

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-10388 & 10389 of 2012 in/and
CRM-A-143-MA-2012 (O&M)
Reserved on: 28.03.2023
Date of Pronouncement: 11.04.2023

Bantu Ram ...Appellant
vs.
State of Punjab and Ors. ...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Ish Puneet Singh, Advocate
for the applicant.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.Shekhawat J.

CRM-10388-2012

The applicant has filed the present application under Section-5 of the Limitation Act for condonation of delay of 69 days in filing the present appeal. Learned counsel for the applicant/appellant submitted that the present case was filed well within the period of limitation in the form of a criminal revision, but the Registry of this Court raised objection that as per the amended provisions of Section 372 Cr.PC, the appeal was maintainable. Consequently, after removal of the objections, the appeal was filed without any delay and in this process, the delay of 69 days had occurred. He further contends that the delay in filing the present appeal was unintentional and bona fide. The submissions have been opposed by the learned State counsel.

After hearing counsel for the parties, for the reasons mentioned by the applicant-appellant, the present application is allowed and the delay of 69 days in filing the present appeal is hereby condoned.

CRM-10389-2012

The applicant/appellant has filed the instant application for exemption from filing the typed copy of the judgment dated 24.09.2011, passed by the Court of Learned Additional Sessions Judge, (FTC), Ropar.

For the reasons mentioned in the application, the same is allowed. The applicant/appellant is exempted from filing the typed copy of the judgment dated 24.09.2011, passed by the Court of Learned Additional Sessions Judge, (FTC), Ropar.

CRM-A-143-MA-2012

The appellant/complainant has assailed the impugned judgment dated 24.09.2011 passed by the learned Additional Sessions Judge, (FTC) Ropar, whereby the learned Appellate Court reversed the judgment and order dated 25.11.2010, passed by the Sh. Kapil Aggarwal, Learned Judicial Magistrate First Class, Anandpur Sahib and acquitted the respondents of the charge. Feeling aggrieved of the same, the appellant/complainant has preferred the present appeal before this Court by raising various grounds.

As per the admitted story of the prosecution, on receipt of a ruqa pertaining to the admission of Bantu Ram son of Nanak, resident of Village Gag, Police Station Anandpur Sahib, District Ropar on 01.03.2000, ASI Shiv Singh went to the Civil Hospital and moved an application for recording the statement of the injured Bantu Ram. However, he was declared unfit to make

the statement. On 02.03.2000, another application was moved by the police for obtaining the opinion regarding the fitness of the injured and the injured was declared fit to make the statement. However, Bantu Ram, injured refused to make the statement. Again on 03.03.2000, Bantu Ram again refused to make the statement, inspite of the fact that he was fit to make a statement. Ultimately, on 04.03.2000, the statement of Bantu Ram injured/complainant was recorded by the police and he stated that he had three sons and was working as a labourer. He was not maintaining good health. About 13 Marlas of Abadi land was lying vacant in front of his house and a dispute was pending in this regard between him and Dhani Ram, accused/respondent No.1. At about 07:00 AM on 01.03.2000, Dhani Ram scattered his bundles of fodder, kept on the said land. He tried to stop him, but Dhani Ram started abusing him. After that, Dhani Ram pushed him on the ground in the pucca street and also attacked him with the stone, which struck on his chest, flank and head. He also gave fist blow on his jaw and due to this his tooth was broken. Dhani Ram also hit him with the stone on his left arm and there was bleeding from his mouth. In the meantime, Sarlo wife of Dhani Ram also came there with a slipper in her hand and gave him beatings with the same on his chest and stomach. He raised the noise to save him and Chhurau son of Pissu and Chhotu Ram son of Likha and other neighbours came forward to rescue him. Ultimately, case under Sections 323, 325, 34 IPC was registered. ASI Shiv Singh along with other police officials went to the place of occurrence and conducted the preliminary investigation. Dhani Ram moved an application to the police, which was marked to DSP for enquiry and DSP in his report

concluded that no occurrence as alleged by Bantu Ram, had taken place and found the matter to be false. However, the police presented the report under Section-173 Cr.PC.

After hearing the parties, the charge under Sections 323, 325, 34 IPC was framed against the accused, to which they pleaded not guilty and claimed trial. After the trial, vide the judgment of conviction and order of sentence dated dated 25.11.2010, the Court of Sh. Kapil Aggarwal, Learned JMIC, Anandpur Sahib convicted the respondent No.1- Dhani Ram under Sections 323 and 325 of IPC, whereas respondent No.2-Sarlo was convicted under Section 323 IPC only and were sentenced accordingly. The respondents No.1 and 2 filed an appeal and vide the impugned judgment, the Appellate Court acquitted both the respondents from charge.

I have heard the learned counsel for the parties and with their able assistance, I have gone through the trial Court record carefully.

Learned counsel for the appellant vehemently argued that in the present case, the learned Appellate Court mis-appreciated the evidence on record and the settled canons of the law. The learned Appellate Court had drawn wrong inference from the fact that there was three days delay in lodging of the FIR. In fact, the complainant had offered proper explanation for the same and the respondents could not have been acquitted on the said ground. I have considered the said submission and find it to be unacceptable. In the instant case, as per the complainant, the occurrence had taken place at about 07:00 AM on 01.03.2000. As per the MLR Ex. PW-6/B, he reached hospital at about 03:40 PM on 01.03.2000. Even though he had suffered minor injuries,

still he was declared to be unfit to make statement on 01.03.2000. On 02.03.2000 as well as 03.03.2000, he was declared to fit to make the statement by the doctors, still he refused to make the statement. Ultimately, the FIR in the present case could be registered on 04.03.2000 and there was no explanation for the delay of 3 days in lodging the present FIR. In the instant case, there was delay of 3 days on the part of the complainant and even till the conclusion of the investigation, he could not offer any cogent and acceptable explanation for the same. Apart from that, it is also evident that even though the parties are closely related, still they were fighting a litigation in the Civil Court. Consequently, there are chances of embellishments and distortion in the prosecution versions as the parties were already inimical towards each other. Since the FIR was not lodged with promptitude and no valid and sufficient explanation was offered by the complainant in the present case, the version of the appellant/complainant has been rightly disbelieved by the learned Appellate Court.

Apart from that, it was also apparent that even the medical opinion rendered by PW-5 Dr.Guriqbal Singh and PW-6 Dr. Palwinderjit Singh also exposed the falsehood of the prosecution case. As per medical opinion of PW-5 Dr.Guriqbal Singh, Bantu Ram was quite fit to make the statement all through the period. Similarly, PW-6 Dr. Palwinderjit Singh also admitted that at the time of his admission at 03:40 PM on 01.03.2000, the appellant/injured/complainant was conscious and was in a fit state to record his statement. Thus, the appellant was physically and mentally fit, still he chose not to report the matter for three days and this fact alone renders the

prosecution story to be doubtful. I have also considered the reasons recorded by the learned Appellate Court. The tooth injury was declared to be grievous on the report of a dentist, but the report was never placed on record and the conviction of the respondents under Section 325 IPC was bad in the eyes of law. Apart from that, PW-6 Dr. Palwinderjit Singh also stated the possibility could not be ruled out that all the four injuries mentioned in the MLR of Bantu Ram could be suffered due to fall from some height. Apart from that, it is apparent that Bantu Ram, injured was aged about 80 years and there was equally a possibility that the loss of tooth from the lower jaw on the left side could be caused by due to old age of the injured. Apart from that, learned counsel for the appellant has brought to the notice of the Court that the accused i.e respondent No.1 was nephew of the appellant/injured/complainant and there was a dispute between both the sides with regard to 13 marlas of land. Thus, it is evident that the parties are closely related to each other and apart from merits of the case, the reversal of the judgment by this Court after 23 years of occurrence may further deteriorate their relationship. Keeping in view the fact that both the sides are closely related, it would be appropriate to give a quietus to the litigation.

Still further, having regard to the entire evidence discussed above and after carefully and closely considering the judgments of the trial Court and the Appellate Court, it appears that the view taken by the Appellate Court was reasonable and plausible. If on appraisal of the evidence and on considering relevant attending circumstances, it is found that two views are possible one as held by the Appellate Court for acquitting the accused and the other for

convicting the accused, in such a situation the rule of prudence requires the High Court not to disturb the order of acquittal made by the Appellate Court. It is equally settled that unless the conclusions of the Trial Court drawn on the evidence on record are found to be unreasonable, perverse or unsustainable, the High Court should not interfere with the order of acquittal. From the discussion of the evidence of the eye-witnesses as well as the injured witness, the prosecution version does not inspire confidence and the ocular version is in contradiction with the medical evidence. Consequently, it would be inappropriate to convert the judgment of acquittal into conviction. While discussing the scope of interference by the Appellate Court, while dealing with the judgment of acquittal, the Hon'ble Supreme Court held in the matter of ***Bhaskar Rao and others Vs. State of Maharashtra AIR 2018 SC 2222:2018 (5) RCR (Criminal 288)*** as follows:-

*“14. As the trial Court and High Court, having appreciated the evidence on record has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this Court as expressed in ***Tota Singh and Anr. Vs. State of Punjab, 1987 (2) RCR (Criminal) 35:1987 CriLJ 974-****

The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW-2 and PW-6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such re-appreciation, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The

jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such, which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse: Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

15. In **Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62: 1996 CrilJ 2867**, this Court observed:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question is the negative the order of acquittal is not to be disturbed."

Keeping in view the above discussion, this Court is of considered opinion that the prosecution had miserably failed to prove the prosecution case beyond reasonable doubt and the learned Appellate Court had correctly acquitted both the respondents. As a consequence, the impugned judgment dated 24.09.2011 passed by Learned Additional Sessions Judge (FTC) Ropar is upheld and affirmed and the appeal is accordingly dismissed.

All pending applications, if any, are also disposed off, accordingly.

The Trial Court record be sent back.

11.04.2023
Hitesh

(N.S.SHEKHAWAT)
JUDGE

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