

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

**CRM-A No. 262 of 2019 (O&M)
Date of Decision: 18.10.2019**

Mamta Rani

..... Appellant

Versus

State of Punjab and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Mandeep Singh Sachdev, Advocate
for the applicant-appellant.

JASWANT SINGH, J.

CRM No. 1880 of 2019

Present application has been filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of **89 days** in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay of **89 days** in filing the application for grant of leave to appeal is condoned.

Application stands **disposed of** accordingly.

CRM No. 1885 of 2019

Prayer in the present application moved by the applicant-appellant is for grant of exemption from filing true typed/certified copy of impugned judgment dated 17.05.2018 passed by learned Sessions Judge, Jalandhar and further permission to place on record the same.

Application is **allowed**. Exemption from filing true typed/certified copy of impugned judgment dated 17.05.2018 is granted.

CRM-A No. 262 of 2019

1. Present application has been filed under section 378 (4) of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of Special Leave to Appeal against the judgment of acquittal dated 17.05.2018 passed by Ld. Sessions Judge, Jalandhar, whereby respondent No.2/accused (Varinder Singh Rajan) has been acquitted of the charges under **Section 302 Indian Penal Code (IPC) and Sections 25 and 30 of the Arms Act.**

2. Factual matrix of the case of the prosecution are that **PW-1 (Rajesh Kumar)** made a statement on 03.06.2016 before Inspector Paramjit Singh to the effect that his brother **Anil Kumar @ Billa** aged about 49 years (**now deceased**) was dealing with the business of garments under the name and style of Pal Garments Showroom and Factory. His brother was on regular visit to Hotel 'Ramada Gym' daily at about 8.00 A.M. On the date of fate, his brother as a routine left his residence at about 8.00 A.M. by travelling in his Fortuner car bearing Regn. No. PB-08-BW-8006 towards hotel 'Ramada Gym'. However, at about 11.30 A.M., somebody informed his father that *Anil Kumar alias Billa* had murdered by firing gun shot and as a result of receiving this information, they reached the Civil Hospital (Emergency Ward), whereby the dead body of his brother was found. Some unknown persons had murdered his brother by firing gun shot. On the basis of this statement, an F.I.R. Ex. PA/2, was registered. Investigation was commenced. During investigation, vehicle of the deceased make Fortuner, alongwith necessary documents of the vehicle and pellets of the bullet were taken into police custody by recovery memo Ex.PW7/B. The body of the deceased was sent for post-mortem examination and the bullet recovered from the body of the deceased was also taken into police custody. On

02.07.2016, **accused-Varinder Singh Rajan** son of late *Surinder Singh* was arrested and during interrogation, accused/respondent got effected the recovery of 17 live cartridges available in the *Almirah* of his residential house and one I-phone make Apple was also taken into police custody. The statement of the witnesses were recorded by the Investigating Officer.

After completion of necessary formalities of investigation, the report under Section 173 Cr.P.C. was presented before the Court of Area Magistrate. Copies of report as envisaged under Section 208 Cr.P.C. were supplied to the respondent/accused free of cost. Since case under Section 302 IPC was exclusively triable by Court of Sessions, hence, the case was committed to the Court of learned Sessions.

Finding a *prime facie* case, the accused/respondent was charge-sheeted for the commission of offences under **Section 302 IPC along with Sections 27 and 30 of the Arms Act.**

To prove its case against the respondent-accused, the prosecution has examined the following **Twenty (20) witnesses**, which are as under:-

Rajesh Kumar as PW-1, Mohinder Pal as PW-2, Mamta Rani wife of deceased (Anil Kumar) as PW-3, Rajan Kashyap as PW-4, Som Nath Kohli as PW-5, Dr. Bareena, Retired Medical Officer as PW-6, Inspector Paramjit Singh as PW-7, ASI Sukhraj Singh as PW-8, Bhagat Singh, Draftsman as PW-9, ASI Lakhwinder Singh as PW-10, HC Harwinder Singh as PW-11, SI Bhagwant Singh as PW-12, HC Satinder Kumar as PW-13, Inspector Sukhdev Singh as PW-14, SI Jaswinder Kaur, Finger Print Expert as PW-15, HC Balbir Chand as PW-16, Jatinder Singh, Junior Assistant as PW-17, Pankaj Sharma, Nodal

Officer, Bharti Airtel Limited as PW-18, Jagbir Singh, Nodal Officer, Ideal Cellular Limited as PW-19 and ASI Davinder Kumar, Incharge, Technical Cell as PW-20.

On completion of prosecution evidence, the statement of accused under Section 313 Cr.P.C. was recorded by the Sessions Court in which all the incriminating circumstances appearing by way of evidence of prosecution against the respondent/accused were put to him and he pleaded his innocence and false implication. No defence evidence was produced by the respondent/accused.

On the basis of weak evidence produced by the prosecution against the respondent, he has been acquitted of the charges for the commission of offences under ***Section 302 IPC along with Sections 27 and 30 of the Arms Act.***

3. We have heard learned counsel for the applicant-appellant and have also gone through the paper-book very carefully with his assistance.

A close scrutiny of the evidence of the prosecution witnesses leaves no manner of doubt that the prosecution with a view to secure conviction has relied upon only on circumstantial evidence. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis, but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the

innocence of the accused and must be such as to show that within all human probability, the act must have been done by the accused.

On careful examination of the prosecution evidence as available in the impugned judgment, we are of the firm view that the chain of the circumstances in the present case is not such that may lead to the only conclusion that the accused alone was responsible for causing the death of deceased (**Anil Kumar alias Billa**). Coming to the statement of star witnesses of the prosecution, namely, **Mamta Rani-PW3**, who has not supported the case of the prosecution and she has turned hostile. She was extensively cross-examined by the prosecution, but nothing fruitful could be elicited in her cross-examination, on the basis of which, it could be said that prosecution has proved its case beyond doubt against the respondent. PW-1 **Rajesh Kumar (complainant)**, who is the brother of the deceased (**Anil Kumar alias Billa**), has deposed in tune with the F.I.R. lodged by him. It is evident that there is no eye-witness, who happened to see the murder of the deceased (**Anil Kumar alias Billa**). PW-4 (**Rajan Kashyap**) has also stated nothing against the accused. He has simply stated that 'scooty' of white colour was seen found to be parked on the spot. However, this witness never visited the police station to identify the 'scooty' which was allegedly recovered from the scene of the crime.

Moreso, in the absence of establishing the fact by the prosecution that the bullet recovered from the dead body of the deceased was matching with the live cartridges recovered from the possession of accused, it can be said that case of the prosecution has to be belied. There is no evidence on the record that bullets recovered from the dead body of deceased (**Anil Kumar alias Billa**) were fired from the revolver belonging

to the accused. The statement of other witnesses is formal in nature and they could not be able to prove the case of prosecution.

Admittedly, it is a blind murder case. In the absence of clincher evidence against the accused/respondent, the trial Court has rightly observed that prosecution has failed to prove its case beyond doubt against the respondent/accused. It may be observed that whosoever the culprit, he or they had taken all steps to conceal the crime. Deceased had been murdered, but without anybody having seen it.

4. That apart, the scope of the Appellate Court, while dealing with the appeals against acquittal, is settled. Though there is no embargo on the Appellate Court to reverse the decision based on the evidence upon which the acquittal is based, generally the order of acquittal based on presumption of innocence of the accused, is further strengthened by acquittal. The Appellate Court, while considering an appeal against acquittal, has to consider whether there are compelling and substantial reasons for reversing the order of acquittal. The Appellate Court can reverse the order of acquittal if the view taken by the Court is palpably erroneous and it could not have been taken by the Court of competent jurisdiction and is taken against well settled canon of criminal jurisprudence. 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, even if two views are equally balanced, it need not result in interference by the Appellate Court in the judgment of the trial Court of acquittal. The Appellate Court will have to see whether there is perversity in the decision, if the conclusions are contrary to the evidence on record, or the Court's

entire approach is patently illegal or it is based on erroneous understanding. If the order of acquittal is to be reversed, the Appellate Court must examine and discuss the grounds given by the trial Court to acquit the accused and must give cogent reasons to overturn the findings. Thus, while considering the order against acquittal, generally the Appellate Court should not interfere where view taken by the trial Court is not unreasonable or perverse. With this legal position in mind, we have considered the view taken by the trial Court is a possible view and it does not require any interference by this Court.

5. In view of the above discussion, this Court is of the opinion that the trial Court, while appreciating the entire evidence in its proper perspective, has rightly held that the prosecution has failed to prove its case against the accused-respondent beyond any reasonable doubt. Thus, no case for any kind of interference in the impugned judgment is made out. The view of the trial Court is hereby affirmed and is maintained.

The instant **application** is without any merit and, therefore, **dismissed**. Leave to Appeal is declined.

(JASWANT SINGH)
JUDGE

October 18, 2019
'dk kamra'

(LALIT BATRA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No