

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

CRR-3696-2017 (O&M)

Date of decision: 15.05.2023

Ranbir and Another

.....Petitioners

Versus

State of Haryana and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Anmol Partap Singh Mann, Advocate for the petitioners

Mr. Praveen Bhadu, AAG Haryana

Mr. Chakitan V.S. Papta, Advocate (Legal Aid counsel)
for respondent No.2

AMAN CHAUDHARY. J.

1. The present revision petition has been preferred against the judgment dated 07.09.2017, passed by learned Additional Sessions Judge, Sonapat setting aside the well reasoned judgment of acquittal dated 30.07.2014 passed by the learned Judicial Magistrate First Class, Gohana.

2. Succinctly, the facts of the prosecution case are that one Satish Kumar, father of respondent No.2, filed a complaint before the Magistrate, stating therein that on 12.04.2007, accused Ranbir Singh in collusion with Satpal, Satbir and others got registered a sale deed of the land belonging to him and his sister by impersonating them. On the direction of the Court, FIR No.36 dated 08.02.2005 was registered against the petitioners under Sections 419, 420, 467, 468, 471, 120B IPC. After completion of investigation, challan was presented. Thereafter, charges

were framed against them, to which they pleaded not guilty and claimed trial.

3. To prove its case, the prosecution had examined nine witnesses. On closing of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material was put to the accused, both of who denied the allegations, alleged false implication and pleaded innocence. In defence, no witness was examined by them.

4. On scrutinizing the evidence and hearing the counsel for the parties, the trial Court came to the conclusion that the prosecution could not prove the guilt of the accused-petitioners to the hilt as obligated by law and thus, they were acquitted from all the charges levelled against them.

5. Aggrieved against the same, respondent No.2 had filed an appeal, which was allowed by the learned Additional Sessions Judge, Sonapat vide impugned judgment dated 07.09.2017 and matter was remanded to the trial Court to decide afresh.

6. Hence, the present revision petition.

7. Learned counsel would contend that the FIR was lodged by Satish Chander, levelling allegations that the execution of sale deed in favour of the petitioners was a result of impersonation by them. However, for 5½ long years the said complainant did not get his statement recorded before the Court despite several opportunities having been given to him. Similarly, his sister namely Prem Lata, who was also the witness in the case never appeared in spite of issuance of bailable as well as non-bailable warrants against her. In a civil suit filed by the complainant-Satish Chander, his sister-Prem Lata had in fact tendered her evidence by way of an affidavit DW2/A, Annexure P-8, wherein she had stated that the sale deed in favour of the petitioners herein was properly executed, she

had received her share of the consideration and that she had never given any power of attorney to anyone for filing a case in any court or for lodging a complaint before the Police. Complainant-Satish Chander died on 11.12.2013. Thereafter, his alleged son filed an application under Section 311 CrPC for being examined as a prosecution witness, which was dismissed by the trial Court vide order dated 13.03.2014 on the ground that he was neither a person in a position to speak on important and relevant facts nor a witness to the sale deed. The said order was never challenged by him. The trial Court rightly pronounced acquittal, reinforcing the presumption of innocence of the petitioners. The First Appellate Court, erroneously set aside the well-reasoned judgment of acquittal for allowing the prosecution to fill-up the lacuna only on the ground that respondent No.2 as also Prem Lata should have been examined as witnesses. Even after the remand of the case to the trial Court, she had not appeared despite having been served through non-bailable warrants and the evidence was closed by order, as is apparent from the zimni orders dated 16.02.2018 and 03.04.2018, Annexures P-6 and P-7. Reliance is placed on the judgments of Hon'ble The Supreme Court in **Ghurey Lal vs. State of U.P.**, (2008) 10 SCC 450, **Arulvelu and another vs. State represented by the Public Prosecutor and Another**, (2009) 10 SCC 206, **Sunil Kumar Sambhudayal Gupta vs. State of Maharashtra**, (2010) 13 SCC 657 and **H.N. Jagadeesh vs. R. Rajeshwari**, (2020) 2 SCC (Cri) 450.

8. Per contra, the learned State counsel assisted by learned counsel for respondent No.2 submitted that the first Appellate Court after appreciating every aspect of the matter had rightly set aside the judgment of acquittal passed by the trial Court and remanded the case as material witnesses had not been examined. The trial has almost concluded, but since the pronouncement of final judgment had

been stayed by this Court vide order dated 09.10.2017, therefore, the case is pending. Thus, the order may not be interfered with.

9. Heard the learned counsel for the parties and perused the record.

10. In pith and substance, complainant Satish Chander, a resident of Kanpur along with his sister Prem Lata, residing in Saharanpur after her marriage, were co-sharers in the land measuring 134 kanal, 9 marlas situated in Tehsil Gohana, District Sonapat allotted to their father in the year 1947, regarding which the petitioners got registered a sale deed by impersonating them.

11. The trial Court has held that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubt. There are basic infirmities in the case of the prosecution which goes to the very root of the case by observing that the sale deed contained the thumb impressions of the complainant. The photograph of complainant imprinted on the sale deed Ex.PW7/A, was affirmed by PW5 Balwan Singh, the then Naib Tehsildar. It all goes on to show their presence at the time of execution of the sale deed.

12. The record reveals in spite of the trial Court having granted numerous opportunities including last opportunities as apparent from the zimni orders dated 27.09.2012, 14.02.2013, 01.04.2013, 29.05.2013, 05.08.2013, 25.09.2013, 16.12.2013, 21.03.2014, 28.03.2014, 21.04.2014, 26.05.2014, 07.06.2014, 01.07.2014, 15.07.2014, the complainant avoided to enter upon for his cross-examination. Likewise, his sister-Prem Lata also failed to appear in the witness box. During the interregnum, the complainant had passed away on 11.12.2013. It is also noticeable that Prem Lata was finally served as is noticed in the order dated 07.06.2014, wherein it is recorded that summons issued to her were received back with the report of second service and her presence, thereafter,

was to be secured through bailable warrant for 01.07.2014. The same was also received back as recorded in the order passed on the next date of hearing i.e. 01.07.2014 and her presence was ordered to be secured through non-bailable warrants for 15.07.2014. In order dated 15.07.2014, factum of prosecution having already availed more than 19 opportunities including last opportunities was recorded, but it failed to conclude the evidence which led to closing of the same by Court order.

13. Respondent No.2, the alleged son of complainant-Satish Kumar, filed an application under Section 311 Cr.P.C. for getting his statement recorded, which was dismissed by the learned trial Court vide order dated 13.03.2014 on the ground that the testimony of the son of complainant is not at all necessary for proper adjudication of the case and that he is not in a position to speak on important and relevant facts, he not being a witness of any incident which finds mention in the complaint. The aforesaid order attained finality, having not been challenged by respondent No.2.

14. *A fortiori*, the onus lies upon the prosecution to prove its case beyond the shadow of reasonable doubt by leading credible and unshakable evidence.

15. Peculiarly, Prem Lata, sister of the complainant and co-sharer in the land, who as a matter of fact, if was aggrieved, would have come forward to testify against the petitioners, rather swore an affidavit as tendered in her evidence on behalf of the defendants-petitioners herein, by way of an affidavit DW2/A, Annexure P-8, in the civil proceedings instituted at the hands of her own brother against the present petitioners, stating therein that the sale deed in favour of the petitioners was properly executed and that she had duly received her share of the consideration and that she had never given any power of attorney to anyone for

filing a case in any court or for lodging a complaint before the police. Still further, the complainant avoided the box for cross-examination despite the all out efforts made by the Court to procure his presence, indicative of the fact that his testimony was likely to be seriously shaken or credit to be successfully impeached as a result of cross-examination. A perusal of the decision by the trial Court makes it abundantly evident that it considered the case in all its complexities. Thus, by no means can it be termed to be based on an erroneous view. It is, as a matter of fact, well founded and justified, there being no probative value of evidence on record in the peculiar factual background to point out a finger of accusation directly and only against the petitioners.

16. In the case of **Ghurey Lal** (supra), Hon'ble The Supreme Court observed that the settled legal position is that if the trial Court's view is possible and plausible, the appellate Court should not substitute the same by its own possible views. Therefore, the appellate Court should be slow to interfere with the decisions of the trial Court. An acquittal by the trial Court should not be interfered with unless it is totally perverse or wholly unsustainable.

17. The basis on which the first appellate Court has remanded the case is ex facie erroneous inasmuch as, it was primarily on the ground that the trial Court did not make efforts to ensure presence of Prem Lata, who was cited as a witness, which is contrary to the record as it is evident from the judgment of the trial Court that en number of opportunities and last opportunities were granted issuing bailable as well as non-bailable warrants to secure the presence of the witnesses including her and the complainant. Even the application filed under Section 311 Cr.P.C., the order of dismissal whereof had not been challenged by respondent No.2, that attained finality was virtually allowed by observing that the son of the

complainant should have also been examined. In **Mohd. Iqbal Ahmad vs. State of Andhra Pradesh**, (1979) 4 SCC 172, it was held by Hon'ble The Supreme Court that the prosecution which failed to avail of the opportunity afforded to it cannot be allowed to put the liberty of the subject in jeopardy again as it was well settled that in a criminal case, no Court should ordinarily direct fresh evidence to be led to fill up a lacuna left by the prosecution. It was also observed in **H.N. Jagadeesh** (supra), by Hon'ble the Supreme Court that to give a chance to produce further evidence to prove the case by ignoring the omission on part of the respondent in not prosecuting the complaint properly would clearly amount to giving an opportunity to him to fill up the lacuna.

18. Pertinently, respondent No.2 could not have been extended an unmerited advantage of their own wrong that too by being ignorant of the petitioner having to go through the ordeal of trial yet again; the continued resistance of Prem Lata to the warrants to appear to support her brother, who though had himself distanced from the proceedings so long he remained alive and that apart, more notably even after the remand by the first appellate Court, she having not appeared, despite being served through non-bailable warrants, is a reaffirmation and fortification of her clear stance.

19. In the case of **Arulvelu and another** (supra), Hon'ble The Supreme Court, re-examined the entire case on account of the conflicting judgments of the Trial Court and the High Court and concluded that the view taken by the trial court is a possible and plausible view. The judgment of the trial court cannot be termed as perverse. The High Court ought not to have substituted the same by its own possible view. The judgment of acquittal of the trial Court, was restored and that of the High Court set aside. It was observed and held that, "Careful scrutiny of all

these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law.”

20. Hon’ble The Supreme Court in **Sunil Kumar Sambhudayal Gupta** (supra), 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. The trial Court which has the benefit of watching the demeanour of the witnesses is the best judge of the credibility of the witnesses. 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 with the decision of the trial Court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference.

21. In **Satyavir Singh vs. State of U.P.**, (2010) 3 SCC 174, Hon’ble The Supreme Court had observed and held that where a judgment of acquittal is recorded, two important aspects emerge therefrom, before the appellate Court. Firstly, there is presumption of innocence of the accused person in our criminal jurisprudence and secondly, the concerned court has recorded the finding in favour of the accused and disbelieved the prosecution and has founded as a matter of fact that the prosecution has failed to prove its case beyond reasonable doubt, thus giving benefit to the accused. Both these presumptions-jurisprudential and in

regard to the factual matrix- must be kept in mind unless the conclusions reached by the Court were palpably erroneous or contrary to law.

22. The impugned judgment having been appraised in the spectrum of facts and circumstances of the case, whilst applying the exposition of law afore-referred, deserves to be set aside.

23. The present revision petition is allowed accordingly. The judgment dated 07.09.2017 passed by the first appellate Court is hereby set aside and that of the trial Court affirmed.

(AMAN CHAUDHARY)
JUDGE

15.05.2023
S.Sharma(syr)

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