

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

**CRM-A-422-MA of 2018(O&M)
Date of decision:18.01.2019**

Geeta Devi

.... Appellant

Versus

State of Haryana and others

....Respondents

**CORAM : HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR.JUSTICE ARUN KUMAR TYAGI**

Present : Mr. Amandeep Rana, Advocate
for the applicant/appellant.

ARUN KUMAR TYAGI, J

CRM-6572 of 2018

Present application has been filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of **397 days** in filing the appeal.

For the reasons stated in the application which is supported by an affidavit, the delay of **397 days** in filing the application for grant of leave to appeal is condoned.

Application stands disposed of accordingly.

CRM-A No.422-MA of 2018

1. The appellant has filed the present application under Section 378(4) of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of leave to file appeal against judgment dated 26.09.2016 passed by the learned Additional Sessions Judge, Faridabad in Sessions Case No.37 of 2014 titled as 'State Vs. Arvind and others' whereby respondent No.2-

Arvind and respondent No.3-Suresh have been acquitted of the charges framed against them.

2. Briefly stated the facts giving rise to filing of the present application are that on 22.02.2013, Devender Kumar Inspector/SHO Police Station Sector-31, Faridabad received a VT message from Police Control Room, Faridabad regarding taking place of firing incident at Budia Nala NH-2, Faridabad on which he reached the spot and thereby left Head Constable Joginder there and he went to Asian Hospital, Faridabad where complainant-Geeta Devi submitted written complaint to him. In the complaint, Geeta Devi alleged that her son Bobby was working with Radiant Cash Company, Faridabad and used to collect cash from Kosi Kalan and Hodal and deposit the same in the bank. On 22.02.2013 at 03.00 p.m. she received intimation that two boys riding on motorcycle had snatched the cash from Bobby and shot him. Since her son had not been provided any conveyance or other aid by the company for collecting the cash, she suspected the involvement of the company officials in the murder of her son. In view of the complaint FIR No.310 dated 22.02.2013 was registered under Sections 392, 302, 412 and 120-B of the Indian Penal Code, 1860 (for short 'the I.P.C.') and Section 25 of the Arms Act, 1959 (for short 'Arms Act') in Police Station, Sector-31, Faridabad. The police investigated the case and during investigation arrested accused-Arvind on 29.12.2013. Accused-Arvind made disclosure statement that he hatched a conspiracy with co-accused Sanjeev and Suresh to rob Bobby and passed information about his location to them. Co-accused Sanjeev and Suresh robbed Bobby and committed his murder. Amount of Rs.2,30,000/- fell to his shareout of the robbed amount and he used sim card of mobile phone No.9015953838, given to him by his friend Lakhan, in the commission of offences. Accused

Arvind got the sim card recovered as per his disclosure statement. Thereafter Accused-Arvind made disclosure statement and got amount of Rs.1,08,000/- and one receipt of Muthoot Finance Company recovered from his house as per his disclosure statement. Accused-Sanjeev and Suresh were arrested in case arising out of FIR No.310 of 2013 registered under Section 307 of the I.P.C. in Police Station Old Faridabad. In that case accused-Sanjeev made disclosure statement and got effected the recovery of country made pistol and 10 cartridges from the house of his brother-in-law at Ashok Nagar, Delhi. Accused-Sanjeev and Suresh were arrested in the present case on 02.01.2014. Mool Chand handed over to the police motorcycle bearing registration No.DL-3 SCB-3760, which was sold by accused Sanjeev to him. On interrogation Accused-Suresh made disclosure statement and got a sum of Rs.1,16,000/- besides one inverter and battery of Sukam Company, one policy of Max Life Insurance and two receipts of Muthoot Finance Company recovered as per his disclosure statement. Accused-Sanjeev made disclosure statement and got recovered one motorcycle make Pulsar bearing registration No.HR-51-AW-6446, allegedly purchased out of the looted amount, and amount of Rs.20,000/- from the almirah in his house as per his disclosure statement. On further interrogation accused Suresh made disclosure statement and got 7 cartridges recovered as per his disclosure statement. Fired cartridge recovered from the scene of crime was sent to FSL along-with the live cartridges recovered from accused-Suresh. Fired cartridge was got compared with the country made pistol recovered from accused-Sanjeev in case FIR No.310 of 2013 under Section 307 I.P.C., Police Station Old Faridabad and as per FSL Report said cartridge was found to have been fired from the same pistol. On finding evidence to be sufficient against accused Arvind, Sanjeev and Suresh, SHO Police Station,

Sector-31, Faridabad filed report under Section 173 (2) of the Cr.P.C. against them.

3. After supplying copies of report and documents sent therewith to the accused the case was committed to the Court of Session. On finding prima facie case charges under sections 120-B and 411 of the I.P.C. were framed against accused-Arvind, charges under Sections 120-B, 411, 392 and 302 of the I.P.C. were framed against accused Sanjeev and charges under Sections 120-B, 411, 392 and 302 of the I.P.C. and Section 25 (1B) (a) of the Arms Act were framed against accused-Suresh to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined PW-1 Geeta Devi; PW-2 Bhu Datt Sharma; PW-3 Vijay Kumar; PW-4 Constable Satbir Singh; PW-5 Head Constable Joginder Singh; PW-6 Dr. Ahibhushan; PW-7 S.I. Gurcharan Singh; PW-8 Lakahn; PW-9 Sarwan Kumar, draftsman; PW-10 R.K. Singh, Nodal Officer, Bharti Airtel Ltd.; PW-11 Ajeet Kumar, Nodal officer, Reliance Communication Ltd.; PW-12 Dr. Satish Chaku; PW-13 Constable Kuldeep Singh; PW-14 ESI Fazzar Khan; PW-15 Dinesh Singh, Nodal Officer, Vodafone Mobile Services Ltd.; PW-16 Amit Kumar, Inspector/SHO; PW-17 Deepak Kumar, Naib Reader to Joint Commissioner of Police; PW-18 Constable Jai Parkash; PW-19 Head Constable Sanjay Kumar; PW-20 S.I. Santokh Singh; PW-21 Rajeev Ranjan, Nodal Officer, Tata Tele Services Ltd.; PW-22 Head Constable Narender Kumar; PW-23 S.I. Layak Ram; PW-24 Mahesh Kumar, Branch Manager, Sri Ram Transport Finance Company, Hodal; PW-25 S.I. Bhim Singh; PW-26 Inspector Sanjeev Kumar; PW-27 Mool Chand and PW-28 A.C.P. Devender Kumar and produced documents and material objects exhibited on record.

5. On conclusion of prosecution evidence, statements of accused under Section 313 Cr.P.C. were recorded wherein they denied commission of alleged offences and pleaded false implication. However, the accused did not produce any defence evidence.

6. On perusal of the material on record and consideration of the submissions made by the learned Public Prosecutor for the State and the learned defence Counsel, the learned Additional Sessions Judge, Faridabad vide impugned judgment held that the prosecution has successfully proved its case against accused-Sanjeev and it is established that accused-Sanjeev committed murder of Bobby by firing shot at him on 22.02.2013 at 03.30 p.m. and snatched the bag containing cash. Accordingly, accused-Sanjeev was held guilty and convicted and sentenced under Sections 392 and 302 for the I.P.C. However, the learned Additional Sessions Judge, Faridabad held that the prosecution has miserably failed to prove its case against remaining two accused namely Arvind and Suresh and accordingly acquitted them of the charges framed against them.

7. Feeling aggrieved the complainant-Geeta Devi, mother of deceased-Bobby has filed the present application for leave to appeal against the impugned judgment of acquittal whereby accused Arvind and Suresh have been acquitted of the charges framed against them.

8. We have heard learned Counsel for the parties and gone through the record.

9. Mr. Amandeep Rana, learned Counsel for the appellants, while referring to the prosecution evidence against accused-Arvind and Suresh in detail, argued that cogent and reliable evidence was produced by the prosecution to prove complicity of accused-Arvind and Suresh in commission of the subject offences but the learned Additional Sessions

Judge, Faridabad did not properly appreciate the prosecution evidence and acted against the settled principles of law and committed grave error by disbelieving the same and acquitting accused-Arvind and Suresh of the charges framed against them. The impugned judgment has resulted in grave miscarriage of justice. Therefore, leave to appeal against the impugned judgment may be granted.

10. In the present case, accused Arvind is alleged to be co-employee of the deceased-Bobby working under the same employer M/s Radiant Cash Company Management Services and to have hatched conspiracy with co-accused Sanjeev and Suresh to rob deceased Bobby of the cash carried by him. Accused-Arvind is alleged to have used mobile phone sim No.9015953838, allegedly given to him by his friend Lakhan, for making call to deceased-Bobby on his mobile phone No.9045807418 for knowing about his location and to have passed on the information about his location to his co-accused Sanjiv on mobile phone No.9211214656 and thereupon, accused-Sanjeev and Suresh who are alleged to have robbed cash from Bobby and to have committed his murder.

11. In order to ascertain as to whether application for leave to appeal makes out arguable case for grant of the same, the nature and effect of evidence produced by the prosecution qua accused-Arvind and Suresh may be considered. PW-20 SI Santokh Singh, Risk Manager, M/s Radiant Cash Management Service Private Limited, has proved by producing the employment record Ex.PW20/A and Ex.PW20/B that deceased-Bobby and accused-Arvind were employed with the said company. PW-1 Geeta Devi has stated before the court that on 22.02.2013 in the morning accused called Bobby on phone and that either the person who gave money to her son Bobby or accused-Arvind knew about the cash being carried by her son

Bobby was involved in the crime. **PW-10 R. K. Singh**, Nodal Officer, Bharti Airtel Ltd. brought the record in respect of mobile phone number 8826420777 of accused-Arvind including customer application form Ex.PK and call details for the period 05.02.2013 to 05.02.2014 Ex.PL. **PW-11 Ajeet Kumar**, Nodal Officer, Reliance Communication Ltd. produced record pertaining to mobile No.9015953838 in the name of Amit Mandal including customer application form Ex.PO and call details for the period 15.02.2013 to 24.10.2013 Ex.PQ. PW-15 Dinesh Singh, Nodal Officer, Vodafone Mobile Services Ltd. produced record pertaining to mobile phone No.9582182271 in the name of Accused-Sanjeev and mobile phone No.8586098730 in the name of Satpal including customer application forms Ex.PT and Ex.PX and call details for the period from 01.01.2013 to 28.12.2013 Ex.PV and Ex.PZ. PW-21 Rajeev Raman, Nodal Officer, Tata Tele Services Ltd. produced record pertaining to mobile phone No.9045807418 in the name of deceased-Bobby, mobile phone No.9211214656 in the name of Shailender Singh, mobile phone No.9266690651 in the name of Sanjay Pandey and mobile phone No.9266117977 in the name of Ravinder Singh including customer application forms Ex.PW21/A, Ex.PW21/D, Ex.PW21/G and Ex.PW21/J and call details for the period from 05.02.2013 to 01.04.2013 Ex.PW21/C, Ex.PW21/F, Ex.PW21/I and Ex.PW21/L. However, it may be observed here that mobile phone No.8826420777 proved to have been issued in the name of accused-Arvind was activated after the occurrence which took place on 22.02.2013 and therefore, the same could not be used by accused-Arvind at the time of the occurrence. Accused-Arvind is not proved to have made any call on mobile phone of deceased-Bobby from any mobile phone. As per call details of mobile No.9045807418 Ex.PW21/C belonging to deceased-

Bobby, some calls were received by deceased-Bobby on that day from some landline numbers but the prosecution has not produced any evidence to prove in whose name and premises the landline phones were installed and who made the calls to deceased-Bobby. Testimony of PW-1 Geeta Devi as to making of such call by accused-Arvind to deceased-Bobby which is not supported by call details record could not be relied upon. Therefore, the prosecution has failed to prove that accused-Arvind made any call to deceased-Bobby to ascertain his location. As per the prosecution version some calls were made on the date of occurrence from mobile phone No.9015953838 (issued in the name of Amit Mandal alleged to have been given by Lakhan to accused-Arvind and to have been used by accused-Arvind at the time of occurrence) to mobile No.9211214656 (issued in the name of Shailender alleged to have been used by accused-Sanjeev at the time of commission of offences). Accused-Arvind made disclosure statement dated 29.12.2013 Ex.PW22/A and got sim card of mobile phone No.9015953838 alleged to have been given to him by his friend Lakhan recovered. However, the recovery of sim card of mobile phone No.9015953838 from possession of accused-Arvind does not by itself prove its use by accused-Arvind at the time of occurrence. The prosecution has examined Lakhan, who is alleged to have given mobile phone No.9015953838 to accused-Arvind, as PW-8 but **PW-8 Lakhan** turned hostile and denied having given the abovesaid sim to accused-Arvind. As per customer application forms Ex.PO and Ex.PW21/D produced by the prosecution mobile phone sim card No.9015953838 had been issued in the name of Amit Mandal while mobile phone sim card No.9211214656 had been issued in the name of Shailender. The prosecution has not examined Amit Mandal and Shailender and has, therefore, failed to prove that these

mobile phone sim cards were being used by accused-Arvind and Sanjeev respectively. Consequently, the call details of these sim cards do not connect accused-Arvind and prove his complicity in the commission of the subject offences. In these facts and circumstances, the prosecution has been rightly held by the learned Additional Sessions Judge, Faridabad, to have failed to prove that accused-Arvind made any telephone call to deceased-Bobby to ascertain his location and passed on the information regarding his location to co-accused Sanjeev to facilitate commission of the subject offences.

12. Further the case of the prosecution is that accused-Arvind was arrested on 29.12.2013 and he made disclosure statement dated 29.12.2013 Ex.PW22/A that amount of Rs.2,30,000/- fell to his share out of the robbed amount. Thereafter, accused-Arvind made disclosure statement dated 01.01.2014 Ex.PW22/B and got amount of Rs.1,08,000/- and one receipt of Muthoot Finance Company recovered from his house vide memo Ex.PW22/C as per his disclosure statement dated 01.01.2014. Accused-Suresh was arrested in this case on 02.01.2014 and he made disclosure statement dated 02.01.2014 Ex.PW22/E. Thereafter, accused-Suresh made disclosure statement dated 04.01.2014 Ex.PW22/H and got sum of Rs.1,16,000/- besides one inverter and battery of Sukam Company, one policy of Max Life Insurance and two receipts of Muthoot Finance Company recovered vide memo Ex.PW22/I as per his disclosure statement dated 04.01.2014. Thereafter, accused Suresh made disclosure statement dated 05.01.2014 Ex.PW22/K and on 06.01.2014 got seven cartridges recovered from his house vide memo Ex.PS as per his disclosure statement dated 05.01.2014. The prosecution has examined PW-13 Kuldeep Singh, PW-22 Head Constable Narinder Kumar and PW-26 Inspector Sanjiv Kumar to prove abovesaid disclosure statements and recoveries.

13. However, it may be observed that the currency notes recovered from possession of accused-Arvind and Suresh did not bear any distinctive mark of identification to prove that the currency notes recovered from their possession were the same which had been robbed from possession of deceased-Bobby. The prosecution has not produced any evidence to prove that the currency notes robbed from possession of deceased Bobby were having any slip of Moothot Finance Company and in the absence of such evidence recovery of currency notes with slip of Moothot Finance Company also does not support the case of the prosecution. Since, recovery of currency notes amounting Rs.1,08,000/- from possession of accused-Arvind and recovery of currency notes amounting Rs.1,16,000/- from possession of accused-Suresh was not of unusually heavy amounts and was made after long gap of time of 11 months from their residential houses where other members of their family were also residing, mere recovery of currency notes from their possession does not incriminate and connect them for commission of the subject offences. The prosecution has also failed to produce any evidence to prove that accused-Suresh purchased inverter with battery of Sukam Company and one policy of Max Life Insurance with the amount robbed from possession of deceased-Bobby. Consequently, the recovery of currency notes and receipt of Muthoot Finance Company from possession of accused-Arvind and the recovery of currency notes, one inverter and battery of Sukam Company, one policy of Max Life Insurance and two receipts of Muthoot Finance Company from possession of accused-Suresh falls short of proving beyond reasonable doubt their complicity in the commission of subject offences.

14. So far as the prosecution version as to making of disclosure statement dated 05.01.2014 and recovery of seven cartridges recovered from

house of accused-Suresh as per his disclosure statement on 06.01.2014 is concerned, in view of the fact that no country made pistol was recovered from possession of accused-Suresh, there was no mention of concealment of seven cartridges in earlier disclosure statement of accused-Suresh and failure to effect any such recovery on search of his house for making earlier recovery from his possession and not joining of any independent witness at the time of recovery of cartridges the case of the prosecution in this regard is highly improbable and wholly unreliable and has been rightly disbelieved by the lower Court.

15. It follows from the above discussion that the prosecution has failed to prove beyond reasonable doubt complicity of accused-Arvind and Suresh in the commission of subject offences and the abovesaid accused have been rightly acquitted by Court below.

16. Consequently, the application fails to make out any arguable case for grant of leave to appeal. Therefore, the application is dismissed being devoid of any merit and leave to appeal is declined.

(JASWANT SINGH)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

18.01.2019

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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No