

(2010) 07 P&H CK 0263

In the Punjab And Haryana At Chandigarh

Case No : CRR No. 802 of 1999 and CRA No's. 623-SBA of 2000

State of Punjab

APPELLANT

Vs

Iqbal Singh
 Pawan Kumar Vs State of Punjab

RESPONDENT

Date of Decision : 12-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 417
Penal Code, 1860 (IPC) — Section 273, 279, 304A, 338

Citation : (2011) 1 RCR(Criminal) 732

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jitendra Chauhan, J.—This judgment shall dispose of CRA No. 623-SBA and CRR No. 802 of 1999 as the same having been arisen out of a common judgment of conviction and sentence. However, the facts are being taken from CRA No. 623-SBA of 2000.

2. The State has preferred this appeal against the judgment dated 1.6.1999 passed by the learned Trial Court whereby the accused/Respondent has been acquitted of the charge framed under Sections 279/338/304-A of IPC.

3. Brief facts of the case stand reflected in para 2 of the impugned judgment, which are reproduced as under:

2. Case of the prosecution is that on 14.4.96 Pawan Kumar son of Chaman Lal stated before the police that he was dealing in Moblie Oil, at Kotkapura. He was having three brothers. On that day, at about 5.00 a.m. he along-with his brother Bal Krishan, his father Chaman Lal, his wife Sunita Devi and his sis ter-in-law Kamlesh Rani, Gurmit Kaur wife of Bahadar Singh Patwari and Surinder Pal Singh Patwari son of Hari Singh went to Dera Such Khund" Sirsa from Kotkpaura on a jeep bearing No. PB-04C-2201, for attending the religious congregation. This jeep was being driven by Darbara Singh son of Sadhu Singh. After attending the

religious congregation, they were coming back from Sirsa in the aforesaid jeep. Complainant and his brother Bal Krishan were sitting on the front seat by the side of driver of the jeep whereas Sunita Devi, Kamlesh Rani, Gurmit Kaur, Chaman Lal and Surinder Pal Singh were sitting on the rear seats. At about 6/6.30 p.m. when they reached across the canal minor near N.F.L. Colony, a bus bearing No. PB-03-1000 belonging to Mann Bus Service was seen coming from the opposite direction. It was being driven by the accused very rashly and negligently. Accused struck the aforesaid bus against the driver side of the jeep, as a result of which driver Darbara Singh sustained injuries on the right portion of his body. On account of this impact, Gurmit Kaur fell down from the jeep and expired whereas Sunita Devi, Kamlesh Rani, Bal Krishan, Chaman Lal and Surinder Pal Singh sustained injuries and jeep went ahead and struck against a tree and stopped. A number of people gathered at the spot. All the injured were taken to Civil Hospital, Bathinda. Sunita Devi and Kamlesh Rani succumbed to their injuries on the way to the hospital. Accused drove away the bus after accident upto some distance and abandoned the same and then ran away. Above statement of Pawan Kumar, Ex.PA was recorded by Balwinder Singh S.I./SHO P.S. Thermal Bathinda. He made his endorsement on it and sent ruqa to the police station where on its basis formal FIR was registered against the accused. The investigation of the case was taken up in hand by S.I. Balwinder Singh who visited the spot and prepared rough site plan and inquests reports....

4. After completion of the investigation, the accused/Respondent was challaned and thereafter charge sheeted by the Judicial Magistrate-Ist Class, Bathinda for the offences under Sections 273/338/304-A of IPC was served upon the accused-Respondent, to which the accused/Respondent pleaded not guilty and claimed trial.

5. In order to substantiate the allegations against the accused, the prosecution examined as many as ten witnesses, namely Pawan Kumar as PW1; Constable Abhey Singh as PW2; Surinder Pal Singh as PW3; Bal Krishan as PW4; Darbara Singh as PW5; Dr. K.S. Brar, CMO Hospital, Bathinda as PW6; Constable Bikkar Singh as PW7; Dr. Niranjana Lal, Emergency Medical Officer, Civil Hospital, Bathinda as PW8; Dr. Harinder Pal Singh, M.O. PHC, Talwandi Sabbo as PW-9 and Dr. K.L. Dhunna, Orthopedic Surgeon, Ganesha Basti, GT Road, Bathinda as PW10. However, Hakim Singh and Ved Parkash were given up as having been won over by the accused.

6. PW-1 Pawan Kumar reiterated his earlier version given in his statement Exhibit PA.

7. PW-2 Constable Abhey Singh, Mechanic, proved his test reports in respect of mechanical test of Bus No. PB-03/1000 (hereinafter as the "offending vehicle") and Jeep No. PB-04C/2201, Exhibit PB and Exhibit PC, respectively.

8. PW3 Surinderpal Singh; PW4 Bal Kishan and PW5 Darbara Singh were the injured and eye witnesses of the occurrence. They have given account of the

occurrence.

9. PW7-Constable Bikkar Singh stated in his testimony that he joined S.I. Balwinder Singh for investigation of the case.

10. PW8 Dr. Niranjan Lal deposed that he conducted the postmortem examination on the dead bodies of Kamlesh Rani, Gurmit Kaur and Sunita Devi.

11. The accused-Appellant was examined u/s 313 of the Code of Criminal Procedure, he denied all other incriminating circumstances appearing against him in the prosecution evidence and claimed trial being innocent. However, in defence, the accused did not lead any evidence.

12. The present Appellant was admitted on 14.3.2008 by this Court:

13. Learned Counsel for the Appellant has argued that the prosecution version is fully proved from the evidence of injured witnesses, namely, Pawan Kumar, PW1, Surinder Pal Singh, PW3, Bal Krishan, PW4 and Darbara Singh, PW5. There are no improvements or contradictions in their statements. Therefore, they are reliable witnesses.

14. It has been further argued that the rash and negligent driving of the accused/Respondent, caused death of Sunita Devi, Kamlesh Rani and Gurmit Kaur, while other co-occupants of the ill-fated jeep in question received grievous injuries. The injured witnesses, Surinder Pal Singh, PW3, Bal Krishan, PW4 and Darbara Singh, PW5 have truthful account of the occurrence. It has also come in the evidence of Darbar Singh, PW5, that the accused/Respondent was known to him. Thus, there was no requirement of his identification but the learned Trial Court has ignored the statement of the said eye witness.

15. The learned Counsel has further argued that the learned Trial Court has committed a serious error in drawing adverse inference due to non-examination of witnesses, namely Hakim Singh and S.I. Balwinder Singh, Investigating Officer. The identity of the accused/Respondent in the instant case is fully established as he is named in the FIR also. Therefore, non-examination of witness Hakim Singh and S.I. Balwinder Singh, Investigating Officer is not fatal in the present case as they were the formal witnesses.

16. On the other hand, learned Counsel for the Respondent has argued that the identity of the accused/Respondent is not proved in the present case. No test identification parade was conducted. There is nothing on record to suggest that the accused/Respondent was known to the prosecution witnesses prior to the accident in question. Learned Counsel has further argued that one Hakim Singh and S.I Balwinder Singh, Investigating Officer were not examined. The testimonies of prosecution witnesses are discrepant with regard to the place of occurrence. She has next contended that the material discrepancies in the evidence of prosecution witnesses, namely, Pawan Kumar, PW1, Surinder Pal Singh, PW3, Bal Krishan, PW4 and Darbara Singh, PW5. create a doubt in the story projected by the prosecution.

17. I have heard the learned Counsel for the parties and perused the record with their able assistance.

18. It is admitted case of the parties that the accused-Respondent was not apprehended on the spot. The Respondent was arrested on 22.4.1996 by the Investigating Officer, Balwinder Singh, SI/SHO, PS Thermal, Bathinda. The said officer has not been examined and another witness Hakim Singh was given up as having been won over by the prosecution.

19. As the accused-Respondent was not previously known to the witnesses prior to the occurrence and no test identification parade was conducted, therefore, the identity of the Respondent/accused in the instant case is not established. It has come in the statement of Darbara Singh, PW4, driver of the jeep, that he knew the accused/Respondent earlier. However, this fact is not found mentioned in his statement u/s 161 of Code of Criminal Procedure This improvement is a material improvement and, therefore, makes the prosecution case doubtful. Pawan Kumar, PW1, also admitted the fact that he came to know about the identity of the accused-Respondent later on and saw him in the Court for the first time in the Court.

20. Another aspect of the matter is that the owner of the offending bus, in question, was not examined to prove the identity of the accused coupled with the fact that the investigating officer was also not examined to prove the FIR and the site plan.

21. In my opinion, these are vital flaws in the prosecution story and create serious doubt in the version put forth by the prosecution. The learned Trial Court rightly acquitted the Respondent. In the cases of acquittal, there is a strong presumption in favour of the accused as the innocence of the accused is reinforced, reaffirmed and strengthen by the judgment of acquittal.

22. The Hon"ble Supreme Court in Arulvelu and Another Vs. State represented by the Public Prosecutor and Another, has observed in paras 31,33 and 35, which read as under:

31. The legal position seems to be well settled and consistent at least since 1934 when the Privy Council decided the case of Sheo Swarup and Others vs. King Emperor in which the Court (per Lord Russell) observed as under:

...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....

33. In Chandrappa and Others Vs. State of Karnataka, , this Court reiterated the legal position 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.

35. this Court in a recently delivered judgment *State of Rajasthan Vs. Naresh @ Ram Naresh*, again examined judgments of this Court and laid down that:

20. ...An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused. this Court has dealt with the scope of interference with an order of acquittal in a number of cases.

23. In *Khedu Mohton and Others Vs. State of Bihar*, , the Hon"ble Supreme Court has held in para 3, which reads as under:

3. It is true that the powers of the High Court in considering the evidence on record in appeals u/s 417, Code of Criminal Procedure are as extensive as its powers in appeals against convictions but that court at the same time should bear in mind the presumption of innocence of accused persons which presumption is not weakened by their acquittal. It must also bear in mind the fact that the appellate judge had found them not guilty. Unless the conclusions reached by him are palpably wrong or based on erroneous view of the law or that his decision is likely to result in grave injustice, the High Court should be reluctant to interfere with his conclusions. If two reasonable conclusions can be reached on the basis of the evidence on record then the view in support of the acquittal of the accused should be preferred. The fact that the High Court is

inclined to take a different view of the evidence on record is not sufficient to, interfere with the order of acquittal.

24. The Hon"ble Supreme Court in Harijana Thirupala and Others Vs. Public Prosecutor, High Court of A.P., Hyderabad, has held as under:

10. The principles to be kept in mind in our system of administration of criminal justice are stated and restated in several decisions of this Court. Yet, sometimes high courts fail to keep them in mind before reaching a conclusion as to the guilt or otherwise of the accused in a given case. The case on hand is one such case. Hence it is felt necessary to remind about the well-settled principles again. It is desirable and useful to remind and keep in mind these principles in deciding a case. In our administration of criminal justice an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by producing the evidence to show him to be guilty of the offence with which he is charged. Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused. At the same time, the court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful grounds or on the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In appreciating the evidence the approach of the court must be integrated not truncated or isolated. In other words, the impact of evidence in totality on the prosecution case or innocence of accused has to be kept in mind in coming the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be added that ultimately and finally the decision in every case depends upon the facts of each case.

12. Doubtless the High Court in appeal either against an order of acquittal or conviction as a court of first appeal has full power to review the evidence to reach its own independent conclusion. However, it will not interfere with an order of acquittal, lightly or merely because one other view is possible, because with the passing of an order of acquittal presumption of evidence in favour of the accused gets reinforced and strengthened. The High Court would not be justified to interfere with order of acquittal merely because it feels that sitting as a trial court would have proceeded to record a conviction; a duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity.

13. It is unfortunate that by the impugned order, the High Court has upset the well-reasoned order of acquittal passed by the trial court. It appears to us that

the High Court while doing so, did not bear in mind the well-settled principles stated above as to what should be the approach in reversing an order of acquittal and under what circumstances it should be reversed.

25. In view of the above discussions, the present appeal is dismissed. The judgment and order dated 1.6.1999 passed by the learned Trial Court is maintained. Resultantly, CRR No. 802 of 1999 also stands dismissed.

26. A photocopy of this order be placed on the file of connected case.