

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRR-1851-2019 (O&M)
Date of decision: 15.12.2022

VASDEV

....Petitioner(s)

Versus

MANOJ KUMAR @ RAJAN AND ANR.

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Ashish Bansal, Advocate
for the petitioner.

AMAN CHAUDHARY. J.

CRM-23228-2019

The present application under Section 5 of the Limitation Act has been filed for condonation of delay of 29 days in filing the revision petition.

For the reasons enumerated in the application, the same is allowed and the delay is condoned subject to all just exceptions.

CRR-1851-2019

The present revision petition has been filed challenging the judgment dated 2.1.2019 passed by learned Additional Sessions Judge, Panchkula, dismissing the appeal preferred by the petitioner against the judgment dated 9.3.2016 passed by learned Judicial Magistrate, 1st Class, Panchkua vide which respondent No.1 was acquitted of the charges framed against him under Sections 279, 338 IPC in case FIR No.157 dated 25.8.2014, registered at Police Station Sector 14, Panchkula.

Briefly put, the facts are that FIR No.157 dated 25.08.2014 was registered under sections 279, 337, 338 IPC at Police Station Sector 14,

Panchkula by complainant Vasdev alleging that on 24.08.2014 at about 10.40 AM when he was going to Sector 12-A, Panchkula in his car bearing registration No.HR-03-M-2878, which was being driven by him and he was accompanied by Vishvamitar. When they reached House No.1046, Sector 12-A, Panchkula, a car bearing registration No.CH-01-AP-8900, which was being driven at high speed and in a rash and negligent manner by the accused hit his car, as a result of which he sustained injuries and was taken to hospital. The driver of the car escaped from the spot whose name was subsequently discovered as Rajan. Upon completion of investigation, challan was presented against the accused.

On notice of accusation for offence under Sections 279, 338 of the IPC, the accused appeared and pleaded not guilty.

To prove its case, the prosecution examined PW1-EHC Ram Pal, PW2- Dr. Neeru, PW3-Vasudev, PW4-Inspector Suresh Kumar, PW5-Vishvamitar, PW6-HC Rakesh Kumar, PW7-ASI Mam Chand, PW8-EHC Ramesh Chand.

Thereafter, statement of the accused under Section 313 of the Code of Criminal Procedure was recorded wherein he pleaded himself to be innocent.

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 09.03.2016

Feeling aggrieved, the petitioner filed an appeal against the aforesaid judgment before the Additional Sessions Judge, Panchkula, wherein also the learned ASJ while recording that the identity of the accused having not been established beyond reasonable doubt and that there were no sufficient grounds to set aside the decision of the trial Court, dismissed the appeal filed by the

petitioner.

Hence, the present revision petition.

Learned counsel contends that learned trial court had wrongly ignored the evidence on record and had erred in acquitting the accused -respondent. He submits that the learned Appellate Court had failed to appreciate the fact that the statement of witness namely Julia Ram was recorded under Section 161 CrPC, who had identified the accused and he was a material evidence. It is his further submission that both the Courts below had failed to appreciate the medical record of the petitioner whereby it was proved that the petitioner suffered fatal injuries in the accident due to rash and negligent driving of the accused-respondent No.1.

I have heard the learned counsel for the petitioner and have perused the case file.

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 Courts below while acquitting the respondent have recorded that both the injured and eye-witness did not identify the accused to be the driver of the car as both of them stated that the driver of the car ran away from the spot, leaving behind the car. The accused is not the registered owner of the offending vehicle. The presence of the accused has not been established. Furthermore that it is settled law that for a case to be based on circumstantial evidence, the chain of events must be such that they should point to a single conclusion and if two views are possible, the accused cannot be held guilty.

In view of the above, this Court is of the considered opinion that no case for interference in the judgment of acquittal is made out. There being no perversity or illegality in the impugned judgments passed by the learned Courts below, the present revision petition is dismissed.

(AMAN CHAUDHARY)
JUDGE

December 15, 2022

S.Sharma(syr)

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