

(2019) 09 P&H CK 0167

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 241 Of 2013(O&M)

Gurbachan Singh And Others

APPELLANT

Vs

State Of Haryana And Another

RESPONDENT

Date of Decision : 24-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 325
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 09 P&H CK 0167

Hon'ble Judges : Anil Kshetarpal, J

Bench : Single Bench

Advocate : Akshay Jain, Manish Bansal, Dr. Anmol Rattan Sidhu, Raghav Gulati

Final Decision : Dismissed

Judgement

Anil Kshetarpal, J

1. By this judgment, CRR No.241 of 2013 and CRR No.1057 of 2013 arising from a common judgment of the Judicial Magistrate shall stand disposed of. CRR No.241 of 2013 has been filed by the convicts, whereas CRR No.1057 of 2013 has been filed by the first informant-injured, seeking enhancement of the sentence.

In the considered view of this Court, primary question which arises is:-

"Whether the appellate Court is justified in reversing the judgment of acquittal passed by the Magistrate without considering all aspects of the case and without dealing with the points on which the judgment of acquittal was based and to what extent Court can interfere in appeal against acquittal?

In the present case, learned Judicial Sub Divisional Judicial Magistrate, Dabwali, acquitted the petitioners-convicts vide judgment dated 28.10.2011, reversed by the learned Court of Sessions in appeal. Although, detailed facts have been given in the judgment passed, however, some facts are required to be noticed.

Petitioners in CRR No.241 of 2013 were sent to face trial for the offence punishable under Sections 323/325 read with Section 34 of the Indian Penal Code. The case set up by the prosecution is that on 07.03.2006, at about 7.00 a.m. when first informant-injured Balbir Singh was going to Gurudwara in the village, Nirmal Singh son of Bant Singh met him in the street and threatened him to get the land demarcated and vacate the encroached land, failing which he would be taught a lesson. In the meanwhile, petitioner Mukand Singh etc. appeared on the spot, carrying wooden battens and they started abusing him and threatened him to leave the village after disposing of his house failing which he would be done to death.

First informant claims that he made a request with his folded hands to the accused claiming to be a poor fellow and cannot compete with them. On hearing noise, his son Kulwinder Singh and daughter Rajprit Kaur came out from his house and Mukand Singh gave a blow with wooden batten (lathi) to Rajprit Kaur on the middle finger of her right hand, whereas petitioners Gurprit, Gurdeep and Labh Singh rushed towards him along with their respective weapons and started giving him blows. Gurprit gave a blow on his left foot. He along with his children ran towards his house. Gurdip threw a stone towards Kulwinder which hit on his nose. Whereas stone thrown by Gurdip hit on the left eye of Kulwinder. Rajprit Kaur also suffered injuries from the stone on her head on the right side and on the left toe. All of them bolted their entry gate after entering their house in order to save themselves otherwise severe injuries would have been inflicted upon them.

Prosecution in order to bring home the guilt, examined Balbir Singh, injured/first informant as PW1, Kulwinder Singh as PW2 and Rajprit Kaur as PW4. Investigating Officer ASI Tarsem Lal appeared as PW3.

Prosecution also examined Dr. M.K.Bhadu as Ex.PW5, who medico legally examined the first informant. Dr. S.L.Aggarwal was examined as PW6, who has conducted X-ray examination of injured Kulwinder Singh and Balbir Singh.

In documentary evidence, application moved by the police to the doctor seeking opinion on the condition of the injured was exhibited as Ex.PB, statement of complainant/first informant as Ex.PA, police proceedings as Ex.PC, endorsement as Ex. PD, FIR as Ex.PE, site/lay out plan as Ex.PF and application moved to the doctor regarding declaration of injuries as Ex.PG.

Accused persons were confronted with the incriminating material in their statements under Section 313 Cr.P.C..

In defence, accused proved on filed copy of medico-legal report of Malkiat Kaur as Ex.D1 and copy of Charge-sheet as Ex.D2.

Learned Sub Divisional Judicial Magistrate has given following reasons to acquit:-

(1) The investigation carried out by the Investigating Officer is in total mess. Investigating Officer when appeared in evidence has admitted that he had

scribed DDR on 08.03.2006 with respect to injuries to Malkiat Kaur wife of Mukand Singh accused. He also admitted that Ex.D1 is medico-legal report of Malkiat Kaur. However, he admitted that he has not investigated about the injuries on the person of Malkiat Kaur. From the examination of testimonies of the injured and the first informant, it is certain that Malkiat Kaur has also suffered injuries in that incident. The witnesses have either pleaded ignorance or have half heartedly denied this fact. Thus, the trial court recorded a finding that the investigation is biased.

(2) Investigating Officer has admitted that no weapons were taken in possession. He did not record the statements of the persons from the locality. He could not give the details of persons who were residing nearby place of occurrence. He has admitted that he did not describe the complete picture before the court regarding existence of house near the place of occurrence. He has admitted that 10-12 persons had approached him in the investigation but he did not record their statements. He went on to admit over writing on the site/lay out plan.

(3) The prosecution has failed to explain why the injured were not got admitted or examined at Civil Hospital, Goriwala, which is at a distance of 3 Km. from the place of occurrence but they opted to go to Civil Hospital, Dabwali. Further, as per the case of the first informant and the injured that they travelled to Civil Hospital, Dabwali in a jeep but neither of them could disclose the name of owner or driver of the jeep in which they travelled to Hospital belong or who was the driver of the jeep, although, one of the witnesses has disclosed that the owner belongs to same village.

(4) There are material contradictions in the statements of PW1 and PW2 with regard to mens rea and motive. PW1 Balbir Singh deposes that demarcation of land took place between them 6 months back without any dispute and Mukand Singh vacated 1¼ kanals of land. Whereas Kulwinder Singh claims that there was a dispute between the parties for the last 5-6 years as the accused were not permitting demarcation.

(5) Still further, ocular version is not supported by medical evidence with respect to consciousness of Kulwinder Singh. Kulwinder Singh when appearing in Court has claimed that he was unconscious but medical evidence does not support that.

(6) Further, place of occurrence is also uncertain. First informant suggests the place of occurrence somewhere else, whereas other witnesses of the prosecution deposed that the incident had taken place in front of gate of Mukand Singh, accused. Hence, place of occurrence is also discrepant between in the evidence of the various witnesses.

However, the first appellate court has reversed the judgment of acquittal by recording following reasons:-

(1) Delay in registration of the FIR has been explained;

(2) Although, all the witnesses of the prosecution are related to the injured, however, they are not proved to be interested witnesses;

(3) Discrepancies and contradictions are immaterial;

(4) The motive is apparent because it has come in evidence that accused Nirmal Singh abused and shouted to teach lesson to the first informant and, therefore, common intention stands established.

That the learned Court of Sessions while deciding the appeal, did not even discuss/analyzed/critically appraise the reasons recorded by the learned Sub Divisional Judicial Magistrate while ordering acquittal. Learned Court of Sessions while hearing appeal against the judgment of acquittal has to be very careful before interfering in the judgment of acquittal.

On examination of various judgments passed by the Hon'ble Supreme Court, following principles can be culled out:-

(1) The judgment of acquittal should not be lightly interfered with;

(2) When two views are possible, it is not permissible for the appellate court to interfere against judgment of acquittal;

(3) Unless the appellate court finds that the approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were demonstratively unsustainable, the Court would not interfere;

(4) Presumption of innocence which is available to every accused person get strengthened with acquittal;

(5) In absence of strong and compelling reasons to differ with, the findings of the acquittal should not be set aside;

(6) Appellate Court before reversing must consider and review the entire evidence.

Thus, it is apparent that the appeal against acquittal is placed at someone different footing than appeal against conviction.

Now keeping in view the aforesaid well settled principles, let us examine the judgment passed by the Court of Sessions.

It is apparent that the Court of Session has not recorded any finding which may enable the appellate court while hearing appeal against judgment of acquittal entitling it to interfere. Hence, the entire approach by the Court of Session was erroneous. Learned appellate court has not recorded finding that the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at were patently unsustainable.

It would not be appropriate to repeat the findings arrived at by the learned Sub Division Judicial Magistrate because correctness whereof has not been found to

be suffering from any substantive error by the first appellate court. However, on re-appreciation of evidence, some more facts have come to the notice of this Court. It is the case of the prosecution that Kulwidner Singh injured son of the first informant became unconscious as stated by Balbir Singh, first informant and he fell at the place of occurrence. Kulwinder Singh when appeared as PW2 has also stated the same thing and claims that his sister and father had took him to residence. However, when one reads the statement of first informant Ex.PA, it is apparent that this facts is not recorded.

Still further, Dr. M.K.Bhadu, who has been examined as PW5 has admitted that all the injuries on the injured can be possible by fall on hard surface. He further goes on to say that injured persons not informed about history of quarrel. Fracture of Balbir Singh can be possible by fall with turning of body weight. Police did not show him any weapon.

Similarly when Dr. S.L.Aggarwal has appeared as PW6, he has also admitted that possible of these injuries on the person of Balbir Singh and Kulwinder Singh due to fall on a hard surface cannot be ruled out.

It has come in evidence that the parties were in litigation. Neither any independent witness has been examined nor he was associated by the Investigating Officer, although, 10-12 persons had come forward. All the 3 witnesses of the occurrence are members of the same family i.e., family of first informant Balbir Singh. Therefore, all the witnesses, namely,

Balbir Singh himself, his son Kulwinder Singh and his daughter Rajprit Kaur were interested witnesses. Hence, in such eventuality, it was incumbent on the Investigating Officer to join some independent witnesses.

For the reasons recorded above, the judgment passed by the learned Additional Sessions Judge (Court of Sessions) is set aside.

Resultantly, Criminal Revision No.241 of 2013 filed by the convicts is allowed and Criminal Revision No.1057 of 2013 filed by the first informant for enhancement of sentence is dismissed.