

CRM-A No.1826-MA of 2018

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

Sr. No.216

**CRM-A No.1826-MA of 2018
DECIDED ON: April 03, 2019**

RAMESH KUMAR

..APPLICANT

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. Mandeep K. Dhot, Advocate, for the applicant.

SUDHIR MITTAL, J.

On the complaint of one Ramesh Kumar son of Gurdas Mall, an FIR under Sections 302, 201, 511, 120-B, 34 IPC was registered at Police Station Sadar Ferozepur, District Ferozepur on account of the murder of Jaswant Rai @ Vicky (son of the complainant). Seven persons were named as accused out of whom Ashok Kumar @ Shoki son of Ram Chand was convicted. Harpreet Singh @ Rinku Suniara son of Rachhpal Singh died during the pendency of the trial, Rajesh Kumar @ Kakka was declared proclaimed offender and the remaining four were acquitted. Thus, the present application for leave to appeal has been filed by the complainant.

According to the case of the prosecution, on 30.08.2015, Rajesh Kumar @ Kakka, Rinku Suniara and Ashok Kumar @ Shoki came to the

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house of the complainant at about 1.00 p.m. and took his son Jaswant Rai @ Vicky along with them. His son did not return till 6.30 p.m. and the complainant tried to contact him on his mobile phone but the same was switched off. He searched for his son throughout the night but could not find him. On reaching near Railway Station, Ferozepur Cantt., the complainant, his other son Gaurav and Bablu (son of sister-in-law) came to know that the deceased had been seen near Dharamshala opposite Railway Station, Ferozepur Cantt. They went inside the Dharamshala and near room no.18 observed foul smell. On peeping inside through the ventilator, they spotted the bloodstained dead body of deceased Jaswant Rai @ Vicky.

On 12.09.2015, accused Avi Kumar @ Sonu son of Satish Kumar, Sukhdev Singh @ Debu son of Jana, Rohit @ Kaka @ Chiri son of Rajiv Kumar, Khem Chand @ Johri son of Moti Ram (respondents No.2 to 5) were arrested. On 26.09.2015, Ashok Kumar @ Shoki was arrested. However, Rajesh Kumar @ Kakka could not be arrested and was declared proclaimed offender whereas Rinku Suniara died during the pendency of the trial.

The relevant prosecution witnesses in this case are the complainant Ramesh Kumar PW-1, an independent witness Ranjit Singh PW-2 and other son of the complainant namely Gaurav Arora PW-3. Ramesh Kumar PW-1 deposed that the deceased accompanied some of the accused on 30.08.2015 from his house and thereafter did not come back. On reaching near Railway Station, Ferozepur Cantt. they came cross Ranjit Singh PW-2 who had seen the deceased going towards Dharamshala opposite Railway Station along with Rajesh Kumar @

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Kakka (person declared Proclaimed Offender), Rinku Suniara (since dead) and Ashok Kumar @ Shoki. On reaching the Dharamshala, they found foul smell emanating from room no.18 and on peeping inside through the ventilator discovered the dead body of Jaswant Rai @ Vicky. Ranjit Singh PW-2 deposed that he saw the deceased along with Rajesh Kumar @ Kakka, Rinku Suniara and Ashok Kumar @ Shoki entering the Dharamshala opposite Railway Station at about 1.30/2.00 p.m. on 30.08.2015. Gaurav Arora PW-3 deposed that he had seen Rajesh Kumar @ Kakka (proclaimed offender), Ashok Kumar @ Shoki and Rinku Suniara (since deceased) coming to their house on 30.08.2015 and that his brother had accompanied them. He also proved CD Exhibit MO-3 prepared from the CCTV cameras installed in the Dharamshala. Based on this evidence as well as the recovery of two gold rings on the disclosure statement of Ashok Kumar @ Shoki said accused was convicted.

While acquitting respondents No.2 to 5 various reasons have been given by the trial Court which are; (a) they were not amongst the persons whom the deceased accompanied while leaving his house on 30.08.2015; (b) they were not seen with the deceased when he entered the Dharamshala as deposed by Ranjit Singh PW-2 and (c) their arrest from the Dharamshala after the murder was not clinching evidence. The CD Exhibit MO-3 has not been found sufficient for convicting the said persons.

Learned counsel for the applicant submits that the CD Exhibit MO-3 shows that respondents No.2 to 5 were going in and out of the Dharamshala on the date of the incident and thus, the trial Court was in error in acquitting them.

The aforesaid evidence has been evaluated by the trial Court along with the other evidence available on record such as respondents No.2 to 5 not being present when the deceased left his house and the independent witness Ranjit Singh PW-2 not having spotted them when the deceased entered the Dharamshala and only thereafter, a finding of acquittal has been returned.

An Appellate Court can rightfully sift through the entire evidence available on record and re-appreciate the same. However, when the appeal is against a judgment of acquittal, the Appellate Court is required to be more circumspect. This is because there exists a presumption of innocence of an accused person and this presumption gets reinforced when such a person is acquitted by the trial Court. In such a situation, the Appellate Court would interfere only if the findings of the trial Court are so erroneous that they have to be termed as perverse. In ***Mahavir Singh Vs. State of Madhya Pradesh, 2017(1) R.C.R. (Criminal) 414***, the Supreme Court has held as follows:-

“12. In the criminal jurisprudence, an accused is presumed to be innocent till he is convicted by a competent Court after a full-fledged trial, and once the Trial Court by cogent reasoning acquits the accused, then the reaffirmation of his innocence places more burden on the appellate Court while dealing with the appeal. No doubt, it is settled law that there are no fetters on the power of the appellate Court to review, reappreciate and reconsider the evidence both on facts and law upon which the order of acquittal is passed. But the court has to be very cautious in interfering with an appeal unless there are compelling and substantial grounds to interfere with the order of acquittal. The appellate Court while passing an order has to give clear reasoning for such a

conclusion.”

In ***Gangabhavani vs. Rayapati Venkat Reddy and others, 2013 (4) R.C.R. (Criminal) 853***, the limitations placed upon an Appellate Court while examining a judgment of acquittal have been set out as follows:-

“6. This Court has persistently emphasised that there are limitations while interfering with an order against acquittal. In exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the acquittal by the lower Court bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.”

While examining the issue of possibility of two views being taken on the basis of the evidence on record, the Supreme Court in ***Brahm Swaroop and another vs. State of U.P., 2010 (4) R.C.R. (Criminal) 898*** has opined thus:

“26. It is well established in law that the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be more, the probable one. While dealing with a judgment of acquittal, the appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial Court had failed to take into consideration any admissible evidence and/or had taken into consideration

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*evidence brought on record contrary to law. Similarly, the incorrect placing of the burden of proof may also be a subject matter of scrutiny by the appellate court. The court of appeal may not interfere where two views are possible for the reason that in such a case it can be held that prosecution failed to prove the case beyond reasonable doubt and accused is entitled for benefit of doubt. (Vide: **Balak Ram & Anr. v. State of U.P.**, AIR 1974 Supreme Court 2165; **Allarakha K Mansuri v. State of Gujarat**, 2002(1) R.C.R. (Criminal) 748 : (2002) 3 SCC 57; **Raghunath v. State of Haryana**, (2003) 1 SCC 398; **State of U.P. v. Ram Veer Singh & Ors.**, AIR 2007 Supreme Court 3075; **S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors.**, 2008(2) R.C.R. (Criminal) 894 : 2008(3) R.A.J. 389; **Sambhaji Hindurao Deshmukh & Ors. v. State of Maharashtra**, (2008) 11 SCC 186; **Arulvelu & Anr. v. State**, 2009 (4) R.C.R. (Criminal) 638 : 2009(6) R.A.J. 349 : (2009) 10 SCC 206; **Perla Somasekhara Reddy & Ors. v. State of A.P.**, 2010(5) R.C.R. (Criminal) 360 : (2009) 16 SCC 98; and **Ram Singh alias Chhaju v. State of Himachal Pradesh**, (2010) 2 SCC 445). ”*

The same view has been taken in **Arulvelu and another vs. State represented by the Public Prosecutor and another**, 2009 (4) R.C.R. (Criminal) 638.

Does the present case fulfil the aforementioned requirements for interfering in a judgment of acquittal? We do not think so. The CD Exhibit MO-3 contains the footage of CCTV cameras installed in the Dharamshala. All the persons, including respondents No.2 to 5, going in and out of the Dharamshala on the date of the incident have been captured in the said footage. Merely because they have been seen going in and out of the Dharamshala where the body of deceased Jaswant Rai @ Vicky

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was found, does not ipso facto point to their involvement in the crime. Exhibit MO-3 has been considered by the trial Court and its evidentiary value has been evaluated in the context of the other evidence available on record. Learned counsel for the applicant has not been able to show how the finding so reached, is perverse. His only argument is that Exhibit MO-3 establishes the presence of respondents No.2 to 5 in the Dharamshala on the date of the incident but this evidence is not sufficient to over turn the finding of acquittal because it does not conclusively establish that respondents No.2 to 5 were also involved in the murder. Thus, the possibility of them being innocent exists. Under the circumstances, interference in the judgment of acquittal would not be justified.

For the aforementioned reasons, the application for leave to appeal has no merit and is accordingly dismissed.

(DAYA CHAUDHARY)
JUDGE

April 03, 2019
Ankur

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No