

CRR-507-2015

236 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-507-2015
Date of Decision: 13.02.2024

Aman

.....Petitioner

Versus

State of Punjab and others

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikram Singh, Advocate
for the petitioner.

Mr. N.S. Dandiwal, Advocate for respondent No. 3.

Mr. H.S. Deol, Senior DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 13.10.2014 passed by learned Additional Sessions Judge, Moga whereby the appeal against judgment dated 29.03.2012 passed by learned Chief Judicial Magistrate, Moga in FIR No. 72 dated 29.03.2002 under Sections 304, 447, 427, 506, 148, 149 of the IPC and Section 25 and 27 of the Arms Act, 1959 registered at Police Station City Moga, was allowed and the respondents-accused were acquitted from the charges framed against them.

FACTUAL BACKGROUND

2. Briefly, the facts are that the father of the petitioner had executed a sale deed on 31.12.1991 in favour of her sister Nirmala Kumari regarding khara no. 534, khewat no. 1706, khatauni no. 1912 measuring 4 marla 4^{1/2} sarsahi and in pursuance of the same, mutation no. 5043 was entered in the name of Nirmala Kumari. They had constructed two rooms on the said land

where she resided alongwith her family. On 29.11.2000, at about 10/11 PM, the accused took the brother of the petitioner on pistol point. In connivance with each other, the accused came to the house of the petitioner and started demolishing the walls with their tractor. They also threatened to kill the petitioner and her family if they resisted. The matter was reported to the police but they failed to take any action. About 4/5 days later, they raised construction of their shops on the said land.

3. The petitioner moved an application before the Punjab State Human Rights Commission, Chandigarh, alleging that Paramjit Singh, respondent no. 2-Jarnail Singh and respondent no. 3-Sukhdev Singh have taken forcible possession of the house of the petitioner and that the mother of the petitioner died on 28.03.2001 due to the shock induced by the same. It was further alleged that Paramjit Singh shelters terrorists and Jarnail Singh and Sukdev Singh are smugglers. The matter was forwarded to SSP, Moga who marked the same to DSP Jagmohan Singh, who after investigating the case, got the instant FIR registered. On finding a prima facie case, charges under Sections 304, 447, 427, 506, 148 and 149 of Indian Penal Code and Sections 25/27 of Arms Act were framed against the accused, to which they pleaded guilty and claimed trial.

4. The prosecution examined as many as 10 witnesses to establish its case. The respective statements of the accused under Section 313 of the Cr.P.C. was recorded wherein they denied all the incriminating evidence put to them and claimed false implication. The accused examined two witnesses in their defence.

5. On assessing the material available on record, the learned trial Court vide judgment dated 29.03.2012 convicted the respondents-accused.

Aggrieved by the judgment of conviction, the respondents preferred an appeal before the learned lower Appellate Court which was allowed vide judgment dated 13.10.2014 and the respondents were acquitted of the charges framed against them.

CONTENTIONS

6. Learned counsel for the petitioner contends that the leaned lower Appellate Court has failed to consider that all prosecution witnesses have fully supported the prosecution case. It has been duly established that the accused, armed with deadly weapons, trespassed into the house of the petitioner and assaulted and restrained her and her family members. The prosecution version has also been corroborated by other witnesses, including eye witness and the petitioner-complainant. The statements of PW8A-Davinder Kumar, Patwari and PW9-Gagandeep Singh have proved on record that the house in question is owned and possessed by the petitioner.

7. He further submits that the respondent no. 2 himself has admitted that Paramjit Singh had only purchased 1 ¹/₂ marla out of the 6 marlas and the petitioner's family had constructed their house on the remaining land, which they were in possession.

OBSERVATIONS AND ANALYSIS

8. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that kharsa no. 559 covering 6 marlas was initially purchased by Paramjit Singh Walia and Amarjit Singh from United Church of Northern India Trust vide sale deed dated 01.02.1985, which has also been admitted by the petitioner in her cross-examination.

Amarjit Singh sold 4¹/₂ marlas of the said land to one Vijay Kumar Sood who further sold it to Nirmala Kumari vide sale deed dated 31.12.1991 and the

remaining 1^{1/2} marlas were sold to respondent no. 2 by Paramjit Singh. Therefore, respondent no. 2 had every right to raise construction over the land he lawfully owns. Further, the petitioner appeared in the witness box as PW1 and gave exaggerated version of the alleged incident by making substantial improvements which casts a shadow of doubt on to the prosecution version. No independent witness has been examined to prove the alleged demolition of the boundary wall by the respondents. There is also an inordinate delay of 1 year in filing the complaint before the Punjab State Human Rights Commission and no explanation is forthcoming to justify the same.

9. 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. Reliance in this regard can be placed on **H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**). A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit and others** passed CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused.

CONCLUSION

10. In view of the facts and circumstances of the case, this Court finds that learned counsel for the petitioner has failed to point out any perversity or illegality in findings recorded by the learned lower Appellate

Court which warrants interference by this Court. As such, there is no merit in the present petition and the same is dismissed.

13.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No