

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

CRA No. D-1287-DB of 2015 (O&M)

Date of decision: 15.02.2017

Nisha

..... Petitioner

Versus

The State of Haryana and another

.....Respondents

**CORAM : HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr. Ravi Malik, Advocate for applicant-appellant.
Mr. S. S. Pannu, D. A.G. Haryana for respondent-State.
Mr. Surinder Dagar, Advocate for respondent No.2.

DARSHAN SINGH J.

The present appeal along with an application bearing CRM No.10964 of 2016 under Section 378 Sub section 3 of the Code of Criminal Procedure (for short – the 'Cr.P.C.') for leave to appeal, has been filed by appellant-complainant Nisha against the judgment of acquittal dated 01.06.2015 passed by learned Additional Sessions Judge, Palwal, vide which respondent No.2 – accused Devender has been acquitted of the charges levelled against him for the offences punishable under Sections 120-B, 364, 342, 302 and 201 of the Indian Penal Code, 1860 (for short – the 'IPC').

2. As per the case of prosecution on 26.07.2010 PW-12 ASI Kundan Lal along with EHC Sanjeev Kumar was present at Kakrali turning

in connection with patrolling and crime detection. Appellant-complainant Nisha met him and presented the complaint Ex.P1 alleging therein that on 21.07.2010 at about 05:30 p.m. Ravinder alias Lala co-accused (tried separately) came to their house and asked her husband Ravinder to accompany him. However, he refused to accompany Ravinder alias Lala, still he forced her husband to sit on the motorcycle and took him away with the assurance that he will drop him back. In the meantime, her brother-in-law (*Jeth*) Mahender died all of sudden, but despite that her husband did not return. She asked Ravinder alias Lala as to why he has not brought her husband back, but he expressed ignorance about his location and rather threatened her. She was almost sure that either Ravinder alias Lala has confined her husband somewhere or he has been killed. PW-12 ASI Kundan Lal sent the application Ex.P1 to the Police Station, on the basis of which the formal FIR Ex.P8 was registered for the offences punishable under Section 342 and 365 IPC and the investigation initiated.

3. PW-12 ASI Kundan Lal, the Investigation Officer of the case, made the efforts to trace out victim Ravinder, the husband of the complainant. On 27.07.2010, he received an information that a dead body has been recovered from Gurgaon Canal in the area of Police Station Jurhera, Distt. Bharatpur (Rajasthan). The inquest proceedings under Section 174 Cr.P.C. were carried out by ASI Umed Singh Police Station Jurhera and the dead body was identified to be that of Ravinder. On 28.07.2010, Rajesh the brother of deceased Ravinder presented a complaint to PW-12 ASI Kundan Lal at General Hospital, Jurhera alleging therein that

on 21.07.2010 his brother Ravinder was taken away by Ravinder alias Lala from his house. Thereafter, Ravinder alias Lala in conspiracy with Bhoop son of Prem Parkash, Devender son of Mahender, Raju son of Paras Ram and Mannu son of Gopal had murdered him and thrown his dead body in the Canal to cause the evidence to disappear. On the basis of said complaint, offences punishable under Sections 302, 201 and 120-B IPC were added.

4. On 28.07.2010 itself co-accused Ravinder alias Lala was arrested. On interrogation, he suffered the disclosure statement and got recovered the motorcycle used in the commission of the offence. On 06.08.2010, Raju alias Raj Pal was also arrested and in pursuance of disclosure statement he got recovered a country-made pistol from his possession. The pistol recovered from co-accused Raju alias Raj Pal was sent to Forensic Science Laboratory, Madhuban (Karnal) for analysis. Respondent No.2 Devender and Bhup Singh son of Prem Pal could not be arrested, whereas Mannu son of Gopal was found innocent during investigation. Initially the report under Section 173 Cr.P.C. was presented only against co-accused Ravinder alias Lala and Raju alias Raj Pal.

5. Respondent Devender was arrested on 26.11.2012. On interrogation he also suffered the disclosure statement Ex.P10 about his involvement in the present commission of offence. In pursuance of the disclosure statement, he got demarcated the place of occurrence vide memo Ex.P11 as well as the place from where the dead body was thrown in Gurgaon Canal vide memo Ex.P12. After completion of the investigation the supplementary report under Section 173 Cr.P.C. was presented in the

Court against respondent No.2 Devender.

6. The case was committed to the Court of Sessions by the learned Chief Judicial Magistrate, Palwal vide order dated 07.02.2013. Respondent No.2 Devender was charge-sheeted for the offences punishable under Sections 120-B, 364, 342, 302 and 201 IPC vide order dated 21.2.2013, to which he pleaded not guilty and claimed trial.

7. In order to substantiate its case, the prosecution examined as many as 15 witnesses.

8. After closure of the prosecution evidence, when examined under Section 313 Cr.P.C., accused pleaded innocence and denied all the incriminating allegations alleged against him. However, he did not adduce any evidence in his defence.

9. On appreciating the evidence on record and contentions raised by learned counsel for the parties, accused-respondent No.2 was acquitted by the learned Additional Sessions Judge, Palwal vide impugned judgment dated 01.06.2015.

10. Aggrieved with the aforesaid judgment of acquittal the present appeal along with application bearing CRM No.10964 of 2016 under Section 378 Sub section 3 Cr.P.C. has been filed by appellant-complainant Nisha widow of deceased Ravinder.

11. We have heard Mr. Ravi Malik, Advocate, learned counsel for the applicant-appellant, Mr. S. S. Pannu, learned Deputy Advocate General for the State of Haryana, Mr. Surinder Dagar, Advocate learned counsel for respondent No.2 – accused and have meticulously examined the

record of the case.

12. Initiating the arguments, learned counsel for the applicant-appellant contended that the case of the prosecution is based on the strong circumstantial evidence. Co-accused namely Ravinder alias Lala and Raju alias Raj Pal have already been convicted and sentenced by the learned trial Court vide judgment and order dated 25/27.05.2013. He contended that respondent No.2/accused Devender was in criminal conspiracy with his co-accused. He contended that respondent No.2 accused Devender was arrested in this case on 26.11.2012. On interrogation, he suffered the disclosure statement Ex.P10 dated 27.11.2012, wherein he has categorically admitted the commission of offence. Further, in pursuance of the disclosure statement he has got demarcated the place of occurrence where he along with co-accused has committed the murder of Ravinder vide memo Ex.P11. He also demarcated the place where the dead body was thrown in Gurgaon Canal vide memo Ex.P12.

13. He further contended that PW-6 Mahesh Kumar is the witness of last seen. Though he has resiled in the present case from his statement made to the police, but he has fully supported the prosecution version in the trial against co-accused Ravinder alias Lala and Raju alias Raj Pal. Thus, he contended that there was sufficient circumstantial evidence on record to establish the charges against respondent No.2 Devender.

14. On the other hand, learned counsel for respondent No.2 contended that the witness of the last seen has not supported the prosecution

version, rather he has categorically stated that he has not seen respondent No.2 Devender along with the deceased. He further contended that the disclosure statement made by the accused is hit by Section 25 of the Indian Evidence Act, 1872 (for short – the 'Evidence Act') and is not admissible in evidence. He further contended that the places allegedly demarcated by respondent No.2 were already in the knowledge of the police and such demarcation was not admissible in evidence. Thus, he contended that there was no incriminating evidence against respondent No.2 Devender and the judgment of acquittal recorded by the learned trial Court does not suffer from any perversity or legal infirmity.

15. We have duly considered the aforesaid contentions.

16. The present appeal is appeal against the judgment of acquittal. It is settled principle of law that if the evaluation of the evidence and findings recorded by the trial Court does not suffer from any illegality or perversity and the grounds on which trial Court has based its conclusion are reasonable and plausible, the High Court should not disturb the order of acquittal even if another view was possible. Merely because the appellate Court on re-appreciation and re-evaluation of the evidence can 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. It should not be forgotten that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principles of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a

competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the Court below. The Hon'ble Apex Court in case ***V. Sejappa Vs. State By Police Inspector Lokayukta, Chitradurga*** **2016(2) RCR (Criminal) 860** as laid down as under:-

“22. In ***Muralidhar alias Gidda and Anr. v. State of Karnataka (2014) 5 SCC 730***, this Court noted the principles which are required to be followed by the appellate court in case of appeal against order of acquittal and in paragraph (12) held as under:-

“12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in ***Tulsiram Kanu AIR 1954 SC 1, Madan Mohan Singh AIR 1954 SC 637, Atley AIR 1955 SC 807, Aher Raja Khima AIR 1956 SC 217, Balbir Singh AIR 1957 SC 216, M.G. Agarwal AIR 1963 SC 200, Noor Khan AIR 1964 SC 286, Khedu Mohton (1970) 2 SCC 450, Shivaji Sahabrao Bobade (1973) 2 SCC 793, Lekha Yadav (1973) 2 SCC 424, Khem Karan (1974) 4 SCC 603, Bishan Singh (1974) 3 SCC 288, Umedbhai Jadavbhai (1978) 1 SCC 228, K. Gopal Reddy (1979) 1 SCC 355, Tota Singh (1987) 2 SCC 529, Ram Kumar (1995) Supp 1 SCC 248, Madan Lal (1997) 7 SCC 677, Sambasivan (1998) 5 SCC 412, Bhagwan Singh (2002) 4 SCC 85, Harijana Thirupala (2002) 6 SCC 470, C. Antony (2003) 1 SCC 1, K. Gopalakrishna (2005) 9 SCC 291, Sanjay Thakran (2007) 3 SCC 755 and Chandrappa (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 powers 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 demeanour 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.”

In view of the aforesaid principle of law, we have to examine the case in hand.

17. The case of the prosecution is entirely based on the circumstantial evidence as there is no direct evidence to establish the charges. In a latest judgment titled *Nathiya Vs. State Rep. by Inspector of Police, Bagayam Police Station, Vellore 2016 (4) RCR (Criminal) 868*, the Hon'ble Apex Court after taking into consideration the earlier pronouncements, laid down the following golden principles to prove the case on the basis of the circumstantial evidence : -

1. The facts so established should consistent only with the hypothesis

of the guilt of the accused – They should not be explainable on any other hypothesis except that the accused is guilty.

2. The circumstances should be of a conclusive nature and tendency.
3. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.
4. In scrutinizing the circumstantial evidence, a Court is required to evaluate it to ensure that the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused.
5. Whether the chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted.
6. In judging the culpability of the accused, the circumstances adduced when collectively considered, must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime alleged – That the circumstances established must be of a conclusive nature consistent only with the hypothesis of the guilt of the accused, was emphatically pronounced.”

Similar principles of law were laid down in cases ***Krishnan Vs. State (2009) Supreme Court Cases (Crl.) 1029*** and ***Sharad Birdhichand Sarda Vs. State of Maharashtra (1984) 4 SCC 116***.

18. In the instant case, the prosecution is relying upon the following incriminating circumstances:-

- 1) Last seen,
- 2) The disclosure statement Ex.P10 suffered by respondent No.2 on 27.11.2012,
- 3) The demarcation of the place of occurrence and the place where the dead body was thrown in Gurgaon Canal.

19. The theory of 'last seen' against respondent No.2 propounded by the prosecution is based on the statement of PW6 Mahesh Kumar. PW6 Mahesh Kumar has stated that on 21.07.2010 he had gone to village Mandkola at the house of his aunt (Mausi) Mukti Devi. At about 09:00 p.m., he had come to the local bus stand of that village for purchasing beer. One Devender, Raju, Ravinder, Mannu, Bhup and Ravinder son of Mukh Ram of village Kakrali also came there at liquor vend and they purchased a bottle of liquor from the said shop. On 27.07.2010, he came to know that Ravinder son of Mukh Ram has been murdered. He further stated that the above named persons were suspects and further categorically stated that none of the above persons, whom he had seen at liquor shop, are present in the Court. This witness was declared hostile and was cross-examined by the learned Public Prosecutor. Even in the cross-examination by the learned Public Prosecutor, this witness has stated that respondent No.2 Devender was not among the persons who were present at the liquor vend. He further specifically denied the suggestion by the learned Public Prosecutor that Devender present in the Court was among the persons whom he had seen at the vend on that day. He also admitted in the cross-examination conducted by the learned defence counsel that no test identification was got conducted from him and accused was never produced before him for the said purpose. Thus, the sole witness of 'last seen' has not supported the prosecution version, rather he has categorically stated in the cross-examination by the learned Public Prosecutor that respondent No.2 Devender was not amongst the persons who were present at the liquor vend. The statement of PW-1

Udey Pal with respect to last seen is only a hearsay and has stated that Mahesh had told him that deceased Ravinder was present along with Ravinder alias Lala, Raju, Devender, Bhoop and Mannu at liquor shop at bus stand Mandkola and they had purchased the liquor from that liquor vend. But as already discussed said Mahesh Kumar while appearing in the witness box as PW6 has not himself supported the prosecution version. In these circumstances, the statement of PW1 Udey Pal, which is only a hearsay evidence, carries no evidentiary value. Thus, the theory of 'last seen' projected by the prosecution is not established.

20. PW9 SI Rajesh Kumar has stated that on interrogation accused-respondent No.2 Devender Singh suffered the disclosure statement Ex.P10. It is an admitted fact that no incriminating article or fact has been discovered on the basis of said disclosure statement made by respondent No.2. As per the provisions of Section 27 of the Evidence Act only those components or portions of the disclosure statement which were the immediate cause of the discovery of any fact would be admissible in evidence and not the rest thereof. The disclosure statement Ex.P10 is virtually a confession allegedly made by respondent No.2 Devender to the police officer while he was in custody. This disclosure statement did not led to the discovery/recovery of any fact or incriminating article and would not fall within the purview of Section 27 of the Evidence Act, thus it will be hit by Section 25 of the Evidence Act and cannot be proved against respondent No.2.

21. It is alleged that respondent No.2 Devender has pointed out

the place of occurrence and the place from where the dead body of Ravinder was thrown in Gurgaon Canal in pursuance of his disclosure statement, but there is no denial to the fact that both these places were already in the knowledge of the police and were pointed out by co-accused Ravinder alias Lala and Raju alias Raj Pal even before the arrest of respondent No.2 Devender. PW9 SI Rajesh Kumar has stated in the cross-examination that the main file qua this case was with him. He has already gone through the facts of the case and demarcations were already present on the file already made by other co-accused and it was known to all. So, both these places were already in the knowledge of the investigating agency. The Hon'ble Apex Court in case *State of Haryana Vs. Jagbir Singh and another* 2003(4) RCR (Criminal) 554 has laid down as under : -

“19 ***** Since the dead body was recovered on the basis of information already known, Section 27 of the Evidence Act has no application. As observed by this Court in *Aher Raja Khima v. State of Saurashtra* (AIR 1956 SC 217), if a recovery of the incriminating articles alleged to have been made by the accused while in custody is inadmissible in evidence if the police already known where they were hidden. That takes the case out the purview of Section 27 of the Evidence Act.”

22. A Division Bench of this Court in case *Charat @ Sunda Vs. State of Haryana* 2005(2) RCR (Criminal) 7 has also reiterated the aforesaid legal position and laid down that recovery of the dead body from a place pointed out by the accused in the confessional statement is not admissible in evidence if the said place had already come to the knowledge of the police. If an information given by accused leads to discovery of a fact which is direct outcome of such information then only it would be evidence,

but when the fact had already been discovered, evidence could not be lead in respect thereof.

23. Thus, as both the places *i.e.* place of occurrence as well as the place where the dead body was thrown were already in the knowledge of the police, so the said demarcation of the places allegedly made by respondent No.2 is inadmissible in evidence.

24. Therefore, in view of our aforesaid discussion, none of the incriminating circumstances relied upon by the prosecution is legally established against respondent No.2. So, the learned trial Court has recorded the judgment of acquittal on the correct appreciation and evaluation of the evidence. The impugned judgment does not suffer from any perversity and legal infirmity. The view taken by the learned trial Court is reasonable and plausible view and there are no compelling and substantial reasons to interfere with the acquittal of respondent No.2 recorded by learned trial Court by this Court.

25. Consequently, the application for leave to appeal is hereby declined.

26. Resultantly, the present appeal is dismissed.

(S.S. SARON)
JUDGE

(DARSHAN SINGH)
JUDGE

15.02.2017

sunil yadav

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No