

Sr.No.219

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-276-2022(O&M)
Date of Decision:14.02.2023

Baru RamAppellant

versus

State of Haryana and others
.....Respondents

CORAM: Hon'ble Mr. Justice G.S.Sandhawalia
Hon'ble Ms. Justice Harpreet Kaur Jeewan

Present: Mr. Sandeep Thakan, Advocate
for the appellant.

Harpreet Kaur Jeewan, J.

1. Present application for grant of special leave to appeal has been filed by the appellant Baru Ram (injured-complainant-victim) under Section 378(4) of Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') challenging the order dated 04.08.2021 passed by the Additional-cum-Judge, Special Court for Sessions Judge, Hisar whereby respondents No.2 to 6 were acquitted from the charge framed in FIR No. 188 dated 12.06.2011, registered under Sections 323, 427, 506, 34 IPC at Police Station Sadar, Hansi.

2.1 Prosecution version in brief is that on 30.08.2006 the mother of the appellant Baru Ram had purchased 18 Kanal 19 Marla land. Baru Ram was working as a clerk in Jat Senior Secondary School, Hisar. On 12.06.2011, it was their turn to water the land. At about 9:00 AM the appellant alongwith his mother, nephew Surender and Shakti Singh had gone to water the fields in Indica Car No.HR-22C-6466 but in the

meanwhile the respondents Vijay Singh, Raja, Shiv Kumar, Rajesh, Krishan alongwith 25-30 unknown persons who were armed with jelly, gandasi, axe and gun came there. When the appellant and the other occupants of the car were alighting from the car, the respondents-accused attacked them, damaged their car and snatched the car and mobile phone from the appellant. Respondent-accused Rajesh @ Raja and Shiv Kumar gave gandasi blows on the feet of the appellant. Accused Vijay Singh @ Bijay Singh gave danda blow on the right hand of the appellant. The accused also assaulted Surender, Shakti and the mother of the appellant. The appellant-injured was taken to General Hospital, Hansi by arranging a vehicle based on the statement of appellant. The motive for causing said injuries was that earlier the accused Vijay Singh wanted to purchase the land from the mother of the appellant. Even agreement to sell was got executed by Vijay Singh but he could not arrange for the sale consideration in time, therefore, he could not get the sale deed executed. A formal FIR was registered at the instance of the appellant against the respondents under Sections 147, 148, 149, 323, 427, 506 IPC. Investigation was carried out and during the investigation Rajesh Kumar and Krishan Kumar were found innocent. The offence under Sections 147, 148, 149 IPC was not made out and offence under Section 34 IPC was added. After completion of investigation, challan was presented against the remaining three accused namely, Vijay Singh, Rajesh @ Raja and Shiv Kumar.

2.2 After supply of the copies of the challan and the documents annexed therewith to the accused, charge sheet under Sections 323, 506, 427, 34 IPC vide order dated 13.08.2012 was issued against accused Vijay, Rajesh @ Raja and Shiv Kumar, but they claimed trial. During the

trial, the remaining accused Rajesh and Krishan were also summoned to face the trial under Section 319 Cr.P.C. Joint charge was framed against all the respondents-accused and all the respondents-accused pleaded not guilty and claimed trial.

2.3 Bharpai, mother of the appellant injured also filed a separate criminal complaint on 08.12.2011 before the area Magistrate with regard to the same occurrence. In addition to the facts recorded in the FIR, she alleged that assailants had snatched their car, important documents, bus passes of students and cash amounting to Rs.2,60,000/- which was lying in the car. She further alleged that accused Vijay gave lathi blow on her waist and neck, whereas accused Raja gave gandasi blow (like a lathi) on the foot, accused Shiv Kumar also gave a gandasi blow on the foot of the appellant Baru Ram, accused Randhir gave danda blow on his left arm and accused Surender gave danda blow on the wrist of left hand of the appellant. Accused Raj Kumar gave gandasi blow like a lathi on left hand of Shakti Singh, accused Shiv Kumar gave gandasi blow like a lathi on his left foot, accused Surender gave danda blow on thumb of his right hand and accused Rajest gave lathi blow on index finger of his right hand.

2.4 The mother of the appellant in the complaint alleged motive that she had purchased land in village Mahjad, whereas accused Vijay Singh wanted to grab it so the accused persons inflicted injuries to them.

2.5 In the complaint case all the accused persons named in the said complaint were ordered to be summoned to face trial under Sections 147/148/149/323/427/392/506/34 IPC vide order dated 10.10.2012 and thereafter the case was fixed for pre-charge evidence.

3. Vide order dated 22.08.2014 passed by the Sub Divisional Judicial Magistrate, Hansi separate applications filed in the case of *State*

vs. *Vijay Singh and others* as well as in the case of *Bharpai vs. Vijay Singh @ Bije Singh and others* for consolidation of both the cases, was dismissed. However, it was observed that the case of *State vs. Vijay Singh and others* as well as the complaint case *Bharpai vs. Vijay Singh @ Bije Singh and others* have been filed regarding the same occurrence, therefore, they were ordered to be tried together but evidence was ordered to be recorded separately in both the cases.

4. On 20.01.2016 the charge was amended in the *State vs. Vijay Singh and others* case and additional charge under Section 395 IPC was framed as such the case *State vs. Vijay Singh and others* was committed to the Court of Sessions and the complaint case *Bharpai vs. Vijay Singh @ Bije Singh and others* was also sent along with the said case.

5. After the commitment of the case, the trial Court framed charge under Sections 147, 148, 149, 323, 427, 506, 395 IPC against the accused persons. They were pleaded not guilty and claimed trial.

6. Prosecution examined 11 witnesses. PW-1 ASI Bhoop Singh, PW-2 EHC Ajay Singh, PW-3 Baru Ram, PW-4 Dr. Navdeep Jain, PW-5 Shakti Singh, PW-6 EHC Satender Kumar, PW-7 HC Rakesh Kumar, PW-8 ASI Govind Dass, PW-9 HC Mukesh Kumar, PW-10 Surender Kumar, PW-11 SI Krishan Lal .

7. Both the State case titled as *State vs. Vijay Singh etc.* and complaint case titled as *Bharpai vs. Vijay Singh @ Bije Singh and others* were decided by a common judgment dated 04.08.2021 by the trial Court, whereby the respondents were acquitted of the charges framed against them.

8. While acquitting the accused the trial court observed that the prosecution version is highly improbable as none of the injury on the

person of any injured was on any vital part of the body. The injuries were superfluous. If so many persons would have attacked the complainant party it is not possible for the injured to get only minor injuries.

8.1 The trial court also observed that there was land dispute between the mother of the appellant and respondent-accused Vijay Singh. The admission made by Baru Ram(PW-3) that his mother had agreed to sell 18 Kanal 19 Marla land to Vijay Singh on 27.04.2011 and thereafter, accused Vijay Singh filed a civil suit for specific performance of the said agreement which was dismissed. The appeal filed by the accused Vijay Singh was allowed. Considering the observations made by the Appellate Court vide judgment dated 05.01.2018 (Ex.D-7), the trial court observed that on the day of occurrence, the land was already in possession of the accused so there was no question of the complainant to go for watering the fields as alleged by the prosecution. The very basis of the prosecution story was found eroded.

8.2 Similarly, the version of the complainant Baru Ram (PW-3) was found unbelievable in view of the improved version given by him regarding the manner in which the injuries were allegedly inflicted by the accused; regarding the weapons; and the specific role attributed to the accused persons. Initially, the appellant PW-3 has tried to avoid the questions relating to the documents pertaining to agreement to sell and civil litigation. However, later on he admitted the same in cross-examination. Depricating the conduct of the appellant and the improvements made by him, the trial court didn't find him as a trustworthy witness.

8.3 Trial court also observed that all the three witnesses Baru Ram (PW-3), Shakti Singh (PW-5) and Surender (PW-10) were relatives

and they were interested witnesses. Their testimony lacked corroboration from independent source and the version of the prosecution that appellant was carrying a sum of Rs.2,60,000/- in his car while going to water his fields was also considered improbable. As such taking note of the aforesaid facts and circumstances, the trial court granted benefit of doubt to the accused while acquitting them.

9. Learned counsel for the appellant has submitted that the trial court has failed to properly consider the version of the victim(PW-3) despite having corroboration from medical evidence as proved by Dr. Navdeep Jain(PW-4). The injuries on the persons of the appellant clearly indicated aggression on the part of the respondents. The version of the appellant was further corroborated by other injured witnesses, as such are sufficient to hold the respondents guilty. However, the trial court had failed to consider this fact that independent corroboration was not required where the testimony of injured witnesses is corroborated by medical evidence as well as by the testimony of the other injured witnesses.

10. We have also considered the contentions raised by learned counsel for the appellant as well as the reasons recorded by the trial court while disbelieving the prosecution evidence.

11. Firstly, it is to be observed that the appeal filed by the injured-victim is maintainable without seeking a leave to appeal in view of the recent decision by the Hon'ble Supreme Court of India in ***Joseph Stephen and others Versus Santhanasamy and others, 2022, AIR (SC) 670***, wherein it was held that the right provided to the victim to prefer an appeal against the order of acquittal is an absolute right. The victim is not to pray for grant of special leave to appeal. The victim has a statutory

right to appeal under the proviso to Section 372 of Cr.P.C and the proviso to Section 372 of the Cr.P.C does not stipulate any condition of obtaining special leave to appeal like sub-section 4 of Section 378 Cr.P.C. in a case wherein an order of acquittal is passed in a case instituted upon complaint.

12. We have considered the merits of the contentions raised by Ld. Counsel for appellant. Though in a case based on direct evidence, the motive takes a back seat but in the present case a reference is required to be made to the motive as set up by the prosecution. As per the version of the appellant, the land purchased by his mother Bharpai was agreed to be sold to accused Vijay Singh but he could not give money at the time of registration of the sale deed, therefore, sale deed could not be registered. As such they caused injuries to the appellant-complainant. The motive set up by the prosecution is falsified by the conclusions drawn by the civil court while deciding the appeal in civil matter pertaining to the civil suit filed by the accused Vijay Singh for specific performance of the agreement dated 27.04.2011 which is alleged to have been executed by the mother of the appellant. The material observations of the Appellate Court in Civil Appeal No.181 of 2015/16 which have been noticed by the Trial Court and rightly appreciated. The same reads: -

“Defendant executed an valid agreement in favour of the plaintiff, received Rs.10 lacs as earnest money, handed over the possession of the suit land in favour of the plaintiff and also received remaining sale consideration at the time when sale deed Ex.D20 was executed but not registered before the Sub Registrar because the defendant became dishonest when she had to pay additional amount to her vendor and she refused to get registered the sale deed in favour of the plaintiff.”

13. Perusal of the judgment passed in a civil appeal indicate that the said appeal has been filed by Vijay @ Bijey Singh respondent-accused wherein he had set up that an agreement to sell dated 27.04.2011 was executed by Bharpai, who is mother of the appellant whereby she agreed to sell 18 Kanal 19 Marla land to the accused (plaintiff) Vijay Singh and received a sum of Rs.10 lakhs as earnest money at the time of execution of agreement to sell. Subsequently, she had also received a sum of Rs.15,17,500/- on 17.05.2011, and the date for execution of the sale deed was fixed as 18.05.2011. The drafted sale deed (Ex. D-20 proved in the civil dispute between the parties) was also considered by the appellate court and it further took note of the admissions made by the appellant Baru Ram who was attorney holder of his mother. In the cross-examination, he had admitted that his mother agreed to sell her land and executed an agreement dated 27.04.2011. Appellant also admitted that he was present at the time of execution of the said agreement but he stated that witnesses were not present. He also admitted that a sum of Rs. 10 lakhs was received.

14. Keeping in view the admission made by the appellant and the evidence on record, the Appellate Court has held that accused Vijay Singh is in possession of the land in question on the basis of the agreement to sell and further, decreed the suit for specific performance.

15. In view of the detailed finding by the Civil Court which is based on the admissions of the appellant with regard to the execution of the agreement and the receipt of the earnest money, we are of the considered opinion that the trial court has rightly held that it is highly improbable to believe the version of the appellant. There was no question for going to the fields to water the same when the possession was already

delivered on the basis of the agreement to sell in favour of the respondent-accused Vijay Singh.

16. We have also considered the medical evidence on record, there appears to be an altercation between the parties and some dispute with regard to the possession of land in question. The version of the appellant with regard to the manner in which he as well as the other injured received the alleged injuries; the gravity of the injuries; and the other attending circumstances makes the case of the prosecution highly doubtful. As such, the trial court has rightly disbelieved the prosecution case and granted the benefit of doubt to the respondents.

17. The scope of inquiry by the Appellate Court while dealing with the appeal against acquittal under Section 378 Cr.P.C has been dealt with by the Hon'ble Supreme Court from time to time. Taking note of the various pronouncements, the Hon'ble Supreme Court in **Mohan @ Srinivas @ Seena @ Tailor Seena vs. State of Karnataka 2022(1) RCR (Criminal 493)** has summarised the law as under:-

23. This court, time and again has laid down the law on the scope of inquiry by an Appellate court while dealing with an appeal against acquittal under [Section 378 CrPC](#). We do not wish to multiply the aforesaid principle except placing reliance on a recent decision of this court in [Anwar Ali and Anr. v. State of Himanchal Pradesh](#), (2020) 10 SCC 166:

14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under: (Babu case [[Babu v. State of Kerala](#), (2010) 9 SCC 189; (2010) 3 SCC (Cri) 1179])

“20. 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. The 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.(Vide *Rajinder Kumar Kindra v. Delhi Admn.* [Rajinder Kumar Kindra v. Delhi Admn., (1984) 4 SCC 635 : 1985 SCC (L&S) 131] , *Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons* [Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312] , *Triveni Rubber & Plastics v. CCE* [Triveni Rubber & Plastics v. CCE,1994 Supp (3) SCC 665] , *Gaya Din v. Hanuman Prasad* [Gaya Din v. Hanuman Prasad, (2001) 1 SCC 501] , [Aravelu \[Arulvelu v. State, \(2009\) 10 SCC 206 : \(2010\) 1 SCC \(Cri\) 288\]](#) and *Gamini Bala Koteswara Rao v. State of A.P.* [Gamini Bala Koteswara Rao v. State of A.P., (2009) 10 SCC 636 : (2010) 1 SCC (Cri) 372])”

It is further observed, after following the decision of this Court in [Kuldeep Singh v. Commr. of Police](#) [Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10: 1999 SCC (L&S) 429], that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with.

14.3. In the recent decision of [Vijay Mohan Singh](#) [Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436: (2019) 2 SCC (Cri) 586], this Court again had an occasion to consider the scope of [Section 378](#) CrPC and the interference by the High Court [State of Karnataka v. Vijay Mohan Singh, 2013 SCC OnLine Kar 10732] in an appeal against acquittal. This Court considered a catena of decisions of this Court right from 1952 onwards. In para 31, it is observed and held as under:

“31. An identical question came to be considered before this Court in [Umedbhai Jadavbhai](#) [Umedbhai Jadavbhai v. State of Gujarat, (1978) 1 SCC 228: 1978 SCC (Cri) 108]. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on reappreciation of the entire evidence on record. However, the High Court, while

reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under:

‘10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappraise the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case.’

31.1. [In Sambasivan \[Sambasivan v. State of Kerala, \(1998\) 5 SCC 412: 1998 SCC \(Cri\) 1320\]](#), the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on reappraisal of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under:

‘8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Doshi case [\[Ramesh Babulal Doshi v. State of Gujarat, \(1996\) 9 SCC 225 : 1996 SCC \(Cri\) 972\]](#) viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in

an order of acquittal though the High Court has rendered a well-considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified; then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case.'

31.2. [In K. Ramakrishnan Unnithan \[K. Ramakrishnan Unnithan v. State of Kerala, \(1999\) 3 SCC 309 : 1999 SCC \(Cri\) 410\]](#) , after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappraise the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed

that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. [In Atley \[Atley v. State of U.P., AIR 1955 SC 807: 1955 Cri LJ 1653\]](#), in para 5, this Court observed and held as under:

‘5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under [Section 417 CrPC](#) came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well-established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal.

If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, *Surajpal Singh v. State* [*Surajpal Singh v. State*, 1951 SCC 1207: AIR 1952 SC 52]; *Wilayat Khan v. State of U.P.* [*Wilayat Khan v.*

State of U.P., 1951 SCC 898: AIR 1953 SC 122]) In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.’

31.4. [In K. Gopal Reddy \[K. Gopal Reddy v. State of A.P., \(1979\) 1 SCC 355: 1979 SCC \(Cri\) 305\]](#), this Court has observed that where the trial court allows itself to be beset with fanciful doubts, rejects creditworthy evidence for slender reasons and takes a view of the evidence which is but barely possible, it is the obvious duty of the High Court to interfere in the interest of justice, lest the administration of justice be brought to ridicule.”

18. In view of the aforesaid decision, while appreciating the evidence on record, which has been discussed in detail by the Trial Court and the judgment which suffers from no perversity, we are of the considered opinion that no other view is possible as taken by the trial court. The respondent-accused have been rightly acquitted by giving them benefit of doubt. Appeal is devoid of any merit as such and the same is hereby dismissed.

(G.S.Sandhawalia)
Judge

(Harpreet Kaur Jeewan)
Judge

14.02.2023
ShivaniKaushik

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No