

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-A-804-2023 (O&M)
Date of Decision: 04.09.2023

Amilal

...Petitioner

Vs.

Bholla @ Parkash and others

...Respondents

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

Present : Mr. Dinesh Kumar Prajapati, Advocate
for the applicant.

N.S.SHEKHAWAT, J. (Oral)

1. By way of the present application for special leave to appeal, the applicant has challenged the impugned judgment dated 23.03.2023 passed by the Judicial Magistrate 1st Class Palwal, whereby, the respondents No. 1 to 10 have been ordered to be acquitted.

2. The complaint in the present case was instituted by the present applicant by alleging that he was resident of Adarsh Colony, Palwal and used to earn his livelihood by working as a labourer. Dinesh, co-accused and respondents No. 1 to 10 had falsely filed a criminal case under Section 325 IPC against the present applicant/complainant, which was pending adjudication. It was further alleged that the accused had illegally encroached upon the house of the applicant situated in Killa No. 7/1, which was near the

present house of the applicant. A civil suit for seeking the possession of the said house was also pending between the parties in the Court for adjudication and the respondents/accused were inimical towards him. It was further alleged that on 07.10.2010, daughter-in-law of the complainant, namely, Poonam was at home alone. At about 06.00 p.m., Dinesh co-accused, Bhola, Mohan Shyam, Ramo, Shyamo and Sunder went in their house and started beating her and abusing her. In the meantime, son of complainant Bhagirath reached home from his duty and tried to rescue Poonam. However, the accused started beating him with kicks, fists and *dandas*. On hearing their noise, their neighbours Ajit, Ravi and Shiv Kumar came on the spot and rescued Bhagirath and Poonam from the accused persons. While running away from the spot, the accused had issued threats to kill them in future. At that time, the complainant was at Bus Stand Palwal in connection with some work and after getting information, he reached the house where his son and daughter-in-law explained the facts to him. The medical examination of Bhagirath and Poonam was got conducted from Civil Hospital Palwal and an application was moved to Police Station Camp, Palwal, but no action was taken. Again, on 20.10.2010, Ranbir, Nanak and Aghoi Ram came to the house of the applicant and threatened that they had asked Mohan Shyam and his sons to kill him in a motor accident. On 11.11.2010, the accused persons, namely, Dinesh, Bhola @ Prakash, Mohan Shyam, Ramo and Shyamo again tried to enter in a fight with the

applicant and his family by forcibly entering in his house and in this occurrence, those persons broke the main gate of the applicant's house. But the inner lock of the gate could not be broken/damaged due to which the life of applicant and his family was saved, otherwise they would have killed them. The applicant moved various applications to the police, but no action was taken by the police on the applications. With these broad allegations, the complaint was filed in the present case.

3. Learned counsel for the applicant vehemently argued that the trial Court only convicted Dinesh co-accused under Section 323 IPC and wrongly dismissed the complaint qua respondents No. 1 to 10. In fact, the trial Court had not considered the documentary as well as oral evidence produced by the applicant, which was enough to prove the involvement of respondents No. 1 to 10 also in the present case. Even, the respondents No. 1 to 10 were also liable to be convicted alongwith Dinesh, co-accused.

4. I have heard learned counsel for the applicant and perused the record with his assistance and find no reasons to deviate from the detailed and well reasoned findings recorded by the trial Court. From the allegations levelled in the present case and the evidence produced by the applicant, it is evident that the complainant could not lead evidence to prove any of the incidents mentioned in the complaint made by him. The complaint was primarily filed by the

applicant with regard to the incidents dated 20.10.2010, 11.11.2010, 15.10.2010 to 18.10.2010 and as per him, the matter was reported to the police several time by making complaints to the police, however, no action was taken by the police. But the record clearly shows that no evidence was led with regard to the said incidents and even the police also did not take any action because these incidents might never taken place. Even no evidence has been led by the applicant to show the damage to any property. Even, no evidence was led to show that any other thing was ever damaged by anyone. Even, a CD was brought on record but there was no certificate of authenticity with the same.

5. Apart from that, the applicant completely failed to prove on record any independent evidence to corroborate the version of the prosecution. Even, the applicant examined CW4 Ajit, but he could not also prove any ingredients of the offence under Section 506 IPC and only Bhagirath and Poonam, who were both having litigation with the respondents, had been examined. Even, the parties already having previous enmity and had filed cases against each other. Thus, the possibility cannot be ruled out that the present complaint was filed due to long standing enmity between the parties. The trial Court has recorded the detailed reasons that the respondents were not sharing any common intention with Dinesh, co-accused and the offence under Section 323 IPC was only proved against Dinesh co-accused. The trial

Court has passed a detailed judgment based on sound reasons and due appreciation of evidence and does not warrant any interference.

6. 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."

7. 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.”

8. From a close scrutiny of the impugned judgment, it is evident that the learned trial Court has properly appreciated the evidence. The impugned judgment passed by the learned trial Court is based on sound reasons and there does not seem to be any illegality or perversity in the appreciation of the evidence by the learned trial Court. Apart from that, the prosecution has miserably failed to prove any factual or legal error in the assessment of evidence made by learned trial Court, insofar as the acquittal of respondent/accused is concerned. The view taken by the learned trial Court is a reasonably possible view and the learned Court has given cogent, convincing and satisfactory reasons while recording the judgment of acquittal and the impugned judgment does not suffer from any legal infirmity, warranting any kind of interference by this Court.

9. As a sequel, the impugned judgment dated 23.03.2023 passed by the Judicial Magistrate 1st Class, Palwal, is ordered to be upheld and the present application for special leave to appeal is dismissed being devoid of merits.
10. Pending applications, if any, are also disposed off, accordingly.
11. The trial Court record be sent back.

04.09.2023

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No