

233 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-603-2019 (O&M)
Date of Decision:05.09.2023

Maninder Pal Singh

...Applicant

Vs.

State of Punjab and others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr.P.K.S Phoolka, Advocate
for the applicant.

N.S.Shekhawat J.

CRM-9456-2019

1. The applicant has filed the present application under Section 5 of the Limitation Act for condonation of delay of 44 days in filing the application for grant of special leave to appeal.

2. I have heard learned counsel for the applicant and perused the record.

3. For the reasons mentioned in the application, the delay of 44 days in filing the application for leave to appeal is ordered to be condoned.

Main case

1. The applicant has filed the present application under Section 378(4) Cr.P.C with a prayer to grant special leave to appeal against the impugned judgment dated 07.08.2018 passed by the Court of JMIC, Rupnagar whereby, the respondents were ordered to be acquitted of the charges framed against them under Sections 326, 323, 504,506, 324,341,148 and 149 of IPC.

2. As per the applicant/complainant, at about, 04:15 PM on

01.04.2011, he was returning to his village from Kurali and he noticed a red colour motorcycle bearing registration No.PB-12H-6678 at a distance of 200 metres, which was driven by Rachhpal Sharma and Dharminder Kumar, accused was the pillion rider, on the said motor cycle. Dharminder Kumar was armed with two iron rod of 4/5 feet length and on seeing the applicant/complainant, Rachhpal Sharma told him to stop and to get down from the vehicle. On this, Dharminder Kumar, accused gave two injuries to him, which hit him on the backside of his body. Rachhpal Sharma snatched the iron rod from Dharminder Kumar and gave blow of the same on the teeth of the applicant/complainant and blood started oozing out from the teeth of the complainant. When the applicant tried to ran away in his vehicle, a Hero Honda motorcycle of red colour bearing registration No.PB-27B-6017 came there and Kulwant Singh and two more persons were sitting on the said motorcycle. Later on, the applicant came to know that their names were Balwinder Kumar and Prem Chand, accused. Later on, Prem Chand exhorted to kill the complainant and not to allow him to go home. On this, Kulwant Singh gave a blow with screw driver, on the left arm of the applicant and Kulwant Singh also gave another blow with screw driver on the stomach of the applicant. Balwinder Kumar gave blow with specs on left arm of the applicant and blood started oozing from the same. The applicant/complainant raised a noise and on this the accused fled away from the spot. The applicant was shifted to the Civil Hospital, Kurali and was medico-legally examined at about 07:15 PM on 01.04.2011. Since the police did not take any action in the present case, on the complaint filed by the applicant. Vide the impugned judgment, the Trial Court held that due to lack of cogent and clinching evidence, the case of the

applicant/complainant failed and it had fallen short of the requisite standard of proof required to be met in the criminal proceedings. Challenging the said verdict the applicant/complainant has preferred the present appeal before this Court.

3. Learned counsel for the applicant submitted that the impugned judgment is based on mis-appreciation of evidence and law. The applicant had duly proved the case by leading unimpeachable evidence. In fact, the applicant and other family members had been arrayed as an accused and have been convicted in a trial arising out of FIR No.36 dated 02.04.2011 under Sections 323,341,148,149 of IPC (Sections 325 and 201 of IPC added later on) registered at Police Station Bhagwantpur. In fact, the said fact clearly proved that the respondents were also present at the place of occurrence and had participated in the commission of the crime. Even the applicant had himself appeared as CW-1 and got examined CW-2 Lakhbir Singh. The Statements of CW-1 and CW-2 were further supported by the evidence of CW-3 Makhan Singh. The statements of three witnesses were duly corroborated by the testimony of CW-5 Dr.Mandeep Aulakh (wrongly numbered as CW-4) and even the copy of the MLR was duly exhibited as C-3. Thus, the respondents were wrongly acquitted of the charge under offences under Sections 148, 341,323,325 read with Section 149 IPC.

4. I have heard learned counsel for the applicant and perused the record carefully.

5. The Trial Court had duly considered the submissions made by the applicant and had correctly acquitted the respondents. In fact, the occurrence had taken place on 01.04.2011, whereas the complaint was filed in the present

case on 16.09.2011, after a period of more than 05 months and even while appearing as CW-1 also, the applicant could not explain the delay in presentation of the complaint before the Trial Court. Apart from that, it is admitted case of the applicant/complainant that one FIR No.36 dated 02.04.2011 under Sections 323,341,148,149 of IPC (Sections 325 and 201 of IPC added later on) Police Station Bhagwantpur was also registered against applicant and other family members and vide the judgment dated 07.08.2018, the applicant and other family members were ordered to be convicted by the Trial Court. Thus, it is apparent that both the versions were taken into account by the Trial Court, while acquitting the respondents. The Trial Court was perfectly justified in holding that the present complaint was nothing, but a counterblast to the FIR got registered by the applicant.

6. Still further, even the testimony of CW-1 Maninder pal Singh, applicant/complainant was not corroborated by the testimony of CW-3 Makhan Singh, the eye witness of the case. In fact, he clearly admitted his cross-examination that he did not know the number of the injuries sustained by Rachhpal Sharma as he had already left the spot prior to his arrival. Consequently, it is apparent that CW-3 Makhan Singh had not even seen the occurrence and it was rightly held by the Trial Court that he had not witnessed the occurrence and was of no use to the applicant. Even otherwise, I have gone through the findings recorded by the Trial Court carefully and finds that impugned judgment is based on correct appreciation of evidence and law.

7. 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."

8. 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.”

9. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant application for leave to appeal is bereft of merit and without any substance; thus, it must fail. No case for interference has been made out. Consequently, the impugned judgment dated 07.08.2018 passed by the Court of JMIC, Rupnagar is ordered to be upheld.

10. Resultantly, with the above-said observations made, the application for special leave to appeal stands dismissed.

05.09.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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