

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

227

CRM-A-683-2018 (O&M)
Date of Decision: 22.08.2023

Satish

...Petitioner

Vs.

Hawa Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Brijeshwar Singh Bhalla, Advocate
for the applicant.

N.S.SHEKHAWAT, J. (Oral)

CRM 10456 of 2018

1. The applicant has filed the present application under Section 5 of the Limitation Act for condonation of delay of 305 days in filing application for leave to appeal.

2. Learned counsel for the applicant submits that the applicant is a poor and rustic villager and was not aware of the technicalities of law. Due to this, the delay of 305 days has occurred in filing the present application.

3. I have heard the learned counsel for the applicant and perused the record.

4. For the reasons mentioned in the application, the delay of 305 days in filing the application for leave to appeal is ordered to be condoned.

CRM-A-683-2018

1. The applicant has filed the present application under Section 378(4) Cr.P.C. with a prayer to grant the leave to appeal against the judgment of acquittal dated 03.01.2017 passed by the Court of Judicial Magistrate 1st Class, Charkhi Dadri, whereby, the respondents have been ordered to be acquitted of the offence punishable under Sections 323, 452 and 506 IPC.

2. As per the story of the prosecution, at about 07.00 p.m., on 09.06.2012, the respondents, who were armed with deadly weapons entered the house of Satish son of Inder Singh, complainant. Respondent No. 1-Hawa Singh inflicted injury on the hand of Satbir, brother of complainant, whereas respondent No. 3-Satish inflicted injury on the head of Satbir. All the respondents also inflicted injuries to Inder Singh, father of the applicant/complainant. Rajesh, respondent No. 2 inflicted injury on the head of Sunder brother of applicant/appellant. They also threatened to kill them.

3. Vide order dated 27.03.2015, the respondents were summoned to face trial under Sections 323, 452 and 506 IPC. After the appearance of the accused, the applicant/appellant examined four

witnesses, namely, Satish as CW1, Sunder as CW2, Satbir as CW3 and Inder Singh as CW4.

4. After the conclusion of the pre-charge evidence, a *prima facie* case under Sections 323, 452 and 506 IPC was made out against the respondents and they were ordered to be charge sheeted accordingly. The statements of respondents were recorded under Section 313 Cr.P.C. and in defence evidence, they had tendered documents Ex.D-1 to D-14. Finally, vide the impugned judgment, the respondents No. 1 to 4 were ordered to be acquitted by the trial Court.

5. Learned counsel for the applicant vehemently argued that in the present case, trial Court had completely overlooked the evidence led by the applicant. In the present case, specific injuries were attributed to all the respondents and offence under Sections 323, 452 and 506 IPC was made out against the respondents. Even, in a cross-version, the applicant and his co-accused were convicted and it is evident from the same that even the respondents No. 1 to 3 had actively participated in the commission of the crime and they were the real aggressors.

6. I have heard learned counsel for the applicant and find no substance in the submissions made by the learned counsel for the applicant. As per the applicant, the respondents No. 1 to 3 had caused

injuries to the applicant and his other family members. However, in pre-charge evidence, the complainant/applicant had only examined four witnesses, namely, CW1 Sastish, CW2 Sunder, CW3 Satbir and CW4 Inder Singh and no MLR's or any other medical evidence was placed on record in support of the allegations leveled by him. Even, neither any independent witness/eye witness was examined by the applicant nor any doctor or any other police officials was examined by the applicant. In support of the case of the prosecution, the applicant himself appeared as CW1 and examined his two brothers Sunder and Satbir as CW2 and CW3 and also examined his father Inder Singh as CW4. Thus, the applicant only examined himself and his close family members in support of the case of the prosecution and there was no independent corroboration. Thus, the trial Court has rightly acquitted the respondents. Apart from that, the trial Court has rightly held that from the perusal of the judgment dated 20.08.2016 Ex.A-1 passed by the Court of Sessions Judge, Bhiwani, it is established that the applicant and his two brothers Sunder and Satbir have been held guilty for commission of the offence punishable under Sections 323, 325 and 506 IPC relating to the same occurrence. Even, the respondents had suffered several serious injuries on their vital parts of body such as head of the respondent and the injuries could not be stated to be self-suffered. In the present case, the applicant has failed to explain the injuries suffered by respondents No. 1 to 3 and it

has been correctly held by the trial Court that the prosecution had suppressed the genesis and origin of the occurrence and the true version was not placed before the Court. Apart from that, the trial Court has rightly held that as per Ex.D-14, i.e. the inquiry conducted by the DSP, it was established that the applicant and his family members were the aggressors and had caused injuries to the respondent side without any provocation. Even otherwise, I have gone through the judgment passed by the trial Court and valid reasons have been recorded by the trial Court, while acquitting the respondents.

7. It has been held by the Hon'ble Supreme Court in the matter of **"Bhaskarrao and others Vs. State of Maharashtra"**, **2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228** 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. v. 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 PW2 and PW6 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 reappraisal, 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 reappraisal 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 characterized 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 in the negative the order of acquittal is not to be disturbed."

8. Still further in **Criminal Appeal No(s.) 410-411/2015 [Ravi Sharma Vs State (Government of N.C.T. of Delhi) and another]**, decided on 11.07.2022, Hon'ble the Supreme Court has held as under:-

"Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant

*portion of a recent judgment of this Court in **Jafarudheen and Others v. State of Kerala (2022 SCC Online SC 495)** as follows:*

“25. 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.”

9. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant application for leave to appeal is bereft of merit and without any substance; thus, it must fail. No case for interference has been made out. Consequently, the judgment dated 03.01.2017 passed by the learned Judicial Magistrate, 1st Class, Charkhi Dadri is ordered to be upheld.

10. Resultantly, with the above-said observations made, the application for leave to appeal stands dismissed.
11. Pending application(s), if any, is also disposed off.
12. Case property, if any, be dealt with, and, destroyed after the expiry of period of limitation for filing the appeal, in accordance with law.

22.08.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking :

Whether reportable :

Yes/No

Yes/No