

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

**CRA-D-230-DBA-2002 (O&M)
Date of decision : 14.11.2019**

U.T. Chandigarh

...Appellant

Versus

Bhupinder Kaur and another

...Respondents

**CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MR. JUSTICE H.S. MADAAN**

Present: Mr. Praveen Chauhan, Advocate,
for Mr. Gagandeep Singh Wasu, Addl.P.P.,
for U.T. Chandigarh.

None for the respondents.

JITENDRA CHAUHAN, J.

The State (U.T. Chandigarh) has preferred this appeal assailing the judgment dated 27.07.2001, passed by learned Judicial Magistrate 1st Class, Chandigarh (hereinafter referred to as 'the trial Court), thereby, acquitting the accused-respondents of the charges framed against them in FIR No.72 dated 11.03.1995, registered under Sections 120-B, 419, 420, 511, 468 and 471 of the Indian Penal Code (for short, 'the IPC'), at P.S. Central, Chandigarh.

Brief facts of the present case as noticed in the impugned

judgment passed by the trial Court are as under:-

“2. It is the version of the prosecution that a complaint Ex.P.15 was received from the office of Sub-Registrar (Education) Co-operative Societies, Punjab Chandigarh, in which it was alleged that on Bhupinder Kaur wife of Harjinder Singh son of Ajit Singh, who was working as Senior Assistant in the office has shown her husband to be owner of 10 marlas plot in village Himanyupur, Tehsil & District Fatehgarh Sahib and for raising the construction on the same, she applied for loan of Rs.1,35,000/-. The plot was mortgaged after receiving report from Patwari Halka Shamsher Nagar, Teh. Fatehgarh Sahib and on the application of the applicant, the Finance Department vide letter No.8822/ Finance Deptt. (Loan) -93 / 11935 dated 12.8.1993 registered the sanction of the loan under the Head Fund. The Finance Department vide letter No.2277 dated 25.1.94 released the first installment of Rs.67,000/-. Before issuing the first installment, the applicant was asked vide letter No.976 dated 27.1.1994 to get the plot mortgaged with the government and in response to that the applicant vide letter dated 4.2.94 on page No.2100 Serial No.1, Cover No.1590 page 100 got the same mortgaged and vide letter dated 7.2.1994 gave the copy of the mortgaged deed, as a result of which, Registrar, Cooperative Societies, Punjab, Chandigarh vide letter No.1592-97 dated 9.2.94 issued the first installment of Rs.67,500/- which was given vide Bill No.101 dated 9.2.94 voucher No.33 dated 10.2.1994. The same was also withdrawn by Smt. Bhupinder Kaur and a certificate for using the loan amount was also

given by the applicant 15.3.1994 and she demanded the release of the second installment. Before releasing the 2nd installment, the applicant was asked to furnish the completion certificate and an officer was also appointed vide letter No.159 dtd. 17.3.1994 and letter No.197 dated 19.4.1994 to verify the construction raised by the applicant on the plot all aged to be owned by husband of applicant. Sh. R.C. Seth, Evaluation Officer gave his report vide letter No.7488 dated 12.5.1994 informed that Bhupinder Kaur wife of Harjinder Singh son of Ajit Singh had no plot in the village Himanyupur as per the site plan for which they have raised loan for construction on the same. So, it was clear that Bhupinder Kaur wife of Harjinder Singh son of Ajit Singh had prepared forged documents and has committed a fraud with the government and she is liable to be punished and the Joint Registrar (Planning), Cooperative Societies, Punjab, Chandigarh vide letter No. Budged /B.A.1/R.S.S./15811 dated 28.10.94 has also given the sanction to prosecute Smt. Bhupinder Kaur and it was prayed that action be taken against the accused. After receiving the complaint formal FIR Ex.PW9/A was recorded. Investigation commenced. The necessary documents were taken into possession vide memo Ex.P.O. The application moved by the accused Bhupinder Kaur Ex.P.16 was taken into possession. All the documents relating to the sanctioning of loan to the applicant Bhupinder Kaur were taken into possession. Accused were arrested. Signatures of Bhupinder Kaur and Harjinder Singh were obtained for comparison and were sent to the

Forensic Science Laboratory, Punjab, Chandigarh, for comparison. Personal search of accused was conducted after they were arrested. Statement of witnesses under Section 161 of Cr.P.C. were recorded. During the investigation accused Khazan Singh was also arrested on the allegation that he had helped accused Bhupinder Kaur and Harjinder Singh in forging the document. On the basis of the investigation, police found sufficient grounds to proceed further against the accused and present the challan filed.”

The accused were charged for commission of offences punishable under Sections 120-B, 419, 420, 511, 468 and 471 IPC, to which they pleaded not guilty and claimed trial. However, during the pendency of the proceedings, accused Khazan Singh expired on 23.10.1997 and death certificate issued on 23.10.1997 in this regard was placed on record.

In support of its case, the prosecution has examined Vijay Kumar as PW1; Sikander Lal as PW2; Kulwant Ray as PW3; R.P. Verma as PW4; Suresh Kumar as PW5; C. Surinder Kaur as PW-6; Sucha Singh as PW7; HC Suresh Kumar as PW8; SI Amarjit Singh as PW9; Naresh Kumar as PW10; Ajit Kumar as PW11; Rajbir Singh as PW12; Kamal Kumar as PW13; R.C. Seth as PW14; and Amarjit Singh as PW15.

When examined under Section 313 Cr.P.C., the accused denied all the incriminating circumstances which appeared against them and pleaded false implication. In defence, the accused examined Prem Parkash as DW1.

After hearing learned counsel for the parties and appreciating the evidence brought on record, learned trial Court vide the impugned judgment, acquitted the appellants from the charges framed against them.

Hence, the instant appeal by the U.T. Chandigarh.

Learned counsel appearing on behalf of the U.T. Administration contends that from the testimony of the prosecution witnesses, case against the accused-respondents is fully established. He refers to the statement of PW-15, Amarjeet Singh, who has stated that he verified the spot and found that there was no such plot in the red line of village belonging to Harjinder Singh, husband of applicant/Bhupinder Kaur, on the basis of which loan was obtained by the latter. Further, PW-3, Kulwant Ray, has proved the letter issued by Educational Assistant Registrar on 17.03.1994 to Sh. R.C. Seth, Evaluation Officer for verification regarding construction of the house as Ex.PZ.

There is no assistance on behalf of the accused-respondents.

Heard learned counsel appearing for the U.T. Administration and perused the record.

It is the settled principle of criminal jurisprudence that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. Only after the initial burden is discharged by the prosecution, the onus shifts on the accused to rebut the presumption. Such burden can only be discharged by leading cogent evidence by the prosecution. In the case of ***Md.Faizan Ahmad @ Kalu v.***

State of Bihar, 2013 (2) SCC 131, Hon'ble the Supreme Court has observed as under:

“11. Criminal Courts recognize only legally admissible evidence and not farfetched conjectures and surmises. The High Court's observation that there was a preconceived plan to abduct the children would not be applicable to the appellant because there is nothing on record to establish that the appellant met the co-accused and planned a strategy to abduct the children and demand ransom. His case stands on a different footing from that of other accused. The case of the other accused will have to be dealt with on its own merit. The High Court was carried away by the heinous nature of the crime and, in that, it lost sight of the basic principle underlying criminal jurisprudence that suspicion, however grave, cannot take the place of proof. If a Criminal Court allows its mind to be swayed by the gravity of the offence and proceeds to hand out punishment on that basis, in the absence of any credible evidence, it would be doing great violence to the basic tenets of criminal jurisprudence. We hope and trust that this is just an aberration.”

Coming to the case in hand, the prosecution has alleged that accused-Bhupinder Kaur, in connivance with her husband/co-accused, Harjinder Singh and her brother/co-accused, Khazan Singh (since deceased), submitted forged mortgage deed and furnished a wrong affidavit to the effect that Harjinder Singh was owner of a plot measuring 10 marlas, situated in

village Himanyupur, District Fatehgarh Sahib and obtained a housing loan. However, no such plot was owned by Harjinder Singh and as such, the loan was obtained on forged documents. This fact came to the notice of the department when the Evaluation Officer submitted his report that no plot in the name of Harjinder Singh is in existence in village Himanyupur.

Before proceeding further, it is considered apposite to refer to the application form for House Building Advance, Ex.PA, submitted by accused-Bhupinder Kaur at the time of availing the loan in question. Under the column "DOCUMENTS ENCLOSED", appearing page No.4 of the application form, the following documents have been shown to be attached:-

- 1. Copy of Map***
- 2. Rought Cost estimate.***
- 3. Affidavit of mine.***
- 4. Affidavit of my husband.***
- 5. Certificate of ownership.***
- 6. Non-encumbrance certificate***
Salary certificate.

However, neither the certificate of ownership, nor the non-encumbrance certificate have been brought on record by the prosecuting agency. These two documents would have been the most crucial piece of evidence but the same were withheld for the reasons best known to the prosecution. Further, the last column of the application form i.e. column No.5, meant to be filled in by the Head of Department reads "The plot falls within "Lal Lakir" of the village and will be pledged in favour of Govt."

Thus, the authorities had satisfied themselves with regard to the nature and ownership of the plot in question and only then, the application for grant of loan was accepted in the first instance.

Further, the most important witness in this case is the Evaluation Officer and the most crucial document is the report of the Evaluation Officer, Ex.P16, proved by R.C. Seth, PW14. While stepping into the witness-box, this witness has admitted in his cross-examination that he did not contact any official from the Revenue Department to ascertain the fact that no plot in the name of Harjinder Singh was in existence in Village Himanyupur. Though, it finds mention in the report, Ex.P16 that one area inspector along with Secretary of the Society visited the spot, but neither the said Area Inspector nor the Secretary have stepped into the witness-box to corroborate the aforesaid version. The prosecution, for the reasons best known to it, has withheld the best evidence from the Court. The testimony of R.C. Seth, PW-14, does not inspire confidence as he himself admittedly did not visit the spot. Thus, the prosecution has failed to conclusively prove that the plot in question never existed. Benefit of doubt, thus, has to be accorded to the accused.

In *Bhagwan Singh & Others v. State of M.P. (2002) 4 SCC 85*, Hon'ble the Supreme Court reiterated another fundamental principle of criminal jurisprudence that if two views are possible upon appreciation of the evidence adduced, i.e. one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should

be adopted. It was observed as under:-

"7. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. Such is not a jurisdiction limitation on the appellate court but a Judge made guidelines for circumspection. The paramount consideration of the court is to ensure that miscarriage of justice is avoided."

Similar view has been taken in ***Tota Singh & Another v. State of Punjab (1987) 2 SCC 529***, the Court reiterated the same principle in the following words:

"This Court has repeatedly pointed out that the mere fact that the appellate court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by

any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous."

In ***Harijana Thirupala & Others v. Public Prosecutor, High Court of A.P., Hyderabad (2002) 6 SCC 470***, their Lordships of the apex Court observed as under:-

"11. In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which he is charged. Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality

of the evidence. In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of the evidence in totality on the prosecution case or innocence of the accused has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be added that ultimately and finally the decision in every case depends upon the facts of each case.

12. Doubtlessly, the High Court in appeal either against an order of acquittal or conviction as a court of first appeal has full power to review the evidence to reach its own independent conclusion. However, it will not interfere with an order of acquittal lightly or merely because one other view is possible, because with the passing of an order of acquittal presumption of innocence in favour of the accused gets reinforced and strengthened. The High Court would not be justified to interfere with the order of acquittal merely because it feels that sitting as a trial court it would have proceeded to record a conviction; a duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity." [In C.](#)

Antony v. K.G. Raghavan Nair, (2003) 1 SCC 1 had to reiterate the legal position in cases where there has been acquittal by the trial courts. This Court observed thus:

"6. This Court in a number of cases has held that though the appellate court has full power to review the evidence upon which the order of acquittal is founded, still while exercising such an appellate power in a case of acquittal, the appellate court, should not only consider every matter on record having a bearing on the question of fact and the reasons given by the courts below in support of its order of acquittal, it must express its reasons in the judgment which led it to hold that the acquittal is not justified. In those line of cases this Court has also held that the appellate court must also bear in mind the fact that the trial court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal, and in such cases if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate court should not disturb the finding of the trial court."

As discussed above, we feel that the prosecution has failed to prove its case against the accused-respondent beyond shadow of reasonable

doubt. The findings returned by learned trial Court are based on correct appreciation of the facts and circumstances pleaded and the material placed before it in support thereof. Hence, this Court is not inclined to interfere in the well-reasoned judgment of acquittal recorded by learned trial Court, which is, hereby, affirmed. Consequently, the instant appeal fails and is thus, dismissed.

Dismissed.

(JITENDRA CHAUHAN)

JUDGE

(H.S. MADAAN)

JUDGE

14.11.2019
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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No