

STATE OF HARYANA

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v.

HUSSAIN

(Criminal Appeal No. 1131 of 2007)

JUNE 29, 2016

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[ABHAY MANOHAR SAPRE AND
ASHOK BHUSHAN, JJ.]

Penal Code, 1860 – ss. 380, 457 and 460 – Theft and house breaking by night – Prosecution case that assailants committed house breaking by night and theft in the dwelling house, resulting in death of complainant's husband and injuries to the complainant – Conviction of respondents for commission of offence u/ss. 380, 457 and 460 and sentenced accordingly – However, acquittal by High Court – On appeal, held: View taken by the High Court there were infirmities in the prosecution case which are fatal is based on appreciation of evidence and was taken within its jurisdiction – High Court gave cogent reasons in support of its view – There is no infirmity or perversity in the reasoning of High Court – High Court also held that the accused have undergone four years' jail sentence partly as under trial and remaining after conviction by the trial court – Thus, the order passed by the High Court does not call for interference – No need to undertake the exercise of appreciating the whole evidence in the instant appeal.

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Appeal – Appeal against acquittal – Re-appreciation of evidence by Supreme Court – Held: When the view taken by the High Court while reversing the judgment of the trial court appears to be just and reasonable which is also supported by cogent reasoning then re-appreciation of evidence not required – It is only when the High Court fails to record any reason or fails to appreciate the evidence or records any material finding, wholly perverse or against any provision of law.

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Dismissing the appeal, the Court

HELD: 1.1 It is a settled principle of law that if the view taken by the High Court while reversing the judgment of the trial court appears to be just and reasonable which is also

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A supported by cogent reasoning then this Court would not re-
appreciate the evidence again especially when the appeal arises
out of the order of acquittal. It is only when the High Court while
reversing the judgment of the trial court fails to record any reason
or fails to appreciate the evidence or when the High Court records
B any material finding which is wholly perverse or against any
provision of law, this Court may consider it proper to examine
the issues arising in the case and in appropriate case interfere in
such finding. Such is not the case here. [Paras 17, 18] [186-C-E]

1.2 The High Court on appreciation of evidence acquitted
respondent No. 2 of all the charges holding that fatal blow to
C deceased was not attributable to respondent No. 2 but it was
attributable to another accused who was a declared proclaimed
offender; that the recovery of the stolen articles made at the
instance of the accused persons was unbelievable because it was
made from the open place which was accessible to all and no
D independent witnesses were examined to prove the factum of
recovery; that Lambardar and Chowkidar of the concerned Gram
Panchayat were available yet they did not join at the time of
recovery and no explanation was offered by the prosecution as to
why they could not join; the evidence adduced by the prosecution
was not sufficient to prove that the stolen property belonged to
E the complainant; and that since the accused in the meantime have
undergone four years' jail sentence partly as under trial and
remaining after conviction by the trial court, they are entitled for
acquittal of the charges in the light of the infirmities in the case
of prosecution which are fatal. [Para 14] [185-E-G]

F 1.3 The view taken by the High Court is based on
appreciation of evidence and the same was taken within its
jurisdiction. The High Court has given its reasoning as to why it
has reversed the finding of the Trial Court. It is one of the
possible views, which the High Court is capable to take on
G appreciation of evidence and it has so taken. There is no infirmity
or perversity in the reasoning of the High Court, which may
persuade this Court to interfere in the impugned order. In these
circumstances, there is no need to undertake the exercise of
appreciating the whole evidence in this appeal. Further, the State
was not able to point out any legal or jurisdictional error or/and
H extreme perversity in the reasoning of the High Court, which

may persuade this Court to probe into evidence *de novo*. [Paras 16, 19, 20] [186-B, F-G]

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1131 of 2007.

From the Judgment and Order dated 28.09.2004 in Criminal Appeal No. 414 SB of 1991 passed by the High Court of Punjab & Haryana at Chandigarh.

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Keshav Kumar, Kamal Mohan Gupta, Advs. for the Appellant.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is filed by the State against the final judgment and order dated 28.09.2004 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 414 (SB) of 1991 whereby the Single Judge of the High Court allowed the appeal filed by the respondent herein and set aside the judgment and order dated 03.08.1991 of the Trial Court convicting the respondent for commission of offences under Sections 380, 457 and 460 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC") and sentenced him to undergo rigorous imprisonment for four years and a fine of Rs.1000/- for commission of offence under Section 380 IPC, rigorous imprisonment for five years and a fine of Rs.1000/- for commission of offence under Section 457 IPC and rigorous imprisonment for a period of ten years and a fine of Rs.1000/- for commission of offence under Section 460 IPC with default clauses. All the sentences were to run concurrently.

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2. Briefly stated, the prosecution case is that on 26.06.1987, F.I.R. No. 79 was recorded at Police Station Mullana on the basis of the statement made by Geeta Devi (the complainant) stating that during the intervening night of 25.06.1987 and 26.06.1987 while she along with her family members were sleeping in the courtyard of their house at village Samalkha, Ambala at around 1.30-2.00 a.m., her mother got up to answer the call of the nature. At that time, her father also got up. The electricity bulb was on at that time. When her mother went outside to switch off the bulb of the courtyard, she found the gate of the house opened. In the meantime, two persons wearing green colour jackets and blue colour underwears carrying sticks in their hands came out from the house. One of them gave stick blow on the head of her father. When her mother tried to save her father, she was also attacked by the other person. Besides these two persons, two other persons were standing outside the

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A boundary wall on western side. On alarm being raised by her, two assailants, who had caused injuries, jumped outside the boundary wall and went outside.

3. On hearing noise, some people gathered at the spot and the assailants were chased, however, they succeeded to run away. The Complainant also mentioned their identity by giving particulars of those assailants to the police. Her father, who had become unconscious, was taken to the Civil Hospital, Ambala where he succumbed to his injuries on 26.07.1987. She also stated that when they went inside the house, they found household articles scattered and on checking two gold rings were missing.

4. After completion of the investigation, three accused persons, namely, Niyamat, Hussain and Rashid were charged under Sections 380, 457 and 460 IPC. The police arrested all the accused. It may be mentioned that Rashid had absconded from the Court and later on declared proclaimed offender and thereafter, proceedings under Sections 82 and 83 were initiated against him.

5. After completion of the trial, the Additional Sessions Judge, Ambala held both the accused guilty of offences punishable under Sections 380, 457 and 460 IPC and sentenced them to undergo rigorous imprisonment for four years and a fine of Rs.1000/- for commission of offence under Section 380 IPC, rigorous imprisonment of five years and a fine of Rs.1000/- for commission of offence under Section 457 IPC and rigorous imprisonment for a period of ten years and a fine of Rs.1000/- for commission of offence under Section 460 IPC with default clauses. All the sentences were to run concurrently.

6. Challenging the order and judgment of the trial Court, the accused persons filed an appeal being Criminal Appeal No. 414(SB) of 1991 before the High Court.

7. By impugned judgment dated 28.09.2004, the High Court allowed the appeal of the accused, acquitted them of the charges and set aside the order and judgment of the Trial Court.

8. Aggrieved by the said judgment, the State has filed this appeal by way of special leave before this Court.

9. It is stated that respondent No.1 has expired during the pendency of this appeal.

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10. Heard Mr. Keshav Kumar, learned counsel for the appellant (State) and also perused the written submissions filed by him after getting permission from this Court. None appeared for the respondent though served. A

11. Having heard the learned counsel for the appellant at length and also on perusal of the written submissions and the record of the case, we find no merit in this appeal. B

12. At the outset, it may be mentioned that out of two accused (respondents) one accused - Niyamat s/o Deena (respondent No. 1) expired during the pendency of this appeal. The appeal as against respondent No. 1 Niyamat is accordingly dismissed as having been abated. The appeal, however, survives only against respondent No. 2 - Husain. C

13. The question that arises for consideration in the appeal is whether the High Court was justified in allowing the respondents' appeal and acquitting them by reversing the judgment of Trial Court which had convicted them for commission of the offences mentioned above. D

14. Insofar as respondent No. 2-Hussian is concerned, the High Court on appreciation of evidence acquitted him of all the charges. It was held that firstly fatal blow to deceased was not attributable to Husain (respondent No. 2) but it was attributable to another accused-Rashid who was a declared proclaimed offender; Secondly, it was held that the recovery of the stolen articles made at the instance of the accused persons was unbelievable because it was made from the open place which was accessible to all and no independent witnesses were examined to prove the factum of recovery; Thirdly, it was held that Lambardar and Chowkidar of the concerned Gram Panchayat were available yet they did not join at the time of recovery and no explanation was offered by the prosecution as to why they could not join; Fourthly, it was held that the evidence adduced by the prosecution was not sufficient to prove that the stolen property belonged to the complainant; and lastly, it was held that since the accused in the meantime have undergone four years' jail sentence partly as under trial and remaining after conviction by the trial Court, they are entitled for acquittal of the charges in the light of the aforementioned infirmities in the case of prosecution which are fatal. E
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15. As mentioned above, this is a case where the Trial Court convicted the accused-respondents of the offences alleged against them whereas H

A the High Court on appreciation of evidence finding fault in the manner of appreciation done by the Trial Court reversed the judgment of the Trial Court and acquitted the respondents giving rise to filing of this appeal by the State.

B 16. In our considered opinion, the view taken by the High Court is based on appreciation of evidence and the same was taken within its jurisdiction. The High Court has given its reasoning as to why it has reversed the finding of the Trial Court. It is one of the possible views, which the High Court is capable to take on appreciation of evidence and it has so taken.

C 17. It is a settled principle of law that if the view taken by the High Court while reversing the judgment of the Trial Court appears to be just and reasonable which is also supported by cogent reasoning then this Court would not re-appreciate the evidence again especially when the appeal arises out of the order of acquittal.

D 18. It is only when the High Court while reversing the judgment of the Trial Court fails to record any reason or fails to appreciate the evidence or when the High Court records any material finding which is wholly perverse or against any provision of law, this Court may consider it proper to examine the issues arising in the case and in appropriate case interfere in such finding. Such is not the case here.

E 19. In our view, the High Court has given cogent reasons in support of its view as mentioned in para 14 and we have not been able to notice any infirmity or perversity in the reasoning of the High Court, which may persuade us to interfere in the impugned order. In these circumstances, there is no need to undertake the exercise of appreciating the whole evidence in this appeal.

F 20. All the submissions urged by the learned counsel for the appellant (State) are based on facts and involved appreciation of evidence. He was not able to point out any legal or jurisdictional error or/and extreme perversity in the reasoning of the High Court, which may persuade us to probe into evidence *de novo*. We thus decline to accept the submissions and also decline to re-appreciate the evidence.

G 21. In the light of foregoing discussion, there is no merit in the appeal. The appeal thus fails and is accordingly dismissed.

H Nidhi Jain

Appeal dismissed.