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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1844-2019 (O&M)
DECIDED ON: 18.08.2022

JAGINDRO DEVI

....PETITIONER

VERSUS

JAGBIR SINGH AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Parminder Singh, Advocate
for the petitioner.

SANDEEP MOUDGIL, J.

CRM-23215-2019

Prayer in this application is for condonation of delay of 48 days
in filing the revision petition.

For the reasons, which are quite justifiable as mentioned in the
application, duly supported by an affidavit, the delay of 48 days in filing the
revision petition is condoned.

The application is allowed.

CRR-1844-2019

1. Aggrieved against the judgment of acquittal dated 04.11.2015 passed
by the JMIC, Ambala, in case FIR No.26, dated 05.02.2008, under Sections
148, 149, 323, 435 and 506 IPC, registered at Police Station Mahesh Nagar,
and subsequent dismissal of appeal as well by the learned Additional
Sessions Judge, Ambala, vide judgment dated 05.03.2019, the instant
revision petition has come up for hearing before this Court.

an FIR was registered against the accused persons at the instance of the complainant-Jagindro Devi on the allegation that there was a dispute between her and the accused persons with regard to the *bara* situated in village Rellon, of which the accused persons wanted to take forcible possession.

3. It was on 05.02.2018, the petitioner alongwith Shailendro Devi was working in the *bara*, the accused persons namely Prem Singh, Jagbir Singh son of Prem Singh, Satbir Singh, Kulbir, Jasbir Singh son of Darshan Singh and Darshan Singh came armed with lathis and dandas.

4. Prem Singh-respondent No.5 was carrying a licensed gun, raised lalkara to his accomplices to teach them a lesson. The other private respondents started beating the petitioner and Shailendro Devi. Respondent No.1-Jagbir Singh gave danda blow on the left arm, respondents No.2 and 3 namely Satbir Singh and Kulbir Singh gave danda blow on the left leg, whereas, respondent No.4-Jasbir Singh son of Darshan Singh gave a danda blow on the forehead and both the legs of Shailendro Devi.

5. Meanwhile, Randhir Singh, brother-in-law and Roop Ram, husband of the petitioner came there. At this stage, respondent No.6-Darshan Singh gave a lathi blow on the head of the husband of the petitioner and lathi blow on the left cheek and head of her brother-in-law Randhir Singh. On hearing the noise, many persons gathered there and the private respondents ran away from the spot threatening them to kill. Roop Ram-husband of the petitioner took the injured to the hospital.

6. The FIR under Sections 148, 149, 323, 435 and 506 IPC was registered at Police Station Mahesh Nagar on the aforesaid statement.

During the course of investigation, the accused persons namely Jagbir Singh, Satbir Singh, Kulbir Singh, Jasbir Singh, Prem Singh and Darshan Singh

were arrested, whereas accused namely Dhanno and Debo were found to be

innocent. They were subsequently released on bail. The site plan of the spot of occurrence was prepared. The statements of the prosecution witnesses were recorded. On completion of investigation, challan was presented in the Court against the above named accused persons for their trial.

7. Charges were framed against the accused-respondents, under Sections 148, 149, 323, 435 and 506 of the IPC, to which they pleaded not guilty and claimed trial.

8. The prosecution has examined the following witnesses:-

PW-1- Jagindro Devi, complainant/injured.

PW-2- Shailendro Devi, injured

PW-3- Randhir Singh son of Gurcharan Singh, injured

PW-4- SI (Retd.) Manphool Singh, Investigating Officer

PW-5- Dr. Babita Ramdev, Medical Officer

PW-6- Roop Ram, husband of the complainant

9. Statements of accused persons under Section 313 Cr.P.C., were recorded, wherein they denied all the allegations levelled against them and claimed themselves to be innocent.

10. Accused examined DN Sharma SDO, PWD Ambala Cantt., as DW-1 and closed the defence evidence.

11. Mr. Parminder Singh, learned counsel for the petitioner has argued that the judgments passed by the Courts below are based on surmises and conjectures without application of mind. He contends that the petitioner and her family members have already been declared owner in possession of the *bara*, in dispute, by the Civil Court. It has been also contended by the learned counsel that the Court below has wrongly acquitted the respondents-accused on the ground that a cross-complaint was filed by the respondents-accused with regard to the same occurrence on the same date and in that

case, the petitioner and others were acquitted. He also submits that the

Courts below have wrongly held that the injuries suffered by other three injured are not corresponding to the role attributed to the accused.

12. Mr. Parminder Singh, learned counsel for the petitioner has vehemently argued that the injured witnesses have explained the injuries suffered by them at the hands of the respondents-accused and, therefore, merely the fact that the private witnesses are related to each other, cannot be a ground to discard the testimony of injured witnesses holding that they are interested witnesses and in the absence of independent witness, there is no corroboration. This finding of the Court below is challenged stating the same to be absolutely illegal and unwarranted particularly in the light of the fact that the respondents have failed to rebut the site plan on record to prove the place of incidence and, therefore, prays for accepting the revision petition.

13. Heard learned counsel for the petitioner, gone through the case file and after giving thoughtful consideration, it is crystal clear that the prosecution has failed to prove the place of occurrence vis-a-vis the site plan Ex.PW4/F, wherein it is shown to be open piece of land. Even otherwise, there is no evidence to show prima facie that the alleged open land belongs to the complainant as well as with regard to the possession of Bara in dispute. It is also pertinent to consider the deposition of the Investigating Officer-PW-4, who categorically admitted the fact that he does not know as to which of the parties is in possession of place of occurrence, shown with Alphabet-A. In fact, the complainant has also admitted in her cross-examination that the land is *shamlat deh*.

14. While returning the findings, the trial Court has well considered mechanically the testimony of the prosecution witnesses as well as defence evidence and observed as under:-

“In view of the testimony of the prosecution witness, it is clear that the occurrence took place and the complainant

& others party as well as accused persons received injuries. In the testimonies of complainant as well as injured, prosecution version is well supported but it suffers from some material infirmities. Firstly, the complainant did not state anything about the fact that her brother in law became unconscious during the fight whereas while deposing as PW-1 she has stated that her brother in law Randhir Singh became unconscious. PW-2 Salindro Devi who is injured and eye-witness to whole incident did not attribute even a single word about the injuries suffered by the accused persons. Moreover, one new version i.e. dismantling of the fencing by the accused persons taken by PW-3 also throws doubt on the prosecution story which was not stated by the complainant. But in view of the MLRs placed on file the fact that fight has taken place between the accused persons and complaint is well proved and this fact is also admitted by the accused persons in cross-complaint titled as Jagbir Vs. Roop Ram. No doubt, the factum of occurrence is well proved by the prosecution but as per the well settled law of criminal jurisprudence, the prosecution case has to be proved beyond reasonable doubt. Neither the case property recovered by the I.O nor the same has been produced in the court. Moreover, the another doubt in the prosecution case is that Prem Singh is the alleged accused was present at the time of occurrence with licensed gun whereas the testimony of DW-1 D.N. Sharma, and the record brought by him

makes it clear that he was present at his duty. Therefore, Id. Counsel for the accused has proved the defence of alibi for accused Prem Singh.”

15. There is no evidence whatsoever to suggest that the accused party is the aggressor. As per the prosecution story, it is a case of cross-version from which it can be merely inferred that some sort of fight took place but neither the injuries have been proved nor the accused were identified. The Doctor who alleged to have conducted the X-ray examination of PW-3-Randhir has not been examined by the prosecution, apart from the fact that PW-2-Shailendro Devi appearing for examination-in-chief failed to disclose the identity of accused persons and later on opted not to appear for her cross-examination.

16. This Court having examined the evidence lead by the prosecution has also noticed discrepancies in the statements which are fatal to the prosecution case particularly of PW-1-Jagindro Devi, PW-3-Randhir Singh and PW-6-Roop Ram. The FIR in the case was registered on a complaint by Jagindro Devi-PW1, alleging that Dhano Devi and Debo Devi allegedly put fire to the gowara, which was found to be false during the examination. PW-3-Randhir Singh has deposed that the accused were already beating Jagindro Devi-PW1 and Shailendro-PW-2, whereas, the version is different as narrated by PW-1 Jagindro Devi, PW-3-Randhir Singh and PW-6-Roop Ram. According to which PW-3-Randhir Singh and PW-6-Roop Ram came to the place of occurrence much later.

17. The case of the prosecution is further creates doubt on minute examination of MLR of the injured PW-2-Shailendro Devi, PW-3-Randhir Singh, PW-1-Jagindro Devi, PW-6-Roop Ram and Raj Kumar son of Malkiat Singh, who got them admitted in the hospital, it is beyond any doubt

clear that the injuries are not corroborating with the oral testimony of the

prosecution witnesses.

18. This Court exercising its revisional jurisdiction is conscious of its limited scope and its jurisdiction vested in it while dealing with the instant case. While exercising the power of revision, the High Court is vested with the powers as that of Court of Appeal under Section 386 Cr.P.C., but in view of Section 401(3) Cr.P.C., there is a prohibition/bar to convert a finding of acquittal into one of conviction. Though and as observed hereinabove, the revision power to examine is vested only in case there is manifest error of law or procedure etc., however, after giving its own findings on the findings recorded by the Court acquitting the accused and after setting aside the order of acquittal, the High Court can remit the matter to the trial Court and/or the First Appellate Court as the case may be. Section 401(3) Cr.P.C., places a limitation on the powers of Revisional Court ordinarily not to interfere in the order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of manifest illegality or the prevention of gross miscarriage of justice.

19. Coming back to the findings recorded by the Court below while passing the judgment of acquittal. The observations in the case of '**Ganesha versus Sharanappa**', (2014) 1 SCC 87 are exactly applicable which is as under:-

"11. However, in a case where the finding of acquittal is recorded on account of misreading of evidence or non-consideration of evidence or perverse appreciation of evidence, nothing prevents the High Court from setting aside the order of acquittal at the instance of the informant in revision and directing fresh disposal on merit by the trial court. In the event of such direction, the trial court shall be obliged to reappraise the evidence in light of the observation of the Revisional Court

and take an independent view uninfluenced by any of the observations of the Revisional Court on the merit of the case. By way of abundant caution, we may herein observe that interference with the order of acquittal in revision is called for only in cases where there is manifest error of law or procedure and in those exceptional cases in which it is found that the order of acquittal suffers from glaring illegality, resulting into miscarriage of justice. The High Court may also interfere in those cases of acquittal caused by shutting out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. In such an exceptional case, the High Court in revision can set aside an order of acquittal but it cannot convert an order of acquittal into that of an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial.

12. The view, which we have taken finds support from a decision of this Court in Bindeshwari Prasad Singh v. State of Bihar [(2002) 6 SCC 650 : 2002 SCC (Cri) 1448], in which it has been held as follows: (SCC pp. 654-55, para 12)

"12.... Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub- section, which places a limitation on the powers of the Revisional Court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High

Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a retrial. It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party.”

20. Now examining the judgment of acquittal passed by both the trial Court as well as of the Appellate Court in the light of the aforesaid discussion and observations on the aspect of revisional jurisdiction of this Court, an overview to the evidence shows that the medical evidence has been duly considered, the oral evidence has been examined mechanically and scientifically, wherein material discrepancies have been recorded apart from the doubt to the occurrence of the incident itself in the light of the fact that the site plan was not proved.

21. Therefore, in view of this Court, the concurrent findings recorded by both the Courts below are based on examination of documentary as well as oral evidence, which does not suffer from any manifest error of law or

procedure to invite interference in the judgment of acquittal. The petitioner has failed to show any glaring illegality and miscarriage of justice in the impugned judgments of acquittal and, therefore, the present revision petition fails.

22. Accordingly, the present petition is dismissed in the aforesaid terms.

(SANDEEP MOUDGIL)
JUDGE

18.08.2022
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No