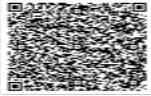


2024:PHHC:092941-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-AD-1-2024 (O&M)
Reserved on 18.07.2024
Pronounced on: 24.07.2024

MOHAMMAD IRFAN ...Appellant

Versus

STATE OF HARYANA AND ORS ...Respondents

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

Present:- Mr. Jitender Dhanda, Advocate for appellant.
Mr. Manish Dadwal, AAG, Haryana.

SUDHIR SINGH, J.

The present appeal is directed against the judgment dated 09.08.2023 passed by learned Sessions Judge, Nuh, whererby accused respondents No.2 to 7 have been acquitted of the charges framed against them by extending them benefit of doubt.

2. Vide order dated 07.03.2024, the lower Court record was called for. The same has been received.

3. As per the case of the prosecution, on 20.07.2015, the police party on patrol duty received a telephonic information regarding the admission of Irfan, Anjum and Irshad in the Community Health Centre, Punhana with the alleged history of sustaining injuries

in a quarrel. The police party reached the hospital and after having taken the opinion of the Doctor, recorded the statement of injured Irfan. Irfan in his statement stated that on 20.07.2015 at around 02:30 PM, when he was present in his house, Hakam, Rijaul-Haq, Jahul, Jamshed, Usman, Mubarik, Kalu, Deenu, Jaikam, Akhtar, Aashik and Mubin, all residents of Village Jaiwant, came there along with illegal weapons and started hurling abuses. When the complainant asked them not to hurl the abuses, accused Hakam fired a shot upon him and he sustained pellet injuries on several parts of his body. On hearing the noise of firing, the brothers of the accused, Anjum and Irshad also came there and all the assailants fired shots upon them. It was further stated that in the interregnum, Mubin, who was having a stick with him, also came there and gave stick blow to Anjum (brother of the complainant). On hearing the noise, the father of the complainant (Mubarik) and Mubin son of Sahabuddin, reached there and had rescued them from the clutches of the accused. When many villagers gathered there, the assailants fled from the place of occurrence while issuing threats that they would kill the complainant in future.

4. On the basis of the aforesaid complaint, FIR No.375 dated 20.07.2015 under Sections 148, 323, 506, 307 read with Section 149 IPC, and 506 IPC and Section 25 of Arms Act, was registered at Police Station Punhana, District Nuh. Initially, the four accused, namely, Riyajul-Haq; Hakam; Mubarik and Deenu, were tried for committing the offences under Sections 148, 149, 323, 307, 506 IPC and Section 25(1)(1B)(a) of the Arms Act. However, after conclusion of the trial, the said four accused were acquitted vide judgment dated

10.8.2016 passed by the then Sessions Judge, Mewat. Subsequently, a supplementary challan was filed against the accused. Thereafter, on 21.10.2017, charges against all of them were framed under Sections 148, 323, 506, 307 read with Section 149 IPC, to which they pleaded not guilty and claimed to be tried.

5. During trial the prosecution examined as many as 17 witnesses i.e. PW-1 Irfan; PW-2 Anjum; PW-3 Irshad; PW-4 ASI Parkash Chand; PW-5 ASI Dharampal, Draftsman PW-6 EASI Vijaypal; PW-7 Constable Rajesh Kumar; PW-8 Dr. Hemant; PW-9 Dr. Asha; PW-10 ASI Rajpal; PW-11 Dr. Sunil Kumar Jain; PW-12 Ishwar Singh, Record Keeper; PW-13 Inspector Vijaypal; PW-14 Dr. B.B. Aggarwal; PW-15 Dr. G. Parkash; PW-16 Constable Talwar Singh and PW-17 Constable Harmender. After recording the prosecution evidence, statements of the accused under Section 313 Cr.P.C. were recorded. The entire incriminating material was put to the accused, which they denied and pleaded false implication due to the party faction in the village. In defence, the accused examined DW-1 DSP Subhash Chand who proved on record his report as Ex. D1. The accused had also tendered certified copy of the order dated 05.12.2016 (Ex. D2); certified copies of the notices for perjury Ex.D3 to D5 and certified copies of the order dated 05.12.2016.

6. The trial Court acquitted the accused of the charges framed against them on the following grounds.

1. Though the complainant in his complaint, on the basis of which the FIR was registered, stated that 13 accused, namely Hakam; Rijaul; Jahul;

Jamshed; Usman; Mubarik; Kalu; Deenu; Jaikam; Akhtar; Aashik; Mubeen and Mubin had attacked upon him and his family members and he had also stated that accused Hakam was having a country made pistol and he had fired shot towards them, due to which he and his brothers Anjum and Irshad, had sustained injuries, yet in the deposition before the Court during trial, the complainant and his brothers stated that accused Hakam, Deenu, Mubarik and Riyaj-ul-Haq, who were named in the complaint were not among the assailants and accordingly vide judgment dated 10.08.2016, passed in Sessions Case No.345 of 2015 passed by learned Sessions Judge, Nuh, the said accused were acquitted.

2. In the aforesaid case i.e. Sessions Case No.345 of 2015, notices were issued to complainant Irfan and injured witnesses Anjum and Irshad, for initiating proceeding against them for perjury.

3. The complainant stated that accused, Jahul Kalu and Mubeen were not present at the time of occurrence and similar was the version of injured witnesses PW2-Anjum and PW3-Irshad.

4. No fire arm was recovered from accused-Hakam by the police during the investigation. A

pistol was allegedly recovered from accused Mubarik, but the complainant and other injured witnesses deposed that accused Mubarik was not involved in the occurrence.

5. In the complaint Ex.P1, the complainant had stated that accused Hakam was having a country-made pistol and he had fired a shot upon him, as a result of which, the complainant had sustained pellet injuries. PW-2 Anjum stated that accused Jamshed had fired shot upon him from a gun and Akhtar had also fired a shot upon him. However, no fire arm was recovered from Hakam, Jamshed and/or Akhtar.

6. PW-3 Irshad deposed that accused Jaikam fired a shot upon him, but admittedly, no fire arm was recovered from accused Jaikam, during investigation of the case.

7. The FSL report Ex.PA, shows that clothes of injured Irshad and Irfan, were sent to FSL and they were examined for the gun shot holes/residues. This report further shows that no hole was found present on the clothes and no blackening/tattooing was visible on those clothes. It further shows that no bullet/pellet hole could be observed on the clothes of injured Irfan and Irshad.

7. Learned counsel appearing for the appellant argues that the impugned judgment passed by the learned trial Court is not based upon the evidence on record and no case was made out to give benefit of doubt to the accused-respondents. It is further argued that no finding has been recorded by the trial Court to the effect that the complainant had any enmity with the accused-respondent so as to falsely implicate them. It is yet further submitted that once a supplementary challan had been filed and fresh charges were framed against the accused, the trial Court was not required to go into the acquittal of some of the accused at an earlier point of time, particularly when in the supplementary challan, incriminating material and evidence was found against the said accused.

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

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

10. A perusal of the impugned judgment would show that the complainant and the other two witnesses (injured), have contradicted themselves. In the initial statement before the Police, on the basis of which the FIR was registered, the complainant had named as many as 13 assailants. Thereafter, as noticed by the trial Court, some of the accused were acquitted vide judgment dated 10.08.2016 passed in Sessions case No.345-2015. In the said case, the complainant and other witnesses, were sought to be prosecuted for perjury. In the present case, it was the case of the prosecution that accused Hakam

had fired upon the complainant and the injured witnesses, but no fire arm was recovered from the accused. It was further found by the learned trial Court that the FSL report as Ex.PA shows that though the clothes of injured Irshad and Irfan were sent to FSL for examinations as regards the gun shot holes/residues, yet no hole was found present on the said clothes and no blackening/tattooing was visible on the said clothes.

11. The testimony of the complainant and the injured witnesses before the Court is entirely different from the version of the complainant recorded in the FIR. Moreover, at an earlier point of time, some of the accused, were acquitted on the ground that the complainant and the injured witnesses deposed in the Court that the said accused were not present at the place of occurrence. For the said conduct of the complainant and the injured witnesses, proceedings for perjury were sought to be initiated against them. Still further the trial Court has also found that no incriminating evidence against the accused as regards the gun shot fire was indicated in the FSL report.

12. The findings recorded by the learned Trial Court are plausible ones, based on the evidence led. It could not be pointed out that any material evidence has been misread or not taken into consideration by the trial Court. Therefore, no fault could be found with the findings of acquittal recorded by the trial Court.

13. 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."

14. 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.

15. 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
Whether reportable

Yes/No
Yes/No