

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

CRM-A-3-2022 (O&M)

Date of Decision: 06.07.2023

State of Haryana

..... Appellant

Versus

Ankit and others

..... Respondents

**CORAM : HON'BLE MR. JUSTICE RAJ MOHAN SINGH
HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr.Manish Dadwal, AAG, Haryana for the appellant.

HARPREET SINGH BRAR, J.(Oral)

1. This is an application under Section 378(3), Cr.P.C. seeking grant of leave to appeal against the judgment dated 04.12.2019 passed by learned Additional Sessions Judge, Sonapat acquitting the accused for the commission of offences punishable under Sections 307, 506 read with Section 34 IPC.

FACTUAL BACKGROUND

2. Succinctly, the facts of the prosecution case are that on 09.09.2017 at about 12.00 midnight, an intimation was received in police station from CHC, Ganaur regarding admission of injured Anil after having received gun shot injury and his having been referred to BPS, Khanpur Kalan. On this information, ASI Rajbir along with HC Naresh Kumar and Constable Parmod reached BPS Khanpur Kalan and moved an application to the doctor seeking his opinion with regard to the fitness of injured for making statement and after obtaining the permission of the doctor, statement of injured was recorded to the effect that he was a resident of village

Agwanpur and was a tailor by profession. On 08.09.2017 at about 9.00 p.m. he along with his wife Suman and mother Dayawati was sitting in the *verandah* of his house. In the meantime, a white car came in front of their house and three young boys alighted therefrom. They all were having weapons in their hands. They all fired shots upon him with an intention to kill him. One bullet hit him on the leg due to which he became unconscious. All the assailants fled from the spot along with their weapons. Thereafter he was taken to Government Hospital, Ganaur for treatment.

3. On this complaint, the prosecution machinery swung into motion. A case under Sections 307, 34 IPC and Section 25 of the Arms Act was registered. Accused Rahul was arrested and his disclosure statement was recorded. Accused Ankit and Shakti were arrested after issuance of production warrants. Their disclosure statements were also recorded. On completion of investigation, challan under Section 173 Cr.P.C. was filed in Court.

4. On finding a *prima facie* case against the accused for commission of offences punishable under Sections 307, 506 IPC read with Section 34 IPC, they were charged vide order dated 16.10.2018.

5. In order to prove its case, prosecution examined as many as 28 witnesses and after hearing the rival submissions and perusing the prosecution evidence, the trial Court came to the conclusion that there was no direct evidence against any of the accused as the complainant and other eye witnesses turned hostile regarding the identity of the accused as culprits. Thus, the present leave to appeal is filed.

CONTENTIONS

6. Learned State counsel has argued that the facts and

circumstances of the case clearly indicates that all the three respondents had fired upon PW-3-Anil with an intention to kill him and one shot injured his right foot. PW-16-Dr. Chiranjeev duly proved on the basis of X-Ray report that PW-3-Anil had suffered a fracture of right foot *medial cuneiform* bone. He also produced an X-Ray film as Ex-PW-16/B. All the three respondents were arrested and respondent No.3-Rahul suffered a disclosure statement which is duly produced on record as Ex-PW-19/A and the weapon of offence has already been recovered from respondent No.3-Rahul. Similarly, the arrest of other respondents is proved by other official witnesses alongwith their disclosure statements. The learned State counsel further contends that the bullet injury suffered by PW-3-Anil on 08.09.2017 was clearly proved from the testimony of PW-23-Mohd.Bilal who found entry and exit wound on the right foot of PW-3-Anil and had also found blackening of margin, thus proving the case of the prosecution beyond a reasonable shadow of doubt. The learned State counsel vigorously argued that even though the injured PW-3-Anil and other eye witnesses namely Suman (PW-1), Dayawati (PW-2) and Mukesh (PW-20) turned hostile but the circumstances of the case proves the complicity of all the accused in firing upon PW-3-Anil with an intention to kill him which breaches the threshold of Section 307 of Indian Penal Code. The medical evidence coupled with the disclosure statements of the accused and recovery of the weapon of offence are more than adequate for the purpose of arriving at a conclusion that the accused have committed the crime. The evidence of the prosecution is further strengthened and corroborated by the FSL report (Ex-PX) which proves that the weapon recovered from the possession of the accused has matched with the empty bullet(s) recovered from the place of occurrence.

ANALYSIS and OBSERVATIONS

7. Before going into the veracity of the evidence of the case, in the light of the arguments of the learned State counsel, this Court would first like to examine the scope and ambit of power of this Court in re-appreciating the evidence in an appeal against an order of acquittal. It is accepted proposition of criminal jurisprudence that this Court has the power to unsettle the order of acquittal on the basis of re-appreciation of the evidence but the power is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favour the accused should prevail over the other pointing towards the guilt of the accused.

8. The Hon'ble Supreme Court has articulated the above principle in the following decisions:

a) A five Judge Bench of the Privy Council in **Sheo Swarup and others v. King Emperor, 1934 AIR(Privy Council) 227**, speaking through Lord Russell of Killowen, held as under:

“7. ... But in exercising the power conferred by the Code and before reaching its conclusions upon fact the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this however is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice.”

b) A three Judge Bench of Hon'ble Supreme Court in **Atley v. State of U.P., 1955 AIR (Supreme Court) 807**, speaking through Justice B.P. Sinha, held as under:

“5. It has been argued by the learned counsel for the appellant

that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on a mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417, Criminal Procedure Code came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal...”

c) A three Judge Bench of Hon’ble Supreme Court in **Kali Ram v. State of H.P., 1973 (2) SCC 808**, speaking through Justice H.R. Khanna, held as under:

“25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted...”

d) A two Judge Bench of Hon’ble Supreme Court in **Arulvelu v. State represented by the Public Prosecutor, 2009 (4) R.C.R. (Criminal) 638** elaborated and discussed in detail the criterion of perversity for reversing the finding of acquittal by the appellate Court. Speaking through Justice Dalveer Bhandari, the Bench laid down the following:

“22. In our considered opinion, the approach of the High Court in the impugned judgment is not in consonance with the settled principles of criminal jurisprudence. The High Court while reversing the judgment of the trial court observed that

"in all probabilities, I am inclined to hold that there was demand of dowry and the deceased was harassed by the first accused and therefore, she committed suicide." In criminal cases the conviction can be sustained only when there is clear evidence beyond reasonable doubt. The accused cannot be convicted on the ground that in all probabilities the accused may have committed the crime. The approach of the High Court is wholly fallacious and unsustainable in law.

23. The real question which falls for our consideration is whether the view which has been taken by the trial court was a possible or a plausible view.

24. We have carefully perused the judgment of the trial court and the impugned judgment of the High Court. The trial court very minutely examined the entire evidence and all documents and exhibits on record. The trial court's analysis of evidence also seems to be correct. The trial court has not deviated from the normal norms or methods of evaluation of the evidence. By no stretch of imagination, we can hold that the judgment of the trial court is based on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it and consequently the judgment of the trial court is perverse.

25. We also fail to arrive at the conclusion that the discussion and appreciation of the evidence of the trial court is so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse and the findings rendered by the trial court are against the weight of evidence. The law is well settled that, in an appeal against acquittal, unless the judgment of the trial court is perverse, the Appellate Court would not be justified in substituting its own view and reverse the judgment of acquittal.

26. The expression 'perverse' has been dealt with in number of cases. In Gaya Din (Dead) through LR. & Others v. Hanuman Prasad (Dead) through LR. & Others, (2001)1 SCC 501 this Court observed that the expression 'perverse' means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.

27. In Parry's (Calcutta) Employees' Union v. Parry & Co. Ltd. & Others, AIR 1966 Calcutta 31, the Court observed that 'perverse finding' means a finding which is not only against the weight of evidence but is altogether against the evidence itself.

28. In Triveni Rubber & Plastics v. Collector of Central Excise, Cochin, AIR 1994 Supreme Court 1341, the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.

29. In M.S. Narayanagouda v. Girijamma & Another, AIR 1977 Karnataka 58, the Court observed that any order made in conscious violation of pleading and law is a perverse order.

30. In Moffett v. Gough, 1 L.R. 1r. 371, the Court observed that a perverse verdict may probably be defined as one that is

not only against the weight of evidence but is altogether against the evidence.

31. In *Godfrey v. Godfrey*, 106 NW 814, the Court defined 'perverse' as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct etc.

32. The expression "perverse" has been defined by various dictionaries in the following manner :

1. Oxford Advanced Learner's Dictionary of Current English Sixth Edition

PERVERSE : Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.

2. Longman Dictionary of Contemporary English - International Edition

PERVERSE : Deliberately departing from what is normal and reasonable.

3. The New Oxford Dictionary of English - 1998 Edition

PERVERSE : Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

4. New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edition)

PERVERSE : Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

5. Stroud's Judicial Dictionary of Words & Phrases, Fourth Edition

PERVERSE : A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

33. In *Shailendra Pratap & Another v. State of U.P.*, (2003)1 SCC 761, the Court observed thus :

"We are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity."

34. In *Kuldeep Singh v. The Commissioner of Police & Others*, 1999(1) SCT 303 : (1999)2 SCC 10, the Court while dealing with the scope of Articles 32 and 226 of the Constitution observed as under :

"9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

35. The meaning of 'perverse' has been examined in *H.B.*

Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal & Others v. Gopi Nath & Sons & Others, 1992 Supp (2) SCC 312, this Court observed as under :

"7. In the present case, the stage at and the points on which the challenge to the assessment in judicial review was raised and entertained was not appropriate. In our opinion, the High Court was in error in constituting itself into a court of appeal against the assessment. While it was open to the respondent to have raised and for the High Court to have considered whether the denial of relief under the proviso to Section 39(5) was proper or not, it was not open to the High Court re-appreciate the primary or perceptive facts which were otherwise within the domain of the fact-finding authority under the statute. The question whether the transactions were or were not sales exigible to sales tax constituted an exercise in recording secondary or inferential facts based on primary facts found by the statutory authorities. But what was assailed in review was, in substance, the correctness - as distinguished from the legal permissibility - of the primary or perceptive facts themselves. It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."

e) A two Judge Bench of Hon'ble Supreme Court in **Chandrappa v. State of Karnataka, (2007) 4 SCC 415** has laid down the parameters with regard to the power of appellate Court while dealing with an appeal against an order of acquittal. Speaking through Justice C.K. Thakker, the following was held:

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;
(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 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 emphasise 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.”

f) A two Judge Bench of Hon’ble Supreme Court in **Mallikarjun Kodagali (Dead) represented through Legal Representatives v. State of Karnataka & Ors, 2019 (2) SCC 752**, speaking through Justice Madan B. Lokur, held as under:

“86. Dealing with the issue, as to whether a victim should seek leave to appeal, one must first understand the concept behind introducing the concept of leave to appeal, especially when the appeals are filed in the High Courts. The presumption of innocence which is attached to every accused gets fortified and strengthened when the said accused is acquitted by the trial Court. Probably, for this reason, the law makers felt that when the appeal is to be filed in the High Court it should not be filed as a matter of course or as matter of right but leave of the High Court must be obtained before the appeal is entertained. Therefore, the High Court would at the initial stage of deciding whether the leave is to be granted or not go into the merits of the case. Only if arguable points are involved, the High Court normally grants leave to appeal. This would not only prevent the High Court from being flooded with appeals but more importantly would ensure that innocent persons who have already faced the tribulation of a long drawn out criminal trial are not again unnecessarily dragged to the High Court.

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94. One also cannot be oblivious to the fact that one of the bedrocks of our criminal jurisprudence is that every person is presumed innocent unless found guilty. This presumption of innocence gets strengthened when the person is acquitted. Therefore, the legislature felt that before a person who has been acquitted after a protracted trial is called to face proceedings in the High Court in an appeal, the High Court should look into the matter and first decide whether there are sufficient reasons to grant leave to file appeal or not. This is, in a manner of speaking a preliminary hearing to decide whether the matter is worth looking into or not. I see no reason why such scrutiny should not be done in appeals filed by the victim. The victim cannot be placed on a higher pedestal than the State or the complainant.”

9. After examining the record of the case, we find that there is no direct evidence against any of the respondents. The star witness of the prosecution i.e. PW-3-Anil (the injured) and the other eye witnesses has not supported the case of the prosecution and they were declared hostile. Moreover, there is no charge against the respondents under Sections 25 and

27 of the Arms Act and the alleged weapon of offence recovered from respondent No.3-Rahul was infact recovered during the investigation of FIR No.496 of 2017 registered at Police Station Ganaur and he is acquitted in the abovesaid FIR by learned JMIC, Ganaur vide judgment dated 01.10.2018. None of the Register No.19 of the alleged weapons recovered from respondent No.2-Shakti and respondent No.3-Rahul pertaining to deposit of the case property in other FIR was proved. Also, there is no evidence as to how and when the weapons recovered in other FIR were taken into possession in this FIR and further sent to FSL for comparison, in the absence of the link evidence the learned trial Court has rightly acquitted the respondents.

CONCLUSION

10. In view of the facts and circumstances of the case, we find that the view taken by the learned trial Court is reasonable and logical. There is no perversity in the finding of acquittal. In view of the fact that presumption of innocence of accused further gets entrenched and fortified on his acquittal by the trial Court, we do not find any ground to interfere in the findings of the learned trial Court. As such, there is no merit in the present application and the leave to appeal is declined. Resultantly, main appeal is also dismissed.

(RAJ MOHAN SINGH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

06.07.2023

Sonia Puri

Whether Reasoned/Speaking : Yes/No
Whether Reportable : Yes/No