

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Sr. No.207

CRM-17794-2019 in/and
CRM-A-989-2019 (O&M)

Reserved on : 22.03.2024

Pronounced on: 24.04.2024

Nazam Singh @ Raja

..... Appellant

VERSUS

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. L.S. Sekhon, Advocate, for the applicant-appellant.

Mr. H.S. Sullar, Sr. DAG, Punjab.

Mr. Sandeep, Advocate for
Mr. P.S. Dhaliwal, Advocate for respondent No.2.

KIRTI SINGH, J.

CRM-17794-2019

1. This is an application under Section 5 of the Limitation Act
for condonation of delay of 214 days in filing the appeal.

Heard.

Sufficient cause has been shown for condoning the delay in
filing the appeal. Hence, the application is allowed and delay of 214 days
in filing the appeal is condoned.

CRM-A-989-2019

2. Aggrieved by the order of acquittal dated 18.08.2018, of respondent No.2, namely, Resham Singh and Puran Singh (since deceased), who were acquitted of the charges under Sections 307, 326, 325, 323, 504 & 506 IPC by the learned Additional Chief Judicial Magistrate, Mansa, the present appeal has been filed under Section 378(4) Cr.P.C. by the complainant, namely, Nazam Singh @ Raja seeking special leave to appeal.

Brief facts

3. The brief facts of the complaint are that on 21.05.2014 at about 2:00 p.m., the complainant along with his wife Kulwinder Kaur had taken their mother Surjit Kaur to the fields. When the complainant and his wife were sowing cotton seeds, accused Puran Singh came there on his tractor Swaraj 855 in their fields and started cultivating the same forcibly. When complainant and his wife Kulwinder Kaur tried to stop Puran Singh from cultivating the land, he gave a '*Takua*' blow on the head of the complainant. The complainant raised the '*Soti*' of his mother to save himself. The '*Takua*' struck on the little finger of his right hand. Then again, Puran Singh gave the '*Takua*' blow which struck on the right hand of the complainant and the '*Soti*' fell down. In the meanwhile, Resham Singh son of Puran Singh also came at the spot and he gave a '*Soti*' blow on the back side of the head of the complainant and the complainant tried to run away. Thereafter, Puran Singh and Resham Singh started dragging his mother Surjit Kaur, due to which, she suffered injuries on her neck, left arm, right arm and on her back. Kuldeep Singh

son of Gurjant Singh who was working in his fields came at the spot and witnessed the occurrence. The accused persons fled away from the spot. The complainant, his wife Kulwinder Kaur and mother Surjit Kaur were taken to hospital at Joga where the complainant and his mother were admitted but due to serious injuries, the complainant and his mother were admitted to Civil Hospital, Mansa.

4. After recording preliminary evidence, the accused were summoned under Sections 326, 325, 323, 504 & 506 IPC read with Section 34 IPC.

5. In pre-charge evidence, the complainant examined CW1 Kuldeep Singh who supported the version of the complainant as eye witness.

6. Complainant Nazam Singh appeared as CW2 and reiterated the version of the complaint.

7. CW3 Kamalpreet, Medical Officer, Civil Hospital Mansa medico-legally examined Surjit Kaur and found the injuries as detailed in medical report Ex.PA. The manual medical report of Surjit Kaur is Ex.PB. The kind of weapon for injuries was sharp in case of injury No.1 and blunt for the rest. On the same time, he medico legally examined Nazam Singh and his detailed report is Ex.PD and manual medical report is Ex.PE. After examining the record i.e. MLR and X-ray report, injury No.2 was declared as grievous in nature and this injury was suffered with sharp edged weapon.

8. CW4 Dr. Manav Jindal, Medical Officer, Civil Hospital Mansa tendered his duly sworn affidavit as Ex.CW4/A, copy of X-ray report Ex.PW4/B and copy of X-ray report of Surjit Kaur as Ex.CW4/C.

9. Charges under Sections 326, 324 & 323 IPC read with Section 34 IPC was framed against accused Resham Singh. The proceedings against accused Puran Singh were abated due to his death.

10. After framing of charge, accused cross examined all the witnesses except CW4 Dr. Manav Jindal and thereafter, the complainant closed the evidence.

11. Statement of accused under Section 313 Cr.P.C. was recorded and all the incriminating evidence was put to him wherein he denied and stated that he was innocent and had been falsely implicated. In the year 2014, he along with his father took the land measuring 14 kanals for cultivating from Ranjit Kaur. On 21.05.2014, Nazam Singh, Surjit Kaur, Kulwinder Kaur, Baldev Singh and Kaka Singh inflicted injuries to his father Puran Singh when he was ploughing the above said land. On the statement of his father Puran Singh, FIR No.32 dated 22.05.2014 under Sections 323, 324 & 325 IPC read with Section 34 IPC was registered at Police Station Joga against the above said persons, who were facing trial and he was eye witness to the same and to put pressure on him the present complaint has been filed on false facts.

Submissions of learned counsel for the appellant

12. It is submitted by the learned counsel for the appellant that the impugned order of acquittal is liable to be set aside as the findings given by the learned trial Court were not sustainable in the eyes of law

and the same are based on conjectures and surmises. The learned trial Court did not apply its judicial mind and did not appreciate the overwhelming evidence produced on record by the appellant which fully connected the respondent-accused with the commission of offence for which he had been charge-sheeted.

Analysis

13. After going through the statements of witnesses and documents placed on record, we are of the considered view that this case is a cross version of FIR No.32 dated 22.05.2014 under Sections 323, 324 read with Section 34 IPC registered at Police Station, Joga. Date and time of the occurrence is the same, meaning thereby that the occurrence was admitted by both the parties but the point of determination in the present case was to ascertain the aggressor party. As per the version of the complainant, in the present complaint on 21.05.2014 at about 2:00 p.m., he alongwith his wife Kulwinder Kaur and mother Surjit Kaur were sowing seeds in their field when Puran Singh came there and fight took place. Puran Singh gave a '*Takua*' blow on the head of the complainant and the complainant in order to save himself raised the '*Soti*' of his mother and his little finger was cut. In the meanwhile, Resham Singh son of Puran Singh came at the spot and gave a '*Soti*' blow on the back side of the head of the complainant. The complainant tried to save himself and ran away then, Puran Singh and Resham Singh dragged Surjit Kaur, mother of the complainant.

Medical evidence(a) With regard to injured Surjit Kaur

14. CW3 Dr. Kamalpreet, Medical Officer examined Surjit Kaur and proved report Ex.PA. MLR is Ex.PB and pictorial diagram is Ex.PC. In cross examination, he stated that depth of injury No.1 on the person of Surjit Kaur is not mentioned in the MLR. Possibility of injury on person of Surjit Kaur being self suffered or due to fall cannot be ruled out.

(b) With regard to injured Nazam Singh

15. CW3 Dr. Kamalpreet, Medical Officer proved MLR of Nazam Singh Ex.PE and pictorial diagram as Ex.PF. He further stated that injury No.2 as detailed in X-ray report was declared grievous in nature and it was caused with sharp edged weapon. The injury No.2 on the person of Nazam Singh is on the palm surface only and small portion attached on dorsal and lateral surface and such injury can be caused in case of open hand. Injury No.2 suffered by Nazam Singh is on the palm side and not the reverse side of the hand. If he had tried to stop the blow of the accused with 'Soti' then the fingers would have been in the shape of grip around the 'Soti' and the injury No.2 on little finger could not be caused. Moreover, there is no injury on the other fingers. 'Takua' is a deadly weapon having a long blade of 6 to 10 inches. So, it appears that it is a self suffered injury. CW4 Dr. Manav Jindal proved the X-ray report of Nazam Singh Ex.CW4/B. There was no fracture on the person of Surjit Kaur as per X-ray report of Surjit Kaur which is proved by him as Ex.CW4/C.

Defence version

16. The accused Resham Singh in his defence tendered a copy of jamabandi Ex. DB in which Wazir Singh was shown as the owner in possession to the extent of 746/2983 share and there was a reference of report No.92 regarding mutation No.197 dated 24.10.2013 vide which the mutation was sanctioned in favour of Krishna Devi widow of Wazir Singh, Harbhajan Singh, Ranjit Kaur, Sarbjit Kaur children of Wazir Singh son of Bachan Singh in equal share. As per revenue record, the property owned by Wazir Singh was inherited by Krishna Devi and children of Wazir Singh. If the land was inherited by LRs of Wazir Singh, then they have right to give land on lease to anyone. It has not come on record that the complainant Nazam Singh etc. were ever in possession of the share of land owned by Wazir Singh. Ex.DC was rapat No.31 entered by Sub Inpsector Jugraj Singh in which it was mentioned that on 21.05.2014 Puran Singh was cultivating the land taken by him on lease from Ranjit Kaur and Nazam Singh etc. had caused injuries. Ex.DD is case titled as State Vs. Nazam Singh etc. and charges were framed against Nazam Singh (who is the complainant in the present case), Babu Singh, Kulwinder Kaur, Sarvjit Kaur under Sections 324, 325 , 34 IPC on 07.05.2015. Ex.DF is a copy of challan presented in case FIR No.32 dated 22.05.2013. Ex.DG is case FIR No.32 dated 22.05.2013 registered by Puran Singh accused in the present case.

17. The Hon'ble Supreme Court in a catena of judgments while dealing with scope and powers of the appellate Court in dealing with an appeal order of acquittal has elucidated:-

(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, 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.

(iii) 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.

(iv) 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.

(v) 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.

18. A three judge bench of the Hon'ble Apex Court in **Ashok Kumar Singh Chandel Vs State of U.P. 2022 SCC Online SC 1525** has adverted with question of jurisdiction of High Court in appeals against acquittal. The Apex Court has held:

I. Jurisdiction of the High Court in Appeals Against Acquittals

73. This is the first preliminary submission and it is based on a principle laid down by this Court that in an appeal against acquittal, the criminal appellate court will not interfere with the acquittal unless there are substantial and compelling reasons. The common submission of all the counsels appearing for the Appellants is, therefore, that the High Court was not justified in reversing the order of acquittal.

74. The position of law with respect to the jurisdiction of the High Court in cases of appeals against acquittals is well established. After reviewing the judgments on this subject, this Court clarified in **Chandrappa v. State of Karnataka (2007) 4 SCC 415** that:

“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.”

75. It is sufficient to note the principle laid down in the Constitution Bench of this Court in **M.G. Agarwal v. State of Maharashtra (1963) 2 SCR 405**:

“16. ...But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. This position has been clarified by the Privy Council in **Sheo Swarup v. King Emperor and Nur Mohammad v. Emperor [AIR 1945 PC 151]**

17.Similarly in **Ajmer Singh v. State of Punjab [(1952) 2 SCC 709 : 1953 SCR 418]** it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are “very substantial and compelling reasons to do so”. In some other decisions, it has been stated that an order of acquittal can be reversed only for “good and sufficiently cogent reasons” or for “strong reasons”. In appreciating the effect of these

observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (a) of Section 423(1) of the Code. All that the said observations are intended to emphasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed in the case of Sheo Swarup, the presumption of innocence in favour of the accused “is not certainly weakened by the fact that he has been acquitted at his trial”. Therefore, the test suggested by the expression “substantial and compelling reasons” should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in **Sanwat Singh v. State of Rajasthan [AIR 1961 SC 715]** and **Harbans Singh v. State of Punjab [AIR 1962 SC 439]** and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse...”

76. Following the Constitution Bench, this Court in **Ghurey Lal v. State of UP (2008) 10 SCC 450** has formulated the following principles:

“69. The following principles emerge from cases

1. The Appellate Court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.

70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has “very substantial and compelling reasons” for doing so.

A number of instances arise in which the appellate court would have “very substantial and compelling reasons” to discard the trial court's decision. “Very substantial and compelling reasons” exist when:

i. The trial court's conclusion with regard to the facts is palpably wrong;

ii. The trial court's decision was based on an erroneous view of law;

iii. The trial court's judgment is likely to result in “grave miscarriage of justice”;

iv. The entire approach of the trial court in dealing with the evidence was patently illegal;

v. The trial court's judgment was manifestly unjust and unreasonable;

vi. The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

vii. This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction-the High Courts/ Appellate Courts must rule in favor of the accused.

4. The appellant is seeking special leave to appeal against judgment and order whereby trial court has acquitted the respondent. It is settled law that granting of special leave to appeal against acquittal is a discretionary power. However, such power has to be exercised judiciously and the Courts are not permitted to exercise the same at whims or fancies and arbitrarily. Arbitrariness has always been held anathema to exercise of any power.”

Conclusion

19. It is an admitted fact that the occurrence had taken place on the land of Wazir Singh. Therefore, the complainant’s version with regard to sowing the seeds in their field and being attacked by the respondent(s)-accused appears to be false. From the entire evidence on record, it is clear that the injury No.2 suffered by Nazam Singh is a self suffered injury. The occurrence did not take place in the manner in which the complainant had stated it to be. So, this Court is of the considered view that the complainant has failed to produce evidence of such nature which could be relied upon beyond doubt to connect the respondents with the subject offences.

20. The law with regard to interference by the appellate Court is crystallized, unless, the finding of acquittal is found to be perverse or unjustified, interference with the same would not be warranted. An additional layer of protection is granted to an accused in cases where the accused already enjoys an acquittal. There is always a presumption of innocence and in case of acquittal, there is double presumption. The

burden lies upon the prosecution to prove the guilt beyond reasonable doubt. The trial Court has passed a well reasoned judgment and we do not find any infirmity in the said order. There is no manifest error or non-appreciation of evidence which would compel us to take a different view.

21. In view of the above, we do not find any manifest illegality or perversity in the judgment dated 18.08.2018 acquitting the respondent No.2 of charges under Sections 307, 326, 325, 323, 504 and 506 IPC and there is hardly any substance in this application much less, in the appeal and therefore, the same is hereby dismissed.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

24.04.2024
Ramandeep Singh

Whether speaking / reasoned	Yes
Whether Reportable	Yes