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

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Date of Decision:12.12.2019

Ajmer Singh

... Appellant

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Aman Dhir, Advocate,
for the appellant.

HARNARESH SINGH GILL, J.

The present appeal has been filed against the judgment dated 11.07.2019 passed by the learned Additional Sessions Judge, Patiala, whereby while setting aside the judgment of conviction and order of sentence dated 04.11.2016 passed by the learned Sub Divisional Judicial Magistrate, Rajpura, the appeal filed by respondents No.2 and 3/accused, has been allowed and they have been acquitted of the charges framed against them.

As per the facts of the case, one complaint was given by Ajmer Singh son of Jit Singh, resident of village Sarala Khurd, to the SHO, P.S.Ghanaur, to the effect that on 04.05.2013 in the afternoon, Labh Singh and his son Kuldeep Singh @ Kala, with the intention to cause damage to the poplar plantations, burnt the wheat stubble. The flames of the same were dangerous for the human health. Because of the fire, 117 poplar trees

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planted in one side in 5 acres of land and 10 plants in the other line, got burnt. The accused had committed the offence by burning the stubble and they had intentionally burnt the poplar trees of complainant's son-Iqbal Singh, who was working at Chandigarh. After the investigation, offence under Section 435 read with Section 34 IPC was found to have been committed and ruqa was sent to the police station for registration of an FIR. Photographs of the place of occurrence were got clicked and site plan was prepared.

From the perusal of report under Section 173 Cr.P.C. a *prima facie* case under Sections 435/188 read with Section 34 IPC was found to have been committed by the accused. They were charge-sheeted accordingly, to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined as many as six witnesses and thereafter closed its evidence.

Statements of respondents No.2 and 3/accused under Section 313 Cr.P.C. were recorded and all incriminating evidence was put to them to which they pleaded false implication and submitted that they had not committed any offence.

In their defence evidence, respondents No.2 and 3/accused had examined three witnesses and thereafter, closed their evidence.

The learned trial Court, vide judgment of conviction and order of sentence dated 04.11.2016, convicted the accused/appellants for the offences under Section 435 and 188 read with Section 34 IPC and sentenced them as under:-

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<i>Name of Convict</i>	<i>Under Section</i>	<i>Sentence</i>	<i>In default</i>
Labh Singh	435 read with Section 34 IPC	Rigorous imprisonment for one year	
	188 read with Section 34 IPC	Fine of Rs.100/-	Simple imprisonment for 7 days
Kuldip Singh @ Kaka	435 read with Section 34 IPC	Rigorous imprisonment for one year	
	188 read with Section 34 IPC	Fine of Rs.100/-	Simple imprisonment for 7 days

Aggrieved of the judgment of conviction and order of sentence passed by the trial Court, respondents No.2 and 3/accused filed an appeal before the learned Additional Sessions Judge, Patiala, who accepted the same and set aside the judgment of conviction and order of sentence passed by the trial Court and acquitted them of the charges framed against them. Hence, the present appeal.

I have heard the learned counsel for the appellant and with his able assistance, gone through the impugned judgment.

The learned Appellate Court has recorded a finding of fact that the prosecution has failed to prove any revenue record to the effect that Labh Singh and Kuldip Singh @ Kala had any land in their names where respondents No.2 and 3 had allegedly set the wheat stubble on fire.

Perusal of the record shows that no independent witness has been examined by the prosecution to prove that Labh Singh and Kuldip Singh had intentionally set the wheat stubble on fire in their fields due to which the poplar trees standing in the land of the complainant and Iqbal Singh got burnt. Moreover, Nachattar Singh, who had allegedly clicked the

photographs of the place of occurrence, had not been examined by the

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prosecution to prove the alleged damage/burning of poplar tress and the setting the wheat stubble on fire by respondents No.2 and 3 in their fields.

The prosecution has also not proved on record that the poplar trees were planted by the complainant and Iqbal Singh in their land. Further, no agriculture expert was examined to prove that the trees valued more than Rs.50/- were burnt in the fire.

It is the defence version that the fire might have burnt the poplar trees in the fields of the complainant due to tripping of the electricity wires. To support their version, respondents No.2 and 3 also examined DW 2 Ishwar Chand, Sub Station Incharge, J.E, Ghanaur, who proved the relevant record regarding tipping of the lines from 3.15 p.m. to 3.20 p.m.

The learned Appellate Court has also rightly held that perusal of the record reveals that there was a long standing litigation pending between the complainant and the accused. Further, son of complainant was admittedly posted as ASI in the Punjab Police and in these circumstances, there were chances of implicating respondents No.2 and 3 in a false case.

Thus, taking into consideration the evidence on record, the lower Appellate Court has rightly arrived at a conclusion that the prosecution had failed to prove the guilt of respondent No.2 and 3 beyond doubt.

It is well settled by now that if the view adopted by the Court while acquitting the accused is a reasonable one and the conclusion reached by it had its grounds well set out on the material on record, the acquittal may not be interfered with. A Division Bench of this Court in case State of Haryana v. Satbir, 2013(7) R.C.R. (Criminal) 1490, has held as under:-

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“There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.”

Still further, Hon’ble Supreme Court in State of Rajasthan Vs. Shera Ram @ Vishnu Dutta, Criminal Appeal No. 1502 decided on 1.12.2011 has held that if the two views are possible on the evidence adduced in the case, then one favourable to the accused, may be adopted by the Court. It was held as under:-

“12. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal, the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and

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the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where inference is imperative and then ends of justice so require and it is essential to appease the judicial conscience.”

It could not be pointed out that the judgment of acquittal passed by the lower Appellate Court is based on misreading or misinterpretation of evidence on record.

No other point has been raised during the course of the arguments.

From the above, I do not find any ground to interfere with the impugned judgment. Therefore, finding no merit in the present appeal, the same is dismissed.

12.12.2019

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Note:	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No