

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

**CRM-A No. 1109-MA of 2018
Date of Decision: 05.07.2019**

Bhateri

..... Appellant/Complainant

Versus

State of Haryana and others

..... Respondents

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

Present: Mr. Manoj Kaushik, Advocate
for the appellant-complainant.

LALIT BATRA, J.

Present application has been filed under Section 378 (4) of the Code of Criminal Procedure, 1973 (hereinafter to be referred to as “Cr.P.C.”) for grant of leave to file the appeal against the judgment of acquittal dated 08.03.2018 passed by learned Additional Sessions Judge, Sonipat, whereby respondents No.2 to 5/ accused have been acquitted of charges for commission of offence punishable under Section 302 read with Section 34 IPC and Section 120-B IPC.

2. Prosecution case in brief is that Bhateri (complainant) moved a complaint in the Court alleging therein that her son namely Monu was married to Babita (respondent No.2 herein) and after marriage, she (Babita) started claiming that she had illicit relations with Pinku, younger brother of her husband (Monu), and got pregnant from that relation. Feeling ashamed

and humiliated of above said rumours, Pinku committed suicide. Thereafter, Monu (since deceased) and his wife Babita left the village and started living in village Bain. Complainant further alleged that Babita had developed intimacy with her brother-in-law namely Ajit (respondent No.4 herein) and when Monu objected to their illicit relations, then all the respondents (accused) in the intervening night of 09/10.02.2011 had assaulted Monu and committed his murder by strangulation. In the early morning hours on 10.02.2011, having received above said information, complainant alongwith her family members and neighbours went to village Bain and found Monu lying dead. Police had also arrived at the spot and they were informed by respondents (accused) that Monu had committed suicide by hanging himself on the iron nail embedded in the wall. Dead body of Monu was sent for post-mortem examination. Though complainant informed the police that Monu did not commit suicide and in fact he was murdered, despite that police did not take any action against the culprits. Police did not register the FIR nor investigated the matter but simply recorded information in the Daily Diary Register. Since no action was initiated by the police against the culprits, complainant was left with no option but to file a private complaint in the Court.

3. During the course of preliminary evidence, statements of CW-1 Bhateri, CW-2 Rajesh, CW-3 Hari Chand, CW-4 Sonu, CW-5 Assistant Sub Inspector Balwan, CW-6 Dr. Jagdish Ram, CW-7 Dr. Randeep Kumar, CW-7 (wrongly numbered) Dr. Sunil Gambhir and CW-8 Assistant Sub Inspector Satbir Singh, were recorded.

4. In view of preliminary evidence led on the record, vide order

dated 21.07.2015, learned Magistrate summoned all the accused to face trial

for the commission of offence punishable under Sections 201 and 302 IPC read with Section 34 IPC and after securing appearance of all the accused and supplying them copies of complaint, documents and statements of all the witnesses, as envisaged under Section 208 Cr.P.C., vide order dated 13.10.2015, learned Magistrate committed the case to the Court of Session for trial of accused.

5. Learned trial Court after having gone through the documents placed on record and then finding a *prima facie* case, vide order dated 07.01.2016, accused were charge-sheeted to face trial for the commission of offence punishable under Section 302 read with Section 34 IPC and Section 120-B IPC, to which they pleaded not guilty and claimed trial.

6. Before trial Court, prosecution has examined PW-1 Dr. Randeep, PW-2 Bhateri (complainant), PW-3 Assistant Sub Inspector Satbir Singh, PW-4 Dr. Jagdish Ram and PW-5 Rajesh Kumar. After giving up remaining witnesses being unnecessary and tendering some documents, evidence was closed.

7. It is relevant to point out here that during the course of trial, accused namely Bhim Singh had expired on 25.09.2016, thus, proceedings qua said accused were dropped, vide order dated 01.06.2017.

8. Statements of accused namely Ajit, Mukesh, Babita and Sonu, as envisaged under Section 313 Cr.P.C., were recorded wherein they denied all the allegations levelled against them.

9. Accused were called upon to enter upon their defence but no evidence has been led by them in their defence.

10. Learned trial Court after hearing learned Public Prosecutor for the State assisted by learned counsel for the complainant as well as learned

defence counsel, accused were acquitted of charges levelled against them, vide judgment dated 08.03.2018.

11. Feeling aggrieved with the findings recorded by learned trial Court, vide judgment of acquittal dated 08.03.2018, appellant-complainant has preferred the present appeal, wherein application under Section 378 (4) Cr.P.C. has been moved for grant of special leave to appeal from the order of acquittal.

12. We have heard learned counsel for the applicant-appellant (complainant) and have also gone through the paper book very carefully.

13. Learned counsel for the applicant at the very outset has argued that since learned trial Court did not appreciate the complainant's version in right perspective, thus, in order to reiterate her cause, special leave to appeal may be granted, so that applicant may agitate her claim to its logical end.

14. While having due regard to the contentions of learned counsel for applicant (complainant), it is observed that vide impugned judgment dated 08.03.2018, respondents-accused have been acquitted of charges levelled against them as prosecution has miserably failed to substantiate its allegations against the accused persons. It is obvious that appeal against acquittal is considered on slightly different parameters compared to an ordinary appeal. 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

reasons for reversing the order of acquittal. The Appellate Court can reverse the order of acquittal if the view taken by the trial Court is palpably erroneous and it could not have been taken by the Court of competent jurisdiction and is taken against well settled canons 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. To this effect reliance can be placed on rulings *Lalit Kumar Sharma and others Vs. Superintendent and Remembrancer, AIR 1989 SC 2134 and Munishamappa and others Vs. State of Karnataka, 2019 (3) KantLJ 466 (Supreme Court)*.

15. Keeping in view above said settled proposition of law and while applying the said ratio to the instant matter, it can be conveniently held that prosecution has utterly failed to discharge its onus beyond the shadow of reasonable doubt against respondents-accused. 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 and, thus, learned trial Court has rightly acquitted respondents-accused of the charges levelled against them and to arrive at said conclusion, reasons are enumerated as under:-

(i) Medical evidence which was made basis of summoning order dated 21.07.2015, in terms of which, respondents-accused were summoned to face trial, main emphasis therein was presence of injuries on the body of deceased Monu. As per report of FSL and Post-mortem Examination Report, the cause of death of Monu was strangulation, which resulted in the fracture of his thyroid cartilage. Though complainant has examined PW-1 Dr. Randeep, who has proved Crime Scene Report (Ex.PW-1/A) and PW-4 Dr. Jagdish, who has proved FSL Reports (Ex.PW-4/A and Ex.PW-4/B) and by these documents effort has been made to bring the cause of death of Monu on the record. In terms of Crime Scene Report (Ex. PW-1/A), it was advised to the Investigating Officer to get the post-mortem examination on the dead body of Monu conducted and though photocopy of Post-mortem Examination Report of deceased Monu has been placed on record but no effort was made by the complainant to examine the doctor concerned, who had conducted post-mortem examination and as such Post-mortem Examination Report has not been proved on record. A bare perusal of FSL Report (Ex. PW-4/A) reveals that no common poison could be detected in Ex. 1-a – stomach with its contents; Ex. 1-b – loops of small and large intestines;

Ex. 1-c – pieces from liver, spleen and kidneys and Ex. 1-d – saline preservative approximately 400 ml. Further in terms of FSL Report (Ex. PW-4/B), wherein laboratory examinations were carried out to detect presence of saliva/semen, however, saliva could not be detected on Ex.2-a (Banian), Ex.2-b (Shirt) and Ex.-3 (T-shirt) and further semen could not be detected on Ex.-4 (Pants). In view of above said reports, it appears that death of Monu was not caused by poison. In view of above, on account of non-examination of doctor concerned, who conducted post-mortem examination on the body of deceased Monu, complainant has utterly failed to prove cause of death of said Monu.

(ii) The main plank of complainant's version is that Monu (since deceased) did not commit suicide, rather he was murdered by respondents-accused and to substantiate her cause, complainant-Bhateri has pressed into service her testimony (PW-2) and testimony of PW-5 Rajesh. Though it is categorical stand of complainant that Monu (since deceased) was harassed and humiliated by respondents-accused and he was murdered by them but to substantiate said aspect, no iota of cogent evidence has been led on the record. Allegedly at the relevant time, Monu (since deceased) was living with his wife Babita (respondent-accused) in village Bain but a careful scrutiny of testimony of PW-2 Bhateri (complainant) clearly reveals that when she (Bhateri) visited village Bain, she found that Babita and Monu (since deceased) were leading a happy married life.

Apart from that no documentary proof has been placed on record at the instance of complainant to show that Monu (since deceased) had ever made any complaint against respondents-accused that he was being harassed and humiliated by them. In this scenario, there is nothing on the record to depict that Monu (since deceased) was ever harassed and humiliated by respondents-accused while living in village Bain.

(iii) Though complainant has laid much stress on the allegations that as Babita was having illicit relations with her brother-in-law Mukesh (respondent-accused) and as such there was motive on their part to eliminate Monu but to substantiate said aspect of allegations, no cogent evidence has been led on the record at the instance of complainant. PW-5 Rajesh Kumar, maternal uncle of Monu (since deceased), during his cross-examination has deposed that Babita (respondent-accused) and Monu (since deceased) never talked with him about their marital life and family affairs and further he could not say as to whether Monu (since deceased) used to take liquor or not. On the other hand, PW-2 Bhateri (complainant) when cross-examined has deposed that Monu (since deceased) and Babita were married about 10/12 years back and her son Monu used to take alcohol occasionally. In view of above, there is nothing on the record to conclude that relations between Monu (since deceased) and his wife Babita were strained on account of alleged illicit relations between above said Babita and Mukesh (respondents-accused) and as such alleged utterances made by

complainant in that respect have no footing to stand.

(iv) Complainant's version basically hinges on certain allegations viz that previously Pinku, brother-in-law of Babita, had committed suicide on account of rumours spread by her sister-in-law Babita that she (Babita) had conceived a baby on account of her illicit relations with Pinku; that respondents-accused used to harass and humiliate Monu (since deceased) on account of ongoing illicit relations between Babita and Mukesh; that respondents-accused had inflicted injuries on the person of Monu, which proved fatal; and that Monu did not commit suicide, rather he was murdered by respondents-accused, however, to substantiate above said allegations, clinching evidence to complete the chain of events has not been led on the record by the complainant and in this scenario, above said allegations are of no help to the cause of prosecution.

(v) It is pertinent to mention here that previously regarding death of Monu, a report in the Daily Diary Register was entered by the Police and then the matter was duly inquired into by the Police authorities wherein it was found that it was not a case of murder and in fact Monu had committed suicide.

16. As a sequel to above said findings, we are of the opinion that the trial Court while appreciating the entire evidence in its right perspective, has rightly held that prosecution has failed to prove its case against respondents-accused beyond shadow of reasonable doubt. Thus, no case for any interference in the impugned judgment is made out. The view of the

trial Court is hereby affirmed and is maintained.

17. In view of the above, the present leave petition under Section 378(4) Cr.P.C. moved by complainant, being bereft of merit, is dismissed. Resultantly, leave to appeal is declined.

(JASWANT SINGH)
JUDGE

(LALIT BATRA)
JUDGE

July 05, 2019
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<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>