

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

218

**CRM-A-2030-MA-2017 (O&M)
Date of Decision : 18.07.2019**

State of Haryana

... Applicant

Versus

Sujjat @ Suja

...Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Ms. Tanisha Peshawaria, DAG, Haryana.

HARNARESH SINGH GILL, J.

1. The State of Haryana has filed the present application under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment dated 12.10.2016 passed by the learned Additional Sessions Judge, Mewat.
2. Vide impugned judgment, the trial Court has acquitted respondents No. 2 to 5, 10 to 14 of the charges under Sections 148, 302, 149, 120-B of IPC. However, accused-respondents No. 1 and 6 to 9 were convicted for the aforesaid offences and sentenced accordingly.
3. As per the prosecution case, complainant Salauddin along with his brother Kutubuddin went to the house of his father, which is on the road side and found that door of the house was closed from inside. Both of them scaled the wall and saw their father Abdul Rasid Numberdar and mother

Maksoodan were lying murdered. As per the complainant, the murder was committed due to an old enmity. Complainant Salauddin and his brother Kutubuddin again made a statement suspecting Kuttar @ Ali Mohd., Noora @ Noor Mohd. and their sons and also Yad Ram, the servant of the deceased in the commission of the crime. On 20.09.2004, Mohd.Ali along with Yad Ram appeared before CIA Inspector and gave a statement regarding extra judicial confession made by Yad Ram to him confessing that he had conspired with Nandi @ Rahim Bux, Liyakat Ahmed, Sujjat, Mota, Mujja, Hidayat and 2-3 other persons and had committed double murder in the night of 11/12.09.2004.

4. As per the complainant, the dead body of their father-Abdul Rashid Numberdar was lying on floor near the cot and blood was found oozing from his head and his mother was found murdered by strangulation by SALWAR and her dead body was lying on the cot.

5. In the present case, initially charges under Sections 302 and 120-B of IPC were framed against Liyakat, Nandi @Rahim Bux, Sujat @ Sujja, Yad Ram, and against accused Hakmuddin charge was framed under Section 216 of IPC vide order dated 10.06.2005 to which they pleaded not guilty and claimed trial.

6. Thereafter, on 08.09.2005, Kutubuddin produced five letters before the investigating agency with a report of handwriting expert, as per which the letters were written by Khurshid. Thus, the specimen handwriting of the accused-Khurshid was taken on 16.09.2005 and it was sent to the FSL, Madhuban for comparison.

7. During further investigation, Phool Mohd. approached police on 19.01.2006 along with accused Jaffar and Hamida, who had suffered

extra judicial confession before him, implicating themselves and several other persons. On the basis of the said extra judicial confession, accused Hakmuddin, who was already challaned for the commission of offence under Section 216 IPC, had joined investigation for the commission of offence under Sections 148, 149, 302 IPC. Accused Jaffar and Hamida were also arrested and recoveries were made on the basis of their disclosure statements. Accused Khurshid and Abdulla were arrested on 01.02.2006 and the specimen handwriting of accused Khurshid was taken and sent to C.F.S.L., Calcutta, C.F.S.L., Shimla and C.F.S.L., Lodhi Road, Delhi. Some documents and ammunition were also recovered. During further investigation, on demarcation of accused Khurshid and Abdulla, copies of agreement and other papers along with a Bahi were recovered.

8. Later on, accused Aziz, joined the investigation on 11.05.2006. Accused Aash Mohd. and Niyamat also joined investigation on 28.03.2006 and accused Hakmuddin joined the investigation for the commission of offence under Sections 148, 149, 302, 120-B IPC on 28.03.2006. Accused Pehlu was arrested on 20.05.2008 and thereafter, challan was presented against the accused, namely, Hakmuddin, Aash Mohd., Niyamat, Dr. Aziz and Pehlu

9. All fourteen accused were charge-sheeted for commission of offence punishable under Sections 120-B, 148, 302, 149, 216 of IPC to which they pleaded not guilty and claimed trial.

10. In the present case, during the trial accused Nandi @ Rahim Bux, Yad Ram and Hidayat had died and the proceedings against them were ordered to be dropped. Accused Mota, Mujad and Ahmad were declared proclaimed offenders. Thus, 11 accused faced the trial.

11. In order to prove its case, the prosecution had examined as many as 58 witnesses. On the other side, the statements of the respondents/accused under Section 313 Cr.P.C. were recorded in which they pleaded innocence and sought to lead evidence in their defence.

12. In defence two witnesses had been examined i.e. DW-1 Munsharif son of Usman and DW-2 Barjesh Kumania, Section Officer.

13. Learned trial Court, while taking into consideration the evidence on record, acquitted Sujjat @ Suja, Hakmuddin, Aash Mohd. Ajij, Niyamat and Pehlu.

14. The present application has only been preferred against Sujjat @ Suja s/o Nura @ Noor Mohd. Learned State counsel has argued that accused-respondent Sujjat @ Suja has been acquitted on the ground that the extra judicial confession of co-accused Jaffar, Hamida and Yad Ram could not be read against him being a confession of co-accused, which has very little evidentiary value. Besides this, the blood samples of respondent-Sujjat were taken for DNA profiling, but the same did not match. It has been further pointed out that PW-14, Khudus had specifically named and identified Sujjat @ Suja alongwith Yad Ram, Nandi, Liyakat and Hidayat, who were last seen together immediately before the occurrence. This evidence of last seen was proved specifically against Liyakat and Sujjat and, thus, the acquittal of the Sujjat is liable to be set aside in view of the evidence regarding last seen.

15. Above all, it is argued by the learned State counsel that it has come in the statement of the Deputy Superintendent, Kulbir Singh (PW-18) that respondent Sujjat was asked to give blood sample, but he verbally refused from doing so and also in writing regarding which the report Ex.

PW16/B along with statement of Sujjat Ex.PW16/C was placed before the trial Court. This factor shows that the refusal of Sujjat in giving blood sample indicated towards his involvement in the murder of Abdul Rashid Numberdar and Maksoodan. Still further, learned State counsel has submitted that respondent-Sujjat has been named in the extra judicial confession suffered by the co-accused Jaffar, Hamida and Yad Ram which cannot be brushed aside as the chain of events against the respondent was complete and fully proved by the prosecution.

16. We have heard learned State counsel, but do not find any merit in the present application seeking leave to appeal.

17. In the present case substantial evidence is incomplete and inexplicable and based on hypothesis on the basis of which the guilt of the respondent Sujjat @ Suja cannot be carved out.

18. Moreover, in the case of acquittal, the Court can only interfere when there are compelling and substantial reasons for doing so. It is only at the stage when the judgment of acquittal is clearly unreasonable or the trial Court has ignored the evidence or misread the material evidence, the appellate Court is competent to reverse the judgment of the trial court. Judgment of acquittal has an obvious consequence of granting freedom to the accused. A person is presumed to be innocent till proven guilty and once held to be not guilty in a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for a valid and proper reason. That is why, the appeal against acquittal has always been differentiated from a normal appeal against the conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate Court would be within its jurisdiction to interfere with the judgment of

acquittal, but otherwise such interference is not called for.

19. From the evidence produced on record by the prosecution before the trial court it stands established that the deceased and the accused party were at daggers drawn and they had an enmity with each other. Enmity is a double edged weapon and it is always possible that the accused person himself might have committed the offence due to said enmity. But the fact remains that respondent-Sujjat @ Suja was spotted by Khudus (PW-14), who had last seen him outside the house of deceased-Abdul Rasid Numberdar. However, respondent Sujjat-Suja had also been named in the extra judicial confession of accused Jaffar, Hamida and Yad Ram. The said extra judicial confession cannot be read against him being confession of the co-accused having very little evidentiary value. Other than this, the blood samples of respondent-Sujjat @ Suja were taken for DNA profiling but the same did not match.

20. As per the law laid down by the Division Bench of this Court in the case of *State of Punjab Versus Paramjit Singh etc.*, 2007(9) R.C.R. (Criminal) 241, in the absence of any direct evidence or specific circumstances, it cannot be held that acquittal of the respondents is arbitrary. Similar view is taken by the Division Bench of this Court in the case of *State of Haryana Versus Satbir etc.*, 2013(7) R.C.R. (Criminal) 1490.

21. Trial Court did not find any other evidence against respondent Sujjat @ Suja, which could point towards his guilt. Thus, respondent-Sujjat @ Suja was given the benefit of doubt.

22. In view of the above, it is held that the trial Court was justified in acquitting respondent-Sujjat @ Suja. The judgment of acquittal is neither

unreasonable nor perverse and hence calls for no interference.

23. Consequently, the application seeking leave to appeal is dismissed. Leave to appeal is declined.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

18.07.2019
pooja saini

<i>Whether speaking/reasoned?</i>	<i>Yes/No</i>
<i>Whether reportable?</i>	<i>Yes/No</i>