

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

**CRM-A No. 1334-MA of 2014 (O&M)
Date of Decision: 23.10.2019**

State of Haryana

..... Appellant

Versus

Himmat @ Manoj and another

..... Respondents

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

Present: Mr. Praveen Bhadu, Assistant Advocate General, Haryana
for the applicant-appellant/State.

Mr. K.S. Sodhi, Advocate
for respondent No. 1-Himmat @ Manoj.

Mr. Sandeep Kumar Yadav, Advocate
for respondent No. 2-Rajbir Singh.

JASWANT SINGH, J.

CRM No. 25889 of 2014

Present application has been filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of **88 days** in filing the appeal.

Upon notice, no reply has been filed.

For the reasons stated in the application, which is supported by an affidavit, the delay of **88 days** in filing the application for grant of leave to appeal is condoned.

Application stands disposed of accordingly.

CRM-A No. 1334-MA of 2014

1. Present application has been filed under section 378 (3) of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of Leave to Appeal against the judgment of acquittal dated 07.02.2014 passed by

learned Sessions Judge, Narnaul, whereby **respondents No. 1 and 2/accused** have been acquitted of the charges under **Sections 302/34 Indian Penal Code (IPC) and Section 25 of the Arms Act.**

2. Factual matrix of the case of the prosecution are that on 26.01.2011, a telephonic message was received from *MHC, Police Station Kanina*, regarding admission of injured **Navdeep (now deceased)** son of Hukam Chand in the hospital due to injuries received by him in a quarrel. On receiving this information, Head Constable (Jaswant Singh) reached *Civil Health Centre (CHC), Kanina* and thereby sought the information of the medical experts regarding fitness of the injured to record his statement. However, medical expert on duty made aware to the Head Constable (Jaswant Singh) that injured (*Navdeep*) was not admitted in the hospital. On receiving this information, Head Constable went to the village of the injured, but injured was not available in the village. On 27.01.2011, a message was received that injured (*Navdeep*) had expired in *P.G.I.M.S., Rohtak*, due to the injuries received by him in a quarrel. Having received this information, ASI Kailash Chand accompanied other police officials reached *P.G.I.M.S., Rohtak*, and in front of the entrance gate of the hospital, Hukam Chand son of Shubh Ram and other residents of the village had met ASI Kailash Chand, and on that day, Hukam Chand was not disposed of. Therefore, his statement was recorded by ASI Kailash Chand on 28.01.2011 to the effect that his son (*Navdeep*) aged about 16 years was student of 9th standard in Village *Bewal* and on 26.01.2011, he and his son took tea and thereafter went to the agriculture fields to answer the call of the nature. He was following his son at a distance of 10/15 paces away and at about 7.30 A.M., his son reached near the plot belonging to Hansram. In the

meanwhile, **accused Rajbir Singh** son of Sh. Matu Ram, who was concealing himself behind the “*Kikar tree*” caught hold his son and **accused Himmat @ Manoj** son of Randhir, gave a knife blow in the abdomen of his son (Navdeep). After causing this injury, they both of them fled away from the spot. The blood started bleeding profusely. He raised an alarm which attracted to 5/7 boys at the spot. He took his son to Primary Health Centre and the doctor on duty gave first aid to his son (*Navdeep*) and his son was discharged from the hospital. He took his son to the house, but the condition of his son became serious and thereafter, he took his son to *Civil Hospital, Narnaul*, from where the doctor advised him to take his son to *P.G.I.M.S. Rohtak* and the doctor conducted the operation upon his son, but his son died in hospital on 27.01.2011 on account of the injuries caused by the accused.

On the basis of this statement, an F.I.R. was registered. Investigation was commenced. The body of deceased was sent for post-mortem examination. Spot was inspected. The statement of the witnesses were recorded by the Investigating Officer. Site Plan was got prepared.

After completion of necessary formalities of investigation, the report under Section 173 Cr.P.C. was presented before the Court of Area Magistrate. Copies of report as envisaged under Section 208 Cr.P.C. were supplied to respondent No.1/accused free of cost. Since case under Section 302 IPC was exclusively triable by Court of Sessions, hence, the case was committed to the Court of learned Sessions.

Finding a *prime facie* case, both accused/respondents were charge-sheeted for the commission of offences under **Section 302/34 IPC along with Section 25 of the Arms Act.**

To prove its case against the respondents-accused, the prosecution has examined the following **Thirteen (13) witnesses**, which are as under:-

*“ **Munshi Ram** No.147, P.C.R. No.4 as PW-1, **Mahesh Kumar**, ASI No.265, Draftsman as PW-2, **HC Jaswant Singh** No.144 as PW-3, **Constable Bhupender Kumar** No.460 as PW-4, **HC Mahabir Singh** No.686 as PW-5, **Ram Karan**, ASI as PW-6, **Dr. Dimple**, **Medical Officer**, PGIMS, Rohtak as PW-7, **Dr. Abhimanyu**, **Medical Officer**, CHC Sehlang as PW-8, **Raj Singh**, ASI, No.652 as PW-9, **Dr. Mukesh**, **Assistant Professor**, **Deptt. Of General Surgery**, **Khanpur Medical College** as PW-10, **Hukam Chand-Complainant** as PW-11, **Kailash Chand**, ASI No.9-SR as PW-12 and **Suresh Chand**, SI/SHO as PW-13. ”*

On completion of prosecution evidence, the statements of the accused under Section 313 Cr.P.C. were recorded by the Sessions Court in which all the incriminating circumstances appearing by way of evidence of prosecution against the respondents/accused were put to them and they pleaded their innocence and false implication. The accused-respondents also led defence evidence. They examined **Kuldeep** as DW1 and **Amar Chand** as DW2.

On the basis of weak evidence produced by the prosecution against the respondents, they have been acquitted of the charges for the commission of offences under **Section 302/34 IPC along with Section 25 of the Arms Act.**

3. We have heard learned counsel for the parties and have also gone through the paper-book very carefully with his assistance.

Coming to the statement of the star witness of the prosecution Hukam Chand, who is the father of the deceased (*Navdeep*) and his statement has been rightly belied by the Trial Court. The statement of this witness has been disbelieved by the Trial Court after giving due weightage to the statement of PW-8 (**Dr. Abhimanyu**), who was posted as Medical Officer in *CHC Kanina* and medically examined the deceased (*Navdeep*) first time, when he was brought by his father before him. The medical expert has testified that one sutured wound 2 cm. size with swelling was present at left illiac region. In this manner, it has rightly been observed by the Trial Court by giving the due weightage to the statement of DW-1 (*Kuldeep*) that the deceased (*Navdeep*) was already under treatment at village *Bhojawas*. Medical expert **Dr. Abhimanyu** has also falsified the place of incident as claimed by the complainant PW-11 by testifying that the patient and his attendant told him that he (*Navdeep*) was assaulted near the bus-stand of the village *Jhigawan, District Mohindergarh*.

Further the trial Court has rightly disbelieved the case of the prosecution on account of recording of F.I.R. with delay. The delay in recording the F.I.R. has not been explained by the prosecution. It is well established principle of law that when there is delay in registration of F.I.R., the case of the prosecution becomes doubtful and there are every chance of introduction of false and concocted story.

Non-production of clothes of deceased alleged to be smeared with blood is also fatal to the case of the prosecution.

We are of the view that when statement of material witness of prosecution (PW-11 - **Hukam Chand- Complainant**) is not worth of credence, then no weightage can be given to the statement of other witnesses of prosecution. The case of prosecution has rightly been

disbelieved by the Trial Court.

4. 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.

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

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

(JASWANT SINGH)
JUDGE

October 23, 2019
'dk kamra'

(LALIT BATRA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>