

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-868 of 2019 (O&M)
Date of Decision: 09.7.2019

RameshApplicant

Vs.

State of Haryana and anotherRespondents

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

Present: - Ms. Divya Godara, Advocate
for the applicant.

HARNARESH SINGH GILL, J.

Applicant Ramesh son of Ramdhari has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment dated 30.7.2018 passed by the learned Additional Sessions Judge, Karnal vide which accused/respondent No. 2-Harvinder has been acquitted of the charge under Section 302 of the Indian Penal Code, 1860 ('IPC' for short) in FIR No. 357 dated 5.7.2016, registered at Police Station Gharaunda, Karnal.

Brief facts of the present case are that Shamsher Singh son of Ram Kishan, in his statement alleged that on 4.7.2016, at about 8.30/9.30, when he came to his house, he found his brother Ramesh and his wife Santosh weeping. Later, they disclosed that their son Amit was lying dead in panchayati banquet hall at village Malikpur. He along with others went there and saw that his nephew Amit was lying dead in a small room of the banquet hall and some unknown persons had committed his murder by

inflicting injuries on his head and face with brickbats. On the basis of said statement, formal FIR was registered. On 7.7.2016, accused-respondent No. 2 was arrested who suffered a disclosure statement on 8.7.2016 admitting his guilt and pursuant to that statement, he got recovered his blood stained clothes from his house.

After completion of investigation and necessary formalities, challan was presented against accused-respondent No. 2.

Charge was framed against the accused-respondent No. 2 under Section 302 IPC to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined as many as 13 witnesses by giving up witness Dinesh Kumar, Director, FSL, Madhuban.

In the present case, the prosecution has examined PW-3 Mahender Singh being an eye witness of the occurrence, who categorically deposed that on 4.7.2016, at about 6.00 P.M., when he was eating eggs from the rehri near the banquet hall, he had heard the cries coming out from the banquet hall. When he enquired about those cries from the rehri owner, then he disclosed that it was a routine course because after consuming liquor, one person namely Happy used to make such cries. He further deposed that thereafter he saw towards the banquet hall and noticed that Happy was giving brick blows to a boy lying on the ground and was pulling him inside, however, he could not identify the person who was lying on the ground and thereafter he went to his home and about one hour later, he came to know through his wife that the boy to whom Happy was giving beatings, had died and the deceased was Amit son of Ramesh belonging to his village. The police had recorded his statement on 5.7.2016 at about 1.30

A.M.

In his cross-examination, he deposed that near to the egg rehri, there were so many shops and the shopkeepers were present in their shops. He further deposed that the distance between the egg rehri and banquet hall was about half killa and he had seen the occurrence from a distance of 3/4 acres. The boundary wall of banquet hall was 3-4 feet. He further deposed that deceased Amit was wearing a jeans pant but he could not disclose about the clothes worn by accused-respondent No. 2. He neither made any hue and cry to help the deceased nor disclosed to anyone about the incident. This witness along with Rajbir and Sukhbir had gone to banquet hall at about 9.00 P.M. where his statement was recorded.

The other witness i.e. PW-1 Gurmish, who had set up the story of last seen theory, stated that on 4.7.2016, at about 8/8.30 P.M., when he returned to his home, he came to know about the murder of his nephew Amit and thereafter he along with his relatives and other villagers had gone to the site of occurrence where dead body of Amit was lying in a small room of the banquet hall and on the same day, at about 4.00 P.M., he had seen deceased Amit and accused Harvinder while roaming on the road in front of banquet hall but in his cross-examination, he stated that he used to go for his labour work at 7.00-8.00 A.M. daily and return home at 6.00-7.00 P.M. He deposed that he did not remember as to what type of clothes were worn by the deceased and accused-respondent No. 2 at the time when he had seen them roaming together in front of the banquet hall at 4.00 P.M. on the same day.

The trial Court while taking into consideration the testimonies of the witnesses, especially PW-3, held that PW-3 could not be considered

to be as an eye witness because he claimed that he had seen the accused-respondent No. 2 while giving brickbats to the boy lying on the ground, but simultaneously he also deposed that the boundary wall of the banquet hall was about 3-4 feet high and he had seen the occurrence from a distance of 3/4 acres. Thus, the trial Court has acquitted respondent No. 2-accused Hardev of the charge under Section 302 IPC.

Learned counsel for the applicant has submitted that PW-3 Mahender son of Bal Kishan was an eye witness of the occurrence who had seen the accused while committing the offence and PW-1 Gurmesh son of Ram Dhari also deposed that he had seen the deceased along with respondent No. 2-accused while roaming on the road in front of banquet hall in Malikpur at 4.00 P.M. and the mobile phone of respondent No. 2-accused was recovered from the place of occurrence on which "Mr. Happy" was written and the nick name of respondent No. 2-accused Harwinder is Happy.

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

In the present case, statement of complainant Shamsheer Singh was got recorded by the police on 5.7.2016 at about 1.30 A.M. but till then neither PW-1 nor PW-3 had disclosed about the material facts which were in their specific knowledge and ultimately, the complainant claimed that some unknown persons had committed the murder. Moreover, PW-3 had claimed that he had seen the occurrence but he was unable to disclose as to what type of clothes the accused was wearing at the time of occurrence. PW-3 also stated that the person lying on the ground was wearing blue jeans whereas as per the case of the prosecution, the pant of the deceased was of grey colour which was found lying near the dead body. Even PW-3 had

also claimed that there were several shops in front of the banquet hall and the shopkeepers were sitting in their respective shops but PW-5 SI Shamsher Singh, during investigation, stated that there were no shops surrounding the banquet hall and even PW-11 Shashi Kant Sharma who had drafted the scaled site plan of the place of occurrence, also stated that he did not know as to whether there was any shop/market near the banquet hall and even there was no khokha or rehri either.

Not only this, PW-3, who is stated to be an eye witness, was not known to respondent No. 2-accused as only the rehri hawker had disclosed to him that Happy used to cry in a routine manner while consuming liquor in the banquet hall but the said hawker had never been joined by the police in the investigation so as to corroborate the statement of PW-3. Even the act and conduct of PW-3 was not appreciable as admittedly he neither tried to help the deceased nor he disclosed the incident to any other person despite the fact that it was an admitted case of the prosecution that PW-2 and PW-3 had gone to the place of occurrence together and remained there for several hours until the police reached there. PW-1 never disclosed to the parents of the deceased regarding the death of their son nor PW-2 had made any statement on the day of occurrence whereas the complainant had got recorded his statement to the police on 5.7.2016 at about 1.30 A.M. PW-1 and PW-3 never disclosed the material facts which were alleged to be in their specific knowledge.

In case *State of U.T., Chandigarh versus Rakesh Kumar and another 2002 (2) CLJ(Criminal) 371* this Court while observing that the prosecution was not been to prove the charge against the accused by leading cogent, reliable and satisfactory evidence, dismissed the appeal filed by the

State challenging the acquittal of respondent of the charge under Section 302 IPC.

While granting the leave applied for, this Court is to bear in mind that in case of acquittal there is a double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the Fundamental principles of criminal jurisprudence that every person is presumed to be innocent unless he is proved to be guilty by a competent Court of law. Secondly, the accused having secured acquittal, the presumption of his innocence is certainly not weakened but re-inforced, re-affirmed and strengthened by the trial Court. When two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court.

Thus, after considering the above facts, the trial Court has rightly acquitted respondent No. 2-accused. Learned counsel appearing for the applicant 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.

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

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

July 09, 2019
Gurpreet

Whether speaking /reasoned : Yes
Whether Reportable : Yes