filed by appellant with SSP Hoshiarpur then it is made out as if on enquiry conducted by the Panchayat, appellant got knowledge as if respondent has removed 80 eucalyptus trees after cutting the same and sold the same in the market. Names of the persons who were in the Panchayat who conducted enquiry, have not been mentioned in ExW2/C and as such virtually the very first application qua alleged

theft filed by appellant after getting knowledge from other. That shows as if appellant was not an eye witness of the cutting and removal of 80 eucalyptus trees from his land by the respondent. In view of that virtually initial application ExPW21C was filed by the appellant with the SSP Hoshiarpur on ground of suspicion expressed against appellant by some persons. However, that suspicion alone cannot take place of proof and as such just naming of respondent as the culprit in Ex.PW21C or Ex.2W21A will not prove case of prosecution particularly when khasra numbers of the land where from these trees cut and removed not disclosed in any of the produced documents or in course of the statements of the examined witnesses in the trial court.

9.PW2 Harjinde Singh appellant claims to have purchased 35 kanals 11 Marlas of land through two sale deeds dated 18.10.2023 and 19.1.2005 from respondent Kulwant Singh. So, initially respondent Kulwant Singh was the owner of the land wherefrom the eucalyptus trees allegedly cut and removed. PW2 claimed in examination-in-chief itself as if respondent Kulwant Singh along with his brother-in-law Charan Dass son of Kartar Chand, resident of Village Chuni Kalan in first two weeks of September 2008 stole away 80 eucalyptus trees standing near the boundary line of his fields. However, name of second culprit Charan Dass has not been given in FIR or in any of the applications Ex.FW2/A or in Ex.PW2/C or in the enquiry report submitted by DSP(R) on 18.2.2009. In view of this, it is obvious that PW2 giving exaggerated versions vis-a-vis the contents of the applications submitted by him as Ex.PW2/A and Ex.PW2/C. On that person will give exaggerated versions, who is to disclose lie. If really Charan Dass also would have accompanied respondent in cutting and removal of these trees, then Charan Dass also would have been arrayed as an accused in the applications Ex.PW2/A or Ex.PW2/C but same is not the position and as such, the inference is obvious that actually PW2 due to his residence in Hoshiarpur, did not see the actual cutting and removal of these trees by respondent or anybody else. Though PW2 claimed to have filed applications on 24.9.2008 and 1.10.2008 against Kulwant Singh respondent and his brother in law Charan Dass qua theft of 80 eucalyptus trees, but name of Charan Dass does not figure in any of those applications Ex.PW2/A and Ex.PW2/C of above referred dates and as such it is obvious that PW2 giving versions away from reality and that is why addition of name of Charan Dass as culprit has been done by PW2 in his statement recorded in the court, albeit such name was not disclosed in the earliest ever filed applications.

10. PW2 admitted in cross-examination as if FIR No.25, dated under sections 452,380 IPC etc. has been registered against him at Mice Station Haryana due to which he filed application with higher authorities for complaining of his false implication, but despite that he received letter from the Deputy Commissioner, Hoshiarpur tht his application has been filed due to pendency of the court case. That FIR virtually was on allegation of demolition of house of Kulwant Singh and of getting of forcible possession is a fact borne from cross-examination of PW2, because he claims

that he was on duty at the time on which alleged demolition of house of Kulwant Singh took place. So, this means that case against appellant with FIR No.25 dated 27.3.2009 had already been registered on complaint of respondent Kulwant Singh. FIR No.19 of this case is of date 18.3.2009 and as such, virtually said FIR No.25 registered almost at the same time as and when the FIR registered.

11. PW2 claimed to have not filed any civil suit against Kulwant Singh and his family members, but he admitted as if Rattan Kaur (mother of respondent Kulwant Singh) filed civil suit titled as Rattan Kaur vs. Harjinder Singh for recovery. This admission of PW2 establishes as if civil litigation between the parties even pending. When civil and criminal litigation pending between the parties, then embellished or exaggerated versions given by the witnesses assumes significance and as such, embellished versions given by PW2 qua Charan Dass also being the culprit leads to the inference as if PW2 has intention of trapping the adversary by cooking up story.

12. Copy of the plaint of Civil Suit No.45 of 7.9.2010 titled as Harjinder Singh Vs Rattan Kaur and others shows as if appellant filed that suit for possession of land measuring 35 kanals 11 marlas by claiming that he has purchased this land from Kulwant Singh and his mother Rattan Kaur on the basis of sale deeds dated 1.10.2003 and 19.7.2005. Reference of these sale deeds even specifically made by PW2 in his examination-in-chief. This means that the land forming subject matter of abovesaid Civil Suit No. 45 is the same wherefrom the alleged eucalyptus trees removed by respondent. After going through Ex D4, it is made out that plea raised by the appellant in para 5 of the said plaint was as if respondent Kulwant Singh along with Rattan Kaur and Hansa with help of unsocial elements tried to cut the trees and demolish the Tube well connection on 20.11.2007. In para 7 of Ex D4, it is mentioned as if respondent Kulwant Singh along with his mother Rattan Kaur and his brother Hansa took illegal possession of the said land in first week of 4eAugust 2009 by taking advantage of involvement of appellant Harjinder Singh and his relatives in a criminal case got registered by Manjit Kaur. So, when these contents of para 7 of Ex.D4 read with examination-in-chief of PW2, then the same leads to the inference as if possession of the land, wherefrom the trees alleged to be removed was illegally taken by respondent Kulwant Singh his mother and brother in August 2009. No reference in ExD4 made at all qua cutting and removing of 80 eucalyptus trees by respondent in 2008 from this land in Ex4. Had really 80 eucalyptus trees been cut and removed by respondent in 2008 from this land in Ex.D4. Had really 80 eucalyptus trees been cut and removed by respondent in 2008, as claimed by PW2, then reference of the same would have been made in ExD4 and even relief of recovery of the price of these stolen trees would have been sought but that relief through ExD4 has not been claimed and as such, the inference is obvious that actually story regarding cutting and removal of the trees may not be correct and that is why the same not projected through the civil suit filed subsequent to the alleged theft in

September, 2008.

13 Unexhibited copy of the written statement filed to that Civil Suit No.45 by his mother and his brother Hansa there on the record to show as if mother of respondent already filed suit for recovery of Rs.1129,687/- and after getting notice of institution of that suit this Civil Suit No. 45 of 1.1.2010 instituted. Copy of the plaint of that civil suit for recovery of Rs.1 1,29,0-687/- also available on the record of the trial court to show as if Rattan Kaur, the mother of respondent claimed herself to be the owner of 35 kanals 11 marlas of land, but her son i.e. respondent Kulwant Singh being attorney agreed to sell the said land Rs.2,45,000/- per killa through agreement dated 20.11.2001. So virtually the subject matter of that civil suit filed by Rattan Kaur is the same land of 35 kanals 11 marlas, from which the trees alleged to be removed by respondent. In the written statement filed in response to Ex.D4 i.e. sun fried by appellant against respondent and his mother and brother, it is mentioned that though the sale deeds got executed by appellant Harjinder Singh from respondent Kulwant Singh as attorney of Rattan Kaur, but despite that as per agreements, mutations were not to be got sanctioned in respect of the alleged sold land till complete payment made to Rattan Kaur and her son respondent Kulwant Singh. Sp, virtually dispute of civil nature remained pending between appellant and respondent qua genuineness of the sale deeds. As the case of respondent put forth in the civil suit is that payment has not been made due to which possession to sesame with respondent until complete payment made and as such, virtually respondent claiming to be in possession of the suit land despite execution of the sale deeds.

14. Agreements Ex D2 and Ex D3 of date 2.9.2003 and 19.6.2005 even have been produced on the record to show as if the sale-deeds relied upon by the appellant got executed from Kulwant Singh and her mother for showing appellant to be owner of the property which was required to be shown to the embassy because daughter of appellant was to be sent abroad. In these agreements itself, it has been mentioned that mutation of the land alleged to be purchased land from banks till entire payment of sale consideration made. Even in these agreements, it is mentioned as if possession of the land not to be got by appellant Harjinder Singh till entire payment made, When all these documents taken into consideration, then they leave no manner of doubt that if the agreements executed by appellant, namely, Ex.D2 of 2.9.2003 and Ex.D3 of date 9.6.2005 itself, it has been agreed by appellant not to get possession of the land, wherefrom trees alleged to be removed by the respondent. In view of the existence of these agreements and in view of the pending civil litigation referred above, it is obvious that virtually appellant was not to get possession of the land alleged to be purchased by him from respondent and his mother. If such possession was not to be got by appellant in pursuance of these agreements, due to which civil litigation remained pending, then file inference is obvious that trees were not removed from the land possessed by the appellant.

When possession of the land on which trees were standing was not with the appellant, then question of possession of these trees by appellant does not arise. So, prosecution remained unsuccessful in proving that the trees belonging to appellant actually were cut and removed. Being so, necessary ingredients attracting provisions of section 379 IPC missing in this case and as such, conviction of respondent rightly not recorded qua commission of offences punishable under sections 379 and 411 IPC each.

15. Admissions by PW2 qua pendency of the civil suits enough to hold that reference to Ex D4 and above referred documents can be made for finding truth.

16.If respondent Kulwant Singh alongwith his mother has filed suit for recovery against appellant then to the contrary PW2 claims to have not filed any suit against Kulwant Singh and his family members but that in fact is not the position as disclosed by copy of the plaint Ex. D4 and as such PW2 disclosed lie in this respect.

17.PW2 asked if the groundnut crop standing in dispute was sown by Kulwant Singh, in response to which he claimed as if the said crop grew at its own. It is unbelievable that groundnut crop will grow at its Own at the place/where it was earlier cut. PW2 admitted to have not sown anything in the land in 2010 and even in 2009. Non-sowing of any crop by PW2 in 2009 or 2010 or prior thereto itself reflects as if appellant Was not in possession of the land purchased by him and as such, recitals contained in Ex.D2 and Ex.D3 the agreements, fully lends credence to case of respondent as if appellant not in possession of the land wherefrom trees alleged to be cut and removed.

18.PW2 specifically admitted in cross-examination to be not present at the time when trees were cut and removed by the respondent and even he does not know as to where these trees were sold by respondent. So, these versions of PW2 leads to the only inference as if PW2 is not an eyewitness of cutting and removal of these trees or sale of the same..This fortifies my above conclusions in this respect where I have held that statement of PW2 being hearsay qua theft, is inadmissible in evidence in view of Section 60 of Indian Evidence Act.

19 PW2 claimed to have planted Safeda trees in 2003 with the help of the labour after bringing the same from his own land. None of those labourers examined and nor the khasra numbers of the land wherefrom these plants brought by PW2 mentioned by him and as such, the best evidence available in this respect even withheld. PW2 admitted having filed earlier application on 24.11.2009 with SSP Hoshiarpur by claiming that no enquiry on the basis thereof was conducted by the police. PW2 claims to have filed another application with SSP Hoshiarpur and thereafter on the basis of the said enquiry report, this case registered. In none of those applications, khasra numbers of the land wherefrom, trees removed, were mentioned is a fact admitted by PW2 in cross-examination and that fact has already been taken note of in above discussion.

20. PW2 claimed as if PW7 Gurmel Singh disclosed him the name of respondent as the person who stole away Safeda trees. Even PW2 admitted having got the present FIR registered against respondent on basis of the facts disclosed to him by abovesaid Gurmel Singh. This FIR was registered on the basis of the suspicion expressed against appellant because of the alleged admission of guilt by him before Panchayat is also a fact borne from cross-examination of PW2. All these versions given by PW2 leads to the inference as if present FIR got registered against respondent on the basis of suspicion expressed by the other against respondent. However, PW7 even in cross-examination admitted to be not knowing as to whom those eucalyptus plants belongs or as to who cut and removed the same. If PW7 does not know as to who has cut and removed the eucalyptus trees or as to who was the owner thereof, then question of disclosure by him of these facts to PW2 does not arise. This means that PW2 disclosed lie as if he got knowledge regarding cutting and removal of the trees in question by respondent Kulwant Singh from disclosures made by Gurmel Singh. That smashes story of prosecution case as to wherefrom the actual information got qua cutting and removal of the trees in question by respondent and none else.

21. PW7 Gurmel Singh claimed as if disclosure statement Ex.PW/1A was suffered by respondent Kulwant Singh in his presence on 21.3.2009, in pursuance of which recovery of two pieces of wood got effected, qua which memo Ex.PWE/B was prepared. In view of the effect of this recovery, in pursuance of the disclosure statement of the respondent, it is vehemently contended by counsel for appellant that as respondent has not accounted for these recovered pieces of wood and as such, he has committed offence punishable under Section 411 IPC at least. The recovered pieces of wood were not having any specific marks of identification and there is nothing on the record to suggest as to who actually was the owner of these recovered pieces of wood and as such these pieces of wood being not proved to be stolen property, would not render respondent liable for commission of offence under section 411IPC

22. PW7 admitted specifically cross-examination to be not knowing as to who was owner of these two recovered pieces of wood and even he does, not claim to be knowing as to who cut and removed these trees. So statement of PW7 does not at all establish that actually the recovered pieces of wood were stolen or theft in respect thereof was committed.

23. PW7 identified the pieces of wood lying outside the court but that identification alone will not serve any purpose, particularly, when the recovered pieces not proved to be owned by the appellant and even not proved to be the stolen property. PW7 has village at a distance of 2 kilometers away from the disputed land and he is on visiting terms with appellant Harjinder Singh and as such it establishes that PW7 introduced in the witness box because of his good relations with the appellant.

24 PW7 admitted as if his signatures were obtained by the appellant on blank papers and if that be the position, then virtually documents Ex.PW/A and Ex.PW/B may have been got witnessed from PW7 being henchman of appellant. Even PW7 admits as if his statement recorded by the police was not read over and explained to him and as such statement of PW7 was recorded by the police without making known the contents of the same to PW7. Such course of action adopted by police shows that it was having inclination to trap the respondent by joining henchman of the appellant like PW7. PW7 claimed that respondent was in police lock up before the time he was called twice a police station. However PW7 not aware as to how many days prior to his visit to the police station was in custody. This means that PW7 called by police as per its wish twice, because of PW7 being intimate to the appellant of the case namely PW2. So, witnessing of the disclosure statement by PW7 was because of his intimacy with the appellant.

25. PW8 SI Tirath Ram arrested on 19.3.2009 by preparing memo Ex.PW8/C and thereafter disclosure statement Ex.PW8/A was suffered by respondent on 21.3.2009 in presence of PW8 and HC Surinder Singh are the versions of PW8. This means that said disclosure statement as per PW8 was not suffered by respondent in presence of PW7 and as such, PW7 is a witness introduced because of his being closeness to the appellant.

26. PW8 admitted in cross-examination that reference of khasra numbers, wherefrom trees cut and removed, not made in the FIR and nor enquiry in that respect was conducted. Even reference of the same not made in application Ex.PW2/A or Ex.PW2/B is a fact admitted by PW8 in Cross examination. This means that neither of the case disclosed police the khasra numbers wherefrom the trees allegedly cut and removed and nor police conducted enquiry in that respect. If that be the position, then it cannot be held that actually the trees were cut and removed from the land owned by the appellant. So, one of the necessary provisions of sections 379 and 411 each missing or is not proved as per requirements of law. No respectable of the village was joined in investigation is a fact admitted by PW8 in cross-examination. As recovery effected after disclosure statement suffered at police station and as such, if really genuine investigation was to be conducted then some respectable could have been associated but the same not associated and as such, it is obvious that disclosure Statement and recovery in consequence thereof got witnessed from intimate of appellant alone namely PW7.

27. PW8 admitted in cross-examination as if the land in question earlier was owned by respondent but now by appellant Harjinder Singh. However, PW8 not aware, if respondent is in possession of the same till date. This means that the Officer of the case did not ascertain as to who remained in possession of the land wherefrom the trees cut and removed. Being so, virtually failed to prove that the land wherefrom the trees cut and removed, actually was in possession of appellant at the time of cutting and removal of the same.

28. PW8 admitted in cross-examination as if Kulwant Singh and his wife has got FIR against appellant-cum-complainant qua demolition of the house existing in the suit land. This version of PW8 lends credence to the view as if civil as well as criminal litigation between the parties due to which motive with the appellant to falsely trap the adversary is all the more there. No theft committed by in presence of PW8 or PW7 or any other witness and as such direct evidence even not available to establish that respondent and none else committed the theft. Rather enquiry even not conducted as to who was in possession of the land where from the trees cut and removed, but contents of ExD2 and ExD3 referred above establishes as if the land where from the trees allegedly cut and removed was to remain in possession of respondent and his mother till entire payment of the sale consideration and as such the inference is obvious that actually respondent able to show by some reasonable evidence as if he or his mother was in possession of the land wherefrom the trees alleged to be cut and removed. Being so, in the absence of any cogent and convincing evidence qua appellant being in possession, it has to be held that prosecution failed to prove its case against respondent qua commission of offence under sections 379 and 411 IPC, even if copy of jamabandi Ex.PW6/A of 2002-2003 and of khasra girdawri for crops of Sauni 2008 Ex.PW6/b shows appellant Harjinder Singh to be owner in possession. That entry got on basis of mutation Nos 208 and 221 in violation of the contents of Ex.D2 and Ex.D3 at the time when civil litigation even was pending reliance on Ex.PV6/A or Ex.PW6/8 cannot be placed for finding that actually appellant was in possession of the land wherefrom trees alleged to be cut, particularly, when the Investigating Officer of the case has not ascertained this fact.

29. PW1 HC Surinder Singh is also a witness of disclosure statement ExPW1/A and of the recovery memo Ex PW1/B but he did not see the case property in the court. PW1 does not know anything except qua disclosure statement and of logs and as such, his statement does not at all establish that actually the logs recovered in pursuance of disclosure statement of respondent were stolen or as to from which land they were cut and even his statement does not establish that there was any identity mark on those logs for establishing the same to be owned by the appellant.

30. PW3 brought record of ExRW2/C and PW3/A but he has no personal knowledge regarding the case. So, statement of PW3 does not throw any light qua the facts as to who committed theft or as to from which land.

31. PW4 Gurbachan Singh claimed that on 23.9.2008 an application by Harjinder Singh Gill was filed with him regarding theft of 80 poplar trees in response to which he being Sarpanch of Village Kantian issued notice to respondent for appearance, the original of which brought by him and copy of the same 1S Ex.PW4/A. So, this statement of PW4 establishes that actually original of Ex.PW4/A was brought by PW4 in the court at the time of record of his examination-in-chief. So, it is not a case in which original of Ex PW4/A has not been produced in the court.

32 PW4 claimed in that disclosure statement Ex.PW4/B was suffered by Kulwant Singh for pleading guilty having committed theft of 80 trees, because, he was in urgent need of money. This fact was admitted in the Panchayat and as such, it is vehemently contended by counsel for appellant that this admission binds respondent due to which he should have been held guilty qua commission of offence under section 379 IPC. Virtually PW4 is Sarpanch of Village Kantian as well as of Village Samana and as such PW4 is the Sarpanch of the village in which the land falls. Though PW4 claimed that both Harjinder Singh appellant and respondent Kulwant Singh signed on Ex.PW4/B, but in fact signatures of Kulwant Singh are not there on Ex.PW4/B is a fact admitted by PW4 in cross examination. Non-appearance of signatures of Kulwant Singh are not there on Ex.PW4/B is a fact admitted by PW4 in cross-examination. Non-appearance of signature on Ex.PW4/B enough to show as if he may not have suffered any disclosure statement and that is why his signatures on Ex.PW4/B not obtained. In view of this position, if reliance on Ex.PW4/B not placed by the trial court then no illegality committed by it, because it is settled law that prosecution to prove its case beyond shadow of doubt. In view of nonappearance of signatures of Kulwant Singh on Ex.PW4/B, the doubt remains if really such disclosure statement was suffered by Kulwant Singh before the Panchayat.

33. PW4 claimed to have got the estimate of worth of the cut trees from contractor Kewal Singh and Subhash Chand assessed but despite that Subhash Chand alone signed on Ex.PW4/B. Neither Subhash Chand and nor Kewal Singh have been examined and as such, the prosecution virtually failed to prove as if assessment of price actually got done correctly or not. PW4 also has good relations with appellant Harjinder Singh, a resident of Hoshiarpur, because he visits his village. This means that PW4 being intimate to appellant, also can depose in favour of appellant. In view of this factum of non-appearance of signatures of respondent Kulwant Singh of Ex.PW4/B assumes significance for holding as if respondent may not have confessed his guilt before Panchayat even.

34 PW4 has not seen cutting of eucalyptus trees and nor he counted the same till date and as such PW4 did not assess the facts after visit on the spot, If really 80 eucalyptus trees would have been cut from the spot, then bases of the same would have remained embedded the ground and the trenches made out due to such cutting would have remained on the spot but nothing of such sort assessed by PW4 and as such PW4 virtually introduced in the witness box for corroborating the prosecution case due to his intimacy with the appellant. So statement of PW4 even does not at all establish that actually theft of the trees committed by the respondent.

35. PW4 admitted in cross-examination as if respondent Kulwant Singh is owner of the land and he does not know if maize and groundnut crops were sown by him in the fields. This means that PW4 has not denied about the ownership and possession of the land, where from the trees cut and

removed, to be that of respondent. However, PW5 SurinderKaur, Panch of Village Kantian, a witness of Ex.PW4/B admitted in cross-examination that property in dispute owned and possessed by father and mother of Kulwant Singh and as such these statements of PW4 and PW5 lead to the inference as if the crop in the suit land may have been sown by because of the same being owned and by his mother and father. If that be the position then removal of the trees from the land owned and by father of the does not render liable for commission of offence of theft.

36. PW4 admitted as if house of Kulwant Singh was demolished but he is unable to disclose if the same was demolished by the appellant Harjinder Singh. However PW4 admitted as if appellant Harjinder Singh filed civil suit against Kulwant Singh for possession of the land, which means that even to the knowledge of PW4, respondent remained in possession and that is why appellant has to file civil suit for possession. PW5 claimed in cross-examination first as if Kulwant Singh respondent gave him in writing regarding cutting of eucalyptus trees but later on he changed the version for claiming as if Kulwant Singh orally agreed in the Panchayat having removed the trees. Giving of two versions in two breaths by PW4, an intimate of appellant leads to the inference as if PW4 also has to suppress PW4 does not know as to who has cut the trees but he claims to have deposed at the instance of appellant Harjinder Singh. These admissions of PW4 leads to the inference as if appellant even without getting writing from respondent claimed about the admissions suffered by respondent in the Panchayat. As PW4 deposed at the instance of appellant Harjinder Singh and as such he has inclination of case of prosecution.

37. PW5 after admitting suit land to be owned and possessed by parents of Kulwant Singh, expressed ignorance, if Harjinder Singh wants to forcibly occupy the said land. This means that PW5 does not deny about intention of appellant to possess the suit land forcibly. PW5 admitted as if Harjinder Singh forcibly and illegally dismantled the house of Kulwant Singh at the time when there was marriage of Dalbir Kaur in the village. After investigation, police registered case against Harjinder Singh is a fact admitted by PW5. These versions of PW5 lends credence to the defence as if appellant for escaping from that act of illegally dismantling the house may have planted this case. Enmity between appellant and respondent on account of that and clue to pendency of civil litigation, as such, is established. So, the above evidence available on the record establishes as if and wherefrom the trees alleged to be cut, is possessed and cultivated by Kulwant Singh, but false case may have been planted. PW5 in last lines of his cross-examination even admitted as if Kulwant Singh cultivating the land question and is in possession of the same. If Harjinder Singh appellant has mortgaged land with Punjab Gramin Bank, Branch Baghpur for consideration of Rs 2,00,000/- or with Primary Cooperative Agriculture Bank Limited, Hoshiarpur in lieu of Rs 2,50,000/- as borne from cross-examination of PW6, then due to that alone, possession of appellant over the suit land not established because statement of PW5 and the other discussed

evidence establishes as if piece of land wherefrom the trees cut and removed not proved to be or occupied by the appellant at the alleged time of cutting of the trees. If such land not proved to be by the appellant, but shown to be possessed by the respondent, the question of stealing of the trees by the respondent does not arise. Being so, judgment of acquittal recorded by the trial Court does not call for interference or on shaky evidence of alleged confession before the Panchayat or on shaky evidence of recovery of two pieces of wood in pursuance of disclosure statement of the respondent.

33. When appeal against order of acquittal preferred, then appellate court has to keep in mind that presumption of innocence is in favour of the accused and he is entitled to benefit of reasonable doubt. Even on re appreciation and re-evaluation of the evidence, a different view than that the one recorded by the learned trial court cannot be arrived at and as such judgment of acquittal recorded by the learned trial court does not call for interference. No other worth point argued.

39. As a sequel of the above discussion, appeal of the appellant merits dismissal and the same is hereby dismissed. Record of the trial Court be returned and appeal file be consigned."

Learned counsel for the petitioner has submitted that on the date of occurrence in the first/second week of September, 2009, there are two sale deeds dated 18.10.2003 and 19.1.2005 and the petitioner by way of leading evidence has proved that he purchased land from accused Kulwant Singh, who was owner of property in dispute and 80 eucalyptus trees were cut and stolen by the respondent-accused. Learned counsel for the petitioner has further submitted that it is proved from the statement of PW6, Patwari that the petitioner is in possession of the land in dispute on the basis of revenue record i.e. jamabandi Exhibit PW8/A and khasra number Exhibit PW8/B, It is also submitted that the petitioner has examined himself as PW2 and deposed that 80 eucalyptus trees valuing ₹1,60,000/- were cut and taken by the accused and after cutting the same, he had committed offence under Section 379 IPC. It is also submitted that the accused had admitted in Panchyat through a writing Exhibit PW4/1 that he has committed the theft of the trees and another witness to the

Panchayat i.e. PW3 has also proved the aforesaid fact.

Learned State counsel, on the other hand, has submitted that the petitioner has failed to prove his case beyond doubt as it has come in the statement of PW6, Patwari that he can not say who was the owner of the property in dispute without looking into the revenue record.

After hearing the learned counsel for the parties, I am of the opinion that there is no merit in the present petition.

Both the Courts below on appreciation and re-appreciation of evidence has held that none of the witnesses could prove that the respondent-accused have cut the trees in their presence. The identity of the person, who cut the trees, has also not been proved by the complainant who appeared as PW2 as well as from the statement of PW7. Even PW4 and PW5 Sarpanch and Member of the Panchayat, have not been able to establish the identity of the accused as these witnesses have stated that they are not the eye witnesses to the theft.

On the perusal of the evidence led by the complainant, it is nowhere proved that he was in exclusive possession of the land in dispute from where the trees were cut.

Since both the Courts below have recorded the concurrent finding that the prosecution has completely failed to prove the guilt and identity of the accused, in view of the judgment of Hon'ble the Supreme Court in Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748, holding that where, in a case, two views are possible, the one which favours the accused, should be adopted by the appellate Court, the impugned order does not call for interference. Accordingly, this

revision petition is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

December 05, 2017
arya

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

