

In the High Court of Punjab and Haryana at Chandigarh.

CRM-A-1900-MA of 2017

Date of Decision:- March 28, 2018

State of Haryana

.....Applicant

Versus

Naseem and another

.....Respondents

CORAM: Hon'ble Mr. Justice T.P.S.Mann
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Kapil Aggarwal, Additional Advocate General, Haryana.

Gurvinder Singh Gill, J.

1. State of Haryana has filed this appeal challenging judgment dated 15.2.2017 passed by the Court of Additional Sessions Judge, Ambala whereby accused Naseem and Aseeb have been acquitted of the offences punishable under Section 307 read with Section 34 IPC and Section 13(2) of Haryana Gauvansh Sanarakshan and Gausamvardhan Act, 2015.
2. The case of prosecution, in nutshell, is that on the night intervening 15.6.2016 and 16.6.2016 when a police party headed by ASI Shamsheer Singh was patrolling at G.T. Road near 'Lohgarh turn', then complainant Gourav Arora accompanied by one more person furnished information that a truck bearing registration No.UP-71T-3782 headed towards Uttar Pradesh would pass through G.T.Road which was loaded with cows and buffaloes. Upon receipt of said information, the police party raised barricades on G.T. Road. It is alleged

that at about 12.15 A.M., a truck passing from that road was signalled to stop but the truck driver instead of stopping hit against the barricade and attempted to run his truck over the complainant and one Akash Kumar with an intention to kill them but they saved themselves by quickly jumping out of the way. The driver of the truck and the person accompanying him in the cabin were nabbed who disclosed their names as Naseem and Aseeb. The truck in question was found loaded with eleven cows and one calf.

3. After completion of investigation, a charge sheet was presented against the accused for having committed offences punishable under Section 307 read with Section 34 IPC and 13(2) of Haryana Gauvansh Sanarakshan and Gausamvardhan Act, 2015. The accused were tried by the Court of Additional Sessions Judge, Ambala and were acquitted vide impugned judgment dated 15.2.2017.
4. The trial Court, while appreciating the evidence, noticed inconsistencies in the testimonies of two star witnesses i.e. PW-1 Gourav Arora (complainant) and PW-3 Akash Kumar and also in the statement of investigating officer PW-8 ASI Shamsheer Singh. The Court also noticed that PW-1 Gourav Arora and PW-3 Akash Kumar are involved in several cases as complainant or as witness, as had been admitted by them in their cross-examination which raised serious doubts regarding veracity of their testimonies. The Court also noticed that though the accused Naseem is alleged to have rammed the truck into the barricades in an attempt to kill Gourav Arora and Akash Kumar but neither the said person nor any person of the police party present at '*naka*' (barricades) was injured. Further, the fact that no attempt was made by the accused to run away from the spot with their vehicle despite the fact that they had rammed

into the barricades was also a circumstance rather inconsistent with the manner in which prosecution story unfolds.

5. We have heard the learned State counsel and have gone through the reasoning of acquittal given in the impugned judgment.
6. We find that the trial Court has marshalled the evidence meticulously while noticing the large number of contradictions and inconsistencies in the testimonies of the star witnesses which certainly render their statements doubtful. Further, the fact that the complainant and his companion have been involved in several other cases either as complainant or as a witness also raises doubts as regards their credibility. Upon a query put by this Court to the learned State counsel as to whether there is any photograph indicating the broken barricades, no such photograph could be shown to this Court. Upon perusal of the judgment, we find that the reasoning given by the learned trial Court for acquitting the accused is based on proper appreciation of evidence and the same would not justify any interference in the impugned judgment.
7. In any case, law as regards challenge to acquittal is well settled to the effect that acquittal is not to be disturbed normally and even if other view is possible, the same would not justify interference in an order of acquittal.
8. Hon'ble Apex Court in a case reported as 2016 SCC OnLine SC 834 Madathil Narayanan & Ors. V. State of Kerala & Anr. held as under :-

“It is a well settled principle of law that if two views are plausible, the view which goes in favour of acquittal has to be adopted. This legal principle has been reiterated by this Court

in the case of *Arulvelu v. State rep. by the Public Prosecutor*.

In the case of *Bindeshwari Prasad Singh @ B.P. Singh v. State of Bihar (now Jharkhand)*, this Court has held that in the absence of any manifest illegality perversity or miscarriage of justice, the order of acquittal passed by the Trial Court may not be interfered by the High Court in exercise of its appellate jurisdiction. The aforesaid view has further been reiterated by this Court in the following two cases viz. *Rathinam @ Rathinam v. State of Tamil Nadu* and *Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra*.”

9. In view of discussion made above and in light of the ratio of the aforesaid judgment, we do not find any ground to interfere with the impugned judgment and the same is upheld. We do not find any ground to grant leave to file appeal and the application, as such, is dismissed.

(T.P.S.Mann)
Judge

(Gurvinder Singh Gill)
Judge

March 28, 2018

mohan

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No