(2012) 07 P&H CK 0211

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. A-170-MA of 2012 (O and M)

Mohinder Singh		APPELLANT
	Vs	
State of Punjab and Others		RESPONDENT

Date of Decision: July 17, 2012

Acts Referred:

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

Hon'ble Judges: Jasbir Singh, Acting C.J.; Rakesh Kumar Jain, J

Bench: Division Bench

Advocate: Peerdan Kabir, for Mr. Gopal Singh Nahel, for the Appellant;

Final Decision: Dismissed

Judgement

Jasbir Singh, Acting Chief Justice

1. This application has been filed u/s 378(4) Cr.P.C. seeking leave to file an appeal against the judgment dated 1.3.2011 acquitting respondents No. 2 to 11 of the charges framed against them. The process of law was started on a statement made by Lakhvir Singh (PW.3) stating that on 27.6.2007 at about 7.30 P.M. injuries were caused to him, Kulwant Singh and Yadwinder Singh by the respondents. The injured were taken to the hospital for medical treatment. Kulwant Singh succumbed to his injuries on 3.7.2007 at P.G.I. Chandigarh.

2. On receipt of an intimation, the Investigating Officer went to the place of occurrence, prepared a rough site plan with correct marginal notes. Upon death of Kulwant Singh on 3.7.2007, inquest proceedings were prepared and dead body was sent for post mortem examination.

3. On completion of investigation, final report was put in Court for trial. The case was committed to the competent Court for adjudication. Copies of the documents were supplied to the accused, as per norms. The respondents were charge sheeted to which

they pleaded not guilty and claimed trial.

4. The prosecution produced ten witnesses and also brought on record documentary evidence to prove its case. At the time of trial, the complainant and other eye witnesses failed to support case of the prosecution. PW.3 Lakhvir Singh gave altogether a different version of the occurrence stating that the injuries were caused by unknown persons. Similarly, PW.7 Yadwinder Singh, injured-eye witness, also failed to support case of the prosecution. He also stated that injuries were caused to them by unknown persons on 27.6.2007 at about 7.30 P.M. PW.8 Jarnail Kaur was also declared hostile. PW.9 Gurpreet Singh, another injured-eye witness, also did not support case of the prosecution. Rather he specifically stated that the accused had not caused injuries to him and they were also not known to him. A witness to extra judicial confession namely Avtar Singh (PW.10) also failed to support case of the prosecution.

5. Taking note of the above facts, the trial Judge has rightly acquitted the private respondents of the charges framed against them.

6. Counsel for the applicant has failed to indicate any legal lacuna in the judgment under challenge. The trial Judge has properly appreciated the evidence on record when passing order of acquittal in favour of the private respondents. The view taken by the trial Court appears to be justified and as per evidence on record.

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

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. The appeal is also barred by 284 days in filing. No ground is made out to condone the delay in filing the appeal as well. Both the applications are dismissed.