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

CRM-A-1735-MA of 2017 (O&M)
Date of decision: February 22, 2018

Sandeep

.....Applicant

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Abhimanyu Kalsy, Advocate for
Mr. Manoj Kumar Palwal, Advocate for the applicant.

A.B. CHAUDHARI, J

CRM No.24892 of 2017

Heard.

Application is allowed for the reasons stated therein. Delay of
90 days in filing the application seeking leave to appeal is allowed.

CRM-A-1735-MA of 2017

The victim has preferred the present application for leave to
appeal against the judgement of acquittal dated 23.11.2016 by Sessions
Judge, Jhajjar, of respondent No.2-Sunil @ Sanjay, in FIR No.303 dated
12.07.2010, under Sections 395, 397 of Indian Penal Code, 1860 (for short
'IPC'), registered at Police Station Sadar, Bahadurgarh.

Learned counsel for the applicant assailing the impugned
judgment and order of acquittal submitted that there was evidence of the
applicant on record, which was clear and was not challenged. The appellant
was robbed of by number of persons including respondent No.2, of the
truck and was thrown in a field thereafter. The trial Court has not taken into

consideration the testimony of the applicant, which was otherwise trustworthy and believable. There was no reason for the trial Court to discard the testimony of the applicant.

We have perused the impugned judgment of acquittal by the trial Court. We have also seen the reasons given by the trial Court. At the outset, we find that it was the case of the prosecution-applicant that 7/8 boys armed with *dandas* had stopped the truck of the applicant on Sampla-Jhajjar Road and had robbed him of ₹1,000/- and mobile phone. Respondent No.2-Sunil @ Sanjay was infact the second driver of the applicant in the same truck. Respondent No.2-Sunil @ Sanjay fled away from the spot. The robbers then tied the applicant and thereafter, in mid-way threw him in agriculture fields. It is important to note that all those 7/8 boys were tried by the trial Court and were convicted for the offence under Section 395, 120-B IPC by the Additional Sessions Judge, Jhajjar, on 23.12.2011. However, all of them were acquitted by the High Court vide judgment dated 10.12.2012. Respondent No.2-Sunil @ Sanjay was later on 23.12.2015 arrested and was put on trial.

It is seen from the above facts and the evidence that respondent No.2-Sunil @ Sanjay, as a matter of fact, was the co-driver of the applicant and nothing incriminating can be said to be against him merely because after the robbers had struck, he had run away from the spot. In fact, that was the natural conduct on his part to run away having been surrounded by 7/8 robbers. The applicant however, alleged that it was respondent No.2-Sunil @ Sanjay who was the part and parcel of the gang of robbers and who had conspired to commit the robbery along with others. In our opinion, the reasons given by the trial Court for acquitting the respondent also could

not be said to be perverse. We quote the following portion from the Paragraph-24 of impugned judgment:-

“.....Neither the Truck nor any of the belongings of the complainant were recovered from the possession of the accused. All the looted items were allegedly got recovered by the co-accused. It is not in dispute that co-accused Mukesh, Monu, Manoj, Deepak and Sheela who were convicted and sentenced by learned Addl. Sessions Judge, Jhajjar vide judgment dated 23.12.2011 and order dated 24.12.2011, have already been acquitted by the Hon'ble High Court vide judgment dated 14.12.2012.”

It is seen from the above that there is hardly any evidence against respondent No.2 that was brought by the prosecution before the trial Court. On the contrary, the conduct of respondent No.2-Sunil @ Sanjay in running away is inconsistent with his guilt. At any rate, the view taken by the trial Court cannot be said to be wrong or illegal and hence, we do not find any ground to interfere with the impugned judgment of acquittal. In the result, we make the following order:-

ORDER

- (i) CRM-A-1735-MA of 2017 seeking leave to appeal against judgment of acquittal dated 23.11.2016 stands dismissed.

(A.B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

February 22, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No