

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

233

CRM-A-889-MA-2017 (O&M)

Date of Decision:- 03.04.2018

Harinder Singh

... Appellant

Versus

Manjit Kaur and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present:- Mr. Mohinder Kumar, Advocate, for the appellant.

M.M.S. BEDI, J.

1. This is an application under Section 378(3) of the Code of Criminal Procedure, 1973 for grant of leave to appeal against the judgment of acquittal of respondents No.1 and 2 with an application for condonation of delay of 184 days in filing the appeal.
2. Briefly stated, the case was registered originally at the instance of Harinder Singh complaining that his younger brother Baljinder Singh, who used to ply the Innova car, had gone with Sarwan Singh, Shamsher Singh, Surinder Singh, Manjit Kaur and Kanwaljit Kaur in the car hired by them. The deceased was the brother of the complainant. Deceased-Baljinder Singh had made a call to his wife to tell her that he was going to Ludhiana and will be back on the next day but he did not return and his phone was found switched off on the next day. As such, a complaint was made to the police regarding Baljinder Singh being missing. His dead body was found on the

railway track. On the basis of statement of complainant that his brother Baljinder Singh had been kidnapped by the accused on 15.5.2014 on the pretext of hiring the vehicle on rent with an intention to kill. Sarwan Singh, Shamsher Singh, Surinder Singh, Manjit Kaur and Kanwaljit Kaur were booked.

3. The case of the prosecution was based upon circumstantial evidence. On appreciation of entire evidence produced, the lower Court has convicted Sarwan Singh, Shamsher Singh and Surinder Singh and passed acquittal order qua respondents No.1 and 2 i.e. Manjit Kaur and Kanwaljit Kaur, wives of Satnam Singh and Jaswant Singh respectively. Star witnesses of the prosecution are PW-4 Lakhbir Singh, who had witnessed extra judicial confession and PW-3 Hardev Singh who had last seen deceased Baljinder Singh with all the accused. The lower Court has considered the evidence qua Manjit Kaur and Kanwaljit Kaur and passed the following order:

“55. Coming to the argument advanced by learned counsel for accused Manjit Kaur and Kanwaljit Kaur, it is contended by learned counsel for these two accused that in the present case, there is absolutely no evidence against them except there being oral statement of PW-3 Hardev Singh witness of last seen as well as PW-4 Lakhbir Singh witness of extra-judicial confession and no recovery was effected from their possession and as such, they may be acquitted. The case of the prosecution including the evidence led on file has been scrutinized minutely by this Court. It is apparent from the prosecution evidence that no recovery of any sort of document or article was effected from the possession of these two accused namely Manjit Kaur

and Kanwaljit Kaur sitting in the car alongwith other three accused. PW-4 Lakhbir Singh the witness of extra-judicial confession has stated that all the five accused including accused Manjit Singh and Kanwaljit Kaur had come to him 31.5.2014 and had confessed their guilt before him regarding abduction of Baljinder Singh, his murder and taking away his Innova Car. However, as mentioned earlier, no recovery has been effected from the possession of accused Manjit Kaur and Kanwaljit Kaur which can be considered to be incriminating against them also. There is nothing to prove on file that these two accused had committed murder of deceased or had entered into any such criminal conspiracy. Even the complainant has not uttered even a single word against both these accused nor it is stated that they were also accompanying the other accused at the time when the Innova car of the deceased was hired which was being driven by deceased. Thus, in the considered opinion of this Court, the case of these two accused namely Manjit Kaur and Kanwaljit Kaur is not at par with the other accused from whom recovery of the documents belonging to deceased Baljinder Singh has been effected. Thus, the prosecution evidence led on file qua these two accused namely Manjit Kaur and Kanwaljit Kaur is not sufficient to hold them guilty or to hold that they were involved in any manner in the crime in question. Hence, giving benefit of doubt, both these accused namely Manjit Kaur and Kanwaljit Kaur stand acquitted of the charge framed against them.”

4. Counsel for the appellant has vehemently contended that the testimony of Hardev Singh that he has seen two ladies namely Manjit Kaur and Kanwaljit Kaur who sit in the car along with three accused is sufficient enough to warrant conviction of the respondents.
5. We have carefully considered the contention of learned counsel for the appellant and appreciated the evidence available on record.
6. On the basis of parameters laid down for warranting conviction in cases of circumstantial evidence, we find that the prosecution has not been able to establish the complete chain of circumstances which could enable us to arrive at the conclusion that Manjit Kaur and Kanwaljit Kaur were also part of the event of kidnapping and murder of brother of the complainant. The complainant himself has not deposed anything against the above said two ladies. Merely on the basis of misguided suspicion, conviction cannot be warranted against the above said respondents.
7. No ground is made out for interference in the judgment of trial Court. Resultantly while the delay of 184 days in filing the appeal is condoned, leave to appeal against the judgment of acquittal qua respondents No.1 and 2 is declined. The application is dismissed.

(M.M.S. BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

April 03, 2018
mohan

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No