

**215 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-A-1793-MA-2016

Date of decision : 20.02.2023

Santokh Singh

.....Applicant

versus

Harvinder Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Avtar Singh Khinda, Advocate
for the applicant.

Mr. Davinder Kumar, Advocate
for the respondents.

RAJESH BHARDWAJ, J.

This application has been filed under Section 378(4) Cr.P.C. by the applicant for grant of leave to appeal against the impugned order dated 11.08.2016 whereby learned Judicial Magistrate Ist Class, Phagwara has acquitted the respondents-accused from the charges they were prosecuted.

As per brief facts of the case, the applicant-complainant and the respondent-accused both had joint agricultural land and they used to cultivate the same. The respondents-accused threatened to dig the earth from joint agricultural land without partition of the same. Though the applicant-complainant requested the respondents-accused not to dig the earth from the joint agricultural land, however, they did not adhere to the same. On 10.05.2011 when the applicant-complainant along with his wife was working in their field, all the respondents-accused came there with common intention duly armed with *datars*. Accused Harvinder Singh and

Jaswinder Singh gave *lalkara* and accused Harvinder Singh gave *datar* blow from its reverse side which hit the upper part of the right eyebrow of the applicant/complainant. Accused Jaswinder Singh then gave a *datar* blow on his head and to ward it off, he raised his right hand and the blow hit on the palm surface of his right hand. Accused Harvinder Singh gave him another blow of *dattar* which hit above the left knee of complainant. Accused Amarjit Kaur also caused injuries with the *datar* on his head. However, the applicant/complainant raised his left hand and the blow struck on the left middle finger of his hand. On their raising noise, the respondents-accused left the place with their respective weapons. They were taken to Civil Hospital, Phagwara and were medico legally examined there. Though the matter was referred to the police, the police did not take any action against the respondents-accused. Hence, the applicant-complainant filed the complaint against the respondents-accused. Learned trial Court summoned the respondents-accused and in pre-charge evidence, the applicant-complainant examined five witnesses. Finding a *prima facie* case, the charges were framed against accused/respondents for the offence under Sections 323, 325, 506, 34 of IPC. In the post-charge evidence, the applicant-complainant stepped into the witness box as CW3 and besides that other four witnesses were also examined. On closure of the applicant-complainant's evidence, statements of the respondents-accused were recorded under Section 313 Cr.P.C. and they pleaded innocence to the same. The respondents-accused examined DW1 Paramjit Ram. On hearing both the sides and appreciating the evidence led by both the parties, learned trial Court found the case of the applicant-complainant full of major contradictions and thus, learned trial

Court acquitted all the respondents-accused vide its impugned order dated 11.08.2016.

Learned counsel for the applicant-complainant has vehemently contended that learned trial Court has failed to appreciate the evidence on record and thus, drawn a wrong conclusion. He has submitted that the applicant-complainant himself stepped into the witness box as CW3 and other eye-witnesses also appeared and supported the case of the applicant/complainant. He has submitted that the injuries were suffered by the applicant/complainant and the same was proved by Dr. Naresh Kundra, who appeared as CW1. He submits that the ocular version was medically corroborated. However, learned trial Court failed to appreciate the same and thus, drawn a wrong conclusion which is totally perverse to the material on record.

After hearing counsel for the applicant and perusing the record, it is apparent that learned trial Court has appreciated the evidence on record threadbare. On perusal of the same, it has been found that the complainant himself appeared in the witness box as CW3, Dr. Naresh Kundra as CW1, Hardial Singh as CW2, Jasvir Kaur @ CW4, Harbhajan Lal as CW5. On re-appreciation of the deposition of CW3 Santokh Singh it would show that he admitted that they were not in possession of the place where the dispute occurred and he admitted that the accused were in possession of the land in dispute. There were major contradictions in the statement of CW3 Santokh Singh. Further CW2 Hardial Singh in his cross-examination stated that the mutation of the land of Phuman Singh was sanctioned in the name of accused. It was also submitted by the witnesses that except them nobody else was present at

the time of occurrence. A conjoint reading of the depositions of all the witnesses had made the case of the applicant/complainant full of major contradictions and thus, the respondents-accused were entitled for the benefit of doubt. Simply because the applicant/complainant produced doctor proving the injuries would not be sufficient as the applicant/complainant has failed to prove the same, the onus of which was on the applicant/complainant to substantiate his case by proving the occurrence beyond reasonable doubt.

As per the law settled, the appeal against conviction and that against acquittal rests entirely on different pedestal. In case of acquittal, it has been held by Hon'ble Supreme Court repeatedly that if there are two views possible in a given case, then, the one favouring the accused should be adopted. As per the criminal jurisprudence, every accused is presumed to be innocent until proven guilty. As per the law settled by Hon'ble Supreme Court, once the accused is acquitted by the Court of law, there lies double presumption of innocence in his favour. Hence, an Appellate Court should not disturb in a cavalier manner the findings arrived at by the trial Court resulting in acquittal of accused and it is only in case of perversity of the findings, the Appellate Court should interfere in the acquittal order passed by the trial Court. In **Jafarudheen and others vs State of Kerala 2022 SCC Online SC 495**, it is held that Appellate Court has to be relatively slow in reversing order of trial Court rendering acquittal, relevant para of the same reads thus:-

“25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.P.C., 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.”

Weighing the facts and circumstances of the present case on the anvil of law settled, this Court finds no perversity in the order passed by the trial Court. Resultantly, the present application for grant of leave to appeal is dismissed.

20.02.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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