

CRM-A-675-MA-2011

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-675-MA-2011 (O & M)
Date of decision: 13.03.2015

Sukhwinder Kaur

.... Applicant/Appellant(s)

Versus

State of Punjab and another

.... 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. Aminder Singh, Advocate,
for the applicant.

Mr. K.S.Sidhu, DAG, Punjab.

Mr. M.K.Singla, Advocate,
for respondent no.2.

PARAMJEET SINGH, J.

The instant application has been filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the impugned judgment dated 18.08.2009 passed by Sessions Judge, Sangrur whereby accused-respondent no.2 has been acquitted of the charge framed against him in FIR No.69 dated 24.07.2006, registered at Police Station Sherpur, under

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Section 306 of the Indian Penal Code (for brevity, 'IPC').

Brief facts of the case are that Gurjant Singh, brother of the complainant is simpleton and Gulzar Singh, father of Gurjant Singh looks after his family as wife of Gurjant Singh died 10-12 years before lodging of the FIR on 24.07.2006. Sarabjit Kaur daughter of Gurjant Singh had maintained illicit relations with her neighbour Mangu Ram son of Vasdev, Pandit by caste, about a year before lodging of the FIR and they had a deep love for each other. The members of families of Sarabjit Kaur and Mangu Ram persuaded them but they did not abstain from meeting with each other. In connection with the said matter, complainant Smt. Sukhwinder Kaur alias Sukhi had come to the house of her parents about 3-4 days prior to the lodging of FIR on 24.07.2006. She persuaded her niece Sarabjit Kaur that Mangu Ram did not hale from their caste and therefore, it was not possible for them to marry her with him. On 23.07.2006, Sarabjit Kaur had left the house with the excuse of bringing wool from village Lachhabaddi and who failed to return by the evening. Smt. Sukhwinder Kaur being suspicious left for the house of Mangu Ram and Vasdev, father of Mangu Ram told that Mangu Ram was not in the house since morning. At about 6.30 P.M., the complainant rang up from a PCO in his mobile phone number 9217912039 and she had a talk with Sarabjit Kaur and who told that she along with Mangu Ram was present at Bus Stand, Barnala and that last bus leaving for Sherpur had already left and both of them should be

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taken from Barnala. At this, Sukhwinder Kaur rang up her husband that Sarabjit Kaur and Mangu Ram were present in the Bus Stand of Barnala and he should bring them to Ghanauri Kalan. Thereafter, the complainant Sukhwinder Kaur accompanied by her father Gulzar Singh left for the house of Mangu Ram to make a complaint against Mangu Ram where the parents of Mangu Ram were found present. The complainant Sukhwinder kaur had still been talking with the parents of Mangu Ram, that in the meantime, her husband came on his motorcycle accompanied by Sarabjit Kaur and Mangu Ram. Again, members of two families prevailed upon Sarabjit Kaur and Mangu Ram, but they were adamant in their attitude and said that they will live and die together and they could not live separately and told that they could do whatever they liked. At that time, it was about 9.30 P.M. Mangu Ram asked Sarabjit Kaur that they will not allowed them to live together and that she should die by consuming the medicine held by her. At the repeated asking of Mangu Ram having compelled Sarabjit Kaur to die, she got out one small packet from her bra and consumed some poisonous substance and who ran away to her house. She was followed by the complainant Sukhwinder Kaur and her husband Makhan Singh as also her father Gulzar Singh. The health of Sarabjit Kaur having got worse, she was removed to the Civil Hospital, Dhuri where doctor having examined her declared her brought dead.

On 24.07.2006, SI Raj Kumar of the Police Station, Sherpur on

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receipt of a wireless message visited the Civil Hospital, Dhuri where he met the complainant Sukhwinder Kaur alias Sukhi who got her statement Ex.PG recorded regarding the said version of the occurrence. SI Raj Kumar after marking his endorsement on the statement of Sukhwinder Kaur sent the same to the Police Station on the basis of which formal FIR Ex.PG/2 was registered. SI Raj Kumar prepared the inquest report Ex.PE on the dead body of Sarabjit Kaur, the dead body having been identified by Gulzar Singh and Sukhpal Singh. The dead body was handed over to HC Surinderpal for getting post mortem examination conducted and SI Raj Kumar also handed over application Ex.PD addressed to SMO, Civil Hospital, Dhuri. SI Raj Kumar accompanied by ASI Ajit Singh and also Makhan Singh visited the place of occurrence in village Ghanauri Kalan and prepared site plan EX.PL with correct marginal notes. The accused was arrested. After completion of necessary formalities, challan against the accused was presented before Illaqa Magistrate, who committed the case to the Court of Session.

On finding a prima facie case, the accused was charge-sheeted under Section 306 of IPC to which he pleaded “not guilty” and claimed trial.

To prove its case, the prosecution examined PW 1 Dr. Ramesh Kumar, Medical Officer, Civil Hospital, Dhuri, PW 2 Kashmir Singh, Draftsman, PW 3 Sukhwinder Kaur (complainant), PW 4 HC Surinder Pal no.495/Barnala, PW 5 Gulzar Singh, PW 6 Bhola Singh, PW 7 HC

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Pargat Singh no.276/Sangrur, PW 8 ASI Ajit Singh and closed the evidence.

Statement of accused under Section 313 Cr.P.C. was recorded wherein he pleaded complete innocence and false implication.

The trial Court, after appreciating the evidence, acquitted the accused of the charge framed against him, vide impugned judgment dated 18.08.2009. Hence, this application for grant of leave to appeal.

I have heard learned counsel for the parties and perused the impugned judgment.

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

“24. I have considered the submissions and I am of the considered view that it is not possible to accept the version of the prosecution as also the testimony of PW 3 Smt. Sukhwinder Kaur that deceased Sarbjit Kaur having left the house on 23.7.2006 having told her grand father PW 5 Gulzar Singh that she was going to Sherpur to purchase the wool as he had got two weaving machines purchased to her grand daughter Sarabjit Kaur, as stated by PW 5 Gulzar Singh, would have gone to Barnala along with accused Mangu Ram. There should be a reason to disbelieve the statement made by PW 5 Gulzar Singh that accused Mangu Ram and Sarabjit Kaur had returned late at night when all villagers had slept. They were brought from Barnala by one Bhola. It is quite possible that PW 3 Sukhwinder Kaur might have tried to prevail upon the parents of the accused so as to marry their son with her niece Sarabjit

Kaur but when they did not agree for the same, Sarabjit Kaur having got disheartened thought of committing suicide and she would have done so at her own house and not in the house of accused Mangu Ram because as and when a girl elopes with a boy of her age without the consent of her parents, she has to be brought back to the home and it cannot be believed that she would be taken to the house of the boy so as to prevail upon the parents of the boy to marry their son with a daughter because these matters have to be sorted out firstly by the parents of the girl and parents of the boy and not that the girl is straightway taken to the house of the boy. Therefore, there is no truth in the statement made by PW 6 Bhola Singh that when he reached the Bus Stand, Barnala on his motor bike, he found Mangu Ram and Sarabjit Kaur to be present there. He told both of them about the telephonic message received by him from Smt. Sukhwinder Kaur. Sarabjit Kaur asked him that she wanted to marry Mangu Ram but he advised her to accompany him to her house and he will talk about everything. There is no reason to accept his statement that he accompanied both of them to village Ghanauri Kalan to the house of the accused at 9.00 or 9.30 P.M. How it come that PW 6 Bhola Singh had come to know about Sarabjit Kaur accompanied by his aunt Ajmer Kaur and her father Gulzar Singh already having gone to the house of parents of the accused. All this would go to show that this is a story coined by the complainant with the assistance of PW 6 Bhola Singh.

25. It is not possible for the Court to place reliance upon the testimony of PW 3 Smt. Sukhwinder Kaur who has tried to suppress her relationship with PW

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6 Bhola Singh who has also in turn tried to show his intimacy with PW3 Sukhwinder Kaur. Half heartedly, PW 3 Sukhwinder Kaur disclosed Bhola Singh son of Ramesh being her husband, who had come accompanied by her on the date of her cross-examination conducted on 15.4.2009 and that he was standing outside the Court, but in the same breath, she stated that name of her husband is Makhan son of Sota, but deposed that her husband is not known as Makhan alias Bhola. However, in the statement Ex.PG of the complainant recorded by the police, the name of her husband is recorded as Makhan Singh alias Bhola. Similarly, PW 6 Bhola Singh stated that he is not known as Makhan Singh. He got his statement recorded with the police. He had not stated before the police that Smt. Sukhwinder Kaur was his wife and they were married about 6-7 years back, but when he was confronted with the statement mark PW 6/A with portion A was found recorded therein. Similarly, he was confronted with the statement that he has got two brothers-in-law (brothers of wife) namely Gurjant Singh and Binder Singh and that he had stated before the police that one of his brothers-in-law namely Gurjant Singh died 10-12 days before the occurrence and that Gurjant Singh, brother of his wife was simpleton and that daughter of his brother-in-law Gurjant Singh was aged about 18 years. The said facts were found recorded in mark PW 6/A. The very fact that PW 6 Bhola Singh who is claimed to be the landlord by PW 3 Smt. Sukhwinder Kaur of his house situated at Sandhu Patti, Barnala had the grace enough to take Sarabjit Kaur and accused on his motor cycle at odd time of the night to their village Ghanauri Kalan would go to show that he is

related to the deceased Sarabjit Kaur through Smt. Sukhwinder Kaur and he has been brought forward as a chain in the story.

26. *Going through the deposition made by PW 6 Bhola Singh, it would come out that he knows everything about the location of the house of Gulzar Singh in village Ghanauri Kalan as also about the deceased Sarabjit Kaur who was seen by him in the house of Sukhwinder Kaur at Barnala where she would come to stay for one or two days and all this would go to show that he is the husband of PW 3 Sukhwinder Kaur, but both PW 3 Sukhwinder Kaur and PW 6 Bhola Singh have denied their relationship. It would not have been difficult for PW 6 Bhola Singh to have accompanied Sarabjit Kaur and accused Manga Ram to his house at Barnala so as to take them to village Ghanauri Kalan on the next day. Therefore, the story appears to have been fabricated by the complainant with the help of PW 6 Bhola Singh.*

27. *There was no reason for the accused in having instigated the deceased Sarabjit Kaur to consume the poisonous substance held by her in her brassiere because it is intriguing to know as to how the accused would have come to know about the deceased having any poisonous substance in her brassiere and why he would coax her to consume the poison, because she loved him. Rather both the accused and the deceased being in love with each other and as deceased and the accused asserted before their family members that they would live and die together, the accused would not have allowed the deceased to die by consuming poison and rather they would have loved to die together as it is often seen that when the parents of the boy and girl do not agree for*

their marriage, they commit suicide together. As per the observations made by the Hon'ble Supreme Court of India in the case of citation Sanju Versus State of Madhya Pradesh (supra) that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. It is not a fit of anger and emotion. Even accepting the version of the prosecution and deposition made by PW 3 Sukhwinder Kaur to be gospel truth that the accused had asked the deceased that since his parents will not allow them to live together, she should die by consuming the poison, it would only mean that he had the sentiments of deep love for her and not that he would like to die by consuming poison. Rather, they would not be coming back to their house accompanied by PW 6 Bhola Singh in case they had left the house together or met each other at Barnala. Therefore, the story of the prosecution with regard to the accused and Sarabjit Kaur having been brought to village Ghanauri Kalan by PW 6 Bhola Singh on the motorcycle at the odd time of night seems to be made up one.

28. *No other point was raised.*

29. *As an upshot of my aforesaid discussion, it would appear that the prosecution has not been able to bring home the charge framed against the accused beyond a shadow of doubt who is accordingly entitled to the benefit of doubt and is acquitted of the charge.”*

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 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 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 applicant 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 566 days in filing the instant application. No cogent reasons have been mentioned in the application for condoning the delay.

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As such, application for leave to appeal is dismissed on merit
as well on account of delay.

13.03.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE