

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207

CRM-A-2724-MA-2018
Date of Decision: 01.02.2023

Rakesh Kumar

... Applicant

Versus

Harbans Singh and others

... Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Harneet Singh Oberoi, Advocate,
for the applicant.

MANISHA BATRA, J.

1. The applicant was the complainant before the trial Court namely, the Court of Judicial Magistrate Ist Class, Patiala and the Criminal Complaint No.62T of 21.08.2008 titled as *Rakesh Kumar v. Harbans Singh and others* came to be instituted on a complaint preferred by the complainant alleging therein that the accused i.e. respondents herein committed offences punishable under Sections 326, 447, 341 and 506 read with Section 34 of IPC. The trial ended in the conviction of all the respondents herein who figured as accused Nos.1 to 4 and all accused were held guilty and convicted under Sections 326 IPC and were sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.500/- each and in default of payment of fine, simple imprisonment for ten days each and they were also sentenced to undergo rigorous imprisonment for a period of one month for commission of offence punishable under Section 341 of IPC. On an appeal preferred before the Sessions Court as Criminal Appeal No.636 of 2017, the learned First Appellate Court i.e. Court of learned Additional

Sessions Judge, Patiala set aside the conviction and acquitted the respondents herein holding that the applicant-complainant had not proved that the respondents-accused had committed the offences punishable under Sections 326 & 341 of IPC.

2. The applicant-complainant has filed the instant application for grant of leave to file appeal against the judgment dated 03.05.2018 passed by learned Additional Sessions Judge, Patiala vide which the respondents-accused have been acquitted.

3. The factual matrix of the case is that the applicant-Rakesh Kumar filed the aforementioned complaint on the allegations that in the year 2006, he had purchased some land from one Swaran Singh s/o Sabu Singh and had taken over possession of the said land. Subsequently, he executed an agreement in favour of Swaran Singh @ Kala qua the same land on contract basis for two years. A portion of the said land was still in his possession. He alleged that on 21.05.2008, he along with his brother Mukesh Kumar and father Hari Mohan had gone to the said land and had been removing old pipes from tubewell which was not in a running condition from his land. In the meanwhile, the respondent Harbans Singh along with his sons Avtar Singh and Didar Singh and servant Gurmail Gir reached there in a Maruti car. They were armed with weapons and while raising a lalkara that the applicant should not be spared, they surrounded him. Respondent-accused Avtar Singh stuck a blow with sword carried by him. The applicant-complainant tried to ward off the blow and suffered injury on the index finger and thumb of his right hand. Blood started oozing from the injuries so sustained by him. His father raised alarm on hearing which people started gathering there and thereafter the assailants fled away

from the spot. The applicant alleged that the motive behind the occurrence was because of the land which was purchased by the complainant from Swaran Singh as the respondents-accused wanted to take forcible possession of the said land. The applicant was rushed to Rajindra Hospital, Patiala and was medico legally examined. One of the injuries found on his person was declared to be grievous. He reported the matter to the police and an FIR was also registered. However, the police failed to take any action against the culprits compelling the applicant to file complaint.

4. On the basis of preliminary evidence led by the applicant, the concerned Magistrate passed order dated 16.07.2013 thereby summoning the respondents-accused for commission of offences punishable under Sections 326, 341, 447 and 506 read with Section 34 of IPC. The respondents-accused appeared in response to the summons and were admitted to bail. The applicant produced witnesses in pre-charge evidence and thereafter vide order dated 18.03.2016, the respondents were charge-sheeted for commission of the aforementioned offences. They pleaded not guilty to the charge and claimed trial. In pre charge evidence, the applicant examined as many as 7 witnesses. He himself stepped into the witness box as CW-2 and examined his father Hari Mohan as CW-3, eye-witness Balbir Singh as CW-4. Apart from this, he produced CW-1 Dr. Gian Singh, CW-5 Dr. Amita, CW-6 Darshan Kumar Verma, record keeper of Rajindra Hospital, Patiala and CW-7 MHC Rajesh Kumar. In after charge evidence, these witnesses were further cross-examined. The statements of respondents-accused were recorded under Section 313 of Cr.P.C. They pleaded innocence and claimed that they have been falsely implicated. In defence evidence, they examined two witnesses DW-1 Hari Singh and DW2

Avtar Singh. Keeping in mind the points canvassed in the arguments advanced by both the parties, the learned trial Court considered the evidence and thereafter pronounced the judgment holding the respondents-accused guilty of the offences punishable under Sections 326 and 341 read with Section 34 of IPC and convicted them for the said offences in the manner as mentioned above. The findings of the trial Court holding the accused guilty was found fault with by the learned First Appellate Court who reversed the judgment of conviction passed by the learned trial Court and acquitted the respondents-accused of the charges as framed against them.

5. Aggrieved by the said decision, the applicant-complainant has filed the present application for seeking leave to file an appeal.

6. It was argued by learned counsel for the applicant-complainant that the impugned judgment of acquittal was liable to be set aside as the findings as given by learned First Appellate Court were perverse and were not sustainable in the eyes of law. The learned First Appellate Court did not apply its judicious mind. The facts and evidence produced on record had not been properly appreciated and a grave error was committed by holding that the applicant was not able to prove his case. There was overwhelming evidence on record to prove that the applicant had sustained two injuries on his person, one of which was grievous in nature caused by a sharp edged weapon. The testimony of applicant inspired full confidence to connect the respondents with the subject offences and the same was fully corroborated from the statements of CW-4 Bablir Singh and CW-3 Hari Mohan. However, the learned First Appellate Court failed to consider the same in proper perspective. With these broad arguments, it was submitted that the impugned judgment passed by the learned First Appellate Court was liable

to be set aside, the leave to appeal deserved to be granted to the applicant and further that the appeal filed by him deserve to be accepted and that the order passed by learned trial Magistrate holding the accused guilty deserved to be upheld.

7. We have given our conscious considerations to the contentions as raised by the applicant. The judgments of the Court of learned trial Magistrate and First Appellate Court and the materials available on record have been summoned from the Courts below for reference in these proceedings.

8. Since the applicant has sought leave to file appeal against the judgment of acquittal, therefore, before proceeding further and advert to the arguments raised by his counsel, it would be useful to review the approach to be adopted while deciding the appeal against acquittal by the trial Court. In **Chandrappa and others v. State of Karnataka**, (2007) 4 SCC 415, the Hon'ble Apex Court had observed that it could not be forgotten that in case of acquittal, there is a 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 should be presumed to be innocent unless he is proved to be guilty by a competent Court of Law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. In **Atley v. State of U.P.**, AIR 1955 SC 807, the approach of the Appellate Court while considering a judgment of acquittal was discussed and it was observed that unless the Appellate Court comes to the conclusion that the judgment of acquittal was

perverse, it should not set aside the same. In **Aher Raja Khima v. State of**

Saurashtra, AIR 1956 SC 217, it was observed that for the High Court to take a different view on the evidence “there must also be substantial and compelling reasons for holding that the trial Court was wrong”. In **Ramesh Babulal Doshi v. State of Gujarat**, 1996 SCC (Crl.) 972, the Hon'ble Apex Court while speaking about the approach of the Appellate Court while considering an appeal against the order of acquittal of accused observed that while speaking in judgment over acquittal, the First Appellate Court is required to seek an answer to the question whether the findings of the trial Court are culpably wrong, manifestly erroneous and demonstrably unsustainable. If the Appellate Court answers the above questions in the negative, the order of acquittal should not be disturbed. In *Chandrappa's case* (Supra) the Apex Court after referring to a catena of judgments, culled out the following general principles regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal in the following words:-

- i) An Appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
- ii) The Code of Criminal Procedure puts no limitation, restriction or condition on exercise of such power and Appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and law.
- iii) An Appellate Court, must bear in mind that in case of acquittal, there is double presumption in favour of the accused.
- iv) 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.

9. On applying the above enunciated principles of law to the peculiar facts and circumstances of the present case and on a careful appraisal of evidence produced on record, we are of the opinion that the application does not deserve to be allowed and no case has been made out for grant of leave to appeal to the applicant-complainant. The respondents-accused had been summoned and charge-sheeted on the allegations that on 21.05.2008, they had wrongfully restrained the complainant while he was present in his agricultural land and was extracting pipes from the bore of his tubewell and in furtherance of their own intention, the respondent-accused Avtar Singh had struck a blow with sword thereby injuring index finger and thumb of right hand of the complainant.

10. The learned First Appellate Court had observed that the complainant had failed to prove that he was either owner or in possession of the land wherein the occurrence had allegedly taken place. After going through the evidence on record, we are also of the same opinion. The complainant claimed ownership of the land previously owned by Swaran Singh son of Sabu Singh on the basis of agreements photocopies of which were produced on record by him as Ex.CW2/A to CW2/C respectively. In his sworn deposition as made at the stage of recording pre-charge evidence as well as after charge evidence, the complainant admitted that no agreement to sell land belonging to Swaran Singh had been executed in his favour and that the same were executed in favour of his father. He admitted that the above-mentioned agreements were not executed in his presence. He was not aware about the exact khasra numbers of the property qua which agreements were executed in favour of his father. Not even this, it was

admitted by him that agreements Ex.D1 to D3 were executed by Swaran Singh in favour of one Darshan Singh and the respondent-accused Harbans Singh. He even admitted that the accused Harbans Singh had purchased property of Swaran Singh vide agreement Ex.D3 and was in continuous possession of the said property since 12.01.2008. He feigned ignorance about the fact that even District Revenue Officer had visited the spot on 07.04.2008 and had corrected khasra girdawari entries in respect of the land mentioned in Ex.D3 in favour of respondent-accused Harbans Singh and girdawari of the said land was also entered in his name. It was also admitted by him that the possession of land which subject matter of agreement Ex.D1 and over which a bore connection was existing had been given by Swaran Singh to Darshan Singh. As such, the learned First Appellate Court rightly observed that the material admissions made by the applicant-complainant falsified his stand with regard to his being in possession over the property which was subject matter of agreements Ex.CW2/A to CW2/C on 21.05.2008 i.e. the date of occurrence. As such, the story as set up by the applicant-complainant that he was wrongfully restrained by the accused while he was present in his own property on 21.05.2008 stand falsified and, therefore, in our opinion, the learned First Appellate Court had rightly acquitted the accused of charge under Section 341 of IPC.

11. The learned First Appellate Court had also observed that the medical evidence produced on record was not reliable and did not prove the version of the complainant about having sustained grievous injury as on 21.05.2008. On assessing the medical evidence produced on record in the form of testimony of CW-1 Dr. Gian Singh and CW-5 Dr. Amita, we are also inclined to hold so. CW-1 Dr. Gian Singh deposed about conducting

medico legal examination of the applicant-complainant on 21.05.2008. He proved Ex.CW1/A medico legal report as per which the applicant-complainant had sustained injuries on index finger and thumb of right hand. He also proved Ex.CW1/B report showing that the injury No.2 was fracture of middle phalynx of index finger and both the injuries were incised wound. However, during cross-examination, it was admitted by this witness that he had not seen any X-ray film of the complainant. X-Ray report was also not in his handwriting nor the original of Ex.CW1/B had been brought and proved by him. He did not know as to who had conducted radiological examination of the complainant. He had admittedly retired from service but stated that the original medico legal report remained with him which was quite strange. It was admitted by this witness that FIR had been registered against him for preparing false medico legal reports, while he was posted at Rajindra Hospital, Patiala (wherein the complainant was admittedly medically examined). The signatures or thumb impressions of complainant were not found on the medico legal report. As such, the learned First Appellate court had rightly opined that the testimony of this witness was not creditworthy. CW-5 Dr. Amita had brought Ex.CW5/A, a register showing writing made by Dr. Gagandeep to the effect that the complainant had suffered fracture. However, the said doctor Gagandeep had not been examined. CW-5 had neither seen any X-ray report nor X-ray film and, therefore, her testimony did not serve any useful purpose for proving that the applicant-complainant had sustained any grievous injury on 21.05.2008. As such, in our opinion, the learned First Appellate Court had rightly disbelieved the medical evidence produced on record by the applicant.

statements of the complainant and his father CW-3-Hari Mohan were contradictory on several material points and hence could not be relied upon beyond doubt. He had given details of the said consistencies/contradictions which in our opinion also, are of such nature which go to the root of the matter and create doubt about the veracity of the version of the complainant and CW-3 as to the truthfulness of the story as set up by the complainant. The learned First Appellate Court after considering all these points in detail and as a final Court of fact finding has rightly re-appreciated the entire evidence independently and acquitted the respondents-accused. On a reading of the entire material, we find that there is no perversity in re-appreciation of evidence by the learned Lower Appellate Court and there is no compelling reason to interfere with its judgment. Therefore, it is held that the learned First Appellate Court arrived at a correct conclusion that the charges as framed against the accused were not proved beyond reasonable doubt and hence they were entitled to be acquitted. The well reasoned judgment of learned First Appellate Court cannot be interfered with. Accordingly, it is held that no leave to appeal deserves to be granted to the applicant-complainant and, therefore, the application is bound to be dismissed. The same is accordingly dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

01.02.2023
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No