

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

**CRM-A No. 2253-MA of 2017
Date of Decision: 07.05.2019**

Surajmal

..... Appellant

Versus

State of Haryana and another

..... Respondents

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

Present: Mr. Vikram Kumar, Advocate for
Mr. D.P.S. Bajwa, Advocate
for the applicant-appellant/complainant.

Mr. Rajeev Doon, Assistant Advocate General, Haryana
for respondent No. 1/State.

Respondent No. 2 (Narender) in person.

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 dated 03.05.2017 passed by learned Additional Sessions Judge, Hisar, whereby the trial Court has acquitted **respondent No. 2-Narender** son of Surajmal son of Ram Sawrup, of the charge under Section 302 IPC.

2. Factual matrix of the case of the prosecution are that **complainant (Surajmal)** on 02.06.2016 at about 6.00 A.M. went to the house of one **Nanha** and thereby he noticed that his son Deepak was lying on the cot and there was bleeding in the body of Deepak. He also noticed marks of sharp edged weapon on the left eye-brow and head of Deepak and he found his son dead. In this regard, he lodged a complaint to the local

police and the local police, on the basis of statement of complainant, registered an F.I.R. for commission of offence under Section 302 IPC. The investigation was commenced by the local police. On the basis of the statement of the witnesses recorded under Section 161 Cr.P.C., accused/respondent No. 2 (Narender) was arrested on 09.06.2016. The weapon of the crime was recovered at the instance of accused.

After completion of necessary investigation, the report under Section 173 Cr.P.C. was presented before the Illaqa Magistrate by the prosecution and copies of challan were supplied to the respondent/accused free of cost and thereafter the case was committed for trial to the Court of Sessions. The accused was charge-sheeted by the trial Court for commission of offence under Section 302 IPC.

To prove its case against the respondent, the prosecution has examined as many as thirteen (13) witnesses.

On completion of prosecution evidence, the statement of accused/respondent 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 him and he pleaded his innocence and false implication.

On the basis of weak evidence led by the prosecution, the trial Court has acquitted the accused/respondent of the charge of murder. 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. Learned counsel for the applicant has argued that the approach of the trial Court, acquitting the accused/respondent, is totally wrong and

erroneous. The trial Court has not considered the facts that as per the observation of the Medical Expert (Dr. Raseed), who conducted the post-mortem examination on the body of deceased-Deepak, the real cause of death of Deepak was due to sustaining of multiple injuries especially on head and that injury was sufficient to cause death in the ordinary course of nature. The trial Court has not appreciated the fact that the case of the prosecution rests on the basis of extra judicial confession of the accused and as per the confession statement of the accused Ex.P-7, accused/respondent has fairly admitted that he committed the murder of Deepak. But this aspect has totally been ignored by the trial Court.

4. We have heard counsel for the parties at length and have also gone through the impugned judgment of the trial Court meticulously.

Admittedly, it is a blind murder case. Right from the very beginning, it is the case of the prosecution that none of the prosecution witnesses has ever happened to see the attack on the body of deceased (Deepak) at the hands of respondent/accused (Narender). The present case is admittedly based on extra judicial confession of the accused and no direct evidence is there as death of Deepak was not witnessed by any of the prosecution witnesses. PW/complainant (Surajmal) has also admitted that he found his son-Deepak lying on the cot and the blood was profusely oozing out from his body. The prosecution has built up its case against the respondent/accused on the basis of his extra judicial confession.

We are of the view that extra-judicial confession is a weak piece of evidence which needs corroboration. None of the prosecution witnesses has come forward with a stand that respondent/accused was nursing a grudge against the accused/respondent and for this reason he committed

the murder of deceased-Deepak. None of the prosecution witness has stated that the accused/respondent ever extended threats to the life of deceased-Deepak prior to the murder. No motive to commit murder on the part of respondent/accused has been established by the prosecution. In the absence of clincher evidence, the trial Court has rightly observed that the evidence in the shape of extra judicial confession has neither been corroborated nor is supported by prosecution witnesses. It may be observed that whosoever was the culprit, he or they had taken all steps to conceal the crime. Deceased had been murdered but without anybody having seen it.

5. 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.

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, had rightly observed in the impugned judgment and held that the prosecution had failed to prove its case against the respondent beyond any reasonable doubt. Thus, no case for any interference in the impugned judgment is made out. 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

May 07, 2019
'dk kamra'

(ARUN KUMAR TYAGI)
JUDGE

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