

(2012) 11 P&H CK 0112

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. A-414-MA of 2012 (O and M)

Onkar Singh

APPELLANT

Vs

Parminder Singh and
Others

RESPONDENT

Date of Decision: Nov. 5, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 378(4)

Hon'ble Judges: Rameshwar Singh Malik, J; Jasbir Singh, J

Bench: Division Bench

Advocate: Paramjit Singh Thiara, for the Appellant;

Final Decision: Dismissed

Judgement

Jasbir Singh, Judge

Criminal Misc. No. 31355 of 2012

1. In view of the reasons mentioned in the application, it is allowed and a delay of 44 days in filing the appeal stands condoned.

Criminal Misc. No. A-414-MA of 2012

Complainant-Onkar Singh has filed this application u/s 378(4) Cr.P.C. seeking leave to file an appeal against the judgment of acquittal dated 24.1.2012 vide which the criminal complaint filed by him was dismissed.

2. It was an allegation against the respondents that on 19.7.2005, they had forcibly entered into land of the complainant and demolished manger constructed by the complainant. They also gave fist and kick blows to Sucha Singh, father of the complainant and killed him.

3. The trial Judge has noted the following facts from the complaint filed by the applicant:-

2. The brief facts of the complaint are that complainant along with his father and other family members has been residing in village Nangal Khunga and father of complainant was owner in possession of plot measuring 4 marlas adjoining to another plot of 6 marlas. In both these plots, the complainant and his father along with his family members are in possession and constructed their house as well as tethering their cattle by raising Khurli for the last number of years. Parminder Singh accused is grandson of Didar Singh Sarpanch of the village and Beant Singh and Parminder Singh are henchmen of said Didar Singh and all the above said four accused are hand in gloves with each others and they are at the back and call of Sarpanch Didar Singh. All these four accused hatched a conspiracy and wanted to carve out the street out of the plot of the complainant and with this intention, all the accused duly armed on 19.7.05 at about 11.00 AM came to the plot by raising Lalkara that the complainant and his father be taught a lesson for raising Khurli in the said plot and started demolishing the manger Khurli and thereafter, threw the brick bats around the said plot. The complainant and his father Sucha Singh, mother Surjit Kaur and his wife Baljinder Kaur came out of their house. All the four accused on seeing them started raising Lalkara and started hurling brick bats and chased the father of the complainant Sucha Singh. Such Singh entered into the house after running and complainant along with other family members tried to save them by going towards one side in the court yard thereafter all the four accused entered into the house of complainant. Parminder Singh accused caught hold of Sucha Singh, father of complainant from his long hair and Sukhdip Singh caught hold of Sucha Singh from his right arm, while Dharminder Singh accused caught hold of Sucha Singh from his left arm. Beant Singh accused gave fist blows and also gave kicks to Sucha Singh. The complainant raised alarm whereupon number of persons gathered there and all the four accused ran away from the spot after committing murder of Sucha Singh. All the four accused with intention to cause murder caused injuries to Sucha Singh in such a manner that the apparent injury should not appear and all the injuries were of fists and kicks in the abdomen and chest, on account of which the father of complainant died at the spot.

4. It is stated that the respondents wanted to take forcible possession of a plot of land, which is in possession of the complainant. It was further stated that the matter was reported to the police and FIR bearing No. 192 was recorded against the respondents on 19.7.2005. However, the police personnel failed to arrest the accused, connived with them and proposed cancellation of the above said FIR. It has come on record that post mortem on the dead body of Sucha Singh was conducted on 20.7.2005 in Civil Hospital at Dasuya. When no action was taken, the complainant filed a criminal complaint. After recording preliminary evidence and finding sufficient grounds to proceed against the respondents they were summoned to face trial. On their appearance, copies of the documents were supplied to them, as per norms. The case was committed to the competent Court for trial. They were charge sheeted to which they pleaded not guilty and claimed trial.

5. The complainant, in order to prove his case, produced five witnesses and also brought on record the documentary evidence. On conclusion of the complainant's evidence, separate statements of respondents/accused were got recorded u/s 313 Cr.P.C. Incriminating circumstances appearing on record were put to them which they denied, claimed innocence and pleaded false implication.

6. The trial Judge, on appraisal of evidence, found the respondents innocent and accordingly they were acquitted of the charges framed against them. As per facts on the record, for committing death of Sucha Singh, an FIR was recorded against the respondents on 19.7.2005. During investigation, they were found innocent and cancellation report was filed in the Court to cancel the above FIR. The trial Judge, by making reference to the medical evidence on record, rightly held that Sucha Singh died a natural death. It was also noticed that Onkar Singh (P.W. 1) and Baljinder Kaur (P.W. 2) have made lot of improvements in their statements when they appeared in the Court. The trial Judge has also made reference to various documents to say that there is nothing on record to prove that any attempt was made to carve out the passage through land of the complainant, as alleged. The matter, in that regard, was pending in Civil Court. It was also noticed that there was no mark of external injuries on the body of Sucha Singh, deceased. Statements of Onkar Singh (P.W. 1) and Baljinder Kaur (P.W. 2) were found to be contradictory to each other. Regarding cause of death of Sucha Singh, the trial Judge has noted as under:-

26. The evidence of P.W. 3 Dr. Anil Dhawan Medical Officer Civil Hospital Dasuya is very material. In his examination in chief he has stated that no external injury was detected. Viscera were sent for chemical examiner to the State chemical examiner and heart was sent to pathologist Govt. Medical College Amritsar for histopathology. On receipt of report alcohol was detected in the contents of Exhibit 1, 2, 3, 4. No poison/alcohol was detected exhibit 5. Blood alcohol concentration estimated to be 69.0 mg per 100 ml. He proved the post mortem report Ex. PW 3/A, histopathology report Ex. PW 3/B and Chemical Examiner report Ex. PW 3/C.

27. In his cross examination he has stated that there was no injury on the dead body of Sucha Singh. Since there was no injury therefore cause of death was not given in the post mortem report Ex. PW 3/A and it was kept pending awaiting report of chemical examiner and pathologist. He gave opinion after receipt of the report that cause of death could not be ascertained and as per histopathology report Ex. PW 3/B the heart was grossly normal.

7. On the basis of evidence, on record, it was said that the cause of death was not ascertained by the prosecution.

8. Their Lordships of the Supreme Court in Allarakha K. Mansuri v. State of Gujarat, 2002 (1) RCR (Cri.) 748, held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

9. A Division Bench of this Court in *State of Punjab v. Hansa Singh*, 2001 (1) RCR (Cri.) 775, while dealing with an appeal against acquittal, has opined as under:-

We are of the opinion that the matter would have to be examined in the light of the observations of the Hon"ble Supreme Court in [Ashok Kumar Vs. State of Rajasthan](#), which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.

10. Similarly, in [State of Goa Vs. Sanjay Thakran and Another](#), and in [Chandrappa and Others Vs. State of Karnataka](#), , it was held that where, in a case, two views are possible, the one which favours the accused has to be adopted by the Court.

11. In *Mrinal Das & others v. The State of Tripura*, 2011 (9) SCC 479, decided on September 5, 2011, the Supreme Court, after looking into many earlier judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

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. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed.

12. Similarly, in the case of [State of Rajasthan Vs. Shera Ram @ Vishnu Dutta](#), , the Hon"ble Supreme Court has observed as under:-

7. A judgment of acquittal has the obvious consequence of granting freedom to the accused. This Court has taken a consistent view that unless the judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the court of competent jurisdiction keeping in view the settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquittal.

8. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for.

13. Thereafter, in the above case a large number of judgments were discussed and then it was opined as under:-

10. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.

14. Counsel for the applicant has failed to indicate any misreading of evidence on the part of the trial Judge which may necessitate interference by this Court. Dismissed.