

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-535-MA-2018 (O&M)

Date of Decision : 10.05.2023

State of Haryana

..... Applicant

Versus

Satpal and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Surender Singh, AAG, Haryana
for the applicant-State of Haryana.

VIKRAM AGGARWAL, J (ORAL)

CRM-7694-2018

Prayer in the present application is for condonation of delay of 101 days in filing the accompanying application. The application is duly supported by an affidavit.

Heard.

For the reasons, mentioned in the application, the same is allowed. Delay of 101 days in filing the accompanying application is condoned.

CRM-A-535-MA-2018

The present application filed under Section 378 (4) of the Code of Criminal Procedure seeks leave of the Court to file appeal against the judgment dated 20.07.2017, passed by the Addl. Sessions Judge, Sonapat vide

which the respondents-accused were acquitted of the charges framed against them.

The facts, in brief, are that on 04.03.2016, complainant Sukram Pal is stated to have taken a lift from three persons who were travelling in a white coloured Alto car. Complainant Sukram Pal was doing a job in the Chandigarh Transport Undertaking and on that day, he had come from Chandigarh. On the same day at about 10:25 p.m., when he was waiting for a vehicle, the three accused offered a lift to him. On the way, the complainant is alleged to have been robbed of his belongings which included Rs.15,500/- in cash, a mobile phone alongwith SIM bearing No.9779275933, ATM Card, licence, CTV report card etc. Beatings were also given to him. After sometime, he was thrown out of the car. On his complaint, FIR No.169 dated 04.03.2016, was registered under Sections 323, 379-A IPC and Section 25 of the Arms Act against the respondents-accused at Police Station City Gohana. Investigation commenced. Respondent No.1-accused Satpal was already in custody in some other case. During his interrogation, he confessed about his involvement in the present case. In pursuance of a disclosure statement having been suffered by him, cash amount of Rs.2,000/- and a bill of mobile phone was recovered from him. Accused-respondent No.2 Mohit respondent was arrested on 15.04.2016 and on his disclosure statement, a pistol and Rs.2,000/- were recovered. Accused-respondent No.3 Sher Singh was also arrested on 03.05.2016, being in custody in some other case and an amount of Rs.500, driving licence and photocopy of Aadhar card were recovered from him. After completion of investigation, report under Section 173 Cr.P.C. was submitted in the Court.

During the trial, the prosecution examined 09 witnesses. No evidence was led in defence. By way of judgment dated 20.07.2017, the respondents-accused were acquitted leading to the filing of the present application seeking leave to file appeal.

I have heard learned counsel representing the applicant-State of Haryana.

Learned counsel has submitted that the trial Court erred in acquitting the accused. Reference has been made to the impugned judgment and it has been submitted that PW2 Sukram Pal, who was the injured-complainant, PW9 ASI Krishan and PW5 ASI Balinder, who had investigated the case, had duly deposed about the incident in detail and the guilt of the accused had been proved beyond reasonable doubt. Learned counsel has submitted that under these circumstances, the trial Court erred in acquitting the accused.

I have considered the submissions made by learned counsel representing the applicant-State of Haryana but find the same to be devoid of merit.

No assailant/accused was named in the FIR. A supplementary statement is said to have been recorded subsequently in which the complainant is stated to have named the accused. However, when complainant Sukram Pal appeared in the witness box as PW2, he spilled the beans in the cross-examination. He stated that one of the accused Satpal belonged to his village but he came to know about his name after the registration of the case. He further stated that he had never disclosed the name of Satpal to the police. He went on to admit that he could not tell the

names of the accused and he had not identified them by name. He went to the extent of stating that the police officials had shown him the police file as also the accused in the Court on the day of his deposition. Admittedly, no test identification parade was conducted. Under the circumstances and especially in view of the cross-examination of complainant Sukram Pal, as referred to above, the identification of the accused by the complainant for the first time in the Court cannot be relied upon. Identification for the first time in the Court is even otherwise evidence of a very weak nature unless and until it is corroborated by other evidence or the assailants are known to the complainant before hand. The alleged recovery of some cash amount is of no consequence because anyone could have been in possession of Rs.2,000/- cash etc. The recovery of the bill of a mobile phone is also completely inconsequential as no one would retain the bill of mobile phone. The countrymade pistol alleged to have been recovered from Mohit is also inconsequential because firstly there was no reference to any pistol in the complaint and further the pistol was alleged to have been recovered from some place near a Dhaba which was an open place and no independent witness was joined at the time of the alleged recovery. The non-joining of independent witnesses would also have been inconsequential had the other evidence been trustworthy. However, once the evidence of the complainant himself is shaky, all other things assume importance. The trial Court considered the matter from all angles and, by way of a well reasoned judgment, acquitted the accused. I have not found any illegality or infirmity in the said judgment. Even otherwise, for the reasons, aforementioned, it is established that the prosecution was not able to prove its case against the accused beyond reasonable doubt.

It is settled law that Courts should be slow in interfering in judgments of acquittal unless and until, the judgment under challenge is found to be perverse. It is now well settled that Courts have to be extremely careful while hearing appeals against acquittal and the judgments of acquittal should not be interfered with lightly. In the case of **Sadhu Saran Singh Vs. State of U.P. and others, 2016 (2) RCR (Criminal) 319**, the Hon'ble Apex Court reiterated that generally an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against the conviction. It was held that in an appeal against acquittal, where the presumption of innocence in favour of the accused is re-enforced, the Appellate Court would interfere with the order of acquittal only when there was perversity of fact and law. A word of “caution” was also added by the Hon'ble Apex Court that the paramount consideration of the Court was to do substantial justice and avoid miscarriage of justice, which could arise by acquitting the accused, who is guilty of an offence. Though, in this case the Hon'ble Apex Court reversed a judgment of acquittal but the principles carved out would definitely be binding and would be applicable as per the facts of each case. As stated above, in the present case, there is no perversity on facts or law. Still further, in the case of **State of Maharashtra Vs. Fazal Rehman Abdul, 2014(7) SCC (Criminal) 01**, the Hon'ble Apex Court laid few parameters to be kept in mind while entertaining appeals against judgments of acquittal. It was held that 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. It was held that while dealing with a judgment of acquittal, the Appellate Court has to consider the entire

evidence on record so as to arrive at a finding as to whether the view of the trial Court was perverse or otherwise unsustainable. It was also held that the Appellate Court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters presumption of his innocence. The part of the Judgment dealing with this issue is reproduced here-in-below:-

“9. This Court has laid down parameters for interference against the order of acquittal time and again. 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. While dealing with a judgment of acquittal, the appellate court has to 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. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. 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 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 in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. 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. The 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.”

This view was also taken by the Hon'ble Apex Court in a case **State of Rajasthan Vs. Madan alias Madaniya, 2019 CrI.L.R. (S.C.) 09**. It was held by the Hon'ble Apex Court that in an appeal against acquittal, the Appellate Court would only interfere where there exists perversity of facts

and law. While arriving at these conclusions, the Hon'ble Apex Court relied upon the Judgment in the case of **Rabindra Kumar Pal alias Dara Singh Vs. Republic of India, 2011(2) SCC 490.**

In view of the aforementioned facts and circumstances, I do not find any reason to interfere in the impugned judgment dated 20.07.2017, passed by the trial Court and, consequently, finding the application seeking leave to file appeal to be devoid of merit, the same is hereby dismissed.

(VIKRAM AGGARWAL)
JUDGE

10.05.2023
mamta

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No