

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

114

CRA-S-199-SBA-2004 (O&M)
Date of decision : 23.01.2024

Gurcharan Singh

.....Appellant

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Bobby Girdhar, Advocate for
Ms.Adity Girdhar, Advocate/ Amicus Curiae for the appellant

Mr. Manipal Singh Atwal, DAG, Punjab.

Mr. Arihant Jain, Advocate for respondents No.2 to 5

AMAN CHAUDHARY, J.

1. Challenge in the present appeal is to the judgment dated 30.05.2003, passed by the Additional Sessions Judge, Sangrur, whereby the accused-respondent Nos. 2 to 5 were acquitted in a complaint case under Sections 325/323 read with Section 34 IPC at Police Station Bhawanigarh.
2. Briefly put, the facts as per the complainant made by Gurcharan Singh are that on 17.11.1999, at about 5.30/6.00 pm while he alongwith some other persons were when on the way to his village, reached near the house of Gurdial Singh, they were attacked by the accused persons namely Ajaib Singh, Gurmeet Singh, Sukhdev Singh and Gurdial Singh and caused injuries to them. When they raised alarm, the accused fled the spot and the injured were taken to the Civil Hospital at Bhawanigarh. They were medico-legally examined and despite the information sent to the police but no action was taken, therefore, the present complaint was filed. However, on the basis

of information by the other party, an FIR came to be registered against the complainant party. The accused were charged under Section 323, 325, 34 IPC, to which they pleaded not guilty and claimed trial.

3. The prosecution in order to bring home the guilt of the accused examined as many as 6 PWs. On closure of their evidence, statements of the accused-appellants were recorded under Section 313 of Cr.P.C. They denied all the incriminating circumstances that appeared against them in the prosecution case while pleading false implication by the police. In their defence, they examined 23 DWs.

4. The learned trial Court after analysing the evidence acquitted the accused-respondents.

5. Aggrieved complainant appellant is before this Court.

6. Learned counsel appearing on behalf of the appellant submits that the trial Court has committed an error while acquitting the accused-respondents despite there being sufficient evidence against them. It was a case of free fight, wherein the complainant party had also received injuries, which are medically proved.

7. Per contra, learned counsel for respondent Nos. 2 to 5 submits that the trial Court after appreciating the entire evidence acquitted them, thus, the present petition deserves to be dismissed.

8. Heard the learned counsel for respondent Nos. 2 to 5 and perused the record.

9. It would be profitable to refer the judgment of Hon'ble The Supreme Court in the case of **N. Vijayakumar vs. State of Tamil Nadu** (2021) 3 SCC 687, wherein it was held thus:

"20.....Under Section 378 CrPC, no differentiation is

made between an appeal against acquittal and the appeal against conviction. By considering the long line of earlier cases this Court in the judgment in *Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 has laid down the general principles regarding the powers of the appellate Court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under: (SCC p. 432) "42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, re-appreciate 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 G.A.No.28 of 1994 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 emphasise 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."

10. Hon'ble The Supreme Court in **Jafarudheen vs. State of Kerala**, (2022) 8 SCC 440, had held that, "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.”

11. Adverting to the case in hand, the trial Court has categorically recorded that the occurrence took place in the evening of 17.11.1998 and immediately the injured were taken to Civil Hospital, Bhawnigarh but when the police did not take the action no complaint was made to the higher authority and the present complaint has been filed only on 15.07.1999 i.e. after more than a period of six months, for which there was no explanation. More so, PWs have failed to explain the injuries on the persons of the complainant party, therefore, it is clear that they have suppressed the genesis of the occurrence and their testimonies cannot be the basis of conviction.

12. No glaring defect in the procedure or that a patent error has been committed by the trial Court in ignorance of law, has been pointed out by the counsel for the appellant, which has resulted in flagrant of miscarriage of justice. There is not even an iota of evidence against the respondents, which would lead to their conviction and a perusal of the order shows that no other view is possible.

13. In view of the above, there being no perversity or illegality in the impugned order passed by the trial Court, whereby the respondents have

been acquitted, the present petition for leave to appeal is hereby dismissed
being bereft of merit.

23.01.2024
ashok

(AMAN CHAUDHARY)
JUDGE

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