

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

**CRM-30019-2019 IN/AND
CRM-A-2280-2019 (O&M)
Date of decision : 12.12.2019**

Devi Lal

...Applicant

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Sandeep Goyat, Advocate,
for the applicant.

JITENDRA CHAUHAN, J.

CRM-30019-2019

For the reasons contained in the CRM application, the same is allowed and the delay of 152 days in re-filing the instant application is condoned.

Main case

The applicant seeks special leave to appeal against judgment dated 24.01.2019, passed by learned Chief Judicial Magistrate, Fatehabad, (for short, 'the trial Court'), thereby, acquitting the accused-respondents in criminal complaint under Sections 323, 325 and 326 read with Section 34 of the Indian Penal Code (for short, 'the IPC').

Brief facts of the case as noticed by learned trial Court in para No.2 of the impugned judgment, read thus:-

complaint that on 07.05.2015, at about 10.00 a.m., the complainant had gone to the field along with his son Uggarsain on tractor. The son of the complainant was ploughing the field with tractor whereas the complainant went to see the tudi. Then, all the three accused persons in collusion with each other started calling names. In the meantime, Savitri caught hold the complainant. Sahab Ram has given a lathi blow on the head of the complainant. Another blow was given by Sandeep with kapa. The complainant lifted his hand, which caused injuries on the fingers of his left hand, on his little finger, ring finger and on finger adjacent to ring finger. In the meantime when the complainant cried then the son of the complainant after lifting down from the tractor came and rescued the complainant and in this way the accused persons also received minor injuries. In the meantime, Sahab Ram has given one more injury which caused injury on the finger of his right hand, which got fractured. The son of the complainant got him admitted in Civil Hospital, Fatehabad where his treatment was done. It is further averred in the complaint that on that day, several police persons came in the hospital and obtained the signatures of the complainant on blank papers but no action was taken against the accused persons. Police in collusion with the accused persons did not lodge any FIR on his statement dated 07.05.2015. On the next day i.e. 08.05.2015 on the statement of the accused, case bearing FIR No. 277 dated 08.05.2015, under sections 323, 341, 506 read with section 34 of IPC was got registered in Police Station Sadar, Fatehabad, against the complainant and his sons Uggarsain and Vishnu and they were arrested and now they are on bail. It is further averred that accused Sahab Ram in

collusion with his son-in-law (damad) i.e. Dr. Shiv Kishore and in collusion with other doctors did not take any action against the accused persons and SHO Bimla Devi tried to release possession of the complainant. Hence, complaint has been given against SHO Bimla Devi but no action was taken. Hence, it was prayed that legal action be taken against the accused persons.”

Upon appreciation of the preliminary evidence, the accused were summoned to face trial for commission of the offences punishable under Sections 323, 324 and 326 read with section 34 IPC vide order dated 12.04.2018.

In his pre-charge evidence, the complainant has examined Devi Lal, complainant as CW-1; Uggarsain as CW-2; MHC Rakesh Kumar as CW-3; EHC Sharwan Kumar as CW-4; Dr. Kuldeep Chaudhary, M.O., PHC Badopal as CW-5; and Satpal, Radiographer, G.H. Fatehabad, as CW-6.

After hearing learned counsel for parties, all the accused were charge- sheeted for commission of offence punishable under sections 323, 324 and 326 read with Section 34 of IPC to which they pleaded not guilty and claimed trial.

After framing of charge, learned counsel for the accused vide his statement dated 04.10.2018, sought to cross-examine the witnesses viz. Devi Lal, Uggarsain and Dr. Kuldeep Chaudhary, who were examined in pre-charge evidence of complainant.

In the after-charge evidence, learned counsel for the accused cross-examined CW1 Devi Lal, CW2 Uggarsain and CW5 Dr. Kuldeep Chaudhary, M.O.

Statements of the accused under section 313 of Cr.P.C. were recorded, in which they denied all the allegations levelled against them. However, the did not lead any evidence in defence despite opting for the same.

After hearing learned counsel for the parties and appreciating the evidence available on record, learned trial Court acquitted the accused-appellants of the charges framed against them and dismissed the complaint.

Hence, the instant application.

It is contended that learned trial Court erred in acquitting the accused-respondents while wrongly disbelieving the oral and medical evidence available on record. There are specific attributions against the accused. The recovery of weapons has also been proved by the prosecution.

Heard.

This Court has perused the entire case file and finds that the Court below while returning a finding of acquittal has noted that the complainant was in fact, the aggressor who caused injuries to the accused-respondents. The injuries sustained by the complainant on his left hand, three fingers could easily be self-sustained or with friendly hands, just to pressurize the opposite party. It appears to be a counter-blast to FIR No.277 (ibid) registered at the behest of the accused herein. The complainant has failed to prove his case against the accused beyond shadow of doubt. Therefore, learned trial Court has rightly acquitted the accused-respondents of the charges framed against them and dismissed the complaint. Even otherwise, it is a settled law as has been held in **C. Antony Vs. K.G.**

appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

Similarly, in '*Anil Kumar Gupta Vs. State of U.P., 2011 AIR(SC) (Criminal) 922*, Hon'ble the Supreme Court has held as under:-

*“8. Shri R.K. Shukla, learned senior counsel appearing for the appellant mainly contended that the High Court in the process of reappreciating the evidence, ignored the vital evidence on record which proves the innocence of the appellant. It was submitted that the approach of the High Court is completely contrary to the decision of this Court in '*Ramesh Babulal Doshi v. State of Gujarat, 1996(3) R.C.R.(Criminal) 188 : (1996) 9 SCC 225*' which was followed by this Court in '*Dwarka Das & Ors. v. State of Haryana, 2002(4) R.C.R.(Criminal) 794 : (2003) 1 SCC 204*' The submission was that the High Court miserably failed to examine the reasons given by the trial Court for recording the order of acquittal.*

9. Learned counsel for the State of U.P. supported the impugned judgment mainly relying on the circumstances that on that fateful night, the appellant alone was in the company of the deceased and it is one of the strong circumstances to hold that it is the appellant who administered poison to the deceased.

10. In Ramesh Babulal Doshi, this Court held that "the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the

appellate Court on reappraisal of the evidence, cannot constitute a valid and sufficient ground to interfere an order of acquittal unless it comes to the conclusion that the en approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal, the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are pal ably wrote, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only-reappraise the evidence to arrive at its own conclusions".

11. In Dwarka Das, this Court following the decision in Ramesh Babulal Doshi, further observed that 'there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a

wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice".

12. In Chandrappa & Ors. v. State of Karnataka, 2007(2) R.C.R.(Criminal) 92 : 2007(1) R.A.J. 841 : (2007) 4 SCC 415 this Court reappreciating the aforesaid principles, further observed that "in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle 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 trial Court. Though the above principles are well established, a different note was struck in several decisions by various High Courts and even by this Court. It is, therefore, appropriate if we consider some of the leading decisions on the point". Having stated so, this Court also held that an appellate Court has full power to reappreciate, review and reconsider the evidence upon which the order of acquittal is founded. But it is well established that if two views are possible on the basis of evidence on record and one favourable view to the accused has been taken by the trial Court, it ought not to be disturbed by the appellate Court."

In the instant case, the Court feels that the impugned judgment

of acquittal passed by learned trial Magistrate calls for no interference.

In view of the above, the instant application seeking leave to appeal is hereby dismissed.

Leave declined.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

12.12.2019
Vgulati/atulsethi

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No