

2024:PHHC:092946-DB



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

CRA-AD-293-2023 (O&M)

Reserved on 16.07.2024

Pronounced on: 24.07.2024

RUMAN

...Appellant

Versus

STATE OF HARYANA AND ANR

...Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. Lajpat Rai Sharma, Advocate for appellant.

Mr. Manish Dadwal, AAG, Haryana.

SUDHIR SINGH, J.

The present appeal is directed against the judgment dated 01.08.2022 passed by learned Additional Sessions Judge, Jind, whererby accused respondent No.2 has been acquitted of the charges under Section 307 and 506 IPC by extending him the benefit of doubt.

2. Vide order dated 31.10.2023, the Lower Court records was called for. The scanned copy of the same was received on 06.03.2024.

3. As per the case of the prosecution, complainant Sandeep made statement before the police on 21.09.2012 that when on 20.09.2012 at about 11:00 AM he had gone to Sandeep (Chhilai Wala) to give some rings for putting into them some stones, then accused Sohan Lal along with one another boy was standing there and

he (Sohal Lal), took out his pistol and pointed it upon the complainant and due to fear, the complainant immediately tried to run back. It was further stated that the accused fired a bullet, but fortunately it missed the target. The accused had fired upon him with the intention to kill. After the incident, when people gathered at the spot, the accused along with his associate ran away from there. The accused was having enmity with the complainant due to some land dispute and he wanted to kill the complainant in order to grab his land. Based on the aforesaid complainant, the FIR was registered under Sections 285 and 506 IPC at Police Station City Jind. After investigation the charge sheet was submitted and cognizance was taken. Initially the charges under Sections 285 and 506 IPC and Section 30 of the Arms Act were framed against the accused, but subsequently vide order dated 16.03.2021 charges under Section 307 and 506 IPC were framed against the accused, to which he pleaded not guilty and claimed trial.

4. During trial, the prosecution examined PW-1 Suresh Kumar (Retd. Arms Clerk, SDM Office, Jind); PW2 ASI Narender Singh (Investigating Officer); PW 3 (Retired ESI/MM); PW 4 Hira Lal, (Investigating Officer) and PW-5 HC Shishpal, besides leading documentary evidence Ex. P-1 to P-10. Thereafter statement of the accused under Section 313 Cr.P.C. was recorded. The entire incriminating material was put to the accused, which he denied and pleaded his false implication. However, the accused did not lead any evidence in defence. The ground considered by the learned trial Court for acquitting the respondent No.2 are as follows:-

“1. The main star witness of the prosecution was complainant-Sandeep son of Dayanand but he was not examined as he had already expired 4-5 years ago.

2. There is no other eye witness to the incident.

3. The case of the prosecution was that empty cartridge was collected by the complainant and that too on the next date of the occurrence and not by the police. As the complainant has already died, the identity of the person who had fired the bullet containing in the said cartridge could not be established.”

6. Learned counsel appearing for the appellant (complainant) has vehemently argued that though the complainant had expired during the trial of the case and his testimony could not be recorded, yet from the other attending facts and circumstances i.e. recovery of the empty cartridge and the FSL report, it was proved on record that the empty cartridge had been fired from the licenced pistol of accused-respondent No.2. It is thus, argued that the very approach of the learned trial Court in acquitting the accused-respondent No.2 is illegal. It is further submitted that no evidence had been produced by the defence, which could contradict or controvert the evidence led by the prosecution, and, therefore the impugned judgment of acquittal is liable to be set aside.

7. We have heard learned counsel for the appellant and have also gone through the record of the case.

8. The sole question that requires consideration by this Court is whether the impugned judgment of acquittal requires any interference by this Court.

9. Indisputably, complainant Sandeep was the only eye witness to the occurrence. He had died during the pendency of the case and, therefore, he could not be examined. There is no other eye witness to the case and hence, it could not be established on record that it was accused-respondent No.2, who had fired the bullet from his licenced pistol. Though in the FSL report, it was mentioned that the empty cartridge was fired from the licenced pistol of the accused-respondent No.2, yet in the absence of the identity of the accused, the said fact alone cannot be a conclusive evidence to hold accused-respondent No.2 guilty.

10. Apart from that it was also found by the trial Court that PW-2 ASI Narender Singh deposed that he had apprehended the accused from his shop and the licenced pistol of 32 bore and 12 live cartridges on which KF 7.65 was written, was handed over to IO along with a licenced slip, whereas PW-4 SI Hira Lal, Investigating Officer, deposed that he had called accused respondent No.2 at the spot along with his weapon, cartridges and armed licence. It was, thus, found that there were contradictions in the testimony of the prosecution witnesses, regarding the arrest of accused-respondent No.2.

11. We find that the findings recorded by the learned trial Court do not suffer from any illegality or perversity. In a criminal case the identity of the accused is to be established so as to prove his guilt beyond the shadow of a reasonable doubt. Wherever any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of doubt. In the instant case as noticed above, the eye witness

of the occurrence i.e. the complainant had died during the pendency of the case and his testimony could not be recorded in the Court. There is no other eye witness to the occurrence. Hence the identity of the accused could not be established, therefore, no fault could be found that the finding of the trial Court that the accused is entitled to benefit of doubt.

12. In criminal appeal against acquittal what the appellate Court has to examine is whether the finding of the learned Court below is perverse and prima facie illegal. Once the appellate Court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the Court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court passed in the case of *Mrinal Das versus State of Tripura*, (2011) 9 SCC 479, it has been observed that:

“13. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final Court of fact, is fully competent to reappraise, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate Court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent Court. If two reasonable

views are possible on the basis of the evidence on record, the appellate Court should not disturb the findings of acquittal.

14. There is no limitation on the part of the appellate Court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate Court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate Court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.”

In the case of **Ghurey Lal Vs. State of Uttar Pradesh**, (2008) 10 SCC 450 in para no. 75, the Hon'ble Supreme Court reiterated the said view and observed as follows:

"75. The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate Court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable."

13. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the appellate Court must not take a different view only because another view is possible. It is because the trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its

decision must not be upset in the absence of strong and compelling grounds.

14. In view of the above, we do not find any illegality and perversity in the findings recorded by the trial Court. Accordingly, the present appeal is dismissed.

[SUDHIR SINGH]
JUDGE

[KARAMJIT SINGH]
JUDGE

24.07.2024
Himanshu

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