

221 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1967-2011

Date of Decision:08.12.2022

MOHAN LAL GUPTA

..... Petitioner

Versus

STATE OF PUNJAB & ANR

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Ms. Vidushi, Advocate
for the petitioner.

Mr. Digvijay Nagpal, AAG, Punjab.

Mr. Mohit Jaggi, Advocate
for respondent No.2.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition is seeking setting aside of order dated 24.12.2009 to the extent the respondent herein has been acquitted from the charges under Sections 337 & 338 of IPC.

2. The petitioner has filed instant petition under Section 401 Cr.P.C. The petition has been preferred alongwith an application seeking condonation of delay of 510 days. The delay stands condoned vide order dated 22.03.2012 passed by a Coordinate Bench of this Court.

3. The brief facts emerging from record are that the complainant/petitioner tendered his statement before police on 27.11.2005 accusing that respondent while driving vehicle (truck) bearing registration No.PB-07C-3227 in rash and negligent manner has hit his Maruti Car bearing registration No.PB-07C-7373. On the basis of statement of petitioner, an FIR came to be registered against the respondent. The police after completing investigation preferred its report

and Trial Court framed charges under Sections 279, 337 & 338 of IPC. The Trial Court after considering evidence led by both sides and documents on record came to a conclusion that respondent has committed an offence punishable under Sections 279 of IPC and he is not guilty of commission of offence under Section 337 & 338 of IPC. The respondent was awarded sentence of 2 months under Section 279 IPC.

4. The respondent preferred an appeal before Sessions Court, which ordered to release the petitioner on probation of good conduct in terms of provisions of Probation of Offenders Act, 1988. The petitioner has preferred present appeal seeking conviction of respondent under Sections 337 & 338 of IPC.

5. Learned counsel for the petitioner submits that the petitioner has suffered injuries as well as mental agony on account of accident caused by respondent. No leniency is warranted and findings recorded by learned Trial Court are factually incorrect.

6. Learned counsel for the respondent submits that alleged incident took place in 2005 and during last 17 years he has already suffered physical as well as mental agony. He was working as constable with Punjab Police and at the time of accident was on duty. The accident was not intentional. The respondent has already retired from service. He further submits that present petition is not maintainable because petitioner has remedy to file appeal in terms of proviso of Section 372 of Cr.P.C.

7. I have heard perused the record and heard arguments of both sides.

8. The petitioner has invoked revisionary jurisdiction of this court. The scope of interference while exercising power of revision against judgment of acquittal is very limited.

8.1 While adverting with Section 439 of old Criminal Procedure Code which in its present avatar is Section 401, a four judge bench of Hon'ble Supreme Court in *D. Stephens v. Nosibolla* 1951 SCC 184 has held:

“12. The revisional jurisdiction conferred on the High Court under Section 439 of the Code of Criminal Procedure is not to be lightly exercised, when it is invoked by a private complainant against an order of acquittal, against which the Government has a right of appeal under Section 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower court has taken a wrong view of the law or misappreciated the evidence on record.”

8.2 A four judge bench of Hon'ble Supreme Court reiterating the above opinion in *Logendranath Jha v. Polai Lal Biswas* 1951 SCC 856 has held:

“9. ... Though sub-section (1) of Section 439 authorises the High Court to exercise, in its discretion, any of the powers conferred on a court of appeal by Section 423, sub-section (4) specifically excludes the power to ‘convert a finding of acquittal into one of conviction’. This does not mean that in dealing with a revision petition by a private party against an order of acquittal, the High Court could in the absence of any error on a point of law, reappraise the evidence and reverse the findings of facts on which the acquittal was

based, provided only it stopped short of finding the accused guilty and passing sentence on him.

10. By merely characterising the judgment of the trial court as 'perverse' and 'lacking in perspective', the High Court cannot reverse pure findings of fact based on the trial court's appreciation of the evidence in the case. That is what the learned Judge in the court below has done, but could not, in our opinion, properly do on an application in revision filed by a private party against acquittal”.

8.3 A three judge bench of Hon'ble Supreme Court in *K. Chinnaswamy Reddy v.State of A.P.* (1963) 3 SCR 412 has observed:

7. It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial court has no jurisdiction to try

the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles.

8.4 A two judge bench of Hon'ble Supreme Court after noticing its previous judgments in *Mahendra Pratap Singh v. Sarju Singh* (1968) 2 SCR 287 has held:

“8. The practice on the subject has been stated by this Court on more than one occasion. In D. Stephens v. Nosibolla [1951 SCC 184 : AIR 1951 SC 196 : 1951 SCR 284] only two grounds are mentioned by this Court as entitling the High Court to set aside an acquittal in a revision and to order a retrial. They are that there must exist a manifest illegality in the judgment of the Court of Session ordering the acquittal or there must be a gross miscarriage of justice. In explaining these two propositions, this Court further states that the High Court is not entitled to interfere even if a wrong view of law is taken by the Court of Session or if even there is misappreciation of evidence. Again, in Logendranath Jhav. Polai Lal Biswas [1951 SCC 856 : AIR 1951 SC 316 : 1951 SCR 676] this Court points

out that the High Court is entitled in revision to set aside an acquittal if there is an error on a point of law or no appraisal of the evidence at all. This Court observes that it is not sufficient to say that the judgment under revision is 'perverse' or 'lacking in true correct perspective'. It is pointed out further that by ordering a retrial, the dice is loaded against the accused, because however much the High Court may caution the subordinate court, it is always difficult to re-weigh the evidence ignoring the opinion of the High Court. Again in K. Chinnaswamy Reddy v. State of A.P. [AIR 1962 SC 1788 : (1963) 3 SCR 412] it is pointed out that an interference in revision with an order of acquittal can only take place if there is a glaring defect of procedure such as that the Court had no jurisdiction to try the case or the Court had shut out some material evidence which was admissible or attempted to take into account evidence which was not admissible or had overlooked some evidence. Although the list given by this Court is not exhaustive of all the circumstances in which the High Court may interfere with an acquittal in revision it is obvious that the defect in the judgment under revision must be analogous to those actually indicated by this Court".

9. Hon'ble Supreme Court in a catena of judgments while dealing with scope and powers of the appellate/revisionary courts in dealing with an appeal/revision 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.

10. In the case in hand:

(i) The alleged incident took place in 2005;

(ii) The petitioner had claimed that petitioner and his wife suffered injuries, however, neither prosecution placed on record medical report nor doctor who conducted medical examination was examined;

(iii) The respondent was working as constable with Punjab Police and at present he has already retired.

(iv) The respondent has already been released on probation *qua* offence under Section 279 of Cr.P.C.

(v) The petitioner had preferred present revision petition whereas appropriate remedy was appeal in terms of provision to Section 372 of Cr.P.C.

(vi) The respondent has already suffered mental agony of protracted trial of 17 years.

(vii) The present petition has been filed with delay of 510 days.

11. In view of the above narrated facts, having regard to the findings recorded by trial court including accepted legal position, this Court is of the considered opinion that in the case at hand there is no infirmity or irregularity in the impugned order whereby trial Court has acquitted the respondent. Accordingly, this Court fully agrees with the finding recorded by trial Court. The impugned judgment and order being speaking, based upon correct appreciation of facts, applicable law & judicial precedents and well-reasoned needs no interference of this Court.

(JAGMOHAN BANSAL)
JUDGE

08.12.2022
Ali

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