

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

**CRA-D No. 696-DB of 2015 (O&M)
Date of Decision: 29.08.2019**

Dhan Singh and another

..... Appellants

Versus

State of Punjab and others

..... Respondents

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

**Present: Mr. Ramandeep Singh Pandher, Advocate
for the applicants-appellants.**

JASWANT SINGH, J.

CRM No. 14578 of 2015

Present application has been filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of **278 days** in filing the criminal appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay of **278 days** in filing the application for grant of leave to criminal appeal is condoned.

Application stands **disposed of** accordingly.

**CRM No. 15551 of 2016 in/and
CRA-D No. 696-DB of 2015**

1. Present application has been filed under Section 378 (3) of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of Special Leave to Appeal against the judgment of acquittal dated 25.02.2014 passed by learned Sessions Judge, Barnala, whereby respondents No. 2 (***Gobind Singh***) and No.3 (***Gurjant Singh***) have been acquitted for an offence under

Section 302/34 of Indian Penal Code (IPC).

2. Factual matrix of the case of prosecution are that on 02.08.2011, dead body of **Jagraj Singh son of Dhan Singh** (whose name does figure as **Dhanna Singh** in the judgment passed by Court below) was recovered from the dry well situated in his agriculture field. As the information was received by the **complainant-Malkiat Singh**, he immediately reached the spot. The complainant with the help of other villagers assembled on the spot, took out the body from the well. Marks of injury on the head and forehead of dead body were seen as the dead body was drenched in blood. At the time of recovery of dead body of **Jagraj Singh**, none of his family members raised any suspicion with regard to cause of his death and, therefore, he was cremated to the flames. However, later on, it became talk of the town that **Gobind Singh son of Sant Singh and Gurjant Singh** son of **Lachman Singh** (respondent Nos. 2 and 3, respectively) residents of village **Kattu** were lastly seen with the deceased at around 6.00 p.m. on the day of incident. It also became talk of the town that **Jagraj Singh** had not a natural death rather he was murdered. Thereafter, father (**applicant-Dhan Singh**) of the deceased-**Jagraj Singh** told the complainant that he was having suspicion against respondent **Gobind Singh** with regard to death of his son. The complainant requested the father of the deceased to inquire the matter before levelling any kind of allegations. On 21.08.2011, **Gobind Singh** and **Gurjant Singh** met the complainant and they both of them made an admission before him that since **Jagraj Singh**-deceased was having illicit relationship with the wife of their brother **Ran Singh** and in order to save the honour of the family, they have murdered **Jagraj Singh** by hitting brick bats on his head. On the basis of this statement

of the complainant, the police recorded a formal F.I.R. The investigation was commenced and the accused were arrested during investigation. 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 accused free of cost. Thereafter, the case was committed to the Court of Sessions.

Finding a *prime facie* case, the accused/respondents were charge-sheeted for the commission of offence under **Section 302/34 of IPC**.

To prove its case against the respondents-accused, the prosecution has examined the following eleven (11) witnesses:-

HC Manmohan Singh as PW-1, Nirmal Singh, Patwari as PW-2, HC Labh Singh as PW-3, Munna Lal as PW-4, HC Tek Chand as PW-5, Malkiat Singh as PW-6, Jasbir Singh as PW-7, Deepak Arora, Nodal Officer, Airtel Company, IT Park, Chandigarh as PW-8, Inspector Kulwant Singh, Investigating Officer as PW-9, Darshna Devi, ANM as PW-10 and ASI Randhir Singh as PW-11.

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.

On the basis of weak evidence produced by the prosecution against the respondents-accused, they have been acquitted of the charges for the commission of offence(s) under **Section 302/34 of IPC**.

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

We are of the view that firstly it was bounden duty of the prosecution to prove that deceased was lastly seen in the company of accused/respondents. Secondly, the prosecution was supposed to prove that there was illicit relationship between deceased and wife of brother of respondent/accused (Gobind Singh).

The present case is admittedly based on extra-judicial confession of the accused and no direct evidence is there as death of deceased-*Jagraj Singh* is not witnessed by any of the prosecution witnesses. The prosecution has built up its case against the respondents/accused on the basis of their extra-judicial confession. We are of the view that extra-judicial confession is a weak piece of evidence, which needs corroboration. The stand of prosecution is neither supported nor is corroborated with any material evidence, on the basis of which, it could be said that there was every chances for the respondents/accused to make admission of crime before PW-6 (*Malkiat Singh*). Moreso, the statement of PW-6 has also not been corroborated by any clincher evidence on the record.

We are also of the view that if there was any relationship between deceased-*Jagraj Singh* and wife of brother of accused/respondents, then their relationship might have gained circulation like wildfire in the village, but none of the villager has come forward in the witness box to say anything in this regard, on the basis of which, it could be said that story put forth by the prosecution is correct. Further, it is also not proved on record by

the prosecution that deceased was found lastly in the company of respondents. On careful examination of statements of all the witnesses of the prosecution, it is not proved that the deceased was lastly seen in the company of accused/respondents. The prosecution has also not established on the record that deceased-*Jagraj Singh* died an unnatural death, because his dead body was not given to medical experts for post-mortem. There is also inordinate delay in registration of the F.I.R. As per the alleged case of the prosecution, the dead body of deceased was recovered from the dry well on 02.08.2011 and the F.I.R. was registered on 23.09.2011. We are of the view that if some kind of injuries were noticed by the relatives of the deceased on dead body, they were required immediately to inform to the local police with a stand that deceased had not a natural death, rather an unnatural death. The delay in the registration of the F.I.R. can be said that F.I.R. has been recorded with due deliberation and false story has been introduced. As such, seeing the case of the prosecution from all the angles, we are of the view that the view of the trial Court is correct, vide which, it has acquitted the respondents/accused.

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-respondents 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

August 29, 2019
'*dk kamra*'

(LALIT BATRA)
JUDGE

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