

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

CRM-A-1172-MA-2016

Date of Decision : 02.08.2023

Vikram Ohri

.....Applicant

Versus

Bal Krishan and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Salil Bali, Advocate
for the applicant.

PANKAJ JAIN, J.

The complainant seeks leave to appeal under Section 378(4) Cr.P.C. impugning judgment dated 26th of April, 2016 passed by Additional Sessions Judge, Hoshiarpur acquitting the respondents holding that the prosecution has miserably failed to prove its case against the accused.

2. The complainant preferred complaint under Section 323, 328, 379, 506, 34 IPC against respondents. After preliminary evidence all respondents were summoned for offences punishable under Sections 323, 328, 506 read with Section 34 IPC. Offence punishable under Section 328 IPC being triable by Session, the case was committed to the Court of Session. The case of the complainant is that he is running a shop in a rented premises. Respondent No.1 is the landlord. It has been claimed that after 2008 respondent No.1 stopped issuing receipts and started demanding rent already paid. On 25th of March, 2011 the petitioner was given kick and fist blows in an altercation arising on account of illegal demand of rent by

the respondents. On 26th of March, 2011 again at about 7.30 PM respondents and their henchmen tried to forcibly evict the complainant. On 31st of March, 2011 it is again claimed that the complainant and his wife were assaulted and the complainant was forced to drink some intoxicating liquid.

3. After analyzing the evidence threadbare Trial Court dismissed the complaint preferred by the complainant and acquitted the respondents finding that :

- (i) The wife of the complainant who appeared as PW-2 did not support version of the complainant *qua* incident of 25th of March, 2011;
- (ii) There is no medical evidence to support the allegations made by the complainant *qua* injuries suffered by him on 25th of March, 2011;
- (iii) Vide Exhibit PW3/B i.e. DDR dated 25th of March, 2011 complainant alleged that respondent No.1 entered his shop with *datar* and threatened him that he will get his legs broken but the said allegation is totally missing in the complaint;
- (iv) As per exhibit PW3/B-the DDR *qua* incident of 25th of March, 2011, the complainant alleged that the occurrence was seen by Vivek but he has not been cited as witness;
- (v) No effort was made to prove any medical evidence *qua*

incident of 25th of March, 2011.

- (vi) *Qua* incident of 26th of March, 2011 also the narration of PW-2 Rajni Dhir is totally contradictory and the persons who are claimed to have threatened the complainant on 26th of March, 2011 have not been arraigned as accused;
- (vii) *Qua* incident of 31st of March, 2011 Trial Court found that both the witnesses i.e. PW-4 the complainant himself and his wife PW-2 are unanimous in submitting that the occurrence dated 31st of March, 2011 took place at around 7.30 PM but surprisingly the complaint was made to SSP on 31st of March, 2011 at 2.00/3.00 PM i.e. 4-5 hours even prior to the occurrence; and
- (viii) *Qua* the alleged incident of poisoning, Trial Court noticed that as per the records of the hospital the complainant stated that he has consumed some poison of his own and that fact stands admitted by the complainant himself and the said fact further stands corroborated by the statement of PW-2 Rajni Ohri, who admitted during her cross-examination that as per the hospital records the complainant admitted that it is he himself who consumed poison on his own.

4. Ld. Counsel has not been able to point out that the aforesaid

findings recorded by the Trial Court are result of misreading of evidence or can be said to be not a possible view. It is also not the case that any evidence on record was ignored by the Trial Court. The law w.r.t. exercise of appellate jurisdiction stands settled by Four Judges Bench of Apex Court in case of **Bansidhar Mohanty vs. State of Orissa, reported as AIR 1955 Supreme Court 585** wherein it was held as under :

“xx xx xx

4. The principles on which the High Court should act in an appeal from an order of acquittal have been quite clearly laid down by the Privy Council in the case of -- '**Sheo Swarup v. Emperor**', AIR 1934 PC 227 (2) at pp. 229-230 (A). The same principles have been so often reiterated by this Court that it is hardly necessary to restate them 'in extenso'.

It will be sufficient to refer to the decisions of this Court in -- '**Surajpal Singh v. The State**', AIR 1952 Supreme Court 52; - '**Puran v. State of Punjab**', AIR 1953 Supreme Court 459 and '**Narayan Ittiravi v. State of Travancore-Cochin**' AIR 1953 Supreme Court 478. It is now well settled by the abovementioned decisions that while in an appeal under Section 417, Criminal Procedure Code of the High Court has full power to review the evidence upon which the order of acquittal was founded, nevertheless, in exercising the power conferred by the Code the High Court will give proper weight and consideration to such matters as (i) the views of the trial Judge as to the credibility of witnesses; (ii) the presumption of innocence in favour of the accused reinforced by the fact of his acquittal at the trial, (iii) the right of the accused to the benefit of any doubt and (iv) 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.”

5. The same was reiterated in the case of **Chandrappa and others vs. State of Karnataka, (2007) 4 SCC 415** wherein it was held that :-

“(1) An appellate Court has full power to review, reappraise 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 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 is 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.”

(emphasis supplied)

6. Further reiterated in the case of '**State of Uttar Pradesh vs.**

Banne @ Baijnath' (2009) 4 SCC 271.

7. I have heard counsel for the petitioner and have gone through records of the case.
8. In view of aforesaid settled proposition of law, this Court does not find any reason to interfere in the findings recorded by the Trial Court. More so, when the Trial Court has recorded a well reasoned finding after appreciating each piece of evidence and it is not denied that the view taken by the Trial Court is not only probable but rather more probable.
9. Consequently, the present application seeking leave to appeal stands dismissed.

August 02, 2023	(Pankaj Jain)
Dpr	Judge
Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No