

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

CRR No.500 of 2014 (O&M)

Date of decision: 03.02.2017

Jagtar Singh

..... Petitioner

Versus

The State of Haryana and others

..... Respondents

**CORAM : HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr. Varinder Singh Rana, Advocate for applicant-petitioner.

Mr. Randhir Singh, Addl. A.G. Haryana for respondent-State.

None for respondents No.2 to 5.

DARSHAN SINGH J.

CRM No.34389 of 2016

This application has been moved by the petitioner for treating the criminal revision *i.e.* CRR No.500 of 2014 as an appeal against acquittal on the grounds *inter alia* that the present criminal revision was filed against the judgment of acquittal dated 16.12.2013 passed by the learned Additional Sessions Judge, Sirsa. In fact the appeal lies against that judgment on behalf of complainant Jagtar Singh. This Court has ample power under Section 401 Sub Section 5 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' - for short) to treat the criminal revision as an appeal.

Complainant-injured Jagtar Singh being the victim has filed the criminal revision against the acquittal of respondents No.2 to 5 by the learned Additional Sessions Judge, Sirsa vide judgment of acquittal under challenge dated 16.12.2013.

Learned counsel for the applicant-petitioner has contended that the appeal was maintainable against the acquittal at the instance of victim/injured and by exercising the powers under Section 401 Sub Section 5 Cr.P.C. present criminal revision may be treated as an appeal.

We have duly considered the aforesaid contentions.

There is no dispute with the proposition of law that the appeal against acquittal is maintainable at the instance of the victim as per the provision of Section 372 Cr.P.C. It appears that the criminal revision has been preferred by the applicant-victim against the judgment of acquittal dated 16.12.2013 under some erroneous belief that the appeal against the acquittal may not be maintainable at his instance.

Section 401 Sub Section 5 Cr.P.C. provides that where an appeal lies but an application for revision has been made to the High Court and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

Thus, in view of these facts and circumstances, the present application is hereby allowed. CRR No.500 of 2014 will be dealt with as a petition of appeal in accordance with the provisions of Section 372 Cr.P.C.

but subject to the provisions of Section 378 Cr.P.C.

The Registry is directed to correct the record accordingly.

CRM-34390-2016 (O&M)

The appellant-complainant is aggrieved against the judgment of acquittal dated 16.12.2013 passed by the learned Additional Sessions Judge, Sirsa.

2. The facts culminating to the passing of the aforesaid judgment of acquittal in nutshell can be summed up as under : -

3. Appellant - complainant Jagtar Singh made the statement Ex.PW3/A to ASI Raj Mal, Police Station Rori, Distt. Sirsa that on 10.06.2008 at about 10:20 p.m., he along with his mother Baldev Kaur, wife Hardeep Kaur and sister-in-law (brother's wife) Gurmeet Kaur were present in their house. In the meantime, accused Kulwant Singh armed with a *Gandasa*, Gora Singh armed with a stick, Banta Singh armed with a *Kasia* and Gurtej Singh armed with a stick entered into their house and stated that they will teach them a lesson for abusing them. Thereafter, accused-respondent Kulwant Singh gave a *Gandasa* blow on his right wrist. He gave another blow near his left wrist. Accused Gora Singh also gave a stick blow on his right and another blow on his left thigh. Accused Banta gave a *Kasia* blow from blunt side on the forehead of his mother Baldev kaur and accused Gurtej Singh gave a stick blow on left hand of Baldev Kaur. They raised alarm and were rescued by Hardeep Kaur and Gurmeet Kaur from the clutches of the accused. Thereafter, the assailants ran away from the spot. Appellant-complainant Jagtar Singh and his mother Baldev Kaur were got

admitted in Primary Health Centre, Kalanwali by Bhola Singh, where they were medico legally examined. On the basis of statement made by appellant Jagtar Singh the case bearing FIR No.84 dated 11.06.2008 under Sections 452, 323, 324 read with Section 34 of the Indian Penal Code, 1860 ('IPC' – for short) was registered. On receipt of X-ray report of complainant Jagtar Singh, the offence punishable under Section 326 IPC was added. During the course of investigation, respondents No.2 to 5 were arrested. Weapons of offence were recovered from their possession. On completion of the formalities of investigation, the report under Section 173 Cr.P.C. was presented in the Court for trial.

4. Accused-respondents No.2 to 5 were charge-sheeted for the offences punishable under Sections 452, 323, 324 and 326 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

5. In order to substantiate its case, the prosecution examined as many as seven witnesses.

6. After closure of the prosecution evidence, when examined under Section 313 Cr.P.C., the accused pleaded false implication. Accused-respondent Kulwant Singh and Gora Singh took the pleas that their father Pakhar Singh was murdered by the complainant party and the present case has been got registered falsely as a counter blast.

7. The learned trial Court vide judgment dated 04.04.2013 held guilty and convicted respondents No.2 to 5 for the offence punishable under Sections 452, 323, 324, 326 read with Section 34 IPC and they were sentenced to undergo rigorous imprisonment for a period of three years and

pay a fine of ₹500/- each for the offence punishable under Section 452/34 IPC; to undergo simple imprisonment for three months and pay a fine of ₹200/- each for the offence punishable under Section 323/34 IPC; to undergo simple imprisonment for a period of six months and a fine of ₹300/- for the offence punishable under Section 324/34 IPC and rigorous imprisonment for a period of three years and a fine of ₹1000/- each for the offence punishable under Section 326/34 IPC. All the sentences were ordered to run concurrently.

8. Aggrieved with the aforesaid judgment of conviction and order of sentence the respondents No.2 to 5 preferred the appeal. The said appeal was accepted vide the impugned judgment dated 16.12.2013 by the learned Additional Sessions Judge and the conviction and sentence awarded to respondents No.2 to 5 were set aside. They were acquitted of the charges levelled against them. Hence, this appeal along with an application to leave the appeal.

9. We have heard Mr. Varinder Singh Rana, Advocate, learned counsel for applicant-appellant, Mr. Randhir Singh, learned Additional Advocate General for the State of Haryana and have meticulously examined the record of the case.

10. Initiating the arguments, learned counsel for the applicant-appellant contended that respondents No.2 to 5 were held guilty and convicted by the learned trial Court on correct appreciation of the oral as well as the medical evidence. He contended that both the injured namely appellant Jagtar Singh and his mother Baldev Kaur have consistently

deposed that respondents No.2 to 5 have criminally trespassed into their house and caused injuries to them. Their oral testimonies are also corroborated from the medical evidence. The occurrence was even admitted by the accused party as per their version in FIR No.85 of 2008 got registered on the statement Naseeb Kaur with respect to murder of Pakhar Singh. He contended that appellate Court has wrongly held the injuries suffered by Jagtar Singh and Baldev Kaur to be self-suffered. Jagtar Singh has suffered the fracture of radius bone in its lower 1/3rd part. This injury was caused with a sharp weapon. Such type of serious injury cannot be self-suffered. Thus, he contended that the findings recorded by the learned first appellate Court are perverse and the conviction of respondents No.2 to 5 has been wrongly set aside. They are proved to have criminally trespassed into the house of the appellant and to have caused injuries to appellant Jagtar Singh and his other Baldev Kaur.

11. We have given our thoughtful consideration to the aforesaid contentions.

12. Respondents No.2 to 5 were held guilty and convicted by the learned trial Court for the offences punishable under Sections 452, 323, 324, 326 read with Section 34 IPC for causing injuries to appellant Jagtar Singh and his mother Baldev Kaur, but their appeal against conviction was accepted by the learned Additional Sessions Judge, Sirsa. Their conviction and sentence was set aside and they were acquitted of the charges.

13. It is well settled principle of law that while dealing with the application for leave to appeal against the judgment of acquittal, it should

not be forgotten 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 principles of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the Court below. It is further the settled principle of law that if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the findings of acquittal recorded by the learned Court below. To support this view reference can be made to case ***Murugan and Anr. Vs. State Rep. By Public Prosecutor Madras, Tamil Nadu & Anr., 2008(4) RCR (Criminal) 906***. The same legal position has been reiterated in cases ***Prem Singh Vs. State of Haryana (2011)3 Supreme Court Cases (Criminal) 794***, ***Anil Kumar Gupta Vs. State of Uttar Pradesh, (2011) 3 Supreme Court Cases (Criminal) 94*** and ***Sunil Kumar Sambhudayal Gupta (Dr.) and others Vs. State of Maharastra, (2011)2 Supreme Court Cases (Criminal) 375***. In case ***Mrinal Das and others Vs. State of Tripura, (2011)3 SCC (Criminal) 810***, the Hon'ble Supreme Court has laid down that in an appeal against acquittal in the absence of perversity in the judgment and order the appellate court should not interfere. The order of acquittal is to be interfered with only when there are compelling and substantial reasons for doing so *i.e.* when the order is clearly unreasonable, the Court below has ignored the evidence or misread the material evidence or has ignored the material

documents.

14. In view of the aforesaid legal position, we have to examine the case in hand. It is pertinent to mention that during the appeal against conviction, the learned Additional Sessions Judge has allowed the application filed by accused-respondents No.2 to 5 for additional defence evidence vide order dated 24.09.2013 for recording the statement of Naseeb Kaur widow of Pakhar Singh as a defence witness. Her statement was recorded which was taken into consideration by the learned Additional Sessions Judge. The said statement was not available on record when the judgment of conviction was pronounced by the learned trial Court. The learned first appellate Court has taken the view that after the murder of Pakhar Singh by the family members of appellant, they fabricated the injuries and got registered the present case as a counter blast. This view taken by the learned Additional Sessions Judge cannot be stated to be perverse warranting any interference by this Court.

15. This fact is not disputed that on the statement of DW-1 Naseeb Kaur case FIR No.85 dated 12.06.2008 with respect to the abduction and murder of Pakhar Singh was registered against the family members of the appellant. It is also not disputed that in that case two family members of the appellant were convicted by the learned Sessions Judge, Sirsa. The occurrence regarding abduction of Pakhar Singh was prior to the registration of the present case. In these circumstances, the conclusion arrived at by the learned Additional Sessions Judge is reasonable and possible that in order to set up a counter blast to the occurrence of abduction

of Pakhar Singh the appellants might have got registered this case. PW-2 Dr. Bhushan Garg has admitted that injuries on the person of Jagtar Singh and Baldev Kaur may be self-suffered but can only be possible when the patient has taken some intoxicant. Though, the learned trial Court has observed that there was no evidence that the injured were under intoxication. However, it is not known as to whether the doctor has carried out any test to assail as to whether any intoxicant was administered to the injured or not. The judgment of the trial Court reveals that appellant Jagtar Singh and Baldev Kaur were medico legally examined by PW-2 Dr. Bhushan Garg M.O. Primary Health Center, Kalanwali after 04:50 a.m. *i.e.* after more than 6½ hours of the occurrence and with the lapse of this time, the symptom of intoxicant may disappear.

16. Thus, in these circumstances the conclusion of the learned Additional Sessions Judge that the members of complainant party could cause injuries upon themselves, got them hospitalised and got registered the case against respondents No.2 to 5 as a counter blast to the occurrence of the abduction and murder of Pakhar Singh, the father of respondents No.2 & 3, is a reasonable and possible view.

17. Thus, keeping in view our aforesaid discussion, the impugned judgment of acquittal passed by the learned Additional Sessions Judge does not suffer from any perversity. The learned Additional Sessions Judge has taken the reasonable and possible view on the basis of evidence available on record which cannot be disturbed by this Court. There are also no compelling and substantial reason to interfere with the acquittal of

respondents No.2 to 5 recorded by the learned Additional Sessions Judge.

18. Resultantly, the application for leave to appeal is hereby declined.

19. Consequently, the present appeal is dismissed.

**(S.S. SARON)
JUDGE**

**(DARSHAN SINGH)
JUDGE**

03.02.2017

sunil yadav

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No