

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

250

CRM-A-412-2020 (O&M)

Date of decision: 10.08.2023

Satnam Singh

....Appellant

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sandeep Kumar, Advocate for the appellant

Mr. H.S. Sullar, Sr. DAG Punjab

AMAN CHAUDHARY, J.

1. The present application for leave to appeal has been preferred against the judgment dated 23.01.2020 passed by Judicial Magistrate 1st Class, Hoshiarpur, whereby all the accused-respondents were discharged in case complaint No.COMI-114-2016, registered under Sections 323, 324, 325, 452 and 34 IPC, titled as “Satnam Singh vs. Harbans Kaur and Others”.

2. The facts that emerge from the complaint are that the complainant and accused-respondent No.2, Harbans Kaur, got married and two children were born out of their wedlock. A few years later Harbans Kaur left the house with the children. On 28.9.2013 at about 2.30 P.M, all the accused unlawfully trespassed the house of the complainant and started giving him kirpan blows on the whole body. One Dharampal, who was present at the spot saved him and on hearing the hue and cry raised, other people also gathered. Thereafter, the complainant went to Civil Hospital, Hoshiarpur, where he was medico legally examined. Since no FIR was got registered by the police, the complaint was filed.

3. In order to prove his case, the complainant examined himself as well as 2 other witnesses. Thereafter, the accused caused an appearance in the Court and were released on bail. The complainant further examined himself and 3 other witness in pre-charge evidence, which was closed by the trial Court after granting several opportunities to do the same.

4. On evaluating the evidence led and hearing the counsel of the parties, the learned trial Court acquitted the accused-respondents herein.

5. Hence the present leave to appeal.

6. Learned counsel contends that the had wrongly acquitted the accused-respondents by taking into account that earlier the same complaint filed by the complainant-appellant was dismissed on 25.04.2016 by the JMIC, Hoshiarpur, however at that time, no other witness in support of his case was produced. But the petitioner in the present complaint had produced three more witnesses, who corroborated his version and there were specific allegations leveled of the injuries caused to him by the accused, which were supported by the MLR and thus, proved the case.

7. Heard and perused the file.

8. It would be profitable to refer the judgment of Hon'ble The Supreme Court in the case of **N. Vijayakumar vs. State of Tamil Nadu** (2021) 3 SCC 687, wherein it was held thus:

"20.....Under Section 378 CrPC, no differentiation is made between an appeal against acquittal and the appeal against conviction. By considering the long line of earlier cases this Court in the judgment in Chandrappa v. State of Karnataka, (2007) 4 SCC 415 has laid down the general principles regarding the powers of the appellate Court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under: (SCC p. 432) "42.

From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, re- appreciate 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 G.A.No.28 of 1994 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."

9. Adverting to the case in hand, a reference is required to be made to the order passed by the trial Court acquitting the respondents by holding thus:

“9. ...However, in the present case, the only exceptional circumstance, which complainant could point out is that the eye witness to the occurrence has now been examined. However, this court is of the view that mere examination of an eye witness at the time of filing of second complaint, is not firstly an exceptional circumstances.

10. Secondly, even presence of an eye witness on the occurrence is itself doubtful. Admittedly, Harbans Kaur filed complaint against eye witness Dharam Pal also. So, firstly eye

witness is inimical to the accused. Going on further complainant admits that he went to hospital on his own. He was not taken to the hospital by the eye witness. So, presence of eye witness on the spot becomes doubtful from this very fact. No explanation was given for non-examining the eye witness CW2 Dharampal in the first complaint. The court of Sh Tanisth Goyal dismissed first complaint observing that no eye witness has been examined and in the second complaint eye witness CW2 Dharampal was examined. But discussed above, his presence is doubtful and possibility that CW2 Dharampal is a framed witness to fill up the lacunas, can not be ruled out completely. Also second complaint has been instituted without disclosing about dismissal of the first complaint, which is clearly an abuse of process of law and complainant becomes dis-entitled to any relief for the said reason also.

11. Also, complainant admitted that the place of occurrence is not in his possession and he had already sold the said place to his brother in the year 2004. So, the possession of the complainant on the place of occurrence, on the date 28.9.2013 i.e. date of occurrence is doubtful. Offence under sec 452 IPC is related to possession. So possession of complainant on the day of occurrence in the place of occurrence is also not proved. Moreover, as discussed above, presence of eye witness CW2 Dharampal Singh is also doubtful because he was never examined by the complainant at the time of filing the first complaint. There is no reference of CW2 Dharampal in the previous complaint Ex.D1, so presence of CW2 Dharampal is doubtful.

12. There is also unexplained delay in filing of the complaint. The incident took place in 2013. Even the first complaint Ex.D1 was instituted in the year 2015 after about two years of the occurrence. It is only mentioned in the complaint that police did not take action against the accused persons and even talks of compromise were going on. But, there is no evidence to establish the talks of compromise with the accused persons. Delay of three years in filing the present complaint is unexplained and unreasonable. It is a common fact that delay often causes embellishment and distorted version. Delay makes the entire prosecution story doubtful and does not raise confidence in the prosecution story. When the substratum or edifice of the prosecution case is doubtful, the entire prosecution story becomes doubtful. Even the second complaint was filed by the complainant without disclosing the fate of the first complaint, which is clearly an abuse of process of law and accused cannot be coerced twice on account of same occurrence, when finding upon the complaint has already

been delivered by the court of competent jurisdiction on merits. The evidence thus lead in the present case file is not sufficient, which if goes un rebutted, when warrants conviction of the accused.

13. Ld.Counsel for complainant argued that at the time of framing of charges, quantum of evidence is required be of prima facie nature only and complainant has established prima facie case against the accused. However, this court does not agree with the contention of the Ld.Counsel for complainant. As per Section 245(1) CrPC at the time of framing of charge in a complaint case, a Magistrate has to consider whether if the evidence remains un rebutted, the conviction of the accused would be warranted or not. If there is no incriminating material in evidence, then accused shall be discharged. Therefore, the nature of evidence required to frame charges in a warrant case instituted otherwise then on the police report, should not only be of prima facie nature but of such nature, if it goes un rebutted would warrant the conviction of the accused.

14. Discussed above, in the present case evidence is neither sufficient to warrant the conviction of accused persons. The nature of evidence lead on record fails to even establish case under Section 324, 452 read with Section 34 IPC, which if goes un rebutted could warrant conviction of any accused.”

10. Hon’ble The Supreme Court in **Jafarudheen vs. State of Kerala**, (2022) 8 SCC 440, had held that, “While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

11. The Court below meticulously examined the evidence and arrived at

the right conclusion as the prosecution could not establish the guilt of the accused-respondents, on account of the doubtfulness of the presence of eye witness, place of occurrence, delay in lodging the FIR and concealment by the applicant of the first complaint filed by him, which all go to the root of the matter. No glaring defect in the procedure or that a patent error has been committed by the trial Court in ignorance of law, has been pointed out by the counsel for the applicant, which has resulted in flagrant of miscarriage of justice. There is not even an iota of evidence against the respondents, which would lead to his conviction and a perusal of the orders shows that no other view is possible.

12. In view of the above, there being no perversity or illegality in the impugned order passed by the trial Court, whereby the respondents have been acquitted, the present application for leave to appeal is hereby dismissed being bereft of merit.

(AMAN CHAUDHARY)
JUDGE

August 10, 2023
M.Kamra

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