

(2015) 09 SHI CK 0066

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 214 of 2008

State of Himachal Pradesh

APPELLANT

Vs

Jagdish Chand

RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378, 417, 418, 423
Penal Code, 1860 (IPC) — Section 279, 337, 338

Citation : (2015) 3 ShimLC 1545

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Advocate : R.S. Verma, Additional Advocate General, for the Appellant; G.D. Verma and B.C. Verma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Karol, J—Assailing the judgment dated 27.12.2007, passed by Judicial Magistrate 1st Class (4) Shimla, District Shimla, H.P., in Criminal Case No. RBT 57/2 of 05/02, titled as State Versus Jagdish Chand, whereby accused stand acquitted of the charged offences, State has filed the present appeal under the provisions of Section 378 of the Code of Criminal Procedure, 1973.

2. It is the case of prosecution that on 10.05.2002, on account of rash and negligent driving of bus No. HP-07-5537, complainant Satyavir Singh (P.W. 1) sustained injuries. He was taken to the local dispensary from where report (Ex. P.W. 10/A) was lodged. Head Constable Sahib Singh (P.W. 10) recorded statement (Ex. P.W. 1/A) of the injured/complainant, which led to registration of FIR No. 107/02 dated 10.05.2002 (Ex. P.W. 10/C) under the provisions of Sections 279 and 337 of the Indian Penal Code, at Police Station, Boileauganj, Shimla, H.P. Injured was got medically examined at IGMH Hospital, Shimla from Dr. Ashwani (P.W. 6), who issued MLC (Ex. P.W. 6/A). Investigation revealed that on account of reversing of the bus, in a rash and negligent manner, Satyavir Singh (P.W. 1) sustained injuries. With the completion of investigation, which

prima facie revealed complicity of the accused in the alleged crime, Challan was presented in the Court for trial.

3. Notice of accusation was put to the accused for having committed offences punishable under the provisions of Sections 279, 337 and 338 of the Indian Penal Code, to which he did not plead guilty and claimed trial.

4. In order to establish its case, in all, prosecution examined as many as twelve witnesses. Statement of the accused under Section 313 of the Code of Criminal Procedure was also recorded, in which he took defence of false implication.

5. Trial Court, after appreciating testimonies of the prosecution witnesses acquitted the accused.

6. Having heard Mr. R.S. Verma, learned Additional Advocate General, on behalf of the State as also Mr. G.D. Verma, learned Senior Counsel, assisted by Mr. B.C. Verma, Advocate, on behalf of the accused and having minutely examined the testimonies of the witnesses and other documentary evidence so placed on record by the prosecution, I am of the considered view that no case for interference is made out at all. The judgment rendered by the trial Court is based on complete, correct and proper appreciation of evidence (documentary and ocular) so placed on record. There is neither any illegality/infirmity nor any perversity with the same, resulting into miscarriage of justice.

7. It is a settled principle of law that acquittal leads to presumption of innocence in favour of an accused. To dislodge the same, onus heavily lies upon the prosecution. Having considered the material on record, I am of the considered view that prosecution has failed to establish the essential ingredients so required to constitute the charged offence.

8. In *Prandas Vs. The State*, AIR 1954 SC 36 , Constitution Bench of the apex Court, has held as under:

"(6) It must be observed at the very outset that we cannot support the view which has been expressed in several cases that the High Court has no power under S. 417, Criminal P.C., to reverse a judgment of acquittal, unless the judgment is perverse or the subordinate Court has in some way or other misdirected itself so as to produce a miscarriage of justice. In our opinion, the true position in regard to the jurisdiction of the High Court under S. 417, Criminal P.C. in an appeal from an order of acquittal has been stated in - "*Sheo Swarup and Others vs. The King-Emperor* AIR 1934 227 (Privy Council) , in these words:

"Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will

always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognized in the administration of justice."

9. From the testimony of Dr. Onkar Singh (P.W. 6) and Dr. Ashwani (P.W. 7), who have proved the MLC (Ex. P.W. 6/A) and medical record (Ex. P.W. 7/A), it is evident that complainant sustained injuries on the left side of his chest. There was tenderness over left side of sternum.

10. Raghu Nath (P.W. 3), who mechanically examined the bus in question found the brakes and steering rod to be in order, but however, there was problem with the first gear. Report (Ex. P.W. 3/A) is on record.

11. On perusal of testimony of police officials Ashok Verma (P.W. 12) and Sahib Singh (P.W. 10), who also prepared the site plan (Ex. P.W. 10/D), it is noticed that the bus in question was parked at a position where there was steep incline. Also it has come in the testimony of these witnesses as also complainant Satyavir Singh (P.W. 1) and independent witness Surinder Singh (P.W. 11) that the bus in question was full of passengers and though accused had started the bus, but however, instead of moving forward, it moved in a reverse direction. Though Surinder Singh states that the accident occurred on account of rash and negligent act of the accused, who was driving the bus in question, but however, he is conspicuously silent as to how and in what manner the act and conduct of the accused was rash and/or negligent. He has not explained it to be so. It stands admitted by this witness that the bus (HP-51-3605), on which this witness was posted as a conductor, was parked and in front of this bus, vehicle driven by the accused was parked in a stationary position. Just as the vehicle, full of passengers was driven by the accused, rather than moving forward, it reversed. When he shouted loudly, accused applied the brakes and stopped the bus. In the meanwhile, Satyavir Singh (P.W. 1) got sandwiched between two buses and sustained injuries. Quite apparently the accused could not see anything behind as the bus was full and the moment he was alarmed he stopped the bus. There appears to be no negligence on the part of the accused. In any event this witness admits that Satyavir Singh was crossing the road from a gap in between the two buses which was just five feet wide. Also there were other passengers and passersby, but none ventured to cross this gap between the two buses and none else sustained injuries as a result of alleged rash and negligent conduct of the accused.

12. Satyavir Singh (P.W. 1) only states that while he was crossing through the gap between the two buses, accused reversed the bus as a result of which he got

sandwiched between the buses, and sustained injuries.

13. Now if the gap between the two buses was small, then Satyavir Singh ought to have exercised due caution while crossing the road. He knew that the bus in question was in motion, he could have waited for the bus to leave the stationary position, and only then cross the road. He risked to cross the road which act of his, certainly cannot be said to be prudent. Also prosecution has not ruled out possibility of the bus being reversed on account of defective gear.

14. It is also well established principle of law that (i) the appellate Court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be more probable; (ii) while dealing with a judgment of acquittal, the appellate court must consider entire evidence on record, so as to arrive at a finding as to whether views of the trial court are perverse or otherwise unsustainable; (iii) the appellate court is entitled to consider whether in arriving at a finding of fact, trial Court failed to take into consideration any admissible fact; and (iv) the trial Court failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law. (Balak Ram Vs. State of U.P., AIR 1974 SC 2165 : (1974) CriLJ 1486 : (1975) 3 SCC 219 : (1974) SCC(Cri) 837 : (1975) 1 SCR 753 ; Allarakha K. Mansuri Vs. State of Gujarat, AIR 2002 SC 1051 : (2002) CriLJ 1489 : (2002) 1 Crimes 322 : (2002) 2 JT 63 : (2002) 2 SCALE 131 : (2002) 3 SCC 57 : (2002) 1 SCR 1011 : (2002) 1 UJ 419 : (2002) AIRSCW 781 : (2002) 1 Supreme 622 ; Raghunath and Ram Kishan and Others Vs. State of Haryana and Others, AIR 2003 SC 165 : (2003) CriLJ 401 : (2002) 9 JT 556 : (2003) 1 SCC 398 ; State of Uttar Pradesh Vs. Ram Veer Singh and Others, AIR 2007 SC 3075 : (2007) 10 SCALE 545 : (2007) 13 SCC 102 : (2007) 10 SCR 689 : (2007) AIRSCW 5553 : (2007) 6 Supreme 164 ; S. Rama Krishna Vs. S. Rami Reddy (D) by his LRs. and Others, AIR 2008 SC 2066 : (2008) CriLJ 2625 : (2008) 4 JT 593 : (2008) 150 PLR 782 : (2008) 6 SCALE 450 : (2008) 5 SCC 535 : (2008) AIRSCW 2824 : (2009) AIRSCW 687 : (2008) 8 Supreme 525 ; Sambhaji Hindurao Deshmukh and Others Vs. State of Maharashtra, (2008) 1 JT 569 : (2008) 1 SCALE 499 : (2008) 11 SCC 186 : (2008) AIRSCW 823 : (2008) 1 Supreme 317 ; Arulvelu and Another Vs. State represented by the Public Prosecutor and Another, (2010) CriLJ 433 : (2009) 2 DMC 677 : (2009) 13 JT 144 : (2009) 13 SCALE 143 : (2009) 10 SCC 206 : (2009) 14 SCR 1081 : (2009) 9 UJ 4289 ; Perla Somasekhara Reddy and Others Vs. State of A.P. rep. by Public Prosecutor, (2009) 8 JT 105 : (2009) 7 SCALE 115 : (2009) 16 SCC 98 : (2009) 8 SCR 145 ; and Ram Singh @ Chhaju Vs. State of Himachal Pradesh, (2010) CLT 594 : (2010) CriLJ 1655 : (2010) 1 Crimes 120 : (2010) 1 JT 666 : (2010) 1 SCALE 669 : (2010) 2 SCC 445 : (2010) 2 SCR 95 : (2010) 2 UJ 1097).

15. In Sheo Swarup and Others vs. The King-EmperorAIR 1934 227 (Privy Council) , the Privy Council held that:

"...the High Court should and will always give proper weight and consideration to

such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses...."

16. In *Chandrappa and Others Vs. State of Karnataka*, (2007) CriLJ 2136 : (2007) 3 JT 316 : (2007) 3 SCALE 90 : (2007) 4 SCC 415 : (2007) 2 SCR 630 , the apex Court observed as under:

"(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) 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.

(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.

(4) 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.

(5) 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."

17. In *State of U.P. Vs. Banne @ Baijnath and Others*, (2009) CriLJ 2234 : (2009) 3 JT 552 : (2009) 3 SCALE 35 : (2009) 4 SCC 271 , the apex Court gave illustrations of certain circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court, which principle, in our considered view, would squarely apply to the judgment under review by us. The circumstances include; (i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position; (ii) The High Court's conclusions are contrary to evidence and documents on record; iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice; (iv) The High Court's judgment is

manifestly unjust and unreasonable based on erroneous law and facts on the record of the case; (v) Apex Court must always give proper weight and consideration to the findings of the High Court; and (vi) the apex Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal. The apex Court further held that "Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference with the decision of the trial court in a routine manner, where the other view is possible should be avoided, unless there are good reasons for such interference."

(Emphasis supplied).

18. Applying the aforesaid principle to the given facts and circumstances, there is no reason to interfere with the judgment of acquittal rendered by the Court below. Satyavir Singh took risk of crossing the gap in between the two buses, despite his knowledge that ignition of the bus was on and was about to move.

19. Court does not find prosecution to have proved its case, beyond reasonable doubt, that accused was driving a bus bearing No. HP-07-5537 in a rash and negligent manner so as to endanger human life and personal safety of others on the public way and struck against the bus bearing No. HP-51-3605 and caused simple as well as grievous injuries to complainant Satyavir Singh by leading clear, cogent, convincing piece of evidence.

20. The Court below, in my considered view, has correctly and completely appreciated the evidence so placed on record by the prosecution. It cannot be said that judgment of trial Court is perverse, illegal, erroneous or based on incorrect and incomplete appreciation of material on record resulting into miscarriage of justice.

21. The accused person has had the advantage of having been acquitted by the Court below. Keeping in view the ratio of law laid down by the Apex Court in *Md. Ankoos and Others Vs. The Public Prosecutor, High Court of A.P.*, AIR 2010 SC 566 : (2010) CLT 222 : (2010) CriLJ 861 : (2009) 14 JT 6 : (2009) 13 SCALE 584 : (2010) 1 SCC 94 : (2009) 15 SCR 616 : (2009) 10 UJ 4781 , since it cannot be said that trial Court has not correctly appreciated the evidence on record or that acquittal of the accused has resulted into travesty of justice, no interference is warranted in the instant case.

For all the aforesaid reasons, present appeal, being devoid of merit, is dismissed, so also the pending application(s), if any. Bail bonds furnished by the accused are discharged. Record of the trial Court be immediately sent back.