

2023:PHHC:128712

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

237

CRR-911-2019

Date of decision : 14.09.2023

Harwinder Singh

..... Petitioner

versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Mohit Garg, Advocate
for the petitioner.

PANKAJ JAIN, J. (Oral)

1. Present petition is directed against judgment passed by Additional Sessions Judge, Sangrur dated 15.01.2019 affirming the judgment of acquittal dated 06.10.2017 passed by ACJM, Sangrur in FIR No.86 dated 10.10.2015, registered for the offences punishable under Sections 304-A, 279, 337 and 427 of IPC.

2. FIR was registered on the statement made by Jaswinder Singh, who alleged that on 10.10.2015 while he was going towards his fields from his house, he saw his cousin Harwinder Singh alongwith his mother Gurmail Kaur were going towards Bhawanigarh side when they were hit by a Creta Car allegedly driven by one Deepak Manglik in rash and negligent manner. After FIR was registered, respondent No.2 was tried. During the course of trial, petitioner who claims himself to be victim having lost his mother in the said motor vehicular accident appeared as PW-1 and stated that it was his cousin brother i.e. the complainant-Jaswinder Singh who told him about name of the driver

2023:PHHC:128712

i.e. Deepak Manglik and reiterated the version of the FIR. However, PW-2 Jaswinder Singh-the complainant and the source of knowledge vis-a-vis name of the driver to the petitioner turned hostile. Resultantly there being an issue w.r.t. the identification of respondent No.2, the trial Court acquitted him.

3. In appeal, the findings recorded by the trial Court stands affirmed by the Appellate Court holding as under:-

“xx xx xx

In the instant case, as discussed above, the prosecution has failed to discharge the burden which was laid on its shoulders. The analytical appraisal of the entire material and evidence on record makes it abundantly clear that it does not warrant or require recording conviction of accused. As a result, the point of determination is answered in negative

19. Further more, the present appeal is against acquittal. It cannot however be forgotten that in case of acquittal there is double presumption in favour of accused. Firstly the presumption of innocence is available to him under the fundamental principle of criminal Jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened, but re-enforced, re-affirmed and strengthened by the Trial Court.

In **State of Punjab Versus Hansa Singh 2001 (1) Recent Criminal Reports 775**, while dealing with an appeal against the judgment of acquittal, the Honorable Division Bench has

2023:PHHC:128712

observed that “We are of the opinion that the matter would have been examined in the light of the observations of the Honorable Supreme Court in *Ashok Kumar Versus State of Rajasthan 1991 (1) SCC 166*, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal was perverse or based on a misreading of the evidence and merely because the Appellate Court was inclined to take a different view could not be a reason calling interference.”

Similar are the observations made in **Goa Versus Sanjay Thakaran 2007 (3) SCC, 755 and Chandrappa Versus State of Karnataka 2007 (4) SCC 415. In Mrinal Das and others Vs The State of Tripura 201 (9) Supreme Court Cases, 479**, wherein the Honorable Supreme Court of India, has observed that the order of acquittal is to be interfered with only if it is clearly unreasonable and when there are compelling and substantial reasons for doing so. When the trial court has ignored the evidence or misread the material evidence or has ignored material documents, like dying declaration, the report of ballistic expert etc. the Appellate Court is competent to reverse the decision of the trial court, depending upon the material placed upon it.

In **State of Rajasthan Versus Shera Ram alias Vishnu Dutta 2012 (1) SCC 602**, the Honorable Supreme Court has observed as under:-

“A judgment of acquittal has the obvious consequence of granting freedom to the accused. This Court has taken a consistent view that unless the judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the court of competent jurisdiction keeping in view the

2023:PHHC:128712

settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquittal.

“The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for.”

As per the observations made by the Honorable Supreme Court of India in **S. Dinesh Kumar Vs. State through Inspector and another 2015 (1) Recent Criminal Reports 285** to the effect while dealing in appeal against judgment of acquittal, if the appellate court finds that there were two views possible, it would not be justified merely on this ground to set aside the judgment of acquittal and pass the verdict of conviction.

In **C.K. Dasegowda & Ors. Vs. State of Karnataka 2014 (3) Recent Criminal Report 697**, the Honorable Supreme Court of India has observed that in an appeal against the judgment of acquittal, the appellate court must bear in mind that 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 is proved guilty by

2023:PHHC:128712

competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforcement, re-affirmed and strengthened by the trial court by placing reliance on the observations made in **Chandrappa Vs. State of Karnataka 2007 (2) Recent Criminal Reports 92**, it was observed that if two reasonable conclusions are possible on the basis of record, the Appellate Court should not disturb the finding of acquittal of the Trial Court.

20. In view of the aforesaid discussion, the Court is of the opinion that as the prosecution failed to establish its case against the accused beyond any shadow of reasonable doubt, the learned Trial Court has rightly acquitted the accused-respondent. This Court also concurs with the findings of learned Trial Court with regard to acquittal of the accused.

Therefore, the impugned judgment of acquittal is hereby affirmed. There is no merit in the present appeal and the same is hereby dismissed. Trial Court record be returned along with the copy of the judgment. Appeal file be consigned to Record Room, Sangrur.”

4. Counsel for the petitioner has heavily relied upon Section 11 of the Evidence Act to submit that since the petitioner was also part of the accident, complainant resiling from his statement cannot create a dent in the case of prosecution. Statement of petitioner be treated as *res gestae*.

5. I have heard counsel for the petitioner and have gone through the records of the case.

6. In the considered opinion of this Court, reliance by counsel for the petitioner on Section 11 of the Evidence Act is misconceived

2023:PHHC:128712

and misplaced. Section 11 reads as under:-

“11. When facts not otherwise relevant become relevant.—Facts not otherwise relevant are relevant—

“(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.”

7. Section 11 has no applicability in the present case. The Indian Evidence Act, 1872 is divided into three parts. Part I deals with ‘Relevancy of Facts’. Part II is ‘of proof’. Part III deals with ‘Production and Effect of Evidence’. The complainant is an injured witness in the same occurrence and thus his testimony is definitely of relevance under Section 6 of the Evidence Act. However, when he appeared as PW-1, he was explicit in his testimony that his cousin Jaswinder Singh reached the spot. It was his cousin Jaswinder Singh who asked the name of the driver of the offending vehicle to whom the accused disclosed his name. Meaning thereby, that he attributes the knowledge vis-a-vis name of the driver to his cousin Jaswinder Singh. Jaswinder Singh appeared as PW-2, but did not support the prosecution version. Thus, the question is whether the statement of the complainant with respect to identity of the accused can be held to be proved when the source of knowledge of the said fact Jaswinder Singh resiled. Section 60 contained in Part II of the Act which deals with proof of oral evidence requires that in all cases, oral evidence must be direct. The testimony of the complainant though relevant lacks formal proof being

2023:PHHC:128712

not direct. It is in these circumstances that the Courts below have found the same to be not reliable to convict the accused. Though the prosecution has proved the accident, however, it could not be proved that the same was caused by accused-respondent.

8. In view of above, this Court does not find that there is any legal infirmity in the judgment of acquittal passed by both the Courts below warranting exercise of revisional jurisdiction by this Court under Section 401 Cr.P.C.

9. Resultantly, the present revision petition is dismissed.

(PANKAJ JAIN)
JUDGE

14.09.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No