

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

CRR-2602-2008

Date of Decision: 21.12.2023

BHARAT SINGH

-Petitioner

Versus

SUBE SINGH & ORS.

-Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Ms. Pratibha Yadav, Advocate
for the petitioner.

Mr. T.S. Grewal, Advocate
for the respondents No.1 to 5.

Mr. Bhupender Singh, D.A.G., Haryana.

KULDEEP TIWARI, J.

1. The instant revision petition is directed against the order of acquittal dated 23.08.2008, rendered by learned Additional Sessions Judge, Rewari, whereby, after setting aside the verdict of conviction and order of sentence dated 24.03.2006, as passed by the learned Additional Chief Judicial Magistrate, Rewari, the respondents No.1 to 5 have been acquitted from the charges framed against them, in FIR No.14 dated 01.01.1997, under Sections 148/149/353/332 of the IPC, registered at P.S. Dharuhera.

FACTUAL MATRIX

2. The roots of the instant revision petition can be traced to a complaint (Ex.PW4/A) made by one Surender Kumar, Headmaster, Government High School, Jharthal, alleging therein that, one Bharat Singh son of Chotte Lal was beaten mercilessly by accused/respondents No.1 to 5.

The contents of complaint, as narrated in paragraph No.2 of the order of acquittal rendered by the learned Sessions Judge concerned, are extracted hereinafter:-

“2. Briefly stated the facts of the prosecution case are that on 01.01.1997, Head Constable Jawahar Singh along with other police officials was present near bus stand of Village Jarthal in connection with patrolling duty. There Surrender Kumar, Headmaster, Government High School, Jarthal presented a complaint Ex.PW4/A alleging therein that Bharat Singh S/o Sh. Chotte Lal was serving as a teacher in Government High School, Jarthal. On 30.12.1996, in 7th period, Bharat Singh was teaching 9th standard in the school. In the said period, a student namely Suraj bhan was indulging in indiscipline. The teacher advised him to maintain discipline which was not relished by Suraj Bhan. He threatened Bharat Singh and stared at him. Bharat Singh scolded Suraj Bhan. Thereafter, on 31.12.1996, while coming on duty, Bharat Singh was beaten up mercilessly by Bijender, Ranbir, Pappu, Kalu and Sube Singh. Thereafter, with the intervention of the respectable persons of the Village, the matter was compromised. Today, i.e. on 01.01.1997, at about 09.00 AM, said teacher namely Bharat Singh reported on duty in the school. The students had also come in the school and a prayer meeting was held. In the meantime, he heard a noise coming from outside. Several persons entered inside the school, who were armed with lathis. They trespassed into the school premises despite the fact that the main gate of the school was closed. It has been further averred by the complainant that he immediately declared holiday and made arrangement to send the girl students to their respective houses safely. Several persons, who were armed with laths had lifted Bharat Singh and took him to the fields where he was beaten up mercilessly. Several persons were involved in the clash. The persons, who had been named in this complaint, had participated in the clash. On this complaint, a rukka was sent to the Police Station, whereupon the formal FIR was registered against the accused.....”

3. The complaint (Ex.PW4/A) led to registration of the present FIR and thereupon, investigation commenced, which resulted in arrest of the accused/respondents No.1 to 5. After completion of investigation, the Final Report under Section 173 Cr.P.C. was presented before the learned trial Court.

4. Finding a prima facie case, the accused/respondents No.1 to 5 were charge-sheeted for commission of offences punishable under Sections 148/353/332/149 of the IPC, to which they pleaded not guilty and claimed trial.

5. The prosecution, in order to prove its case against the accused/respondents No.1 to 5, examined as many as 9 witnesses.

6. The accused/respondents No.1 to 5, in their statements recorded under Section 313 Cr.P.C., pleaded innocence and false implication in the present case while denying all the allegations, as leveled against them.

7. After completion of trial and upon appreciation of the entire evidence available on record, the learned trial Court held the accused/respondents No.1 to 5 to be guilty for commission of offences punishable under Sections 148/353/332 read with Section 149 of the IPC and convicted them accordingly, through recording the verdict of conviction and order of sentence dated 24.03.2006.

8. The verdict of conviction and order of sentence were assailed by the accused/respondents No.1 to 5, through filing a statutory appeal, before the learned Sessions Judge concerned.

9. The learned Sessions Judge concerned, finding the conviction of the accused/respondents No.1 to 5 to be anchored upon whimsical grounds, allowed the statutory appeal preferred by the accused/respondents

No.1 to 5, through drawing the order of acquittal (supra), and, acquitted them from the charges framed against them and set aside the verdict of conviction and order of sentence.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

10. The learned counsel for the petitioner, in his challenging the acquittal of the accused/respondents No.1 to 5, has placed reliance upon the testimony of petitioner/injured/PW3 Bharat Singh, to contend that he has levelled specific allegations against the accused/respondents No.1 to 5. Moreover, ample vigour has been lent to his ocular testimony by PW8 Dr. P.D. Mehra, who had medico legally examined the injured.

11. The learned counsel for the petitioner has further argued that despite affirmation being lent to the prosecution case by a number of prosecution witnesses, vis-a-vis, PW1 Ved Parkash, PW2 Ram Mehar Singh, PW6 Shish Pal and PW7 Kishan Lal, yet the learned Sessions Judge concerned erred in recording the order of acquittal.

12. Moreover, the learned counsel for the petitioner has also placed reliance upon the provisions comprised in Section 63 of the Indian Evidence Act to argue that once photocopy of the MLR concerned has been proved on record by the doctor concerned, thereupon, non-production of the original MLR would not be fatal to the prosecution case. However, the learned Session Judge concerned has illegally founded the acquittal of the accused/respondents No.1 to 5 on the plea of non-production of the original MLR.

13. Concluding her arguments, the learned counsel for the petitioner has submitted that even the sole testimony of the injured, in the lack of any other supporting material, is sufficient to bring home the guilt of

the accused/respondents No.1 to 5. Though the learned trial Court had rightly appreciated the testimony of the injured and its creditworthiness had paved the way for conviction of the accused/respondents No.1 to 5, however, the said testimony has been disbelieved by the learned Sessions Judge. Since the acquittal of the accused/respondents No.1 to 5 is based on conjectures and surmises, therefore, interference of this Court is warranted.

SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDENTS

14. *Per contra*, the learned counsel representing the accused/respondents No.1 to 5 has opposed the arguments made by the learned counsel for the petitioner. He submits that the original MLR, which is of dire significance to prove the case of prosecution, never saw the light of the day and mere exhibition of its photocopy does not discharge the burden, as hinges upon the prosecution, to prove the authenticity of a document.

15. Furthermore, though the prosecution had examined a number of witnesses to substantiate its case, however, none of them levelled any specific allegations against the accused/respondents No.1 to 5, rather their testimonies were replete with contradictions. Moreover, the material witnesses instead of being examined by the prosecution, were examined by the defence in its defence evidence, which resulted in the prosecution case becoming demolished.

16. Finally, he argued that the present FIR is a result of concoction and premeditation, as there was a considerable delay in registration of the FIR, which creates a dent in the prosecution case.

ANALYSIS

17. Before embarking upon the process of ascertaining the validity

of the impugned order of acquittal, it is deemed imperative to capture an overview some significant legal propositions.

18. There is no dispute that this Court can re-appreciate the entire evidence while dealing with an order of acquittal. The High Court has full power to appreciate the entire evidence to reach its own conclusions and it is also open for the High Court, to re-determine the question of facts and law. For this, we place reliance upon the judgment passed by Hon'ble Supreme Court in ***State of Maharashtra vs. Sujay Mangesh Poyarekar, 2008 (9) SCC 475.***

19. Also, Hon'ble Supreme Court in ***Chandrappa vs. State of Karnataka, 2007(2) RCR (Crl.) 92*** laid down broad principles to be followed while dealing with an appeal against an order of acquittal, which are as under:

“(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court, based on the evidence before it, may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence 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 a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

20. On the touchstone of the hereinabove extracted legal propositions, this Court has, with the able assistance of the learned counsels for the parties, made a meticulous survey of the impugned order of acquittal, however, it does not appear to be tainted with any illegality or perversity. The reasons for forming this inference are elucidated hereinafter.

21. Since this Court, in revisional jurisdiction, refrains from re-appreciating the entire evidence, therefore, only the impugned order of acquittal will be examined and that too, strictly within the parameters of the provisions comprised in Section 401 of the Cr.P.C.

22. The star witness of the prosecution is PW3 Bharat Singh, who deposed that on 30.12.1996, while he was teaching 9th class, the relative of one Jassu, namely, Surajbhan was making noise in the class. When PW3 Bharat Singh asked him to mend his behaviour, he did not pay any heed, whereupon, PW3 Bharat Singh slapped him. Thereafter, on 31.12.1996, Sube Singh, Bijender, Rajbir, Raj Kumar and Dharambir met PW3 Bharat Singh on his way and then gave beatings to him. After intervention of other teachers of the School, especially Head Teacher, namely, Surender, the

matter was compromised. However, on the next day, i.e. 01.01.1997, several persons armed with lathis came to the school. Accused Bijender gave lathi blow to PW3 Bharat Singh, whereupon, he ran away from the school, however, he was chased by the accused, who then overpowered him in the fields. All the accused started beating PW3 Bharat Singh with lathis and he was made half dead. Thereafter, the Head Teacher came and took him to Civil Hospital.

23. Though the other prosecution witnesses, vis-a-vis, PW1 Ved Parkash, PW2 Ram Mehar Singh, PW5 Surender Kumar, PW6 Shish Pal and PW7 Kishan Lal, lent corroboration to the testimony of PW3 Bharat Singh, however, they deposed that PW3 Bharat Singh was beaten by a mob, whose participants were armed with lathis and dandas. The discrepancies and contradictions in the versions of prosecution witnesses, which propelled the learned Sessions Judge concerned to not assign any credence thereto and record the order of acquittal are succinctly discussed hereinafter.

24. The statement of PW1 Ved Parkash was not considered by the learned Sessions Judge concerned, since he had made an admission in his cross-examination, qua his being not present at the site of the quarrel.

25. Likewise, PW2 Ram Mehar, in his cross-examination, had admitted that his statement, under Section 161 of the Cr.P.C., was never recorded by the police, and, that no injury was inflicted in his presence.

26. In the similar fashion, PW6 Shish Pal also deposed that he did not visit the spot of occurrence. PW7 Kishan Lal also admitted that he did not witness any person causing injuries to the injured Bharat Singh.

27. Since the oral testimonies of the prosecution witnesses did not support the version of PW3 Bharat Singh, therefore, the learned Sessions

Judge concerned rightly did not assign them any weightage.

28. Furthermore, there is no conflict that the original MLR was never produced before the learned trial Court, rather only its carbon copy was produced on record. Moreover, PW8 Dr. P.D. Mehra, though proved the carbon copy of MLR, however, upon his being put to cross-examination, he admitted that neither he has brought the original MLR, nor the carbon copy of the MLR bears any stamp of Medical Officer. Also, PW8 Dr. P.D. Mehra, while making deposition, did not give any details of the injuries, as allegedly suffered by the injured Bharat Singh.

29. Therefore, though the carbon copy of MLR was exhibited, however, in the absence of the original MLR, from whose comparison, the carbon copy of MLR could become admissible as secondary evidence, the learned Sessions Judge concerned rightly did not assign any credence to the carbon copy of MLR.

30. In this way, the ocular testimony of PW3 Bharat Singh, besides remaining unsupported by other prosecution witnesses, also does not gain any support even from the medical evidence.

31. Ordinarily, the order of acquittal will not be interfered with, lightly, merely because other view is possible. Upon passing of an order of acquittal, presumption of innocence in favour of the accused gets reinforced and strengthened, as laid down by Hon'ble Supreme Court in ***Harijana Thirupala vs. Public Prosecutor, High Court of A.P., (2002) 6 SCC 470.***

32. For all the reasons (supra), this Court comes to a conclusion that the testifications of the prosecution witnesses are not credible, rather the same are found to be replete with infirmities. Moreover, the reasoning given in the impugned order of acquittal does not suffer from any gross

perversity or absurdity of mis-appreciation and non-appreciation of the evidence on record. It is trite law that order of acquittal should not be disturbed unless there are substantial or compelling circumstances.

33. Therefore, this Court does not find any ground to interfere with the order of acquittal. In sequel, the instant revision petition is hereby **dismissed**, it being bereft of merit, and, the **impugned order of acquittal**, rendered by the learned Sessions Judge concerned, is hereby **upheld**.

34. The case property, if any, be dealt with in accordance with law. The record be forthwith sent down.

(KULDEEP TIWARI)
JUDGE

21.12.2023
devinder

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