

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-529-MA-2016 (O&M)
Date of decision: 31.07.2023

Tarlochan Singh

....Applicant-appellant

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. G.S. Sandhu, Advocate for the applicant-appellant

Ms. Himani Arora, AAG Punjab

Mr. Gurbir Singh Pannu, Advocate for respondent Nos. 2 to 7

AMAN CHAUDHARY. J.

1. The present application for leave to appeal has been preferred against the judgment dated 31.08.2015, whereby the respondents were acquitted by the Additional Sessions Judge of the charges levelled against them under Sections 323, 440, 506, 427, 148, 149 IPC, and further to uphold the conviction of accused rendered by trial Court dated 10.06.2013, and modify the sentence therein, which was as below:

Offence u/s	Imprisonment	Fine	Default sentence
323 IPC	6 Months SI	-	-
452/149 IPC	1 Year SI	Rs.1000/-	1 Month SI
427/149 IPC	6 Months SI	-	-
147 IPC	1 Year SI	-	-

2. Briefly put, the facts of the case are that complainant Tarlochan Singh and his brother-Charan Singh had started a dairy. In 2006, a dispute had arisen

between them over the partition of said dairy. Thereafter, he had instituted a case against his brother in the civil court, the proceedings were not attended by Charan Singh. Due to this reason the accused-respondent No.3 wanted to take revenge. On 23.08.2010, he along with other accused persons, at around 10 pm in a drunken state, threw stones and bricks from the roof of Karamjit Singh at the house of the complainant. Further, they entered into his house and broke the window panes, and caused injuries to the complainant and his daughter, who got themselves examined at Civil Hospital, Ludhiana.

3. On the basis of the statement of the complainant, a formal FIR was registered. Challan was prepared and presented in the Court, where on finding a prima facie case, the accused-respondents were charge-sheeted, under Sections 452/323/427/506/148/149 IPC. However, the accused-respondents pleaded not guilty and claimed trial.

4. To substantiate the charges against them, prosecution examined as many as 5 witnesses and closed its evidence by Court order. The statements of the accused-respondents were recorded under section 313 Cr.P.C. All the incriminating evidence was put to them, which they denied and pleaded false implications and claimed innocence. The defence closed their evidence after examining two witnesses.

5. On scrutinising the evidence led by the parties and hearing their respective counsels, Judicial Magistrate First Class, Ludhiana convicted the

accused-respondents Karamjit Singh, Charan Singh, Gurcharan Singh and Harpal Singh under sections 323/452/149/427/147 IPC and sentenced each of them as noticed above.

6. Aggrieved by the judgment of the trial Court, the accused-respondents preferred an appeal, the same was allowed and they were acquitted of the charges levelled against them.

7. Hence, the present application for leave to appeal.

8. Learned counsel contends that the trial Court had wrongly ignored the evidence on record and erred in acquitting the accused-respondents on good probation. There were specific allegations levelled against the accused persons in the FIR. The lower Appellate Court has wrongly held that there is delay in lodging the FIR. The judgment of conviction dated 10.06.2023 is legal and valid. The ocular version has been corroborated by the medical evidence, and the doctor was also examined therein to prove the same.

9. Learned counsel for respondent Nos.2 to 7 would submit that the present application should be dismissed, since the prosecution had failed to bring home the guilt of the accused and lower appellate Court had rightly acquitted them.

10. Heard.

11. Hon'ble The Supreme Court in **Sunil Kumar Sambhudayal Gupta (Dr.) vs. State of Maharashtra**, (2010) 13 SCC 657 had framed the guidelines for the appellate court to deal with the matter of "appeal against acquittal", which read thus:

“Appeal against Acquittal:

38. It is a well-established principle of law, consistently re-iterated and followed by this Court is that while dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. Even though the appellate court is entitled to consider, whether in arriving at a finding of fact, the trial Court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. The trial court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses.

39. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The nature of the offence, its seriousness and gravity has to be taken into consideration. The appellate court should bear in mind the presumption of innocence of the accused, and further, that the trial court's acquittal bolsters the presumption of his innocence. Interference with the decision of the Trial Court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference.

40. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. 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. A 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. (See: **Balak Ram & Anr. v. State of U.P.**, AIR 1974 SC 2165; **Shailendra Pratap & Anr. v. State of U.P.**, AIR 2003 SC 1104; **Budh Singh & Ors. v. State of U.P.**, AIR 2006 SC 2500; **S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors.**, AIR 2008 SC 2066; **Arulvelu & Anr. v. State**, (2009) 10 SCC 206; **Ram Singh alias Chhaju v. State of Himachal Pradesh**, (2010) 2 SCC 445); and **Babu v. State of Kerala**, (2010) 9 SCC 189).”

12. The Additional Sessions Judge, while acquitting the accused-respondents had observed that, “(a) Prosecution has failed to prove the

preparation of rough site plan Ex.PC at the spot. PW2 Gurpreet Kaur has categorically stated in her cross examination that no site plan was prepared at the spot. More over site plan Ex.PC has been shown to be prepared on 1.9.2010, therefore, Investigating Officer had no occasion to collect the evidence from the spot regarding the occurrence which was alleged to be taken place on 23.8.2010.

(b) Prosecution has placed on record photographs Mark-A and other photographs on the file which has not been duly proved. More over it is the case of the prosecution that the alleged occurrence took place on 23.8.2010 and the matter was reported to the police first time on 26.8.2010. There is nothing on the case file which can suggest that police took the photographs of the scene of the occurrence. The complainant in his evidence has nowhere stated that he photographed the scene of occurrence at his own, therefore, no reliance can be placed on the photographs. The prosecution has also not produced the car in question in the Ld. Trial Court. Therefore, prosecution is left with the ocular evidence of PW1 Tarlochan Singh and PW2 Gurpreet Kaur. As earlier stated the evidence of both the witnesses is contradictory regarding the information supplied to the police. Therefore, their evidence is not consistent, credible and trustworthy. Ld. Counsel for the complainant has argued that PW1 Tarlochan Singh and PW2 Gurpreet Kaur sustained injuries in the occurrence and they immediately went to the Civil Hospital for taking treatment. As per the prosecution version Dr.Raminder Kaur medicolegally examined PW1 Tarlochan Singh and PW2 Gurpreet Kaur at about 11.50PM at Civil Hospital Ludhiana. On the contrary Ld. Counsel for the appellants has argued that it was imperative upon PW5 Dr.Raminder Kaur to intimate the police regarding the admission of the above said witnesses in the civil hospital, but she failed to prove the medical ruqa regarding the same. I have gone

through the copy of MLR Ex.PW5/A and Ex.PW5/C. In both the MLRs it is shown that the information was sent immediately to the police. A perusal of the case file shows that there is no medical ruqa on the file which can suggest that information regarding the admission of above said witnesses were sent to the Police Station immediately. More over as per PW3 Ravail Singh Investigating Officer he first time got the information regarding the alleged occurrence on 26.8.2010. Therefore, prosecution has miserably failed to prove that PW5 Dr. Raminder Kaur intimated the admission of the PW1 Tarlochan Singh and PW2 Gurpreet Kaur in the hospital. In these circumstances, this court is of the view that non sending of medical ruqa to the Police Station by the Doctor PW5 Raminder Kaur also creates suspicion in the prosecution case. In the totality of the circumstances it can be safely said that prosecution has failed to bring convincing, reliable and trustworthy evidence with regard to the alleged occurrence.”

13. 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.”

14. Learned counsel for the applicant has not been able to point out any

glaring defect in the procedure or that a patent error has been committed in ignorance of law by the lower appellate Court, which has resulted in flagrant miscarriage of justice. There was not even an iota of evidence present against the respondents, which could lead to their conviction. The impugned judgment having been examined, no other view is possible.

15. In light of the above, this Court finds no illegality or perversity in the impugned judgment passed by the lower appellate Court warranting any interference. As such, the present application for leave to appeal is hereby dismissed being devoid of merit.

31.07. 2023

M.Kamra

Whether speaking/reasoned

Whether reportable

:

:

Yes / No

Yes / No

(AMAN CHAUDHARY)
JUDGE