

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1729-MA of 2017 (O&M)

DATE OF DECISION:20.5.2019

Smt. Shanti

.....Applicant

Versus

Indu Bala and another

.....Respondents

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

Present:- Mr. Mohit Garg, Advocate
for the applicant.

DAYA CHAUDHARY, J.

Crl. Misc. No. 24886 of 2017

There is delay of 18 days in filing the application for grant of leave to appeal.

For the reasons mentioned in the application, which is supported by an affidavit, the same is allowed and delay of 18 days in filing the application for leave to appeal is condoned.

Crl. Misc. No. A-1729-MA of 2017

The present application has been filed under Section 378 (4) & (5) of Cr.P.C. for grant of special leave to appeal against judgment of acquittal dated 19.11.2014 passed by Additional Sessions Judge, Hisar.

Briefly, the facts of the case as made out in the present application are that the applicant/complainant filed a private complaint on 1.2.2012 alleging therein that she was widow and was having three children i.e. two daughters and one son. One daughter was married, whereas, the other was unmarried. Marriage of her son, namely, Ram Mehar was fixed

with one Indu Bala (accused No.1) during lifetime of her husband-Hawa Singh, who died on 16.9.2010. After the death of her husband, mutation of inheritance was sanctioned in her favour and in favour of her children. The marriage of her son was solemnized with accused No.1-Indu Bala on 25.3.2011. After the marriage, accused No.1-Indu Bala started to live separately as her behaviour was not good with the complainant and her children. After sometime, accused-Indu Bala started putting pressure upon the complainant to transfer the property in her name. For that purpose, she along with her husband came to the house of the complainant three/four times but complainant refused to do the same. On 14.10.2011, the accused -Indu Bala came to the house of the complainant along with her brother Jitender but he went after leaving her. On 17.10.2011, there was a quarrel between complainant and accused No.2 regarding land in dispute. In the night, accused-Indu Bala and her husband Ram Mehar went to their room for sleeping. Indu Bala gave poison in milk to her husband-Ram Mehar and he started crying. Complainant found her son injured and she got him admitted in the hospital. At the time of admission, the Doctor told the complainant that poison had been given to her son. Ultimately, at about 2.00 pm, the son of the complainant was declared dead.

After filing of the complaint, the complainant led preliminary evidence and accused were summoned under Sections 302 and 120-B IPC by learned Area Magistrate. After appearance of the accused, the case was committed to the Court of Sessions for trial vide order dated 19.2.2015. Ultimately vide judgment dated 7.3.2017 passed by Additional Sessions Judge, Hisar, accused-Indu Bala and Sukhbir were acquitted of the charges framed against them by giving benefit of doubt.

Aggrieved by aforesaid said judgment of acquittal dated 7.3.2017 passed by Additional Sessions Judge, Hisar, the present application for grant of leave to appeal against judgment of acquittal has been filed by raising various grounds.

Learned counsel for the applicant submits that the learned trial Court has not appreciated the evidence as the complainant and other witnesses have fully supported the case of the prosecution. The statements of the witnesses finds corroboration with the medical evidence led in the shape of recording statement of Dr. R. Kumar (PW-2). Learned counsel further submits that the learned trial Court has wrongly held that there was delay of about three and a half months in filing of the complaint, which was utilized by the complainant, whereas, the complainant was under depression as she lost her son and there was sufficient reason for not filing the complaint within reasonable time.

Heard the arguments advanced by learned counsel for the applicant and have also perused the judgment of acquittal dated 7.3.2017 passed by Additional Sessions Judge, Hisar.

Learned trial Court has acquitted the accused by holding that the prosecution had failed to prove its case beyond reasonable doubt as the accused had no role in causing death of deceased-Ram Mehar. There was no evidence of any conspiracy between the accused or any common intention to administer poison to deceased-Ram Mehar and no offence under Sections 302/34 IPC or Section 306/34 IPC was made out against the accused. The accused were acquitted of the charges by holding that the prosecution had failed to prove its case against the accused beyond reasonable doubt.

On perusal of finding recorded by the trial Court and after considering the contention raised by learned counsel for the applicant, admittedly the case is based on circumstantial evidence. No doubt as per FSL report (Ex. P-5), aluminium phosphide was detected in gastric lavage of deceased-Ram Mehar but it was not proved on record that the accused persons administered poison to Ram Mehar. The dead body of the Ram Mehar was taken away by his uncle Krishan and Sukhbir without postmortem examination. In case Ram Mehar was given poison there could have been injury on his person due to resistance but neither there was any external injury on his person nor any other evidence was there to show that he resisted while giving poison. PW-1 Shanti, the mother of the deceased, was the first person to observe that Ram Mehar had been given poison. The bed head ticket Ex. P2 did not find mention that there was any external mark of injury on the person of the deceased, which rules out forcible poisoning. The medical evidence as well as oral evidence are contradictory to each other as PW-1 Shanti and PW-3 Poonam had stated in their statements that poison was given to the deceased forcibly, whereas, PW-3 Dr. R. Kumar had admitted that in the bed head ticket (Ex.P2), the word Sulphas had been scored off and cardiac arrest was written as cause of death. The back side of first page of Ex. P2 reveals that the reason for death was mentioned as cardiac arrest. PW-3 explained this anomaly by stating that it was for transport purposes, whereas, this explanation is not convincing. Admittedly, post mortem was not conducted on the dead body of deceased-Ram Mehar and as such the complainant failed to prove the cause of death of Ram Mehar. Even no complaint was made to the police before filing of the private complaint. As per statement of DW-1 ASI Balbir, Ex. D2 i.e.

DDR No. 28 was got recorded on the basis of statement of Krishan Kumar, brother-in-law of PW-1 Shanti. He further stated that as Krishan Kumar and other relatives of the deceased-Ram Mehar did not want any legal action, therefore, postmortem was not conducted on the dead body of deceased-Ram Mehar. These facts were intentionally concealed by the complainant in her complaint. Even Krishan Kumar and Mewa Singh, brother-in-laws of the complainant were not cited as witnesses in the complaint. Similarly, PW-3 Poonam tried to improve her version by stating that her uncle-Krishan and co-accused-Sukhbir colluded and pressurized them for not taking legal action and dead body was accordingly cremated.

Admittedly, the incident had occurred on 17.10.2011 at about 10.00 pm in the house of deceased-Ram Mehar, whereas, the complaint was filed by PW-1 Shanti on 1.2.2012, which shows that there was approximately three and a half months of delay. The reason which has come in the statement of the complainant was that police did not take any action on the complaint. However, neither any copy of such complaint was placed on record nor any record was summoned from the police to prove this fact. It can safely be said that the case of the complainant was based on oral dying declaration of deceased-Ram Mehar, extra judicial confession made by the accused and presumption under Section 106 of Indian Evidence Act. PW-1 and PW-3 both have testified that deceased-Ram Mehar has made oral dying declaration to PW-1 Shanti but the factum of oral dying declaration was neither mentioned in the complaint nor in the preliminary evidence led by the complainant. There was material improvements in the statements of PW-1 and PW-3. The evidence of PW-3 Poonam with regard to dying declaration of deceased-Ram Mehar is only a hearsay evidence and

the same is not admissible under law. Moreover, said PW-3 Poonam was not present at the place of occurrence and she had deposed on the information given to her by her sister-Suman, who has not been examined by the complainant. On perusal of finding recorded by the trial Court and also the reasons as mentioned above, we find no reason to interfere with the judgment of acquittal passed by the trial Court.

It has been held in Division Bench judgment of this Court in the case of **Ranjit Kaur Vs. State of Punjab and others** 2008 (22) RCR (Criminal) 848 that in case two views are possible, the view taken by trial Court in favour of accused persons while recording acquittal, be taken as possible view.

Hon'ble the Apex Court in a recent judgment titled as **Munishamappa and others Vs. State of Karnataka** 2019 (1) Scale 721 has held that the High Court should not interfere with the order of acquittal merely on the ground that two views are possible. The interference of High Court should only be in such cases where appreciation of evidence by trial Court is capricious or its conclusions are without evidence or acquittal is not in accordance with law or the approach of the trial Court has led to miscarriage of justice.

Hon'ble Apex Court in a case reported as *2016 SCC OnLine SC 834 Madathil Narayanan & Ors. V. State of Kerala & Anr.* held as under :-

“It is a well settled principle of law that if two views are plausible, the view which goes in favour of acquittal has to be adopted. This legal principle has been reiterated by this Court in the case of *Arulvelu v. State rep. by the Public Prosecutor.*

In the case of *Bindeshwari Prasad Singh @ B.P. Singh v.*

State of Bihar (now Jharkhand), this Court has held that in the absence of any manifest illegality perversity or miscarriage of justice, the order of acquittal passed by the Trial Court may not be interfered by the High Court in exercise of its appellate jurisdiction. The aforesaid view has further been reiterated by this Court in the following two cases viz. ***Rathinam @ Rathinam v. State of Tamil Nadu and Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra.***

A Division Bench of this Court, in a case reported as 2016(2) *Law Herald* 1603 ***Mithlesh vs. State of Haryana and another***, while upholding acquittal of an accused charged with committing rape, noticed the following facts which are identical to the present case :-

“It is also important to note that the applicant was a mature female of 24 years. She herself was maintaining physical relations with respondent No.2 and never lodged any complaint for a period of about one and a half years. It does not inspire confidence that she would have suffered harassment to the alleged extent and would keep mum for such a long period without disclosing the alleged tale of her harassment even to her parents. She intimated the alleged sexual harassment to her father just two days before the registration of FIR. Defence taken by respondent No.2 gets corroboration from the statement of PW10 Dr. Sarita Rani, Medical Officer, who medico legally examined the applicant that there were no signs of injury on the person of the applicant.”

Hon'ble the Apex Court in the case of **Murugesan and others Vs. State through Inspector of Police** 2013 AIR (SC) (Cri) 126 has laid down certain principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal and the same are reproduced as under:-

(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) [The Code](#) of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal

jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”
(emphasis is ours)

In view of the facts and law position as discussed above, we are of the view that there is no merit in the arguments advanced by learned counsel for the applicant and application for grant of leave to appeal against judgment of acquittal is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

May 20, 2019
pooja

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes