

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

CRA-S-937-SBA-2005

Date of decision: 5.12.2019

Inder Singh

...Appellant

Versus

Lakhvir Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr.Atul Jain, Advocate for the appellant

Ms.Sehar Navjeet Singh Sandhu, Amicus Curiae
for the respondents

JITENDRA CHAUHAN, J.

1. The present appeal has been filed against the judgment dated 17.5.2004, passed by the learned Additional Chief Judicial Magistrate, Kapurthala in complaint case No.89-I of 31.5.1997, whereby, respondents Lakhvir Singh, Kashmir Singh and Dalip Kaur were acquitted of the charge framed under Sections 427, 447 & 379 of the Indian Penal Code (for short 'IPC').

2. The facts necessary for adjudication of the matter as narrated in paras 2 & 3 of the impugned judgment are as under:-

“Facts leading to the presentation of this complaint lies in the narrow compass that Inder Singh, complainant and his brother Baldev Singh alongwith Balkar Singh, Joginder Singh, Amrik Singh, Malook Singh, Darshan Singh etc. were co-sharers in possession of land comprised of Khasra no.47//9 min North 4-0 falling

within the revenue limits of village Toganwala Tehsil and District Kapurthala and allegedly sown their wheat crops for rabi 1997. On the day of occurrence on dated 23-4-1997 at 11-00 A.M. accused -persons trespassed into the land and harvested the wheat crops grown by the complainant etc. and stealthily took away the bundle of wheat crop into their own field causing loss to the complainant to the tune of Rs.3000/- by illegal means. The occurrence was witnessed by Gurmit Singh and one Sadhu Singh. Complainant informed the Police of Police Post, Hussainpur but they took no action against the accused-persons. Complainant also filed an application dated 9-5-1997 to the Police Station Sadar, Kapurthala. The police visited the place of occurrence after recording rapat no.31 dated 9-5-1997 but no action was taken against the accused any further. The complainant has obtained copy of judgment and decree from the competent Civil Court regarding their claim.

3. In preliminary evidence, as per statement of complainant, Inder Singh and his witness PW Sadhu Singh, accused- persons were ordered to be summoned for their having committed an offence punishable under Sections 427/447/379 IPC as per order dated 7-6-1997.

3. After considering the complaint, the documents annexed herewith and hearing both the parties, charges were framed under Sections 379/427/447 IPC against the accused persons, to which they did not plead trial and claimed trial.

4. After hearing the learned counsel for the complainant-appellant; the learned defence counsel and examining the evidence on the record, the learned trial Court acquitted the respondents herein.

5. Before parting with the arguments, it has been noticed that as per office report, respondent No.3 has since died, accordingly, the appeal qua the said respondent stands abated.

6. Learned counsel contends that the learned trial Court erred in acquitting the accused by ignoring the evidence on record because complainant had proved on record the copies of jamabandi, copy of khasra girdwari and judgment of civil Court and beyond doubt, the accused -respondents forcibly harvested the wheat crop sown by the complainant and other co-sharers and took away the bundles.

7. On the other hand, learned Amicus Curiae for the respondents states that the learned trial Court after appreciating the evidence on record and the statements of the witnesses, has rightly acquitted the respondents. He prays for the dismissal of the present appeal.

8. I have heard the learned counsel for the parties and perused the record carefully with their able assistance.

9. In **Sunil Kumar Sambhudayal Gupta and others vs. State of Maharashtra 2011 (1) RCR (Criminal) 57** the Apex Court framed the guidelines for appellate court as to how to deal with in the matter of “appeal against acquittal”, which are as under:-

“Appeal against Acquittal:

22. It is a well-established principle of law, consistently re-iterated and followed by this Court is that while dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. Even

though the appellate court is entitled to consider, whether in arriving at a finding of fact, the trial Court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. The trial court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses.

23. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The nature of the offence, its seriousness and gravity has to be taken into consideration. The appellate court should bear in mind the presumption of innocence of the accused, and further, that the trial court's acquittal bolsters the presumption of his innocence. Interference with the decision of the Trial Court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference.

24. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. A finding may also be said to be perverse if it is

‘against the weight of evidence’, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (See: **Balak Ram & Anr. v. State of U.P.**, AIR 1974 SC 2165; **Shailendra Pratap & Anr. v. State of U.P.**, AIR 2003 SC 1104; **Budh Singh & Ors. v. State of U.P.**, AIR 2006 SC 2500; **S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors.**, AIR 2008 SC 2066; **Arulvelu & Anr. v. State**, (2009) 10 SCC 206; **Ram Singh alias Chhaju v. State of Himachal Pradesh**, (2010) 2 SCC 445; and **Babu v. State of Kerala**, (2010) 9 SCC 189).”

10. The learned trial Court while acquitting the respondents has recorded that:-

“No doubt, documents copy of judgment and decree sheet is in favour of Inder Singh but the same is ex parte decree which no doubt is binding on the criminal Court but the fact remains that plaintiff-complainant was out of possession at that time. So far as the mutation No.2385 from Labh Kaur in favour of Inder Singh complainant and his brother Baldev Singh is concerned, it does not reveals as to when this mutation was got sanctioned and it does not establish possession of the complainant”.

It has further been observed that:-

“A bare perusal of the complaint makes it abundantly clear that there is absolutely no allegation about the intention of the widow to commit any offence or to intimidate, insult or annoy any person in possession. In

ultimate analysis and appraisal of evidence on record it is held that possession of Inder Singh, complainant has not been established and no offence under Sections 427/447/379 IPC is made out.”

The Court has carefully scanned the record. From the close reading of the impugned judgment, no other view is possible. There is not even an iota of evidence against the present respondents, which could make out a prima facie case against the respondents. No case for interference in the judgment of acquittal is made out.

11. In view of the above, this Court finds no perversity or illegality in the impugned judgment passed by the learned trial Court whereby the respondents have been acquitted. As such, the present application for leave to appeal is hereby declined being devoid of any merit.

5.12.2019
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?	Yes	/	No
Whether reportable?	Yes	/	No