

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

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**CRM-A-649-MA-2016
Reserved on:05.09.2022
Date of Decision: 27.09, 2022**

Lakhwinder Singh

...Appellant

Versus

State of Punjab and others

... Respondents

**CORAM : HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present : Mr. Gagandeep Singh Sirphikhi, Advocate
for the applicant.

Ms. Ishma Randhawa, Addl. A.G. Punjab.

Mr. Ajay Pal Singh Rehan, Advocate
for respondents No. 2 to 4.

N.S.SHEKHAWAT, J.

The instant application under Section 378(4) Cr.P.C., arises out of judgement dated 29.01.2016 passed by the Court of learned Judicial Magistrate 1st Class, Batala, whereby, the respondents were acquitted of the charges framed under Sections 326, 342, 323 and 506 IPC by holding that the complainant had failed to prove the case against the accused and he had created a false complaint due to enmity with the accused and had wasted the public time of the Court also. Challenging the said verdict of acquittal the applicant/complainant has filed the instant application before this Court.

We have heard the learned counsel for the parties and have carefully perused the trial Court records and we concur with the

findings recorded by the trial Court while acquitting the respondents/accused.

The complaint was filed in the instant case on 07.08.2010 by complainant Lakhwinder Singh by alleging that he was resident of village Fattupur and the respondents belonged to his village only. The complainant alongwith other family members had purchased the land from the co-sharers of the respondents/accused and due to said reason, the respondents were inimical towards the complainant. At about 09.00 a.m., on 20.07.2010, when the complainant was going towards his fields, Jagir Singh and Surjit Singh, respondents No. 2 and 4, respectively, came there armed with 'dangs' whereas, Narinder Singh respondent No. 3 came there armed with 'dattar' and waylaid the complainant. Jagir Singh raised a *lalkara* to teach him a lesson for purchasing the property from the co-owner in the name of his wife and gave a blow with 'dang' on the left hand of the complainant. Narinder Singh gave two blows with 'dattar' on the left arm of the complainant. When the complainant raised a hue and cry to save him, Joginder Singh and Jaswinder Singh came from the backside and witnessed the occurrence and saved the complainant from the clutches of the respondents/accused.

The occurrence in the instant case had taken place at 09.00 a.m. on 20.07.2010, whereas from the perusal of the records, it is evident that the complainant/appellant made statement Ex.D1 to the police on 24.07.2010 after a delay of four days. Similarly, the instant

complaint was filed before the trial Court by the complainant on 07.08.2010 after a period of about 18 days. Till the conclusion of the trial, the applicant/complainant could not offer any explanation with regard to delay in reporting the matter to the police or to the Court. Even if the arguments by the learned counsel for the applicant that the police was hesitating in taking action against the accused under political influence, is admitted to be correct, still the applicant/complainant had the opportunity to lodge the criminal complaint before the Court and the delay itself is fatal to the case of the prosecution.

Still further, it is also on record that the applicant/complainant had reported the matter to the police by making a complaint Ex.D1. The matter was investigated by the police and after joining him as well as the other party in the investigation, it was found that the injuries suffered by the applicant/complainant were self-inflicted and the version put-forth by the complainant was found to be false and unbelievable. As a consequence thereof, a calendra under Section 182 IPC was registered against the present applicant/complainant and the copy of the calendra was placed on the file as Mark D1. The said calendra against the applicant is stated to be pending in the Court. Consequently, the version of the applicant/complainant was found to be false after a detailed investigation by the police and his case was found to be doubtful.

The learned trial Court has discussed the testimony of CW3 Dr. Kishan Chand and held a detailed discussion on the medical evidence in the impugned judgment. In fact, it is apparent from the testimony of CW3 Dr. Kishan Chand, who prepared the MLR of the applicant/injured, that apart from cut of injury No. 1, no other injury was noticed. He had suggested to get the forensic opinion, but he had not received any such report. Even we agree with the contentions raised by the learned defence counsel before the learned trial Court that this double bone cut on the wrist of the complainant, i.e., non-vital part is caused due to self-infliction and the possibility of self-infliction of the injury in the instant case cannot be ruled out. This also finds support from the testimony of CW3 Dr. Kishan Chand, who deposed that he found more probability of injuries having been inflicted with the friendly hands and due to this reason, he had raised suspicion and sought the report from the forensic experts. Still further, even the X-ray films had not been produced on the record by the applicant/complainant which was the best and the primary evidence to record a finding as to whether there was any fracture in respect of the injury of the complainant or not. Further, the trial Court correctly found that there were contradictions between initial version Ex.D1 and the evidence led by the applicant at a later stage. In his initial version, the applicant/complainant stated that he was caused injury only with one blow of 'dattar' and there was no reference of the second blow, whereas in the complaint he alleged that Narinder Singh

gave two 'dattar' blows, which hit on the left armed of the applicant. We have also perused the testimonies of various prosecution witnesses and found the same to be unreliable and even the complainant could not withstand the test of cross-examination. Consequently, we find no reasons to deviate from the detailed findings recorded by the learned trial Court. Apparently, the trial Court has recorded good reasons for recording the verdict of acquittal and the same is liable to be affirmed by this Court.

It has been held by the Hon'ble Supreme Court in Ghurey Lal Vs. State of U.P., 2008(10) SCC 450 as follows:-

“71. In Chandrappa & Others v. State of Karnataka (2007) 4 SCC 415, this Court held:

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

(2) 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.

(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.

(4) 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.

(5) 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."

72. The following principles emerge from the cases above:

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 reappraise 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 trial court was wrong.

Keeping in view the substratum of the prosecution case and the material available on record we are of the considered opinion that the prosecution has miserably failed to prove the guilt of the accused beyond the reasonable doubt.

Resultantly, we affirm and uphold the impugned judgment dated 29.01.2016 passed by the learned Judicial Magistrate 1st Class, Batala. The application is without any merit and, therefore, dismissed. Leave to appeal is declined.

All the pending miscellaneous applications, if any, are disposed off, accordingly.

The trial Court record be sent back forthwith.

(SURESHWAR THAKUR)
JUDGE

27.09, 2022
amit rana

(N.S.SHEKHAWAT)
JUDGE

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