

CRA-S-2369-SB-2014

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-S-2369-SB-2014 (O & M)
Date of decision: 04.03.2015

Bhupinder Singh

.... Appellant

Versus

State of Punjab and others

.... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) *Whether Reporters of the local papers may be allowed to see the judgment?*
- 2) *To be referred to the Reporters or not?*
- 3) *Whether the judgment should be reported in the Digest?*

Present: Mr. B.S.Bali, Advocate,
for the appellant.

PARAMJEET SINGH, J.

Instant criminal appeal has been filed challenging the judgment dated 15.10.2013 passed by learned Additional Sessions Judge, Fatehgarh Sahib whereby respondents no.2 to 7 (for brevity 'the accused') have been acquitted of the charge framed against them in a case FIR No.54 dated 09.07.2011, registered at Police Station Mulepur, under Section 306 of the Indian Penal Code.

In nutshell, the case of prosecution is to the effect that Bhupinder Singh son of Ranjit Singh, resident of village Gajewas, Police

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Station Sadar, Samana, District Patiala got recorded his statement that his sister-Rajinder Kaur was married with Hakam Singh, who has died. Rajinder Kaur, who had no issue, visited the complainant on 04.07.2011. On that day, she was under stress and told the complainant that Nirbhai Singh, her brother in law, Shamsher Singh, father-in-law and Gurjant Singh, brother-in-law used to harass her and also did not give her any share of the land. Rajinder Kaur also told the complainant that some days back, Nirbhai Singh had forcibly shown paddy crop in her fields and not given money of the lease amount for the land which fell to her share. She also moved applications before the officers concerned. The complainant on seeing her tensed, got her admitted in Rajindra Hospital, Patiala where she ultimately died. The complainant and his brother received the dead body of their sister-Rajinder Kaur. When they were keeping the dead body of their sister-Rajinder Kaur in the vehicle, they found a paper from her dead body showing the reasons for her death and the same was bearing her thumb impressions. The paper recited that Rajinder Kaur was very distressed from the members of her in-laws comprising of her father-in-law Shamsher Singh son of Wasakha Singh and Nirbhai Singh, Gurjant Singh, Kesar Singh sons of Shamser Singh, resident of village Bhal Majra, Tehsil and District Fatehgarh Sahib including Harjit Kaur wife of Nirbhai Singh and Gurmeet Kaur wife of Gurjant Singh. The said persons had also grabbed her house including the property which fell to her share. She was pestered very much and even deprived of food and cloth. The said persons would be held

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responsible for her death. It is further mentioned in the statement that Rajinder Kaur died due to distress caused by her in-laws on account of not giving the land which fell to her share. On the basis of said statement, FIR No.54 dated 09.07.2011 was registered at Police Station Mulepur, under Section 306 of the Indian Penal Code. Investigation was set into motion. Statements of witnesses were recorded. Site plan was prepared. The accused were arrested. After completion of investigation, challan was presented for the commission of offence under Section 306 of the Indian Penal Code in the Court of Illaqa Magistrate, who committed the case to the Court of Session. Thereafter, the case was entrusted to learned Additional Sessions Judge, who framed charge under Section 306 of the Indian Penal Code, to which accused did not plead guilty and claimed trial.

To prove its case, prosecution examined PW 1 Bhupinder Singh (complainant), PW 2 Gurdeep Singh, PW 3 Narinder Singh, PW 4 Dr. S.S.Oberio, Addl. Professor, Forensic Medicines, PW 5 Dr. Anil Kumar Suri, PW 6 V. Yadwidner Singh, PW 7 HC Jasvir Singh, PW 8 Inspector Nirmal Singh and gave up PW Gurmit Kaur, Bharpur Singh and Raghbir Singh in view of application moved by complainant-Bhupinder Singh and gave up PWs lady Constable Sumanjit Kaur, C. Parvinder Singh, PHG Jarnail Singh, ASI Darshan Singh, Inspector Jaswinder Singh and HC Varinder Singh as unnecessary against the accused and thereafter closed its evidence after tendering General Power Attorney dated 22.02.2011 Ex.PR, report Ex.PS of Finger Print Bureau,

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copy Ex.PT of plaint of civil suit No.286/20.08.2010, titled Rajinder Kaur vs. Shamsher Singh and others and report Ex.PU of Chemical Examiner in the same.

Statements of the accused were recorded under Section 313 Cr.P.C. The accused denied the incriminating circumstances appearing against them in the prosecution evidence and claimed to be innocent. In their defence, the accused tendered documents Mark D-1 to D-7 and Ex.D-1 and Ex.D-2.

The trial Court after conclusion of trial acquitted the accused of the charge levelled against them. Hence, this criminal appeal.

The trial Court, after appreciating the evidence on record, observed as under:-

“11. The record, after hearing arguments as per evidence could be led on record by the prosecution and by the accused against the same, referred above, has been perused and it is found that the case of the prosecution is based on the testimonial version of PW 1 Bhupinder Singh complainant, PW 2 Gurdeep Singh, PW-3 Narinder Singh, because PW-4 Dr. SS Obreio, Dr.Anil Kumar Suri, PW-6 C.Yadwinder Singh, PW-7 HC Jasvir Singh and PW-8 Inspector Nirmal Singh are formal in nature. The defence version of all accused while recording statements under section 313 of Cr.P.C is that they are innocent but have been falsely implicated in this case because Rajinder Kaur died natural death but the complainant Bhupinder Singh and his family used to harass Rajinder Kaur since deceased because Rajinder Kaur used to demand her share of land from the land of

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her father. The next defence of the accused is that the alleged suicide note EX.PA was false and some one thumb marked, the same in the connivance of the complainant and the police or the thumb impression of Rajinder Kaur since deceased might have been taken on the alleged note after her death by complainant with the help of police. The next defence of the accused is that Shamsher Singh executed transfer deed in favour of his sons and Rajinder Kaur since deceased was residing in village Bhal Majra happily and was never harassed during her life time and was served food and other necessities of life by the accused. The question arises as to whether the accused could be able to establish their said stand or not on the record. Anyhow Rajinder Kaur since deceased admittedly filed a civil suit no.286 of 10.8.2010 in the following manner;-

Suit for joint possession to the extent of 1/6th share of the land alongwith defendants no. 2 to 5, by setting aside the alleged transfer deed bearing vasika no.2058 dated 21.7.2010 regarding the land executed by the defendant No.1 in favour of defendants No.2 to 5 being illegal, null, void, without consideration, without legal necessity, without benefit of estate and is result of collusion between the defendants and the same is not binding on the legal rights of the plaintiff and the same has no value in the eyes of law and mutation, if any, sanctioned on the basis of above said transfer deed is also illegal, null and void and the same is not binding on the legal rights of the plaintiff and is liable to be set aside. And suit for permanent injunction restraining the defendants no.2 to 5, their agents & servants from alienating the land by

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way of sale, mortgage, gift or in any manner of the land comprised in khewat no.99, khatoni no.134, khasra no.13//1 (6-13), 2(6-13),3/1 (0-10) 8/2(0-12), 9(8-0), 10 (8-0), 12(7-7), 13/1, 1 (0-11), 26//16 (7-6), 10(8-0), 12(7-7), 13/1(0-11), 26//16 (7-6), 25(7-3), 30??4(7-15), 5/2(6-0), as per jama-bandi for the year 2007-08 situated at village Bhalmajra Tehsil and Distt. Fatehgarh Sahib as per copy Ex.PT of plaint dated 22.7.2010 against the accused Singh,Nirbhai Singh,Gurjant Singh and Kesar Singh and one Sarabjit Kaur wife of Lachhman Singh, since deceased son of accused Shamsher Singh after sanctioning of the mutation on the basis of sale deed no.2058 dated 21.7.2010 executed by accused Shamsher Singh in favour of accused Nirbhai singh, accused Gurjant Singh, accused Keasr Singh and Sarabjit Kaur wife of Lachhman Singh since deceased other son of accused Shamsher Singh. Hakam Singh since deceased husband of Rajinder Kaur since deceased admittedly died much earlier to filing of the said civil suit. Rajinder Kaur since deceased challenged mutation no.1078 dated 21.7.2010 sanctioned on the basis of sale deed no. 2058 dated 21.7.2010 before the revenue authority but of no avail because the said mutation no.1078 sanctioned on the basis of sale deed no. 2058 dated 21.7.2010 was upheld in favour of accused Nirbhai Singh, accused Gurjant Singh and accused Kesar Singh all sons of accused Shamsher Singh and one Sarabjit Kaur wlo Lachhman Singh since deceased son of accused Shamsher Singh resident of village Bhal Distt. Fatehgarh Sahib, as per copy Ex.D-4 of order dated 31.1.2011 passed to the said effect by Assistant Collector Ist Grade, Fatehgarh Sahib, Rajinder Kaur since deceased also executed power of

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attorney dated 22.2.2011 Ex.PR in favour of the complainant Bhupinder Singh. Rajinder Kaur since deceased admittedly also executed Will in favour of the complainant Bhupinder Singh. The witness Narinder Singh, examined by the prosecution, being husband of Ranjit Kaur, the then sarpanch of village Bhal Majra admittedly moved an application dated 29.6.2011 as per copy Ex.DA of the same to the then SHO PS Mulepur against the accused Nirbhai Singh son of Shamsher Singh and Babbu son of the accused Gurjant Singh for taking action against them on account of abusing to him by them. The body of said application goes to reveal that said Rajinder Kaur since deceased wife of Hakam Singh, was old in age and was not being looked after by any one. The leg of Rajinder Kaur since deceased was fractured. The witness Narinder Singh brought Rajinder Kaur since deceased to Rajinder Hospital, Patiala for medical treatment and brought back to village Bhal Majra but the accused Nirbhai Singh and others resultantly abused him by reaching his house. The witness Narinder Singh also moved another application dated 31.1.2012 as per copy EX.DB of the same against Harbhajan Singh, Amandeep Singh son of Harbhajan Singh, accused Nirbhai Singh, Avtar Singh son of Mohinder Singh residents of village Bhal Majra on the ground that Kuldeep Singh had gone with him on 31.1.12 at the time of voting by taking food but Harbhajan Singh and others chased him but was rescued by the villagers otherwise said Harbhajan Singh and others might have beaten Narinder Singh. The witness Narinder Singh was already against the accused party as per documentary evidence of both the applications. Rajinder Kaur since

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deceased as per record was suffering from diabetes and as per version of complainant Bhupinder Singh came to his house on 4.7.2011 and being under stress was admitted into Rajindera Hospital, Patiala on 7.7.2011 by him as per copy Ex.DD of bed head ticket brought on record by the accused but withheld by the prosecution. The copy EX.DD bed head ticket of medical record goes to reveal that Rajinder Kaur since deceased was declared dead on 9.7.2011 at 11:55 am in the Rajindera Hospital during her treatment and the death of Rajinder Kaur was natural. The dead body of Rajinder Kaur since deceased admittedly was received by the complainant Bhupinder Singh and his brother Raghbir Singh vide receipt EX.PF on 9.7.2011 from the said Rajindera Hospital, Patiala and was taken to village Bhal Majra and thereafter was brought to mortuary on 9.7.2011 at about 9:35 pm. Moreover Gurmeet Kaur wife of the complainant Bhupinder Singh as per his admission of the complainant used to change the clothes of Rajinder Kaur, since deceased during her admission into Rajindera Hospital, Patiala daily. The complainant Bhupinder Singh thereafter on receiving the dead body of Rajinder Kaur, since deceased on 9.7.2011 from the Rajindera Hospital patiala, after her natural death, found the alleged suicide note EX.PA in the clothes worn by Rajinder Kaur, since deceased and thereafter went to inform the matter to the police on disclosing by Bharpur Singh to him after reading the said alleged suicide note. The prosecution gave up Bharpur Singh and did not examine him against the accused and the best reasons are clear. The complainant on visiting the police station also recorded his statement against the accused ultimately converted into FIR of the case. Rajinder Kaur, since deceased as admitted by complainant Bhupinder Singh himself did not take any meal in the hospital and the question

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of consuming any aluminum phosphide ultimately detected by Dr. SS Oberio, Addl. Professor, Forensic Medicine, Govt. Medical College, Patiala and Dr. Gurminder Singh Kakkar, resident in Forensic Medicine Department after conducting the postmortem examination of dead body of Rajinder Kaur, since deceased on 10.7.2011, did not arise at all because the dead body of Rajinder Kaur, since deceased, released as per bed head ticket issued by the doctors of Rajindera Hospital, Patiala by referring death of Rajinder Kaur, since deceased as of natural in the same, to the complainant and his brother, could not consume said poison after death and before postmortem examination conducted by both the said doctors. Rajinder Kaur, since deceased. as admitted by Dr.SS Obberio, was subconscious at the time of admission on 7.7.2011 into Rajindera Hospital, Patiala and had fever for one day and history of diabetes mellitus. Rajinder Kaur, since deceased as also admitted by Dr. SS Oberio on examination was hypertensive and had right hemiplegia (right side paralysis). The witness also admitted that CT scan findings were suggestive of infarct in the left middle cerebral artery. The cerebral infarct cerebral malaria as per case file and CT examination, as also admitted by the said doctor was found by him. Rajinder Kaur, since deceased as recorded by Dr.S.S.Oberio was moderately built and was nourished and cause of death on account of starvation as alleged by the complainant Bhupinder Singh did not arise at all. The accused as admitted by Narinder Singh used to provide food to Rajinder Kaur, since deceased after the death of her husband. The land of Narinder Singh admittedly was adjacent to the land of the accused and had dispute of boundary of fields with the accused occasionally and admittedly was called as doctor in village. Narinder Singh admittedly took Rajinder Kaur,

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since deceased to Bhadson for medicine. The accused Nirbhai Singh, Gurjant Singh, Kesar Singh and Shamsher Singh admittedly had separate houses. The accused Nirbhai Singh, Gurjant Singh and Kesar Singh as admitted by said Narinder Singh were cultivating their lands of their own. Sarabjit Kaur wife of Lachhman Singh, since deceased, brother of accused Nirbhai Singh, Kesar Singh and Gurjant Singh inherited the share of her husband and was not arrayed as accused in the present case. The accused Shamsher Singh admittedly is the real paternal uncle of Narinder Singh, examined by the prosecution against the accused. Narinder Singh admittedly did not go to Rajindera Hospital, Patiala on date of death of Rajinder Kaur to know about the health of Rajinder Kaur, since deceased. The investigating agency during investigation also got compared the alleged thumb impression of Rajinder Kaur, since deceased allegedly on the alleged suicide note Ex.PA with standard thumb impressions of Rajinder Kaur, since deceased available on her general power of attorney Ex.PR but could not be compared because the same as per report Ex.PI, were partly ink smudged and were not comparable. The investigating officer deposed against the case of the prosecution that the right thumb of dead body of Rajinder Kaur was stained with ink at the time of examining the dead body by him after recovering the same at 8:00 pm on 9.7.2011 from the rear seat of sumo parked on road side in the village Bhal Majra. The investigating officer also did not procure the medical record relating to the period before the death of Rajinder Kaur and the same was brought on record by the accused

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and did not join the doctors who had treated Rajinder kaur from 5.9.2011 to 9.9.2011 and the best reasons are known to him. The investigating officer did not try to trace out the author of the alleged suicide note in question and brought his investigation in the area of doubt. The said suicide note allegedly bearing thumb impression of Rajinder Kaur, since deceased is the base of the case of the prosecution but could not be proved by the prosecution as referred here in above. The sample parcels prepared by the said doctors after postmortem of dead body of Rajinder Kaur, since deceased were deposited with MHC Jasvir Singh and were sent to the the office of Chemical Examiner, Kharar and to Professor Head of department of pathology of Govt. Medical College Patiala through constable Yadwinder Singh as deposed by the said police officials. The accused, as per evidence of the prosecution, never instigated Rajinder Kaur to commit suicide and non-payment of outstanding amount and disturbing joint possession over the property as view taken in NeeJamSharma versus State of Punjab and another 2011 (3) RCR (CrI) 203, by no means can be said to be abetment to instigate to commit suicide and refusal to give land by the accused to Rajinder Kaur since deceased in the same way was not abetment to commit suicide. Moreover abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without positive act on the part of the accused to instigate or aid to commit suicide cannot be said to be as such as per view taken in M Mohan versus State Tr. Dy. Supdt. Of police 2011(2) RCR(2)

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(Crl) 272 and without element of mens rea to instigate or aid to commit suicide to the deceased completed only on account of harassment and cruel behaviour as per view taken in Ajay Singh Parveen and another versus State of UT Chandigarh 2011(2) RCR (Crl) 66, cannot be covered under section 306 of IPC, as per arguments advanced by the learned counsel for accused. The prosecution was required to prove its case as per fact of section 107 of IPC to the effect that A person abets the doing of a thing, who- First- instigates any person to do that thing or Secondly-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1.- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, willfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C. The prosecution in fact has failed to prove its case in order to substantiate the ingredients of the offence punishable under section 306 of IPC against the accused. The last, as is clear above, of the property was involved in the present case. Therefore, the contention of learned counsel for the

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accused raised to the effect that the prosecution has miserably failed to prove its case against the accused as per view taken in all the referred citations, is found to be sustainable from all comers.

12. It, in view of the aforementioned brief discussion of oral as well as documentary evidence whatever is available on record, is a considered view that the prosecution has miserably failed to substantiate the point for determination of the offence allegedly committed by the accused to prove its case against the accused. The accused are acquitted by giving them benefit of deficient incriminating evidence of the witnesses of the prosecution, from the charge framed against them with the direction to the accused to furnish bail bond for a sum of Rs.50000/- each with on surety of alike amount under section 437-A of Cr.P.C. The case property, if any, be also destroyed in accordance with law after the expiry of period of appeal if any, to the said effect. The file be consigned to record room (J), Fatehgarh Sahib.”

The Hon'ble Supreme Court in ***Muralidhar @ Gidda & Anr.***

vs. State of Karnataka 2014(2) RCR (Criminal) 507 has held as under:

“10. Lord Russell in Sheo Swarup vs. King Emperor [AIR 1934 Privy Council 227] highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said, “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

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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.” The opinion of the Lord Russell has been followed over the years.

11. As early as in 1952, this Court in Surajpal Singh v. State; [AIR 1952 SC 52], while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed, “the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu v. State; [AIR 1954 SC 1], Madan Mohan Singh v. State of U.P.; [AIR 1954 SC 637], Atley v. State of U.P.; [AIR 1955 SC 807], Aher Raja Khima v. State of Saurashtra; [AIR 1956 SC 217], Balbir Singh v. State of Punjab; [AIR 1957 SC 216], M.G. Agarwal v. State of Maharashtra; [AIR 1963 SC 200], Noor Khan v. State of Rajasthan; [AIR 1964 SC 286], Khedu Mohton v. State of Bihar; [(1970) 2 SCC 450], Shivaji Sahabrao Bobade v. State of Maharashtra; [(1973) 2 SCC 793], Lekha Yadav v. State of Bihar; [(1973) 2 SCC 424], Khem Karan v. State of U.P.; [(1974) 4 SCC 603], Bishan Singh v. State of Punjab; [(1974) 3 SCC 288], Umedbhai Jadavbhai v. State of Gujarat; [(1978) 1 SCC 228], K. Gopal Reddy v. State of A.P. ; [(1979) 1 SCC

355], Tota Singh v. State of Punjab [1987(2) R.C.R. (Criminal) 35: (1987) 2 SCC 529], Ram Kumar v. State of Haryana; [1994(3) R.C.R.(Criminal) 631 : 1995 Supp (1) SCC 248], Madan Lal v. State of J&K; [1997(4) R.C.R.(Criminal) 89: (1997) 7 SCC 677], Sambasivan v. State of Kerala; [1998(2) R.C.R.(Criminal) 693 : (1998) 5 SCC 412], Bhagwan Singh v. State of M.P.; [2002(2) R.C.R.(Criminal) 593 : (2002) 4 SCC 85], Harijana Thirupala v. Public Prosecutor, High Court of A.P.; [2002 (3) R.C.R.(Criminal) 861 : (2002) 6 SCC 470], C. Antony v. K. G. Raghavan Nair; [2002(4) R.C.R. (Criminal) 750 : (2003) 1 SCC 1], State of Karnataka v. K. Gopalakrishna; [2005(2) R.C.R.(Criminal) 20 : (2005) 9 SCC 291], State of Goa v. Sanjay Thakran; [2007(2) R.C.R.(Criminal) 458 : (2007) 3 SCC 755] and Chandrappa v. State of Karnataka; [2007(2) R.C.R. (Criminal) 92: 2007(1) Recent Apex Judgments (R.A.J.) 841: (2007) 4 SCC 415]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the

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witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

Learned counsel for the appellant has failed to show any error in law or on facts on the basis of which interference can be made by this Court in the judgment under challenge. There is also a delay of 126 days in filing the instant appeal. No cogent reasons have been mentioned in the application for condoning the delay.

As such, instant criminal appeal is dismissed on merit as well on account of delay.

04.03.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE