

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

224.

CRA-AS No.141 of 2023 (O&M)

Date of Decision:07.03.2024

Balwinder Singh

... Appellant

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Nitnem Singh, Advocate
for the appellant.

HARPREET SINGH BRAR, J. (ORAL)

CRM No.15038 of 2023

Prayer in the instant application filed under Section 482 Cr.P.C. is for grant of permission to the applicant-appellant to file appeal against acquittal under Section 372 Cr.P.C. being legal heir of the complainant.

For the reasons stated in the application, the same is allowed and the applicant-appellant is permitted to file the appeal against acquittal of respondents No.2 and 3, being legal heir of the complainant.

CRA-AS No.141 of 2023

1. The present appeal has been filed against the judgment dated 09.11.2022 passed by the learned Additional Sessions Judge, Bathinda whereby the judgment of conviction and order of sentence dated 28.10.2015 passed by the learned Judicial Magistrate 1st Class, Bathinda has been set aside and respondents No.2 and 3 have been acquitted.

2. In brief, facts of the case are that FIR No.13 dated 11.02.2011 under Sections 420, 467, 468, 471, 120B IPC was registered at Police Station, Nathana on the application of the complainant Jugraj Singh alleging therein that he was owner

of 1/5th share of land measuring 18 kanals 15 marlas bearing Khewat No.525 and Khatauni No.855 to 859 and also 1/5th share of 15 kanals 11 marlas bearing Khewat No.526, Khatauni No.860 situated within the revenue limits of village Nathpura. Jagsir Singh son of Jaswant Singh, Harbans Singh, Namberdar of village Mehraj, Patti Sandli, Gurmail Singh son of Bahadur Singh of village Mehraj, Patti Soul and one other person known to above named persons conspired with each other in order to cause wrongful gains to them and wrongful loss to the complainant. They in connivance with each other and one other person, who impersonated as complainant, forged and fabricated a sale deed with regard to abovesaid land and that unknown person thumb marked the sale deed impersonating himself as the complainant and Harbans Singh Namberdar and Gurmail Singh put their signatures identifying him as the complainant. Jagsir Singh signed as buyer and thus, a forged sale deed No.866 dated 08.07.2009 was executed in his favour.

3. After completion of investigation, challan was presented against the accused persons and finding *prima facie* case against the accused, charges under Sections 120-B, 419, 420, 467, 468, 471 IPC were framed to which they pleaded not guilty and claimed trial. In order to prove its case, prosecution had examined as many as six witnesses. Statement of accused persons were recorded under Section 313 Cr.P.C. and the incriminating evidence was put to them to which they pleaded not guilty and claimed innocence. In defence, accused persons examined DW1 Dilbar Singh. After appreciation of evidence led by the prosecution and the accused persons in their defence, the learned trial Court vide judgment dated 28.10.2015 convicted respondents No.2 and 3 under Sections 120B, 419, 420, 467, 468, 471 IPC and sentenced them to undergo rigorous imprisonment for a period of three years along with fine. The appeal preferred against the said judgment by respondents No.2 and 3 has been allowed and the judgment of conviction and order

of sentence stood set aside vide judgment dated 09.11.2022 passed by the learned Additional Sessions Judge, Bathinda. Aggrieved by the judgment dated 09.11.2022 passed by the learned Additional Sessions Judge, Bathinda, the appellant has preferred the present appeal.

4. Learned counsel for the appellant submits that the learned lower Appellate Court has gravely erred in acquitting the accused-respondents No.2 and 3 by giving them the benefit of doubt, while completely ignoring the reasoning given by the learned trial Court. The learned lower Appellate Court has not appreciated that the civil court judgment Ex.PC and decree Ex.PC/1 leaves no manner of doubt that the sale deed Ex.PB was a forged and fabricated document and respondent Nos.2 and 3 identified the wrong person as the seller, which proves their active participation in committing forgery upon the complainant. Further, the learned lower Appellate Court did not appreciate the fact that the prosecution has proved that the sale deed Ex.PB does not bear the signatures of the complainant by examining PW5 Anil Kumar Gupta, Handwriting and Finger Print Expert.

5. I have heard learned counsel for the appellant and after going through the record of the case, this Court finds no merit in the arguments raised by the counsel for the appellant. Admittedly, the specimen signatures of the complainant were not taken before the Magistrate and therefore, there is violation of mandate of Section 311 (A) Cr.P.C., which empowers the Magistrate 1st Class to issue direction to any person to give specimen signatures of handwriting for the purpose of investigation or any proceedings. The expert was called by the complainant himself for comparison of specimen signatures and he was paid fee for the same by the complainant. Without independent and reliable corroboration, the opinion of the handwriting experts cannot be relied upon to base the conviction. A two Judge

Bench of the Hon'ble Supreme Court in *Padum Kumar Vs. State of Uttar Pradesh* (2020) 3 SCC 35 speaking through Justice R. Banumathi has held as under:-

“15. Of course, it is not safe to base the conviction solely on the evidence of the handwriting expert. As held by the Supreme Court in Magan Bihari Lal v. State of Punjab [Magan Bihari Lal v. State of Punjab, (1977) 2 SCC 210 : 1977 SCC (Cri) 313] that: (SCC p. 213, para 7)

“7. ... expert opinion must always be received with great caution ... it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law.”

16. It is fairly well settled that before acting upon the opinion of the handwriting expert, prudence requires that the court must see that such evidence is corroborated by other evidence either direct or circumstantial evidence. In Murari Lal v. State of M.P. [Murari Lal v. State of M.P., (1980) 1 SCC 704 : 1980 SCC (Cri) 330] , the Supreme Court held as under: (SCC pp. 708-09, paras 4 and 6)

“4. ... True, it has occasionally been said on very high authority that it would be hazardous to base a conviction solely on the opinion of a handwriting expert. But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are unreliable witnesses — the quality of credibility or incredibility being one which an expert shares with all other witnesses — but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of fingerprints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of handwriting is not nearly so perfect and the risk is, therefore,

higher. But that is a far cry from doubting the opinion of a handwriting expert as an invariable rule and insisting upon substantial corroboration in every case, howsoever the opinion may be backed by the soundest of reasons. It is hardly fair to an expert to view his opinion with an initial suspicion and to treat him as an inferior sort of witness. His opinion has to be tested by the acceptability of the reasons given by him. An expert deposes and not decides. His duty "is to furnish the Judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the Judge to form his own independent judgment by the application of these criteria to the facts proved in evidence [Vide Lord President Cooper in Davis v. Edinburgh Magistrate, 1953 SC 34 quoted by Professor Cross in his evidence]"

6. The complainant has admitted in his testimony that he was not present at the time of execution of sale deed and he nominated the accused only on the basis of information supplied by his brother Balwinder Singh. Therefore, there is no direct or circumstantial evidence to corroborate that respondents No.2 and 3 had identified the person, who impersonated the complainant as seller. None of the witnesses have testified that they had seen respondents No.2 and 3 putting their signatures on sale deed Ex.PB for identifying the alleged imposter.

7. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt.

8. In view of the facts and circumstances of the case, this Court finds that the defence has been successful in making serious dent in the prosecution case and that the prosecution has miserably failed to establish its version beyond reasonable

doubt. Learned counsel for the appellant has failed to point out any perversity or illegality in the findings recorded by the learned lower Appellate Court, which warrants interference by this Court. As such, there is no merit in the present appeal and the same is dismissed.

(HARPREET SINGH BRAR)
JUDGE

March 07, 2024
Pankaj*

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