

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

**CRA-AD No. 144 of 2015 (O&M)
Date of Decision: 23.10.2019**

Hardwari Lal

..... Appellant

Versus

U.T., Chandigarh and another

..... Respondents

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

Present: Mr. Rishabh Gupta, Advocate
for the applicant-appellant.

Mr. J.S. Toor, APP., U.T., Chandigarh
for respondent No. 1.

JASWANT SINGH, J.

1. Application bearing ***CRM No. 35954 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 19.08.2015 passed by learned Additional Sessions Judge, Chandigarh, whereby ***respondent No.2/accused (Balwinder Singh)*** has been acquitted of the charges under ***Section 302 read with Section 120-B of Indian Penal Code.***

2. Factual matrix of the case of the prosecution, are that ***complainant (Hardwari Lal)*** is father of the ***deceased (Ashok Kumar)*** and he moved a complaint against ***accused Darshan Singh*** son of *Gurnam Singh* to the effect that his son *Ashok Kumar (now deceased)* was dealing with the business of sale and purchase of property with accused *Darshan Singh* for the last more than 5/6 years. However, he found his son mentally upset and when he inquired about the facts from his son (Ashok Kumar), his

son (Ashok Kumar) made aware to him that a plot measuring 5 Bighas was purchased by him from *Darshan Singh* and he had already paid a sum of ₹ 30 lacs (Thirty Lacs) as sale amount of the plot to *Darshan Singh*. He (*Ashok Kumar*) made several request to *Darshan Singh* to execute the sale deed in his favour or to return the sale amount, but *Darshan Singh* did not pay any heed to his request. *Ashok Kumar* also made aware to him that *Darshan Singh* and his family members were extending threats to him that in case he would raise demand of sale amount of ₹ 30 lacs (Thirty Lacs), he would face the music and would be done to death.

On 25.02.2012, at about 9.00 A.M., while the complainant's son/*Ashok Kumar (now deceased)* was having his breakfast, *Darshan Singh and his brother Hardev Singh @ Kala*, accompanied one or two persons arrived in his house and they took his son (*Ashok Kumar*) with them on the pretext that they would execute the sale deed in his favour.

However, in the evening on the same day, at about 6.15 P.M., a telephonic message was received from *Darshan Singh* that *Ashok Kumar* had cardiac arrest and was admitted to *Govt. Medical and Hospital, Sector-32, Chandigarh* and the doctor declared him brought dead. *Darshan Singh* deposited the dead body of *Ashok Kumar* in the Mortuary and thereafter, he escaped from the hospital. He (complainant-*Hardwari Lal*) made number of attempts to have contact with *Darshan Singh* to find out the real facts with regard to death of his son, but the mobile phone of *Darshan Singh* was always found switched off. He had suspicion that *Darshan Singh* was responsible for the death of his son (*Ashok Kumar*) and he also refused to conduct the post-mortem examination on the dead body of his son (*Ashok*

Kumar). It is also written by the complainant in his complaint that his son was not suffering from any heart disease and the motive of *Darshan Singh* to kill his son was only to usurp the amount of ₹ 30 lacs which was paid by his son.

On the basis of this statement, an F.I.R. was registered against the accused. Investigation was commenced. During investigation, *Darshan Singh* suffered a disclosure statement to the effect that he in-collusion with accused-*Balwinder Singh* son of *Gurnam Singh* mixed some poisonous substance in the “*Dal*” of deceased (Ashok Kumar), which resulted his death.

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 respondents/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 Sessions.

Finding a *prime facie* case, both accused/respondents were charge-sheeted for the commission of offences under ***Section 302 read with Section 120-B of Indian Penal Code.***

To prove its case against the respondent-accused, the prosecution has examined the following **Twenty Four (24) witnesses**, which are as under:-

Dr. Vishal Garg as PW-1, Dr. Haninder Singh as PW-2, Karam Chand as PW-3, Damandeep Singh as PW-4, Hardwari Lal-complainant as PW-5, Rakesh Kumar as PW-6, HC Yashpal as PW-7, HC Jaswinder Singh as PW-8, Susheel Kumar as PW-9, Deepak

Sharma as PW-10, Ajay Kumar Kataria as PW-11, Dr. Ranjeev Bhagat as PW-12, ASI Nahar Singh as PW-13, Parveen Kumar as PW-14, Inspector Anokh Singh, Investigating Officer as PW-15, R. Chandra, Scientist, CFSL-36, Chandigarh as PW-16, MHC Sukhwinder Singh as PW-17, Sanjeev Bagga as PW-18, Manjit Brar as PW-19, Daljeet Singh as PW-20, Charan Singh as PW-21, Kiran Sharma as PW-22, Sumant as PW-23 and Ranjit Singh as PW-24.

On completion of prosecution evidence, the statements of accused 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. The accused also led defence evidence. They examined **Kuldeep Singh** as DW1, Inspector **Satpal Sharma** as DW-2 and **Dr. Rajwinderjit Singh** as DW-3.

3. We have heard learned Counsel for the parties and have also gone through the paper-book very carefully with their assistance.

Firstly, coming to the statement of PW-5 (**Hardwari Lal-complainant**), who had at no point of time implicated accused *Balwinder Singh* with regard to commission of murder of his son (Ashok Kumar). Right from the very beginning, it is also claimed by the complainant that it was Darshan Singh, who on the day of occurrence, visited his house to invite his son with him on the pretext of execution of sale deed in his favour. It is nowhere stated by the complainant (**Hardwari Lal**) that at the relevant time Balwinder Singh/accused was also accompanying Darshan Singh/accused. Similarly, PW-22 (**Kiran Sharma**) has nowhere stated that

accused Balwinder Singh was also accompanying accused Darshan Singh, when Darshan Singh happened to visit to the house of deceased (Ashok Kumar) on the day of occurrence.

We are of the view that it is a duty of the Court to cull out the nuggets of truth from the evidence of prosecution witnesses. Accordingly, the Trial Court has come to the conclusion that prosecution has failed to prove the participation of this accused (Balwinder Singh) in the commission of crime of murder of Ashok Kumar. Mere statement recorded by the police during interrogation of Darshan Singh, by virtue of which this accused has been netted in the crime of murder, is not enough and is having no legal significance.

As such, the Trial Court has rightly discarded the testimony of prosecution witnesses, while giving verdict of acquittal in favour of accused-***Balwinder Singh***. The observations are being circumscribed with regard to accused *Balwinder Singh* under Section 302 IPC.

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 is made out for any kind of interference in the impugned judgment. 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

(LALIT BATRA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>