

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-661-MA of 2018 (O&M)
Date of Decision: 18.7.2019

State of Punjab

.....Applicant

Vs.

Jagroop Singh and another

.....Respondents

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

Present: - Mr. H.S.Sullar, DAG, Punjab.

HARNARESH SINGH GILL, J.

CRM-10274-2018

This is an application under Section 5 of Limitation Act, 1963 seeking condonation of delay of 109 days in filing the application under Section 378 (3) Cr.P.C., seeking leave to appeal.

For the reasons recorded in the application, the same is allowed. Delay of 109 days in filing the application under Section 378 (3) Cr.P.C., is condoned.

CRM-A-661-MA of 2018

1. This application is filed by the State under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment, dated 8.8.2017 passed by the learned Additional Sessions Judge, Patiala, vide which the respondents were acquitted of the charge under Sections 302 read with Section 34 of the Indian Penal Code, 1860 ('IPC' for short) in FIR No. 304

dated 15.9.2016, registered at Police Station Tripuri.

2. As per the prosecution case, Head Constable Kirpal Singh got recorded his statement to Sub Inspector Shaminder Singh that on 15.9.2016, he was on duty from 8.00 P.M. to 8.00 A.M. along with SC Harbans Singh. At 3.30 A.M., they came to know that one person had fallen near De-addiction Centre. After reaching the spot, they had seen that one cycle along with one bag was lying on the road and one dead body of old person was lying there with his face covered with the cloth, with injuries on his head and neck and his legs and arms had been tied with a turban. Later they came to know that the name of the deceased was Nirmal Singh and accordingly, the FIR in question was registered.

3. During investigation, it was found that the blood drops trail was going towards one house/shop which was under construction and somebody had tried to clean the blood. Bathroom and kitchen of the said house/shop had also been also washed. Blood stained earth and bricks were taken into possession. One blood stained wood recovered from the house of respondent No. 2- Paramjit Kaur @ Pammi was also taken into possession. During investigation, statements of Parminder Singh (son-in-law of deceased Nirmal Singh) and one Sarabjit Kaur were recorded under Section 175 Cr.P.C. It was found that deceased Nirmal Singh used to visit the house of Paramjit Kaur and they had some intimacy. Later, Paramjit Kaur had developed relations with one Jagroop Singh and dispute arose between Nirmal Singh and Jagroop Singh. Respondents-accused Paramjit Kaur and Jagroop Singh in connivance with each other had committed the murder of Nirmal Singh and thrown the dead body outside the house. Accused-respondent No. 2-Paramjit Kaur had suffered a disclosure statement that it was Jagroop Singh who had murdered Nirmal Singh and later he had given

the purse, cheque book and mobile of Nirmal Singh to her and she had concealed the same in the bushes near her house. Similarly, accused-respondent No. 1 Jagroop Singh had suffered a confessional statement, upon which the clothes along with knife were recovered. Report from the Forensic Science Laboratory had been obtained which made it clear that the accused-respondents had committed the murder of Nirmal Singh.

4. After completion of investigation and necessary formalities, challan was presented against accused-respondents.

5. Charge was framed against the accused-respondents under Sections 302 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution had examined as many as 18 witnesses.

7. In the statement recorded under Section 313 Cr.P.C., the accused had denied the prosecution case and pleaded false implication. Accused-respondent No. 1 Jagroop Singh stated that he had never got recovered any article to the police nor he had suffered any disclosure statement at any point of time and he had no relations with Paramjit Kaur. He had further stated that he did not know deceased Nirmal Singh nor he had ever met him. Similarly, accused-Paramjit Kaur stated that she had no relations with Jagroop Singh nor she had ever met him. She further stated that she never resided in the rented house, as alleged by the prosecution. The respondents-accused, however, did not lead any evidence in their defence.

8. After taking into consideration the evidence on record, the trial Court came to the conclusion that the prosecution had failed to prove its

case beyond the shadow of reasonable doubt. Accordingly, the benefit of acquittal was given to the respondents. Hence, the present application seeking leave to appeal has been filed by the State.

9. It has been argued by the learned State counsel that prosecution has been successful in proving its case beyond the shadow of reasonable doubt. It is further argued that the trial Court has wrongly acquitted the respondents on the basis of conjectures and surmises as PW-1 Sukhwinder Singh son of deceased Nirmal Singh deposed that his father had developed illicit relations with respondent No. 2-Paramjit Kaur and that later, Paramjit Kaur had developed illicit relations with respondent No. 1-Jagroop Singh and they both had committed the murder of his father. However, the trial Court has ignored the said evidence. Learned State counsel has further argued that the articles recovered from the place of occurrence had been sent to Forensic Science Laboratory and as per the FSL report, human blood was found on those articles. It is further argued that Avtar Singh, while appearing as PW-7, deposed that the shop purchased by him in the name of his daughter Kusum Lata, had been rented out to Paramjit Kaur in the year 2012 and in this regard the rent deed had also been executed by the accused-respondent No. 2 and he had also identified the signatures of Kusum Lata on rent Note Ex. PW-7/A. It is prayed that the judgment passed by the trial Court may be set aside.

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

11. In the present case, Sukhwinder Singh son of Nirmal Singh had appeared as PW-1 and stated that he was posted as Constable in RPF at Saharanpur, U.P. On 1.9.2016, he had come on leave. His father Nirmal

Singh aged 70 years was an Ex-serviceman and that his father had developed illicit relations with respondent No. 2-Paramjit Kaur. The trial Court while acquitting the respondents, has found that it was a hearsay story projected by PW-1 as during his cross-examination and/or in his examination-in-chief, he never stated at any point of time that he had seen his father with respondent No. 2-Paramjit Kaur. In his cross-examination, the said witness stated that no quarrel had ever taken place between his father and Paramjit Kaur, in his presence. Since Sukhwinder Singh (PW-1) son of deceased Nirmal Singh could not prove on record his father's illicit relations with Paramjit Kaur, the evidence was rightly ignored by the trial Court.

12. Similarly, PW-2 Head Constable Gurjit Singh, during his cross-examination, stated that he did not know as to who had identified the dead body. This witness had failed to spell out the dimensions of the house of Paramjit Kaur. None of the prosecution witness could prove on record that deceased Nirmal Singh had developed illicit relations with respondent No. 2-Paramjit Kaur or deceased Nirmal Singh and the respondents knew each other. No call details were brought on record by the prosecution showing any conversation between deceased Nirmal Singh and respondent No. 2 Paramjit Kaur.

13. The prosecution has further erred by not obtaining the opinion of Dr. Charan Kamal (PW-4) who along with Dr. A.D. Aggarwal had conducted the post-mortem on the dead body of Nirmal Singh. The said witness deposed that as per the inquest report in column No. 12, there had been no mention of any injury on the upper arm of the dead body. Another witness i.e. PW-5 Parminder Singh, who is the son-in-law of deceased

Nirmal Singh, did not point out any finger towards the character of his father-in-law i.e. deceased Nirmal Singh. The prosecution had further failed to produce Kusum Lata as a witness nor her statement had been recorded to the effect as to whether she had rented out the shop in question to Paramjit Kaur in the year 2012.

14. From the above, it is clear that the prosecution has failed to prove that Nirmal Singh had developed illicit relations with respondent No. 2-Paramjit Kaur or the respondents in furtherance of their common intentions had committed the murder of Nirmal Singh by causing injuries on his neck with a knife.

15. Since there is no eye witness account to the occurrence, it is a case based on circumstantial evidence for which the finding of guilt must be cogently and firmly established.

16. The present case is a case of acquittal. Thus, paramount consideration of the Court should be to avoid miscarriage of justice. A miscarriage of justice which may arise from the acquittal of guilty is not less than the conviction of an innocent. Probable view taken by the trial Court which may not be disturbed in the appeal is such a view which is based upon legal and admissible evidence. Even if two views are reasonably possible on the state of evidence, one supporting the acquittal and the other indicating conviction, then in that event, the High Court would not be justified in interfering with the order of acquittal.

17. A Division Bench of this Court in case '***State of Haryana versus Statbir, 2013(7) R.C.R. (Criminal) 1490***', has held as under:-

“There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that

there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.”

18. Thus, after considering the above facts, we are of the considered opinion that the trial Court has rightly acquitted the respondents. Learned State counsel could not point out any material illegality or perversity in the impugned judgment of acquittal. Nothing has been shown as to the misreading and misinterpretation of the evidence by the learned trial Court, while passing the impugned judgment.

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

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

July 18, 2019
Gurpreet

Whether speaking /reasoned : Yes
Whether Reportable : Yes