

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

**CRM-A No. 691 of 2019 (O&M)
Date of Decision: 23.09.2019**

State of Haryana

..... Appellant

Versus

Sandeep @ Timepass

..... Respondent

**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.

JASWANT SINGH, J.

CRM No. 10381 of 2019

Present application has been filed under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of **286 days** in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit of the applicant, the delay of **286 days** in filing the application for grant of leave to appeal is condoned.

Application stands disposed of accordingly.

CRM-A No. 691 of 2019

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 23.02.2018 passed by learned Sessions Judge, Gurugram, whereby respondent/accused has been acquitted for the offences under **Section 302 IPC read with Section 34 of Indian Penal Code (IPC).**

2. Tersely put the facts of the case of the prosecution are that a dead body of a male was found by complainant (*Surender Kumar*) lying on the spot drenched with blood. On noticing the dead body of a young person, he immediately made a telephonic information to the police and on receiving this information, *S.I. Vinay Kumar, Investigating Officer* (PW16) alongwith other police officials reached the spot. On reaching the spot, the police found deep wounds on head and face of the body and blood was collected from the head of the deceased. A blood stained cement block was also found lying there on the spot. The deceased was half naked. The police also recorded the statement of complainant vide Ex.PC and on the basis of that statement, the police registered an F.I.R. (Ex.PD) under Section 302 of IPC. The scene of crime was got inspected from FSL Expert and Fingerprint Expert. The photographs of the dead body were also got clicked by the Investigating Officer. Blood stained earth, hair of the deceased, trousers and sleepers were also taken into police possession and the same were sealed with the seal under the impression 'VK'. Inquest proceedings under Section 174 Cr.P.C. were initiated and the dead body was transmitted to the hospital for autopsy. Later on, the dead body was identified as of ***Sita Ram***, the father of Ravi.

It is also the alleged case of prosecution that **accused/respondent (*Sandeep @ Timepass*)** was interrogated in F.I.R. No. 260/2016 under Section 25 of the Arms Act, of police station Sadar Gurugram, whereby he made a confessional statement to the police that he alongwith co-accused/Parmod had murdered *Sita Ram* (deceased). On the basis of this confessional statement, the respondent/accused was joined in

the investigation and was arrested. On the basis of disclosure statement suffered by accused-Sandeep @ Timepass, the brick bat used in the crime for murdering deceased-Sita Ram and his blood stained shirt were recovered and these items were also sent to Forensic Lab Madhuban for examination.

After completion of necessary formalities of investigation, the report under Section 173 Cr.P.C. was presented before the Court of Illaqa Magistrate. Copies of report as envisaged under Section 208 Cr.P.C. were supplied to the respondent/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 Sessions by the Court of Illaqa Magistrate.

Finding a *prime facie* case, the accused/respondent was charge-sheeted for the commission of offences under **Section 302 read with Section 34 of Indian Penal Code.**

To prove its case against the respondent-accused, the prosecution has examined the following **Sixteen (16) witnesses**, which are as under:-

“ Girish Kumar, Draftsman, C.P. Office as PW-1, Constable Sandeep Kumar as PW-2, Surender Kumar, complainant as PW-3, ASI Pehlad Singh as PW-4, Constable Satender Kumar as PW-5, Satish Kumar as PW-6, Dr. Deepak Mathur, MO G.H. Gurugram as PW-7, Inspector Vijay Kumar as PW-8, ASI Munni Lal as PW-9, SI Kanwar Singh as PW-10, Constable Bijender Singh as PW-11, Constable Nasir Hussain as PW-12, HC Naveen Kumar as PW-13, Vikas, Photographer as PW-14, Ravi (son of the deceased) as PW-15 and SI Vinay Kumar, Investigating Officer as PW-16. ”

On completion of prosecution evidence, the statement under Section 313 Cr.P.C. was recorded by the Sessions Court in which all the incriminating circumstances appearing by way of evidence of prosecution against the respondent/accused were put to him and he pleaded his innocence and false implication. No defence evidence was produced by the respondent/accused.

On the basis of weak evidence produced by the prosecution against the respondent, he has been acquitted of the charges for the commission of offences under **Sections 302 read with Section 34 of Indian Penal Code.**

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

It is true that case of the prosecution rests on circumstantial evidence. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and must be such as to show that within all human probability the act must have been done by the accused.

On careful examination of the prosecution evidence as available in the impugned judgment, we are of the view that prosecution has failed to complete the chain of circumstances to establish that deceased was murdered by the accused/respondent.

Admittedly, it is a blind murder case. Right from the very beginning, it is the case of prosecution that none of the prosecution witness has ever happened to see that deceased was attacked by the respondent/accused (Sandeep @ Timepass). Meaning thereby, none of the prosecution witnesses ever saw that deceased was murdered by the respondent/accused. The evidence produced by the prosecution in the nature of confessional statement is very weak type of evidence. It is evident that prosecution has built up its case on the basis of confessional statement of the accused recorded while he was in custody in other case and during interrogation of that case, he made a confessional statement that deceased (Sita Ram) was murdered by him.

We are of the view that confessional statement made by accused while in police custody is hit by Indian Evidence Act and is not admissible in the eyes of law. A confessional statement made by accused while in police custody cannot be used by the police and prosecution to prove case against the accused. The recovery of any incriminating article on the basis of this statement is also not helpful to the case of prosecution. The prosecution has set up its case that the statement suffered by the accused while in custody can be used under Section 27 of the Indian Evidence Act. We are of the view that basic idea embedded in **Section 27 of Evidence Act** is the doctrine of confirmation by subsequent events. The statement of

information leading to discovery is only admissible. The discovery on the basis of information given by the accused is a guarantee that the information is true. But in the instant case, there is no reliable information to be relied upon as per requirement of **Section 27 of Indian Evidence Act** because recovery of brick bat is not corroborated with the disclosure statement suffered by the accused as in the disclosure statement it is recorded that to inflict injuries on the head of deceased, a stone was used by him.

As such, in the absence of any independent support in the effecting of recovery on the basis of disclosure statement, the prosecution case has to be disbelieved. Further, there is also lacunae in the case of prosecution in the manner that the blood stained shirt recovered was not examined by the Forensic Expert with the blood group of deceased to prove that the blood stains on the shirt of the deceased were matching with his blood group. No motive to cause injuries on the person of deceased by the respondent/accused has been proved by the prosecution. In the absence of proving any motive, the case of the prosecution has to be belied.

As such, in the absence of clincher evidence against the respondent/accused, the Trial Court has rightly observed that prosecution has failed to prove its case beyond doubt against the respondent/accused. It may be observed that whosoever the culprit, he or they had taken all steps to conceal the crime. Deceased had been murdered but without anybody having seen it.

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-respondent beyond any reasonable doubt. Thus, no case for any kind of interference in the impugned judgment is made out. 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

September 23, 2019
'dk kamra'

(LALIT BATRA)
JUDGE

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