

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

**CRM-A No. 306-MA of 2018
Date of Decision: 09.07.2019**

Rakesh Kumar

..... Appellant

Versus

State of Punjab and others .

..... Respondents

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

Present: Mr. Naveen Batra, Advocate
for the appellant-applicant.

JASWANT SINGH, J.

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 Appeal against the judgment of acquittal dated 19.12.2017 passed by learned Additional Sessions Judge, Hoshiarpur.

2. In nutshell, the facts of the prosecution case are that initially a DDR Entry bearing No. 35 dated 18.05.2015 under Section 174 of Cr.P.C. was recorded at Police Station, Hariana, District Hoshiarpur on the basis of the statement of complainant-Rakesh Kumar, vide which, he stated that on 10.05.2015, his brother **Vinod Kumar (now deceased)** went to the agricultural fields during the noon time, but he did not come back. He went to the fields to find out the location of his brother at about 10.00 P.M., and then he found his brother in the house of **Hardial Singh @ Marru**, where **Karan** son of Roop Lal and **Mani** son of Gurbax Singh met him, who were accosting with his brother. He confronted his brother as to why he did not come back to the house, upon which, his brother told him that he would

arrive to the home very shortly and on receiving this answer, he left the spot towards his home. However, when he took the turn and was on the way to his house from the agricultural fields, he heard the shrieks of his brother and on hearing this, he immediately ran towards the house of *Marru*, where he found that a cloth piece was put around the neck of this brother and *Mani* was armed with a wooden log in his hand and both the accused were pulling his brother and they managed to escape after leaving his brother on the passage. On having inquired as to who gave hit on the head, his brother could only tell him that it was *Mani*, who gave hit on his head. Then he made the arrangement of a vehicle and took his brother to Government Hospital, Bhunga, from whereby he was referred to Civil Hospital, Hoshiarpur. Since, the condition of his brother became deteriorate, so he was referred to P.G.I., Chandigarh, where he remained admitted till 17.05.2015. On 17.05.2015, as per advice of the doctor, they brought his brother to Civil Hospital, Hoshiarpur where he died on 18.05.2015 at about 2.30 p.m.

It is also case of the prosecution that earlier on 12.05.2015, a medical message was received regarding admission of injured *Vinod Kumar* in P.G.I. The police officials visited P.G.I. to get the statement of deceased recorded, but the doctor on duty declared the injured unfit to make the statement. The initial information was transmitted by the doctor to the police that it was a case of accident, but later on, the complainant having claimed to be eye-witness of causing of injuries on the person of his brother (deceased) by *Mani* and *Karan*, has recorded the F.I.R. under Section 302/34 IPC.

After completion of necessary formalities of investigation, the report under Section 173 Cr.P.C. was also presented before the Court and copies of challan were supplied to the respondents/accused free of cost and on the basis of *prima facie* case, the accused were charge-sheeted by the trial Court for commission of offences under Section 302/34 of IPC.

To prove its case against the respondents/accused, the prosecution has examined as many as fifteen (15) witnesses, which are as under:-

“ Pritam Singh S/o Harbans Lal as PW-1, Ram Kishan as PW-2, ASI Tajinder Singh as PW-3, Dr. Deepak Kumar, EMO Civil Hospital, Hoshiarpur as PW-4, SI Jiwan Kumar as PW-5, Complainant-Rakesh Kumar as PW-6, Dr. Seema Garg, Medical Officer, Civil Hospital, Hoshiarpur as PW-7, Dr. Rupesh Singh, PGI, Chandigarh as PW-8, Dr. Gurbax Singh, Medical Officer, Civil Hospital, Hoshiarpur as PW-9, Arjun Khanna, Draftsman as PW-10, Dr. Raj Kumar, Proprietor as PW-11, Hardial Singh S/o Kehar Singh as PW-12, MHC Gulshan Mohamad as PW-13, Inspector Harneel Singh, SHO, PS Haryana as PW-14 and ASI Ajit Singh, Investigating Officer as PW-15.

On completion of prosecution evidence, the statement of accused/respondent(s) 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 them and they pleaded their innocence and false implication.

On the basis of weak evidence led by the prosecution, the trial

Court has acquitted the accused/respondents for the commission of offences

for which they have been charge-sheeted. 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.

3. We have heard the learned counsel for the applicant-appellant and have also gone through the paper book very carefully.

Firstly, coming to the statement of key witness of the prosecution, **Rakesh Kumar** who stepped into the witness box as **PW-6**. During cross-examination, this witness gave the graphic details of the receiving of injuries of his brother in road side accident. This witness himself gave the information to the police as to the manner in which the injuries were sustained by his brother in road side accident.

As such, the initial version put forth by the complainant cannot be permitted to be withdrawn by him, later on by setting up a new story that his brother was murdered by the respondents/accused. In case he narrated the version that his brother sustained the injuries at the hands of the accused, the police and the doctor might have recorded his stand in their record. The medical evidence produced by the prosecution on record has also highlighted the fact that there was no ligature mark on the neck of the deceased. **Dr. Deepak Kumar (PW-4)**, who firstly admitted the injured/deceased Vinod Kumar in *Civil Hospital Hoshiarpur*, on 11.05.2015 at about 1.30 P.M., has stated that the patient was admitted as a case of road side accident and no MLR was prepared by him. This witness also testified in the cross-examination that Rakesh Kumar (complainant) gave the information to him that it was a case of road side accident.

Further, **Dr. Rupesh Singh** from P.G.I., Chandigarh, appeared

in the witness box as **PW-8**, who again stated that the patient was brought

by his brother-Rakesh Kumar due to the injuries sustained in the road side accident and the patient was discharged on 17.05.2015 as no active neuro surgical intervention was required.

Dr. Seema Garg (PW-7), who conducted postmortem examination on the dead body of the deceased, has also not opined that there were injuries on the person of the deceased of such a nature, which could be termed as sufficient in ordinary course of nature to cause death of deceased.

In the statement of other witnesses examined by the prosecution, nothing was brought on the record on the basis it could be said that it was the case of murder alleged to be committed by the respondents. As such, the trial Court has rightly disbelieved the statement of prosecution witnesses to come on the conclusion that deceased was not murdered by the respondents.

4. The parameters within which the High Court is required to exercise its powers under Section 378 of the Court, while hearing the appeal against acquittal, are well settled laid down in various judgments of Hon'ble Supreme Court which are as under:-

“ Surajpal Singh v. State (1952 SCR 193); Ajmer Singh v. State of Punjab (1953 SCR 418); Sanwat Singh v. State of Rajasthan and Harbans Singh v. State of Punjab (1962 Supp 1 SCR 104); Ramesh Babulal Doshi v. State of Gujarat 1996(3) RCR(Criminal) 188 : (1996)9 SCC 225; Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR(Criminal) 748 : (2002)3 SCC 57; Bhagwan Singh v. State of M.P. 2002(2) RCR (Criminal) 593 : (2002)4 SCC 85; Harijana Thirupala v. Public Prosecutor, High Court of A.P. 2002(3) RCR (Criminal) 861 : (2002)6 SCC 470; Ramanand Yadav v. Prabhu Nath Jha, 2004(1) RCR(Criminal) 469 : 2004

(2) Apex Criminal 307 : (2003)12 SCC 606; Kallu v. State of M.P. 2006(1) RCR(Criminal) 427 : 2006(1) Apex Criminal 135 : (2006)10 SCC 313; and Chandrappa and Ors. v. State of Karnataka 2007(2) RCR(Criminal) 92 : 2007(1) RAJ 841 : (2007(4) SCC 415).”

As such, by applying the dictum of the law referred above, we are of the view that if a conclusion with regard to the innocence of the accused is reasonably possible on the basis of the evidence and materials on record, it ought not have disturbed the findings recorded by the trial Court, even if, on a re-appreciation of the evidence, it was inclined to take a different view. So long the view taken by the trial Court was a possible view, the exercise of the appellate power of the High Court under Section 378 Criminal Procedure Code would remain circumscribed by the well settled parameters. 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 the present case, the trial Court for the reasons noticed, came to the conclusion that the accused before it should be acquitted. Accordingly, we endorse the view of the trial Court in this regard, as prosecution right from the very beginning, nowhere claimed that deceased was murdered by the respondents. Moreso, in the absence of such kind of injuries on the person of deceased, which were sufficient in the ordinary course of nature to cause his death, no case is said to be proved for offence of murder.

There was delay in the registration of the F.I.R. with regard to factum of causing of injuries by the respondents on the person of deceased.

The suppression of true and material facts by the prosecution are also sufficient to create a dent in the case of the prosecution.

6. 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 interference in the impugned judgment. The view of the trial Court is hereby affirmed and is maintained.

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

(JASWANT SINGH)
JUDGE

July 09, 2019
'dk kamra'

(LALIT BATRA)
JUDGE

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