

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

**CRA-D-636-DBA-2003 (O&M)
Date of decision : 31.01.2020**

Gurmukh Singh

...Appellant

Versus

Gurnam Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Ms. Bindu Goel, Advocate/*amicus curiae*,
for the appellant.

None for the respondents.

JITENDRA CHAUHAN, J.

The complainant/Gurmukh Singh (since deceased) had preferred this appeal assailing judgment dated 04.02.2003, passed by learned Additional Sessions Judge, Rupnagar, thereby, acquitting the accused-respondents of the charges framed against them in complaint under Sections 148, 383, 458, 323 read with Section 34 of the Indian Penal Code.

Brief facts of the present case as noticed in para No.1 of the impugned judgment passed by the trial Court are as under:-

*“Gurmukh Singh, complainant, filed
complaint against Gurnam Singh, Kuljit Singh,
Bhupinder Kaur, Amarjit Kaur, Balwinder Kaur and*

Arun Kumar, on the allegations that Amarjit Kaur, accused was married wife of complainant Gurmukh Singh and Kuljit Singh, accused, was son of the complainant, whereas Bhupinder Kaur, accused was daughter of complainant and Gurnam Singh accused was son-in-law of the complainant; that the accused had strained relations with the complainant and accused Amarjit Kaur had filed suit in forma pauperis against the complainant for maintenance, which was pending in the court of Civil Judge, Junior Division, Kharar; that accused Amarjit Kaur also made application to the police, where both the parties had been summoned; that all the accused persons formed one party and they were bent upon to loot and cheat the complainant as they wanted to grab the residential house of the complainant, in which, he had been residing; that on 3.1.1998 at about 9.00 P.M., Kuljeet Singh, accused armed with Gandasi, Gurnam Singh, accused armed with Takua, Bhupinder Kaur and Amarjit Kaur, accused armed with Gatra Kirpans, Balwinder Kaur, accused armed with Lathi, Arun Kumar armed with Takua alongwith 10/14 persons, armed with deadly weapons came to the house of the complainant, after forming un-lawful assembly; that they break open the outer gate of the house of the complainant; that the complainant, his daughter Rajinder Kaur, Sital Singh, his son-in-law, and Ajit Singh, resident of village Singh alongwith Santokh Singh also resident of village Singh were present, at the house of the complainant, at that time, because during the day time, the accused had threatened to kill the complainant and plunder his household articles at

night; that accused committed lurking house trespass, threatened the complainant and other members, present at his residence and they were given pushes and slaps and that accused Kuljeet Singh and Gurnam Singh, caught hold the complainant from his arms and tried to strangulate him, whereas accused Arun Kumar, had been raising Lalkara that if the complainant or any other person present there, tried to intervene, he would be done to death; that Santokh Singh and others tried to rescue the complainant; that Gurnam Singh and Kuljeet Singh, accused took away the valuable articles and Amarjit Kaur, Bhupinder Kaur and Balwinder Kaur, took away jetwllery comprising of gold and silver ornaments; that Gurnam Singh also took away VCR, whereas Kuljeet Singh took cash of Rs.40,000/- and the sale deed of house No.500-C/6, Dashmesh Colony, Kharar, from the Almirah; that Bhupinder Kaur and Amarjit Kaur, took necklace and rings whereas Balwinder Kaur took gold Kara and Panjeb of silver; that the complainant and other persons present there, requested the accused and their companions to desist from their illegal designs, but to no effect; that the accused were using filthy language and were hurling abuses; that complainant Gurnam Singh old man of 68 years got him freed from the clutches of the accused and brought his gun from the room and loaded the same in order to scare away the accused; that accused Gurnam Singh and Kuljeet Singh, with the help of Arun Kumar grappled, with the complainant and tried to snatch the gun and in that process, the gun was accidentally fired by Gurnam Singh injuring Kuljeet Singh, in the process and in the meanwhile Kuljeet Singh and other accused

fled away from the spot after taking costly items; that on 4.1.1998, the accused party got false FIR registered, against Gurmukh Singh, Manjit Singh and Ravinder Kaur under Section 307 read with Section 34 IPC and under Section 27/54/59 Arms Act and the complainant was arrested by the police; that the unlawful assembly of the accused committed dacoity and also voluntarily caused hurt and put the complainant in the fear of death and had also made preparations for causing hurt; that on 14.1.1998, the complainant, made statement before the police and the police assured the complainant that the accused would be challaned but nothing was done. Hence the present complaint was filed by Gurmukh Singh.”

On the basis of preliminary evidence, all the accused were summoned to face trial. However, the presence of accused Kuljeet Singh and Arun Kumar could not be secured, thus, vide order dated 23.07.2001, they were declared as proclaimed offenders. Thereafter, the Court of learned Illage Magistrate, committed the complaint case vide order dated 23.07.2001 for being tried with the State case, being cases of version and cross-version.

Charges under Sections 148, 323 read with Section 34, 382 and 458 IPC were framed against the accused persons by learned trial Court, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Gurmukh Singh, complainant and PW-2 Ajit Singh.

When examined under Section 313 Cr.P.C., all the accused denied

the allegations and pleaded false implication. In defence, the accused examined DW-1 Dr. Gautam Biswas, Associate Professor; and DW-2, accused Bhupinder Kaur. The attested copy of the FIR registered in the cross-case was placed on record as Ex.D-3.

Learned trial Court vide the impugned judgment acquitted the accused of the charges framed against them and dismissed the complaint. Hence, the instant appeal.

Learned amicus curiae contends that the appellant was arrested in the State case on 04.01.1998. After his arrest, the appellant made a statement before the police about the true genesis of the occurrence and on that he was assured of the action on the complaint. However, despite repeated requests, the police did not take any action. Ultimately, after his release on bail, he moved the instant complaint on 07.11.1998. Thus, the delay that was caused, if any, stands sufficiently explained. The dispute pertains to a residential building. Respondent No.3, Amarjit Kaur, had moved a complaint, Ex.P1, against the appellant for attachment of the residential building in a suit for maintenance. The statement of DW-2, Bhupinder Kaur, daughter of the appellant and respondent No.3 cannot be believed, she being an interested witness.

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

This Court has perused the entire case file and finds that the Court below while returning a finding of acquittal has noted that the version given by the complainant/appellant could not be proved on record. Rather, the counter-version given by the accused-respondents inspires confidence. DW-

2, Bhupinder Kaur, is the daughter of the appellant and respondent No.3. She is not expected to depose falsely against her father. The alleged occurrence took place on 03.01.1998, whereas, the instant complaint was filed on 07.11.1998, after a delay of more than ten months. Mere assertion of the appellant that he had moved a complaint before the police that no action was taken thereon as the alleged statement of the appellant/complainant made before the police has not seen light of the day. Thus, the version of the accused-respondents which forms the basis of registration of the FIR against the appellant is more probable and trustworthy. The instant complaint appears to be an afterthought, only to wriggle out of the criminal liability by exerting pressure on the respondents. Even otherwise, it is a settled law as has been held in ***C. Antony Vs. K.G. Raghavan Nair***, 2002(4) RCR (Criminal) 750 that even if a second view on 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 reappraise, 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 Court calls for no interference.

Consequently, the instant appeal is, hereby, dismissed.

(JITENDRA CHAUHAN)
JUDGE

31.01.2020

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Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No