

237 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A No.1012-MA of 2018 (O&M)
Date of decision : 21.08.2023

SDO (OP), Sub Division
Babyal Uttar Haryana Bijli Vitran Nigam Appellant

versus

State of Haryana & anr. Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Ms. Chhavi Sharma , Advocate
for the applicant-appellant.

Mr. Ashok Kumar Sehrawat, DAG, Haryana.

PANKAJ JAIN, J. (ORAL)

1 Applicant seeks leave to appeal against the judgment dated 20.07.2017 whereby respondent No.2 stands acquitted in FIR No.364 dated 03.04.2015 registered under Section 135 of the Electricity Act at Police Station I & P Ambala.

2 The trial Court after appraising the evidence found that the only evidence to corroborate the version of the complainant-witness PW1 and PW2 was in form of compact disc which has been produced and tendered in evidence as Exhibit P-L. However, the same being only a secondary evidence could not be proved in accordance with the provisions of Section 65 (b) of the Indian Evidence Act.

3 Learned counsel for the appellant does not dispute that neither the original device nor the memory card/chip which was used to record the incident was ever produced.

4 The law w.r.t. exercise of appellate jurisdiction stands settled by Four Judges Bench of Apex Court in case of **Bansidhar Mohanty vs. State of Orissa, reported as AIR 1955 Supreme Court 585** holding as under :

“XX XX XX

4. *The principles on which the High Court should act in an appeal from an order of acquittal have been quite clearly laid down by the Privy Council in the case of -- 'Sheo Swarup v. Emperor', AIR 1934 PC 227 (2) at pp. 229-230 (A). The same principles have been so often reiterated by this Court that it is hardly necessary to restate them 'in extenso'.*

It will be sufficient to refer to the decisions of this Court in -- 'Surajpal Singh v. The State', AIR 1952 Supreme Court 52; - 'Puran v. State of Punjab', AIR 1953 Supreme Court 459 and 'Narayan Ittiravi v. State of Travancore-Cochin' AIR 1953 Supreme Court 478. It is now well settled by the abovementioned decisions that while in an appeal under Section 417, Criminal Procedure Code of the High Court has full power to review the evidence upon which the order of acquittal was founded, nevertheless, in exercising the power conferred by the Code the High Court will give proper weight and consideration to such matters as (i) the views of the trial Judge as to the credibility of witnesses; (ii) the presumption of innocence in favour of the accused reinforced by the fact of his acquittal at the trial, (iii) the right of the accused to the benefit of any doubt and (iv) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.”

5 The afore-said principles stand reiterated in the case of **Chandrappa and others vs. State of Karnataka, (2007) 4 SCC 415** wherein it was held as under :-

“35. *From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while*

dealing with an appeal against an order of acquittal emerge :

“(1) An appellate Court has full power to review, reappreciate 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 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 emphasize 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 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 possibly on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

(emphasis supplied)

6 Further reiterated in the case of '**State of Uttar Pradesh vs. Banne @ Baijnath' (2009) 4 SCC 271.**

7 In view of above, this Court does not find that there is any legal infirmity in the record or in the judgment passed by Ld. Trial Court to reappraise the evidence.

8 In view of aforesaid settled proposition of law, this Court does

not find any reason to interfere in the findings recorded by the Trial Court and the same is dismissed.

9 Since the main case has been decided, therefore, there is no necessity to pass any order in the application for condonation of delay and the same is disposed off accordingly.

(PANKAJ JAIN)
JUDGE

21.08.2023
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No