

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

**CRA-AD No. 111 of 2015 (O&M)
Date of Decision: 27.08.2019**

Harish Kumar

..... Appellant

Versus

State of Haryana and others

..... Respondents

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

Present: Mr. Sachin Mittal, Advocate for
Mr. Shashi Kumar Yadav, Advocate
for the applicant-appellant.

JASWANT SINGH, J.

**CRM Nos. 30266-67 of 2016 in/and
CRA-AD No. 111 of 2015**

1. Application bearing *CRM No. 30266 of 2016* moved by the applicant is for placing on record an application bearing *CRM No. 30267 of 2016* under Section 378(4) Cr.P.C. seeking Leave to Appeal against the judgment of acquittal dated 23.09.2015, whereby all the accused-respondents have been acquitted.

Application bearing ***CRM No. 30266 of 2016*** is **allowed**. The aforesaid another application bearing *CRM No. 30267 of 2016* is taken on record.

2. Application bearing ***CRM No. 30267 of 2016*** has been filed under section 378 (4) of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of Leave to Appeal against the judgment of acquittal dated 23.09.2015 passed by learned Additional Sessions Judge, Faridabad, whereby all the accused persons (respondent Nos. 2 to 8 herein) have been

acquitted for offences under **Sections 148, 323, 307, 506 read with Section 149 IPC and accused-Manoj (respondent No. 5 herein) under Section 25 of Arms Act.**

3. Factual matrix of the case of the prosecution are that on the basis of written complaint by **Harish Kumar son of Mam Chand**, wherein he alleged that on 11.08.2012 at about 10.00 p.m., the accused/respondents abused him. On hearing the abuses, he stopped them and objected them not to hurl the abuses. As a result of which, all the accused/respondents extended threats to his life and afterwards, he went inside to his house. However, on 12.08.2012 at around 11.30 a.m., while he was going to market from his house and covered about 10 paces from his house, it was found by him that persons, namely, **Puran, Sube, Babu Lal, Manoj, Jaggu, Sunil and Yogesh** were coming from the opposite direction. Accused-Manoj and Yogesh were armed with country-made pistols and other accused were armed with *lathis*. He, on seeing them, immediately ran towards his house, but Manoj and Yogesh with intention to kill him, opened the fire from the pistols carrying by them, but the bullets of the pistol did not hit him. The other accused raised "*lalkara*" that he should not be spared, but he managed to enter in his house and bolted the door from inside. The accused also started hurling the abuses to him and openly proclaimed that now he has saved himself, but in future, he will be done to death. On the basis of these allegations, an F.I.R was registered by the local police. After completion of necessary formalities of investigation, the report under Section 173 Cr.P.C. was presented. Copies of report as envisaged under Section 208 Cr.P.C. were supplied to the accused free of cost. Since the case under Section 307 IPC was triable by the Court of Sessions, therefore, the case was committed

accordingly to the Court of Sessions.

Finding a *prime facie* case, the accused/respondents were charge-sheeted for the commission of offences under **Sections 148, 323, 307, 506 read with Section 149 IPC and accused-Manoj (respondent No. 5 herein) under Section 25 of Arms Act.**

To prove its case against the respondents, the prosecution has examined the following Eight (08) witnesses:-

Ct. Dalbir as PW-1, **Harish** as PW-2, **Vikas Kumar** as PW-3, **ASI Mahavir Singh** as PW-4, **Ct. Deepak Kumar** as PW-5, **Ashok Kumar**, Draftsman as PW-6, **ASI Kuldeep** as PW-7 and **ASI Shri Ram** as PW-8.

On completion of prosecution evidence, the statements under Section 313 Cr.P.C. were recorded by the Sessions Court in which all the incriminating circumstances appearing by way of evidence of prosecution against the respondents/accused were put to them and they pleaded their innocence and false implication. In defence, accused examined **Ct. Kuldeep** as DW1, **Kishan** as DW2, **Rakesh Kumar**, Record Keeper, Sessions Court, Faridabad as DW3, **HC Rajesh Kumar** as DW4 and **SI Braham Singh** as DW5.

On the basis of weak evidence produced by the prosecution against the present respondents, they have been acquitted of the charges for the commission of offences.

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

Firstly coming to the statement of the complainant/PW-2 (**Harish**), who has demolished the very foundation of the case of the

prosecution by admitting the real facts on the record that there was enmity

among the complainant party and the accused. He also admitted that his brother (*Nav Rattan*) was facing a criminal trial under *Sections 323, 325, 447, 452, 506 IPC* registered on the basis of complaint lodged by *Santosh wife of one of the accused Babu Lal*. He stands also admitted the filing of another complaint by his uncle against the accused party. In this manner, the false implication of the accused in order to settle the old scores cannot be ruled out.

Apart from this, the prosecution has totally failed to establish on the record that any fire was opened by the accused aiming the complainant to kill him because pellets of the bullets were not collected to strengthen the fact that in fact the bullet was fired by the accused from their country-made pistol. When there is serious flaw in case of the prosecution, as noticed by us in the foregoing lines, the case of prosecution becomes some what fishy and doubtful particularly in the wake of previous animosity among the complainant party and the accused and also in view of the examination report of the "*Forensic Expert*" with regard to non-working condition of the recovered country-made pistol. Animosity as projected by the defence among the parties to the case is itself sufficient to discard the evidence of prosecution witnesses especially in view of the attending circumstances which have been discussed by us to discard the case of prosecution.

5. 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.

6. 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-respondents beyond any reasonable doubt. Thus, no

