

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-599-MA of 2013

Date of Decision: March 06, 2020.

Jit Lal

.....Appellant

versus

Preetu @ Pritam Dass and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE VIVEK PURI.

Present: Mr.Ramesh Sharma, Advocate, for the appellant.
Mr.Gautam Diwan, Advocate, for the respondents.

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Vivek Puri, J. (Oral)

[1] The present application for leave to appeal has been preferred against the judgment dated 09.02.2011 passed by the learned Chief Judicial Magistrate, Kapurthala vide which the accused/respondents have been ordered to be acquitted in a complaint No.60 dated 09.05.2002 under Sections 323, 427, 452, 354, 382, 392, 148, 149 IPC, Police Station Kotwali, Kapurthala.

[2] I have heard learned counsel for the parties and perused the record.

[3] Precisely, the occurrence took place on 12.03.2002 and in the complaint it has been alleged that the accused/respondents armed with deadly weapons, forcibly and illegally entered the premises of the complainant/appellant. They caused damage to the household articles to the tune of Rs.30,000/-, committed theft of three golden rings, three golden chains, three golden ear rings, Rs.5000/- in cash and other household articles. Injuries were inflicted on Jagtar Singh son of the complainant/appellant.

[4] The appellant led the preliminary evidence and the accused/respondents were summoned to face trial under Sections 323, 427, 452 read with Section 149 IPC.

[5] The complainant/appellant had examined his son Jagtar Singh as CW-1, Fauja Singh as CW-2, Dr.H.L.Mehmi as CW-3 and himself as CW-4 during the course of pre-charge evidence. Charge under Sections 452, 427 and 323 read with Section 149 IPC was framed against the accused/respondents to which they pleaded not guilty and claimed trial.

[6] After framing of charge only two witnesses, namely, the appellant and CW-2 Fauja Singh appeared for further cross-examination and thereafter the complainant had closed the evidence.

[7] In the statement recorded under Section 313 Cr.P.C., the accused have denied the correctness of the incriminating evidence against them and pleaded their false implication. They have examined Ghoolias DW-1 and HC Kulwinder Singh DW-2 besides producing copies of the judgments dated 12.01.2005 and 17.09.2010 in their defence evidence.

[8] Vide the judgment dated 09.02.2011 passed by the learned Chief Judicial Magistrate, Kapurthala, the accused/respondents were acquitted of the allegations levelled against them.

[9] Aggrieved from the aforesaid judgment, the complainant/appellant has filed the present application under Section 378(4) Cr.P.C. seeking leave to file appeal.

[10] I have heard learned counsel for the parties and perused the paper book.

[11] It is significant to note that the allegations are with regard to damage to the household articles, commission of theft and inflicting injuries

on the person of the son of the complainant/appellant. A perusal of the impugned judgment makes it amply clear that at the earlier instance, the complainant/appellant had submitted an application before the Senior Superintendent of Police, Kapurthala and the same was silent with regard to the damage to any household articles. The allegations of trespass were also disbelieved as one of the rooms in the house in question was in possession of Satya-accused/respondent who was married to Amaru, brother of the complainant/appellant. Even the blood stained clothes of Jagtar Singh, son of the complainant/appellant, were not produced in the Court and no photographs of damaged articles were taken and submitted in the Court.

[12] Significantly, after framing of the charge, neither Jagtar Singh CW-1, son of the complainant/appellant nor Dr.H.L.Memhi CW-3 have been tendered for further cross-examination on behalf of the accused. As per the provisions of Section 246(5) of the Code of Criminal Procedure, the witnesses were required to be recalled for further cross-examination. In the absence of further cross-examination, their statements recorded prior to the framing of charge are liable to be ignored, the same being incomplete as they are de-void of further cross-examination. Consequently, it has to be construed that neither the injured was examined nor injuries on his person are supported with medical evidence. In such circumstances, it has to be concluded that the findings of acquittal, as recorded by the Court below are on the basis of appreciation of evidence in proper perspective and does not call for any interference by this Court.

[13] It may be mentioned here that in an appeal against acquittal, if two views are possible and the Court below has acquitted the accused, the Appellate Court would not be justified in setting-aside the acquittal merely

because other view is also possible. The Appellate Court cannot substitute its reasons or possible view, if the view of the learned trial Court while acquitting the accused was a possible view. Furthermore, the acquittal of the accused bolsters the presumption of innocence in favour of the accused.

[14] Consequently, the leave to prefer appeal is declined and the appeal is dismissed.

March 06, 2020 <i>mohinder</i>		(VIVEK PURI) JUDGE
Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No