IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No.354 of 2002
Date of decision : 03.05.2010

Kalu Ram

.... Petitioner

VERSUS

Ram Sarup and another

....Respondents

CORAM:- HON'BLE MR. JUSTICE KANWALJIT SINGH AHLUWALIA

Present: Mr. Sandeep Jasuja, Advocate,
for the petitioner.

Mr. J.P. Singh, Advocate,
for the respondents.

KANWALJIT SINGH AHLUWALIA, J. (Oral)

Complainant - Kalu Ram son of Gandhi Ram has preferred the present revision petition assailing acquittal of accused respondents Ramsarup and Norki Devi ordered by SDJM, Abohar vide his judgment dated 17.09.2001 in case FIR No.5 dated 11.01.1999 registered at Police Station Sadar, Abohar under Sections 326, 324/34 IPC at the instance of complainant Kalu Ram. However, respondent-State has opted not to file such an appeal.

Kalu Ram PW-1 got recorded his statement Ex.P1 to SI Vir Chand PW-4 on 11.01.1999 at 11:30 AM, at Civil Hospital, Abohar. In his statement, he stated that he was a resident of Village Kundal. His maternal grand-father was having 11 killas of land. Out of which 8 killas of land was with him and remaining 3 killas of land was in possession of Sarwan Ram son of Kesra Ram. Against 3 killas of

land a suit was decided in favour of the complainant. Jaila Ram son of Kesra Ram had not paid the amount of compensation. Therefore, the Court auctioned one kanal of land in order to recover the costs of the complainant. On 10.1.1999, there was a turn of water to irrigate the land of the complainant. The complainant gave his land to his maternal uncle Puran Ram on the basis of share. When the complainant was going to take turn of water at about 4.16 PM Ram Sarup son of Jaila Ram came and his mother gave a lalkara that the complainant should be taught a lesson. Ram Sarup gave a blow by his toka on the right shoulder and another blow on the left arm of the complainant. On a noise raised, maternal uncle of the complainant was attracted at the spot. Mother of Ram Sarup had given a push. Ram Sarup, who was aged about $16^{1/2}$ years at the time framing of charge and his mother Norki Devi were charged for offence under Section 326 IPC for having caused grievous hurt to Kalu Ram on 10.1.1999 at about 4.15 PM. These two accused were also charged for offence under Section 324 IPC read with Section 34 of IPC. They denied the allegations.

Dr. Gobind Ram Aggarwal PW-2 examined Kalu Ram on 10.1.1999 at 6.30 PM and found following three injuries on his person :-

> "(1) Incised wound 5x1.5 cm at the superio-posterio aspect of right shoulder joint blidding was present Xray was advised.
>
> (2) Incised wound 3x1 cm on the medial and posterial aspect of left fore-arm 8cm away from left wrist, bleeding was present. X-ray was advised.

(3) Complaining of pain at front of neck there was no tenderness of external injury."

Injury no.3 was complaint of pain. Injury no.2 was declared grievous as there was fracture of left ulna bone.

Kalu Ram appeared as PW-1 and reiterated as to what was stated in the FIR.

PW-3 Puran Ram was turned hostile as he had not supported the prosecution version.

SI Vir Chand, Investigating Officer appeared as PW-4.

PW-6 Dr.S.K. Juneja stated that there was a fracture of left ulna bone.

Admittedly, in the present case, Norki Devi mother of the accused-respondent Ram Sarup was empty handed. The charge was framed in this case on 22.02.1999. Age of Ram Sarup was recorded as $16^{1/2}$ years. The trial Court after examining the oral as well as documentary evidence came to the conclusion that the prosecution case was highly doubtful. PW-3 Puran Ram, an eye-witness, had not supported the prosecution case. There was an inordinate delay in lodging the FIR. PW-3 Puran Ram was discrepant on various aspects. Medical evidence does not corroborate the ocular version. The trial Court on this issue said as under:-

"15. According to the prosecution story the occurrence in question took place on 10.01.1999 at 4.16 P.M. and injured Kalu Ram was medico-legally examined on 10.01.1999 at 6.30 P.M. PW-6 Dr. S.K. Juneja, Radiologist, Civil Hospital, Abohar has observed that injury No.2 after x-ray of left forearm showed fracture of left ulna bona and

> callus formation was seen. So, according to Dr. S.K. Juneja callus formation was noticed on 11.01.1999, when x-ray examination of injured Kalu Ram was conducted. But according to Modi's Medical Jurisprudence & Toxicology, page 241 granulation issue, known as the soft provisional callus, is formed from the third to the fourteenth day." The prosecution case shows that the callus formation was seen in injury No.2 on 11.01.1999. So, it is evident that injury No.2 was not caused on 10.01.1999. Rather this injury related to more than three days prior to 11.01.1999. Hence it can not be held that injury No.2 on the person of Kalu Ram was caused by the accused on 10.01.1999."

The Court further considered the age of injured and alleged the eye-witness. The petitioner who was only $16^{1/2}$ years at that time, therefore the prosecution story was held improbable by saying as follows: -

> "The accused have denied all the circumstances appearing in the prosecution evidence against them and pleaded innocence. It is admitted case of the parties that there exists enmity between them. According to the prosecution story PW-1 Kalu Ram complainant, who is of age about 25/26 years, PW3 Puran Ram, alleged eye witness, who is of age about 30 years were present in their land to irrigate the same and accused Ram Sarup, who is of age about 18/19 years and was student of 10^{th} class at that time and his mother Norki, who is of age about 52 years, voluntarily caused hurt to Kalu Ram, complainant – injured. This story appears to be unnatural one. It can not be presumed that a lady of more than 50 years of age alongwith her young son of age about 18/19 years, who is student, would attack on two full grown men. The motive is a double edged weapon, which can be used by both sides.

> Mere fact that one kanal land of father of accused Ram Sarup was got auctioned by the complainant can not be taken as a reason for alleged infliction of injuries by the accused on the person of the complainant. The defence version is that the accused have been falsely implicated in this case due to enmity. A dispute over 3 killas of land is there between the complainant and the accused party. So, possibility of falsely implicating the accused in this case can not be ruled out. In such circumstances, I am of the view that the defence version seems to be probable one as compared to the prosecution story."

Since in the present case, respondent - State has not filed any such appeal, this Court would be hestitant to cause interference in a revision against acquittal when the view formulated by the trial Court is not perverse.

Furthermore it was held in **AIR 1968 Supreme Court 707 Mahendra Partap Singh vs. Sarju Singh and another,** relying upon **D.Stephens vs. Nosibolla, AIR 1951 SC 196,** as under:-

> "Only two grounds are mentioned by this Court as entitling the High Court to set aside an acquittal in a revision and to order a retrial. They are that there must exist a manifest illegality in the judgment of the Court of Session ordering the acquittal or there must be a gross miscarriage of justice. In explaining these two propositions, this Court further states that the High Court is not entitled to interfere even if a wrong view of law is taken by the Court of Session or if even there is mis-appreciation of evidence. Again, in Logendranath Jha v. Polajlal Biswas, 1951 SCR 676 (AIR 1951 SC 316), this Court points out that the High Court is entitled to set aside an acquittal if there is an error on a point of law or no appraisal of the evidence at all. This Court observes that it is not sufficient

to say that the judgment under revision is “perverse” or “lacking in the true correct perspective”. It is pointed out further that by ordering a retrial, the dice is loaded against the accused, because however much the High Court may caution the Subordinate Court, it is always difficult to re-weigh the evidence ignoring the opinion of the High Court. Again in K.Chinnaswamy Reddy v. State of Andhra Pradesh, 1963 (3) SCR 412 = (AIR 1962 SC 1788), it is pointed out that an interference in revision with an order of acquittal can only take place if there is a glaring defect of procedure such as that the Courdt had no jurisdiction to try the case or the Court had shut out some material evidence which was admissible or attempted to take into account evidence which was not admissible or had overlooked some evidence. Although the list given by this Court is not exhaustive of all the circumstances in which the High Court may interfere with an acquittal in revision it is obvious that the defect in the judgment under revision must be analogous to those actually indicated by this Court. As stated not one of these points which have been laid down by this Court, was covered in the present case. In fact on reading the judgment of the High Court it is apparent to us that the learned judge has re-weighed the evidence from his own point of view and reached inferences contrary to those of the Sessions judge on almost every point. This we do not conceive to be his duty in dealing in revision with an acquittal when Government has not chosen to file an appeal against it. In other words, the learned Judge in the High Court has not attended to the rules laid down by this Court and has acted in breach of them.”

In **Akalu Ahir v. Ramdeo Ram, AIR 1973 Supreme Court 2145 (V 60 C 352)**,Hon'ble apex Court observed as under:

“This Court then proceeded to observe that the High Court is certainly entitled in revision to set aside the order of acquittal even at the instance of private parties, though the

State may not have thought fit to appeal, but it was emphasized that this jurisdiction should be exercised only in exceptional cases when “there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice.” In face of prohibition in Section 439(4), Cr.P.C., for the High Court to convert a finding of acquittal into one of conviction, it makes all the more incumbent on the High Court to convert da finding of acquittal into one of conviction, it makes all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one oif conviction by the indirect method of ordering re-trial. No doubt, in the opinion of this Court, no criteria for determining such exceptional cases which would cover all contigencies for attracting the High Court's power of ordering re-trial can be laid down. This Court, however, by way of illustration, indicated the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision:

(i) Where the trial Court has no jurisdiction to try the case, but has still acquitted the accused;

ii) Where the trial Court has wrongly shut out evidence which the prosecution wished to produce;

iii) Where the appellate Court has wrongly held the evidence which was admitted by the trial Court to be inadmissible;

iv) Where the material evidence has been over-looked only (either?) by the trial Court or by the appellate Court; and

v) Where the acquittal is based on the compounding of the offence which is invalid under the law.

> These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of acquittal. In Mahendra Pratap Singh, (1968) 2 SCR 287 = (AIR 1968 SC 707) (supra) the position was again reviewed and the rule laid down in the three earlier cases reaffirmed. In that case the reading of the judgment of the High Court made it plain that it had re-weighed the evidence from its own point of view and reached inferences contrary to those of the Sessions Judge on almost every point. This Court pointed out that it was not the duty of the High Court to do so while dealing with an acquittal on revision, when the Government had not chosen to file an appeal against it. “In other words” said this Court, “the learned Judge in the High Court has not attended to the rules laid down by this Court and has acted in breach of them.”

Similar view was reiterated by Hon'ble apex Court in **Bansi Lal and others vs. Laxman Singh, (1986) 3 Supreme Court Cases 444**.

Again, Hon'ble apex Court, in **Ramu alias Ram Kumar and others, 1995 Supreme Court Cases (Cri) 181**, held that it is well settled that the revisional jurisdiction conferred on the High Court should not be lightly exercised particularly when it has been invoked by a private complainant. **In Vimal Singh vs. Khuman Singh and another, (1998) Supreme Court Cases (Cri) 1574** and in **Bindeshwari Prasad Singh vs. State of Bihar, 2002 AIR (SC) 2907**, the High Court has been reminded of its very limited jurisdiction in revision against acquittal.

It is well settled that unless any legal infirmity in the

procedure or in the conduct of trial or patent illegality is pointed out, the revisional Court will not interfere.

There is another added features which this Court cannot ignore. In ***Hari Ram versus State of Rajasthan & Another, 2009 (2) RCR (Crl.), 878***, Hon'ble the Apex Court has held that the amendment in the Juvenile Justice Act has to apply retrospectively to the appeals and the revisions pending before the Court. Therefore, accused Ram Sarup was a juvenile. In a case, where offence is allegedly made out under Section 326 IPC, this Court is of the view that no ends of justice will be served in case after 11 years, the matter is remanded back to Juvenile Justice Court to hold an enquiry.

I find no merit in the instant revision petition to interfere while exercising revisional jurisdiction as learned counsel for petitioner has failed to point out any illegality or irregularity.

There is no merit in the present petition which is hereby dismissed.

(KANWALJIT SINGH AHLUWALIA)
JUDGE

3-05-2010
manju