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

**CRM-A-385-MA-2016**

**Date of Decision:06.12.2022**

**KARTAR SINGH**

..... Petitioner

*Versus*

**STATE OF PUNJAB AND ORS**

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present : Mr. Gurcharan Dass, Advocate  
for the appellant.

Mr. Digvijay Nagpal, AAG, Punjab.

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**JAGMOHAN BANSAL, J. (Oral)**

1. The appellant through instant application under Section 378(4) Cr.P.C. is seeking grant of special leave to appeal against order dated 21.12.2015 whereby learned Sessions Judge, Sangrur has acquitted the respondents from charges of commission of offence punishable under Sections 148, 323 and 452 read with Section 149 of IPC.

2. The brief facts which are necessary for the adjudication of the present controversy and emerging from the record as well arguments of learned counsel for the appellant are that the appellant-Kartar Singh filed Criminal Complaint bearing No.COMI/55/2014 against six persons namely Maghar Singh, Mukhtiar Singh, Avtar Singh, Paramjit Singh, Balkar Singh and Dari Singh. During the pendency of proceedings, Dari Singh and Paramjit Singh passed away. The appellant withdrew complaint against Balkar Singh. Accordingly, trial took place against remaining three accused. The complaint was filed under Section

452, 323, 325, 506 and 148 IPC read with Section 149 of IPC.

3. The appellant in its complaint alleged that a piece of Shamlat land was given to him on 12.05.1973 and he had possession over the land since then. The Gram Panchayat of Village Bharimansa filed civil suit against the appellant. On 20.05.2007, Maghar Singh Sarpanch and other members of the Panchayat forcibly trespassed into the house of the complainant and caused injuries upon his person. The Trial Court examined witnessed of the complainant/appellant and framed charges under Section 452, 323 and 148 read with Section 149 of IPC. The Trial Court post charges recorded evidence of complainant as well as present respondents. The Trial Court came to a conclusion that complainant has proved his case beyond the shadow of reasonable doubt, therefore, accused/respondents were liable to be convicted under Sections 452, 323, 148 and 149 IPC. The Trial Court vide order dated 07.07.2015 awarded sentence of Rigorous Imprisonment of 2 years under Section 452, 323, 148 read with Section 149 of IPC alongwith fine.

4. The respondents preferred an appeal before learned Sessions Judge, Sangrur, who vide order dated 21.12.2015 came to a conclusion that complainant has failed to prove guilt of the accused/appellant beyond the shadow of reasonable doubt, thus, they were entitled to benefit of doubt. Learned Sessions Judge, Sangrur, accordingly, set aside judgment of conviction and allowed appeal of the accused.

5. Learned counsel for the appellant would submit that Trial Court has passed a reasoned order and Sessions Court has wrongly set aside findings of learned Trial Court. There was no basis to upset judgment of conviction. The doctor, who prepared MLR had confirmed

injuries suffered by appellant. The respondent attacked appellant because they wanted to get the land vacated from the possession of appellant. There was no *mala-fide* intention on the part of complainant to implicate the respondents.

6. Per contra, learned counsel for the respondents contends that learned Sessions Court has rightly acquitted the respondents by setting aside the conviction order passed by the learned JMIC. Learned counsel further submits that Trial Court based its decision on surmises and conjectures and failed to appreciate the evidence in rightful manner.

7. I have perused the record and heard arguments of the appellant. The present application seeking special leave to appeal is bereft of merit and deserves to be dismissed.

8. Hon'ble Supreme Court in a catena of judgments while dealing with scope and powers of the appellate court in dealing with an appeal against an order of acquittal has elucidated:

(i) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(ii) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(iii) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to

emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(iv) **An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.**

(v) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

9. A three judge bench of the Apex Court in **Ashok Kumar Singh Chandel Vs State of U.P. 2022 Live Law (SC) 915** has adverted with question of jurisdiction of High Court in appeals against acquittal. The Apex Court has held:

***I. Jurisdiction of the High Court in Appeals Against Acquittals***

***91. This is the first preliminary submission and it is based on a principle laid down by this Court that in an appeal against acquittal, the criminal appellate court will not interfere with the acquittal unless there are substantial and compelling reasons. The common submission of all the counsels appearing for the Appellants is, therefore, that the High Court was not justified in***

*reversing the order of acquittal.*

*92. The position of law with respect to the jurisdiction of the High Court in cases of appeals against acquittals is well established. After reviewing the judgments on this subject, this Court clarified in Chandrappa v. State of Karnataka<sup>24</sup> that:*

*“3. Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.”*

*93. It is sufficient to note the principle laid down in the Constitution Bench of this Court in M.G. Agarwal v. State of Maharashtra<sup>25</sup>:*

*“16. ...But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of*

*the guilt or innocence of the accused. This position has been clarified by the Privy Council in Sheo Swarup v. King Emperor and Nur Mohammad v. Emperor [AIR 1945 PC 151] ...*

*17. ...Similarly in Ajmer Singh v. State of Punjab [(1952) 2 SCC 709 : 1953 SCR 418] it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are “very substantial and compelling reasons to do so”. In some other decisions, it has been stated that an order of acquittal can be reversed only for “good and sufficiently cogent reasons” or for “strong reasons”. In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (a) of Section 423(1) of the Code. All that the said observations are intended to emphasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of Sheo Swarup, the presumption of innocence in favour of the accused “is not certainly*

*weakened by the fact that he has been acquitted at his trial”. Therefore, the test suggested by the expression “substantial and compelling reasons” should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in Sanwat Singh v. State of Rajasthan [AIR 1961 SC 715] and Harbans Singh v. State of Punjab [AIR 1962 SC 439] and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse...”*

**94.** Following the Constitution Bench, this Court in *Ghurey Lal v. State of UP*<sup>26</sup> has formulated the following principles:

*“69. The following principles emerge from cases*

*1. The Appellate Court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.*

*2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he*

*was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*

*3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.*

*70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:*

*1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.*

*A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:*

- i. The trial court's conclusion with regard to the facts is palpably wrong;*
- ii. The trial court's decision was based*

*on an erroneous view of law;*

*iii. The trial court's judgment is likely to result in "grave miscarriage of justice";*

*iv. The entire approach of the trial court in dealing with the evidence was patently illegal;*

*v. The trial court's judgment was manifestly unjust and unreasonable;*

*vi. The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.*

*vii. This list is intended to be illustrative, not exhaustive.*

*2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.*

*3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/Appellate Courts must rule in favor of the accused.*

10. The appellant is seeking special leave to appeal against judgment and order whereby trial court has acquitted the respondent. It is settled law that granting of special leave to appeal against acquittal is a discretionary power. However, such power has to be exercised judiciously and the Courts are not permitted to exercise the same at whims or fancies and arbitrarily. Arbitrariness has always been held

anathema to exercise of any power.

11. In the case in hand, the appellant was in possession of Shamlat land and respondents had filed civil suit against the appellant. There was no personal interest of the respondents because land belonged to Panchayat and respondents were holding post of Sarpanch or Punch. The appellant did not get FIR registered against the respondents whereas appellant opted to file criminal complaint. The Panchayat could not get possession of the land through nomral mode and it moved through District Development and Panchayat Officer. The criminal case under Section 13-A of Punjab Village Common Land Act, 1961 and under Section 447 of IPC came to be registered against present appellant and his other family members. There was no reason for the members of the Panchayat to get agitated rather it was appellant, who was facing criminal proceedings under aforesaid sections. The medicial examination was conducted on 20.05.2007, however, no dangerous or grievous injury was found on the person of the appellant. He did not lodge FIR. The alleged incident took place on 20.05.2007 whereas complaint came to be filed on 14.06.2007. Had appellant approached police and spent time in pursuing his remedy before police, the filing of complaint on 14.06.2007 could justify, whereas things are different. It is settled proposition of law that every delay in FIR, does not spoil case of prosecution, however, complainant/prosecution is supposed to explain delay especially when there is long delay between incident and date of lodging FIR or filing of complaint.

12. The appellant examined Nirmal Singh CW-2 and Dhanna Singh who supported the version of the appellant, however, in their

cross-examination, they deposed that accused/respondent did not come to the house of the complainant nor incident occurred in their presence. The appellant in his deposition had deposed that his daughter in law and brother's wife were present at the time of alleged accident, however, none of them was examined.

All the above facts and circumstances make the case of appellant doubtful and it is settled proposition of law that prosecution is bound to prove its case beyond the shadow of reasonable doubt.

13. Having regard to the findings recorded by Appellate Court including accepted legal position, this Court is of the considered opinion that in the case in hand, there is no infirmity or irregularity in the impugned order whereby Appellate Court has acquitted the respondent. Accordingly, this Court fully agrees with the finding recorded by Appellate Court. The impugned judgment being speaking, based upon correct appreciation of facts, applicable law & judicial precedents and well-reasoned needs to interference. Therefore, request of the applicant seeking permission special leave to appeal is hereby rejected. In the result, application seeking special leave to appeal and appeal stand dismissed.

( JAGMOHAN BANSAL )

JUDGE

06.12.2022

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|---------------------------|---------------|
| Whether speaking/reasoned | Yes/No        |
| <i>Whether Reportable</i> | <i>Yes/No</i> |