

CRM-A-776-MA-2012

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-776-MA-2012 (O & M)
Date of decision: 15.05.2015

Tarveen Singh

.... Applicant/Appellant(s)

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. Onkar Singh Batalvi, Advocate,
for the applicant.

PARAMJEET SINGH, J. (ORAL)

CRM-55267-2012

Having heard learned counsel for the applicant and in view of grounds mentioned in application, delay of 71 days in filing the application for leave to appeal is condoned.

Application stands allowed.

CRM-A-776-MA-2012

The instant application has been filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the impugned judgment dated

CRM-A-776-MA-2012

05.05.2012 passed by learned Additional Sessions Judge (Ad hoc), Fast Track Court, Gurdaspur whereby respondents No.2 and 3/accused have been acquitted of the charges framed against them in case FIR No.181 dated 04.11.2008, registered at Police Station Sadar, Pathankot, under Sections 115/120-B of the Indian Penal Code (in short, 'IPC').

Brief facts of the case are to the effect that applicant-complainant Tarveen Singh got recorded his statement with the police to the effect that he was running a mobile repair shop. On 21.01.2007, at about 7.15 P.M, sons of accused-Santosh Kumari, namely Rajesh Kumar and Rakesh Kumar accompanied by two hired persons attacked him and took him to their house. In this respect, an FIR No.11 dated 02.02.2007 was registered with Police Station Sadar, Pathankot against them. The complainant alleged that those persons tried to kill him, since accused-Naresh Bala wanted to marry him. The said criminal case was pending in the Court and the complainant was pressurized to withdraw the said case. However, the complainant did not accede to such demand. On this pretext, accused-Naresh Bala got annoyed with the complainant. On 02.10.2008, Deep Singh came to village and advised the complainant to return home during day hours since there was danger to his life. On enquiry, said Deep Singh disclosed to him that Santosh Kumari and Naresh Bala came to his shop and asked him to commit the murder of complainant by giving him some wrong medicine and accused promised him to pay huge amount. Deep Singh got astonished on hearing such

CRM-A-776-MA-2012

demand of accused and he called his cousin namely Rajinder Singh and apprised him. Deep Singh was asked to initiate action. However, Deep Singh was cautioned that if he refused to do said job, then accused would try to get the complainant murdered through some other persons. Deep Singh was also advised to create evidence and took some money from accused. On subsequent action, accused came to the shop of Deep Singh and Deep Singh promised them to complete said job after accepting money. On 06.10.2008, accused-Naresh Bala came to the shop of Deep Singh and gave him ₹20,000/- in advance for such purpose and she further promised to pay ₹1 lac prior to funeral ceremony of the applicant. The complainant asked Deep Singh to make some recording pertaining to such conversation with the accused. Deep Singh made recordings on different occasions and prepared a compact disc, which he produced before the police along with advance money of ₹20,000/-.

On the basis of aforementioned statement, FIR was registered. During investigation, compact disc and advance money of ₹20,000/- were taken into police possession. Statements of witnesses were recorded. During investigation, ASI Gurbachan Singh heard recorded conversation in compact disc by arranging laptop. Site plan was prepared. The accused were arrested. During investigation, the police found that there were relations between complainant-Tarveen Singh and accused-Naresh Bala and both of them intended to contract marriage with each other, but due to certain reasons, the marriage could not be

CRM-A-776-MA-2012

solemnized. Accused-Santosh Kumari was well aware of these facts and she was having no objection to marriage of her daughter with complainant. On 27.01.2007, sons of Santosh Kumar and other identified persons assaulted the complainant and kidnapped him. A criminal case was registered against them. The complainant was also pressurized to compromise in the said criminal case, but he did not agree with such demand of the accused. On this promise, the accused hatched a criminal conspiracy to commit murder of complainant and they took various steps as noted above for abetting the commission of murder of complainant-Tarveen Singh.

After completion of investigation, challan was presented under Sections 115/120-B of IPC in the Court of Area Magistrate, who committed the case to the Court of Session. Thereafter, the case was entrusted to learned Additional Sessions Judge (Ad hoc), Fast Track Court, Gurdaspur, who framed the charges under Sections 115/120-B of IPC against the accused to which they pleaded 'not guilty' and claimed trial.

To prove its case, prosecution examined complainant-Tarveen Singh as PW 1, Deep Singh as PW 2, HC Karor Singh as PW 3, ASI Gurcharan Singh as PW 4, SI Jagir Singh as PW 5, HC Gurinderpal Singh as PW 6, PHC Kuldip Raj as PW 7, Rajinder Singh as PW 8, Jatinder Singh as PW 9 and Tejbir Singh as PW 10.

Statements of the accused were recorded under Section 313 Cr.P.C. The accused denied all the incriminating circumstances

CRM-A-776-MA-2012

appearing against them in the prosecution evidence and claimed to be innocent.

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

“39. *I have considered the contentions of both sides in the light of record placed before me. From the contentions raised by both sides, the only point for determination evolved in this case as to whether the present accused hatched criminal conspiracy abetting and instigating Deep Singh PW 2 to commit murder of Tarveen Singh PW 1.*

40. *In order to prove abetment of offence punishable with sentence of death or imprisonment for life, as provided under Section 115 IPC, the following ingredients are required to be proved by the prosecution:*

- (i) That the accused abetted the commission of the offence;*
- (ii) That the offence abetted is punishable with death or life imprisonment; and*
- (iii) That the offence committed was not committed or no hurt was caused to any person in consequence of such abetment.*

41. *The abetment has been defined under Section 107 IPC as reproduced below:*

107. Abetment of a thing —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.

Explanation 2—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

MOTIVE

42. *The prosecution evidence is scrutinized to find out if the accused was having any motive to plan murder of Tarveen Singh PW 1. No doubt, the motive in criminal trial is double edged weapon, which can be used to falsely implicate a person and at the same time, it may provide ground to accused to commit offence. However the motive in present case, while keeping in view the peculiar facts and circumstances, has assumed significance.*

43. *As per prosecution story and evidence, it has been described that accused Naresh Bala was annoyed with Tarveen Singh PW 1 due to registration of criminal case against her brothers. But the said Tarveen Singh PW 1 made important revelations in cross-examination explaining the circumstances under which, the case was registered against the brothers of accused Naresh Bala*

CRM-A-776-MA-2012

and regarding his relations with accused Naresh Bala. The relevant part of his cross-examination is reproduced below:

“It is correct that I wanted to marry with accused Naresh Bala but her family members except her mother did not agree, and on this account, I had altercation with brothers and other family members of Naresh Bala. It is correct that Naresh Bala filed complaint against him (me) for causing harassment to her. It is correct that I used to interfere in the marriage proposal of Naresh Bala at other place. Again said no. It is correct that compromise was affected in the said complaint. It is correct that compromise which was executed and shown to me bears my signatures and its photo copy is Ex.DA (objected to being photo copy).”

44 *Deep Singh PW 2 made following deposition in his cross-examination on this aspect and it is reproduced below:*

“I know Tarveen Singh as we are both of same village and we born in that village..... Tarveen Singh was not interest to marry with Naresh Bala accused.”

45. *Now coming to the cross-examination of Jatinder Singh PW9 who has explained relationship between accused Naresh Bala and Tarveen Singh PW1 and subsequent development of strained relations. In cross-examination, Jatinder Singh PW9 made following statement:-*

“I cannot tell the date, month and year when Naresh Bala and her mother threatened me. I

filed written complaint against them with PS Sadar Pathankot. I cannot produce the copy of said complaint. I cannot tell the date, month and year of filing the said complaint. Tarveen Singh is my neighbourer and is resident of same street where my house is situated. I know Tarveen Singh as he is from same Mohalla where I was residing..... I give my statement according to the dictation given to me by Tarveen Singh.”

46. *Keeping in view the above stated prosecution evidence and particularly cross-examination of Tarveen Singh PW1, the motive was with Tarveen Singh PW 1 and not with the accused to resort to hatch criminal conspiracy. Tarveen Singh PW 1 has orally stated that he got registered an FIR against the brothers of accused Naresh Bala. But he did not bother of bring on record such FIR. Rather, the accused have produced copy of order dated 11 Jul 2011 mark-B passed by Hon'ble High Court wherein FIR No.11 under Sections 342, 323, 506, 148, 149, 34 IPC as registered with PS Sadar, Pathankot and proceedings arising there from were quashed. The accused have also brought upon record written compromise deed Ex.DA wherein a compromise was affected between parties, under which the accused Naresh Bala did not press her complaint moved against Tarveen Singh PW 1.*

47. *In view of discussion made above, no convincing material has been brought upon record by the prosecution to prove that circumstances do exist, which motivated the accused Santosh Kmari and Naresh Bala to hatch criminal conspiracy wherein they*

instigated Deep Singh PW2 to commit murder of Tarveen Singh PW1. However, the circumstances do point out that Tarveen Singh PW1 could have falsely implicated the accused.

PROBABILITY OF INSTIGATING DEEP SINGH

48. *Now coming to the next aspect of the case regarding faith allegedly reposed in Deep Singh PW2 by accused to act in accordance with their criminal design.*

49. *Before touching this aspect, it is relevant to go through evidence of prosecution with regard to relations between Tarveen Singh PW 1 and Deep Singh PW2 on one hand as well as accused and Deep Singh PW2 on other hand. In the opening lines of his cross-examination, Tarveen Singh PW1 has deposed that he knew Deep Singh PW2 for the last 15 years and he used to visit his shop for taking medicine for himself and for his family members. Deep Singh PW2 also deposed that he knew Tarveen Singh PW1 since both of them are residents of same village and born in that village.*

50. *Deep Singh PW 2 could not divulge any detail regarding his acquaintance with accused and deposed that on 2 Oct 2008, these accused came to his shop and told him about their criminal design to eliminate Tarveen Singh PW1. There is no evidence to prove that accused were earlier known to Deep Singh PW2 and they were having any visiting relationship. It is unbelievable that two ladies went to unknown person and to talk with him and instigated him to commit murder of his acquaintance of 15/20 years. No reasonable or prudent man could think of acting in such manner. On this aspect, a reasonable doubt has been created in mind regarding truthfulness of such part of prosecution.*

51. *Next aspect is as to whether Deep Singh PW2 was running doctor shop and was having sufficient expertise to give medicine. Deep Singh Pw2 has deposed in the opening lines of his chief examination that he was practicing as registered medical practitioner at Narot Mehra for the last 10 years. In cross-examination, the PW 2 has deposed that he is not MBBS and he is only diploma holder but he is not a doctor. Deep Singh PW 2 has further deposed that he is not pharmacist. No such diploma certificate has been brought upon record. Such evidence of prosecution is not sufficient to prove that Deep Singh PW 2 was doctor and he could have been engaged by accused for giving wrong medicine to Tarveen Singh PW1. This evidence also created doubt in the mind about authenticity of the prosecution allegations.*

RECORDING-MANNER THEREOF

52. *Next aspect of the case is as to under what circumstances alleged recording of conversation was done by Deep Singh PW2. As per statement of Deep Singh only audio recording was done whereas Tarveen Singh PW 1 has alleged that Deep Singh did video as well as audio recording of the alleged conversation of him and accused.*

53. *For effective adjudication, the relevant part of cross-examination of Deep Singh PW2 is reproduced below:*

“I recorded the alleged conversation on mobile set. Accused Santosh Kumari and Naresh Bala never contacted me on phone. I do not know the capacity of Mobile set in the respect of recording of audio or video

conversation. I do not know whether there was any sim card in the mobile set or not. Volunteered the mobile set belonged to Tarveen Singh. I kept that mobile phone on days when the conversations were recorded. But I do not remember the dates when I sued and kept the mobile set. The conversation recorded by me was between me and Santosh Kumari..... During recording of conversation, nobody remained present except myself and Santosh Kumari and I never called Tarveen Singh for recordings.... I handed over only CD of conversation..... to Investigating Officer....”

54. *Now coming to the cross-examination of Tarveen SinghPW1 on this aspect and relevant part thereof is reproduced below:*

“I used to meet Dr. Deep Singh for a period of one month, but I cannot tell how many times, he met me. I was only one time present during the recording of conversation recorded by Dr. Deep Singh... Deep Singh did not tell regarding such conversation. Deep Singh recorded conversation on my Mobile Phone. I had not issued the bill of the said mobile which I handed over to Deep Singh. I can produce the said bill. The said mobile was purchased from a shop at Pathankot but I do not remember the name of the said shop. Today, I have not brought said bill. Again said I cannot produce the bill regarding purchase of mobile..... I do not remember the date, month or year when I was present and Deep Singh

recorded the conversation... The CD was prepared by me from the data of Mobile. I am running a shop of Mobile sets. There was only one CD regarding conversation and that was handed over to Investigating Officer on 4/11/2008... When the recording was taken into mobile phone in my presence. I was not present, rather I was at a distance and at that time I also reached the shop of Deep Singh when both the accused left the shop.”

55. *The above said cross-examination of Tarveen Singh PW1 and Deep Singh PW2 has also raised doubt about authenticity of version of prosecution with respect to circumstances, under which, the alleged conversation of accused Santosh Kumari and Deep Singh PW2 was recorded.*

56. *The above stated prosecution evidence, is not sufficient to accept the CDs as best evidence of recorded conversation. Nor any complete detail has been given as to when and under what circumstances these recordings were done by the prosecution witnesses. Nor medium of recordings has been brought upon record. It is relevant to mention that mobile phone produced during trial of the case was used by the investigating officer for recording sample voice of accused Santosh Kumari.*

57. *Last aspect of this case is as to whether the CD is containing conversation between accused Santosh Kumari and Deep Singh PW2. As per prosecution story, the matter was referred to Forensic Science Laboratory, Chandigarh. But no such report has been produced on record or proved in accordance with law. The method adopted by prosecution to prove the alleged*

conversation between accused Santosh Kumari and Deep Singh PW 2 by CD and written transcript is not convincing. The prosecution has failed to prove that the recorded conversation is between accused Santosh Kumari and Deep Singh PW2.

CONCLUSION

58. *Having regard to discussion made in foregoing paragraphs, the prosecution has miserably failed to prove its allegations beyond shadow of reasonable doubt or suspicion. Hence, both the accused are acquitted of the charge framed against them by giving them benefit of doubt.”*

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

CRM-A-776-MA-2012

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.

As such, application for leave to appeal is dismissed on merit.

15.05.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE