

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

**CRM-A- 1212-MA of 2018
Date of Decision: 28.03.2019**

Pradeep Kumar

..... Appellant

Versus

State of Haryana and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present: Mr. Abhay Kumar, Advocate with
Mr. Vineet Kumar Singh, Advocate and
Mr. Tarun Sharma, Advocate
for the applicant/appellant.

Mr. Rajeev, A.A.G. Haryana

Mr. Aditya Sanghi, Advocate
for respondent No.2.

JASWANT SINGH, J.

CRM-A No. 1212-MA of 2018

1. Present application has been filed under section 378 (4) of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of Leave to file the Appeal against the judgment dated 06.03.2018 passed by learned Additional Sessions Judge, Narnaul, whereby the trial Court has acquitted the **respondent no.2. Vikram Singh** son of Ram Singh, of the charge under section 302 Indian Penal Code (IPC).

2. Tersely put the facts of the case are that ***Suraj Bhan @ Bana son of Matadin*** was murdered by unidentified persons and in this regard a telephonic message was transmitted to the police station, Kanina on 28.08.2016. On receiving this information SI/SHO Rajender Singh along

with police party went to the spot in the Government vehicle and the relatives of the deceased were also informed in this respect. Statement of complainant was also recorded by the police to the effect that complainant received information from Satyapal regarding murder of his father while he was sleeping in the hut. On the basis of this statement, the F.I.R. under section 302/34 IPC was registered. SI/SHO Rajender Singh being Investigating Officer recorded the statement of witnesses and also prepared the rough site plan of the place of the crime. He conducted the inquest proceedings under section 174 Cr.P.C. Thereafter, the investigation was handed over to SI/SHO Shiv Kumar and during his investigation, Anita, daughter-in-law of Suraj Bhan, since deceased, presented an application before him, wherein she held Vikram son of Ram Singh responsible for murder of Suraj Bhan. Then Investigating Officer joined accused Vikram in the investigation and also found incriminating evidence against him and accused was arrested on 14.09.2016. Statement of accused Vikram under section 27 of the Indian Evidence Act was recorded which led to the recovery of one mobile phone two SIM cards and those were taken into police custody. After this SI/SHO Rajender Singh further conducted the investigation on 27.10.2016, complainant Pradeep produced one wallet belong to accused Vikram containing Rs.300/- of denomination of Rs.100/- each, two photographs and some papers before Investigating Officer who were also taken into police custody. On 31.10.2016, the complainant Pradeep also produced one Mobile Marka LG and a SIM card bearing No.8750485678 before him, which were taken into police custody. On 26.11.2016 Sanjay Kumar son of deceased Suraj Bhan had produced one

him which were also taken into police custody. SI/SHO obtained call details record of mobile number of accused Vikram from Cyber Cell, Narnaul and prepared the scaled site plan of place of crime and also got clicked the photographs of the place of occurrence.

3. On completion of investigation, challan against the accused was presented in the Court. Copies of documents relied upon by the prosecution as envisaged under section 208 Cr.P.C. were supplied to the accused. From the perusal of the report under section 173 Cr.P.C, the accused was charge-sheeted by the trial Court for commission of offence under section 302 IPC. to which he pleaded not guilty and claimed trial.

To strengthen its case against the respondent, the prosecution has examined as many as fifteen (15) witnesses besides producing documentary evidence, which are as under:-

Rameshwar Singh son of Richhpal as PW-1, ***Ranvir*** son of Balbir Singh as PW-2, ***Anita*** wife of Sanjay Kumar as PW-3, ***Sanjay*** son of Surajbhan as PW-4, ***Pardeep Kumar*** son of deceased Surajbhan as PW-5, ***HC Pardeep No.190*** as PW-6, ***Manoj Patwari*** Halqa Khairana as PW-7, ***Manoj Kumar*** Photographer as PW-8, ***EASI Bir Singh*** No.577 as PW-9, ***ASI Bahadur Singh*** No.155 as PW10, ***SI Kailash Chand*** No.9/SR as PW-11, ***SI Rajender Singh*** No.SR/17 as PW-12, ***SI Shiv Kumar*** No.SR30 as PW-13, ***HC Sanjeet*** No.607 as PW-14 and ***Dr. Jitender Chaudhary*** MO as PW-15.

On completion of prosecution evidence, the statement of accused/respondent under section 313 Cr.P.C. was recorded by the trial Court in which all the incriminating circumstances appearing by way of prosecution evidence were put to him and he pleaded his innocence and false implication.

On the basis of weak evidence led by the prosecution, the trial Court has acquitted the accused/respondent of the charge of murder.

Feeling aggrieved against the judgment of acquittal, the complainant has come up by way of filing of this application to leave him to file the appeal against the judgment of acquittal.

We have heard the learned counsel for the applicant-appellant at length and have also gone through the record very carefully.

4. Learned counsel for the applicant-appellant has argued that impugned judgment of the lower Court is wrong both on facts and laws. Sufficient evidence was produced by the prosecution to prove on the record that Suraj Bhan was murdered by accused Vikram. The trial Court has wrongly disbelieved the statement of key witnesses of prosecution namely Anita, Sanjay and Pardeep. These witnesses approved on the record that there was motive for accused Vikram to murder deceased-Suraj Bhan.

5. We are of the view that on the basis of the facts and evidence gathered on the record, the case of the prosecution entirely rests on the circumstantial evidence. The conviction on the basis of circumstantial evidence can be recorded only when each of the circumstance is individually proved against the accused and number of circumstances proved formed a chain so complete as to rule out any reasonable hypothesis compatible with the innocence of the accused. In the instant case, neither the chain of circumstance against the accused is complete nor is there any link between different circumstances sought to be proved against the accused so as to describe as a chain of circumstances.

Coming to the statement of PW-3 Anita and the evidence of this witness does not inspire any confidence on the basis of which her evidence could be relied upon. Undoubtedly, she was knowing to the accused and she

stretch of imagination that why she did not lodge any complaint against the accused immediately on receiving the threats to the life of her father-in-law and also of her. The motive put forth by the prosecution for causing of murder by the accused is weak and is not enough on the basis of which it could be said that the accused was interested to murder the father-in-law of witness Anita as he was knowing their relationship. It also appears that F.I.R. was recorded by the police after due consultation and deliberation with prosecution witnesses. PW-5 has testified that he moved an application Ex.5/A for lodging of F.I.R. after due consultation with brother and other family members. It also transpires that accused was arrested after about 16 days of gap from the date of murder of deceased Suraj Bhan. More, so the weapon of the offence was not recovered. As per the disclosure statement of the accused, no recovery of weapon has been affected, as such despite recording of disclosure statement of accused under section 27 of the Indian Evidence Act the non recovery of weapon has weaken the case of the prosecution. The statement of witness Sanjay and Pardeep has also been examined but none of the witness could able to establish on the record that it was the accused who has committed the murder of deceased-Suraj Bhan. None of the villager has been examined by the prosecution who could able to depose in the Court that accused was found roaming near to the area whereas deceased Suraj Bhan was found murdered. The accused was not seen in the cattle shed, on the basis of which it could be said that it was the accused who caused murder of deceased-Suraj Bhan. The statement of police officials witnesses is of formal nature and also having no legs to stand to stand upon. Non-examination of Suman who could establish the

the prosecution. On the basis of her evidence it could be established by prosecution that she (Suman) clicked the photographs of accused in the mobile phone of accused. IN the absence of independent support and corroboration to the statement of interested prosecution witnesses the trial Court has rightly disbelieved the statement of prosecution witnesses.

6. 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.

7. 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, had rightly observed in the impugned judgment and held that the prosecution had failed to prove its case against the respondent beyond any reasonable doubt. Thus, no case is made out for any interference in the impugned judgment. The view of the trial Court is hereby affirmed and is maintained.

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

(JASWANT SINGH)
JUDGE

March 28, 2019
'dk kamra/Vinay'

(ARUN KUMAR TYAGI)
JUDGE

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