

**CRR-1931-2012
2023C:044413**

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

224

**CRR-1931-2012
Date of decision: 23.03.2023**

STATE OF HARYANA

.....Petitioner

VERSUS

HEMANT AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Surender Singh, AAG, Haryana
for the petitioner.

Ms. Abhishek Kaushik, Advocate
for the respondents.

VIKRAM AGGARWAL, J (ORAL)

The present revision petition is directed against the judgment dated 03.04.2012 passed by the Additional Sessions Judge, Sonipat vide which the appeal filed by the respondents against the judgment of conviction dated 20.04.2011 passed by the Court of Sub Divisional Magistrate, Gohana vide which the respondents were convicted under Sections 323, 325, 452 read with Section 34 IPC and were sentenced to undergo rigorous imprisonment for various offences, the maximum being three years along with fine was allowed and the conviction was set aside.

On a complaint submitted by the complainant Parsu Ram, the FIR in question was registered. The allegation was that on 23.11.2007 at about 4:45 AM, when he was urinating in his Court yard, the respondents caught hold of him and assaulted him. Respondent No.1 tried to hit him with an iron hammer on the head but the blow landed on his right shoulder.

A brick was also thrown at him which hit on the right side of his head and the third accused assaulted with him slaps and fist blows. When he raised an alarm, his brother Puran came out and also saw respondent No.1 inflicting the hammer blows upon him. He got himself medico-legally examined which revealed a fracture in his right shoulder. He had been going to the police but eventually FIR was registered on 30.11.2007. Investigation commenced. The final report under Section 173 Cr.P.C. was submitted and charges were framed. The prosecution examined six witnesses. The Trial Court convicted the accused and sentenced them in the manner referred to in the preceding paragraph. Aggrieved by the same, an appeal was preferred which was allowed by the Additional Sessions Judge, Sonipat. It is this decision that has been assailed in the present revision petition.

Learned counsel representing the State of Haryana has submitted that the prosecution had proved its case against the accused beyond reasonable doubt by leading ocular and medical evidence. Reference has been made to the MLR and statement of the injured complainant Parsu Ram who appeared as PW-1. Reference has also been made to the statement of PW-4 and the Investigating Officer ASI Shisan Kumar who appeared as PW-3. Learned counsel has submitted that the Additional Sessions Judge Sonipat, did not consider the matter in the correct perspective and erred in acquitting the accused.

On the other hand learned counsel representing the respondents has contended that the judgment under challenge is not liable to be interfered with. It has been argued that the entire evidence was examined

and thereafter cogent reasons were recorded, while arriving at the conclusion that the prosecution had not been able to prove its case against the accused.

I have considered the arguments addressed by learned counsel for the parties. I have also gone through the paper book of the revision petition. Admittedly, the incident is alleged to have taken place on 23.11.2007. The FIR was registered on 30.11.2007 i.e. after a delay of about one week. Though it is the case of the complaint that he had been going to the police but no FIR was registered, no evidence worth its name was led to prove the said fact. If the incident of the kind had taken place, there was no reason for not approaching the police with a written complaint, in case an FIR was not being registered by the police. It was not the complainant alone who was pursuing the case but it was his brother Puran also who is stated to have witnessed of the incident. There is no explanation for the delay in the registration of the FIR which was fatal to the case of the prosecution and was rightly so held by the Additional Sessions Judge, Sonipat.

Insofar as the merits are concerned, the First Appellate Court also did not find the statement of the complainant Parsu Ram who appeared as PW-1 to be convincing. It was the positive case of the complainant that all accused were professionally known to him but while giving information to the police, he named only respondent No.1 in the first instance and the names of the other two assailants were not disclosed. Coupled with this, the presence of PW-2 Puran at the spot was also found to be doubtful by the first Appellate Court because as per the complainant Parsu Ram, PW-2 Puran had come to the spot on hearing his wails and when the accused was

trying to run away, whereas PW-2 Puran while appearing in the witness box deposed about the entire incident. It also came on record that there was history of previous litigation. The first Appellate Court therefore came to the conclusion that the prosecution was not able to prove its case against the accused beyond reasonable doubt. I do not find any reason to interfere with the well reasoned judgment passed by the First Appellate Court acquitting the accused.

Even otherwise 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 merit in the present petition and the same is, therefore, dismissed.

23.03.2023
himanshu

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No