

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

**CRM-A No. 972 of 2019 (O&M)
Date of Decision: 22.07.2019**

State of Haryana

..... Appellant

Versus

Sunil and others

..... Respondents

**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.

JASWANT SINGH, J.

CRM No. 17608 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 **98 days** in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay of **98 days** in filing the application for grant of leave to appeal is condoned.

Application stands disposed of accordingly.

CRM-A No. 972 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 file the appeal against the judgment of acquittal dated 29.08.2018 passed by learned Additional Sessions Judge, Faridabad, whereby accused persons, namely, ***Sunil, Rahul, Saurabh and Parvinder*** (respondents herein) have been acquitted for offences under Sections 148, 149, 323, 324, 325, 326,

452, 307, 302, 506 IPC and Section 25 of Arms Act.

2. Facts of the prosecution case are that a written complaint was moved by **PW-1 (Pawan Kumar)** in the local police alleging therein that on 06.03.2015, he visited the house of his aunt, namely, *Vimlesh wife of Suresh Pal* to celebrate the festival of *Holi*. At about 5.30 p.m., while he along with **Neeraj (now deceased)**, his aunt *Vimlesh* and uncle *Suresh Pal* were available in the house. In the meantime, **Meer Singh, Rahul, Pawan, Anil, Sunil, Ranjit, Balwinder, Satender, Narender, Saurabh, Billu, Arun son of Billu, Shahid, Parvinder, Montu and 4-5 other boys** came therein by travelling in two four wheelers i.e. *Verna* and *Swift Cars* and remaining 4-5 came there by riding on the motor cycles. They all of them were armed with deadly weapons. They started firing in the street and forcibly entered in the house. *Meer Singh* opened the fire at the main gate and as a result of which the glass of the gate smashed. At that time, he (*Pawan Kumar*) along with *Neeraj* was sitting in the room. **Meer Singh** exhorting in the manner that *Neeraj* would be eliminated and he was calling upon *Neeraj* to come out. On hearing this **lalkara**, *Neeraj* went on the roof and on seeing *Neeraj* on the roof, **Meer Singh** opened fire from his pistol, which hit *Neeraj* on his leg. **Pawan** also opened the fire from his country-made pistol and the shot hit *Neeraj* on his other leg, as a result of which *Neeraj* fell on the ground. **Anil** also fired a shot from his pistol at the chest of *Neeraj*. **Sunil and Rahul** hit **farsas** on the head and face of *Neeraj*. **Satender and Parvinder** hit **rodes** at the leg of the *Neeraj*. **Ranjit** had fired in the air from his pistol and told who would come to save *Neeraj*, would be killed. **Balwinder, Narender, Saurabh, Billu, Arun son of Billu, Shahid and Montu** were armed with

dandas and **knives** in their hands. They also caused injuries on the person of Neeraj. Then he along with his uncle and aunt raised noise which attracted many persons. Finding *Neeraj* dead, the assailants left the spot. Injured was removed to Hospital. The motive of causing of the injury on the person of *Neeraj* was that about one month back, an altercation took place among *Neeraj, Meer Singh, Anil and Pawan*, but the matter was resolved with the help of the villagers at that time. An F.I.R. was registered against the accused/respondents and investigation was commenced.

After completion of necessary formalities of investigation, the report under section 173 Cr.P.C. was presented by the prosecution in the Court against the respondents/accused. Thereafter, the case was committed to the Court of Sessions. Copies of challan were supplied to the accused free of cost and on the basis of *prima facie* case, the accused were charge-sheeted by the Court for commission of offences under **Sections 148, 452, 302, 307, 506 read with Section 149 IPC and 25 of Arms Act.**

To prove its case against the respondents-accused, the prosecution has examined as many as Thirty Four (34) witnesses, which are as under:-

“ **Pawan Kumar as PW-1, Vimlesh as PW-2, Rahul Chandila, Record Incharge, Metro Hospital as PW-3, ASI Anoj Kumar, Draftsman as PW-4, Smt. Mukesh as PW-5, Raj Kumar Arya as PW-6, Shyam Singh as PW-7, HC Mohd. Muslim as PW-8, EHC Durga Parshad as PW-9, ASI Bhagwan as PW-10, Ct. Vijay Kumar as PW-11, Dr. Abhishek Yadav as PW-12, Dr. Prem Kumar as PW-13, ASI Gajinder Singh as PW-14, SI Ishwar Singh as PW-15, Dr. Sanjeev as PW-16, Dr. Sudheer Kumar Tyagi as PW-17, SI Malkhan Singh as PW-18, Ct. Jitender as PW-19, HC Satbir Singh as PW-20, ASI Om Parkash as PW-21, Dr. B.D.**

Pathak as PW-22, Dr. Kamal Aggarwal as PW-23, Dr. Sonia D.Kaur as PW-24, ASI Suresh Chand as PW-25, Manisha, Sr. Scientific Officer as PW-26, Ct. Joginder as PW-27, Inspector Preet Pal as PW-28, Dr. Abha Jyoti Parashar as PW-29, Dheeraj as PW-30, HC Ravinder Kumar as PW-31, SI Ram Mehar as PW-32, Dr. Yasar Shafi as PW-33 and Jagbir Singh, Medical Record Clerk, Asian Hospital, Faridabad as PW-34.

On completion of prosecution evidence, the statements of accused persons under Section 313 Cr.P.C. were recorded in which all the incriminating circumstances appearing by way of evidence of prosecution against the respondents-accused were put to them and they pleaded their innocence and false implication.

On the basis of weak evidence led by the prosecution, the Sessions Court has acquitted the respondents, namely, **Sunil, Rahul, Saurabh and Parvinder (respondents herein)** for the commission of offences for which they have been charge-sheeted.

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

Apparently, the lower Court has given benefit of doubt to respondents **(Sunil, Rahul, Saurabh and Parvinder)**. Obviously, respondent No. 4-Parvinder was also found innocent by the Investigating Officer during investigation, but during trial, all the four respondents herein were summoned by the trial Court on the basis of moving of an application under Section 319 Cr.P.C. by the complainant. The pivotal question before us is as to whether the trial Court is right in giving benefit of doubt to these respondents. In this regard, the statements of PW-1 (**Pawan**

of them have totally failed to prove the presence and participation of these respondents in the alleged episode vide which the injuries were caused on the person of *Neeraj* (now deceased), which resulted into his death. Investigating Officer has also appeared in the witness box and he also failed to prove that any injury on the person of *Neeraj* was attributed to these respondents. There is no evidence produced by the prosecution that respondents were also member of unlawful assembly and were armed with any deadly weapon. As such, the trial Court has rightly acquitted these respondents for lack of sufficient evidence.

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. Before leaving this judgment, we are also of the view that a very limited question was set up before us with regard to acquittal of these respondents/accused for commission of offences, hence, it is made clear that this judgment will not be taken as an expression of our opinion *qua* other accused persons, who have been convicted by the trial Court. In case any appeal is preferred by other accused persons with regard to their conviction by the trial Court, anything said or observed herein may not be taken as an expression with regard to merits of the case *qua* them and that Court will remain free to examine the facts of the case *qua* other accused.

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, has rightly held that the prosecution has failed to prove its case against the accused-respondents herein 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

July 22, 2019
'dk kamra'

(LALIT BATRA)
JUDGE

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