

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-A-1567-MA-2016 (O&M)

Date of decision: 20.12.2022

SIKANDER SINGH

....Appellant(s)

Versus

BALWINDER SINGH & ORS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Gaurav Singla, Advocate
for the appellant.

AMAN CHAUDHARY. J.

CRM-27284-2016

For the reasons stated in the application, same is allowed. Delay
condoned.

CRM-A-1567-MA-2016

Present leave to appeal has been filed challenging the judgment dated
31.03.2016 passed by learned Sub Divisional Judicial Magistrate, Jagraon,
whereby the respondents have been acquitted of the charges levelled against
them.

Briefly put, the facts of the case are that on 14.07.2005 at about
06:00 PM, appellant-Sikandar Singh and his brother Balvir Singh were going to
the house of their uncle Ram Singh and about 20 karams before the house of Ram
Singh, accused-respondents armed with iron rod, knife, gandasa and stick,
attacked and injured the appellant and also his brother Balvir Singh, who tried to
protect the appellant by laying over the body of the appellant as he had fallen on
the ground.

Pursuant to the preliminary evidence led by the complainant-appellant, accused-respondents were summoned under Sections 325/323/506 read with Section 34 IPC, vide order dated 11.01.2012.

In pre-charge evidence, appellant-Sikander Singh deposed as CW-1, Witnesses Balwant Singh and Balvir Singh deposed as CW-2 and CW-3, Dr. Kailash Chander deposed as CW-4 as regards medical examination of the appellant on 15.07.2005 and proved the medical record pertaining to the appellant. Dr.G.P. Mangla deposed as CW-4 as regards medical examination of injured Balvir Singh on 14.07.2005 and proved on record MLR Ex.CW-4/A, Pictorial diagram Ex.CW-4/B and X-ray Ex.CW-4/C.

The witnesses were cross-examined by the accused-respondents and thereafter, pre- charge evidence was closed and matter was fixed for arguments on the point of charge.

After hearing the learned counsel for the parties, charge under Section 323 IPC was ordered to be framed vide order dated 03.03.2016 and accordingly, the respondents were charge-sheeted on 09.03.2016 and thereafter, matter was fixed for evidence of the appellant.

In evidence, accused-respondents recalled all the witnesses except medical experts, for further cross-examination. However, PW-1 Sikander Singh and injured Balvir Singh appeared and were further cross-examined and thereafter, the evidence of complainant was closed.

Entire incriminating evidence appearing against the accused-respondents, was put to them and their statements under Section 313 CrPC were recorded 313 Cr.P.C, wherein they denied the allegations and stated that they have been falsely implicated in present case.

After hearing the learned counsel for the parties and examining the evidence on the record, the learned trial Court acquitted the accused-respondent vide judgment dated 31.03.2016.

Hence the present leave to appeal.

Learned counsel for the appellant has vehemently argued that the trial Court has acquitted the accused-respondents without appreciating the facts and circumstances of the case and the evidence available on the record and the acquittal is based on conjectures and surmises. He submits that the appellant has been duly supported by medical evidence in the shape of testimony of witnesses, however, the learned trial Court has discarded the well proved and unrebutted evidence of the appellant. He further contends that trial Court has miserably failed to consider the fact that no defence evidence has been led by the respondents in their support.

Heard.

In Sunil Kumar Sambhudayal Gupta and others vs. State of Maharashtra 2011 (1) RCR (Criminal) 57 the Apex Court framed the guidelines for the appellate court to deal with the matter of “appeal against acquittal”, which are as under:-

“Appeal against Acquittal:

22. It is a well-established principle of law, consistently reiterated and followed by this Court is that while dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. Even though the appellate court is entitled to consider, whether in arriving at a finding of fact, the trial Court

had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. The trial court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses.

23. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The nature of the offence, its seriousness and gravity has to be taken into consideration. The appellate court should bear in mind the presumption of innocence of the accused, and further, that the trial court's acquittal bolsters the presumption of his innocence. Interference with the decision of the Trial Court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference.

24. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. A finding may also be said to be perverse if it is 'against the weight of evidence', or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (See: **Balak Ram & Anr. v. State of U.P.**, AIR 1974 SC 2165; **Shailendra Pratap & Anr. v. State of U.P.**,

AIR 2003 SC 1104; **Budh Singh & Ors. v. State of U.P.**, AIR 2006 SC 2500; **S. Rama Krishna v. S. Rami Reddy (D)** by his LRs. **& Ors.**, AIR 2008 SC 2066; **Arulvelu & Anr. v. State**, (2009) 10 SCC 206; **Ram Singh alias Chhaju v. State of Himachal Pradesh**, (2010) 2 SCC 445); and **Babu v. State of Kerala**, (2010) 9 SCC 189).”

In the case in hand, learned trial Court while acquitting the respondents had taken into consideration the statements made by CW1-Sikander Singh and CW3-Balvir Singh, which are inconsistent. Further, that CW2-Balwant Singh had not appeared for cross-examination after charge. The complainant had suppressed the fact of their having gone to Sudhar Hospital for medical treatment but left the hospital against the advise of doctor and without completion of formalities of admission has also been referred to. There being no admissible medical evidence regarding grievous nature of injuries had also raised a doubt with regard to the conduct of medical examination of the complainant and injured, coupled with the fact that FIR lodged by the complainant had been cancelled by the police after proper inquiry report dated 05.08.2005, however, the complaint in question was instituted after a gap of more than two years on 07.09.2017, wherein, charges were framed under Section 323 IPC only.

In view of the above, this Court finds no illegality or infirmity in the well reasoned judgment of learned trial Court, which calls for interference, as such the present application for seeking leave to appeal is dismissed being bereft of merit.

(AMAN CHAUDHARY)
JUDGE

December 20, 2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>