

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

**CRM-A No. 165 of 2019 (O&M)
Date of Decision: 28.03.2019**

State of Haryana

..... Appellant

Versus

Naushad and others

..... Respondents

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

Present: Mr. Rajeev Doon, Assistant Advocate General, Haryana
for the applicant-appellant/State.

JASWANT SINGH, J.

CRM No. 1170 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 **114 days** in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, the delay of **114 days** in filing the application for grant of Leave to Appeal is condoned.

Application stands disposed of accordingly.

CRM-A No. 165 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 01.06.2018 passed by learned Additional Sessions Judge, Karnal, whereby the trial Court has acquitted the respondents-accused of the charges under Section 307/149 IPC, Section 13 (2) of The Haryana Gauthansh Sanrakshan and

2. Factual matrix of the case of the prosecution are that **complainant (EHC Mukesh Kumar)** made a statement to the police patrolling party to the effect that on 04.03.2017 at about 12.10 a.m., he (complainant) along with DSP Smt. Shakuntla, Incharge Crime Against Women, was on patrolling duty in Government vehicle bearing Regn. No. HR05-AQ-0200 and when the police party reached near *Sai Baba Mandir*, a VT message was received from the Control Room to the effect that a few young boys armed with deadly weapons were present in Sector-7 and were forcibly taking away the cows for slaughtering. On receiving this information, the police party went to market of Sector-7, Karnal and it was found that 10/12 young boys were forcibly loading the cows in the vehicles in their occupation. On seeing the police party, they opened the fire on the police vehicle, as a result of which the driver of the police vehicle stopped the vehicle at the distance and those boys started firing and pelting the stones on the police party and made an attempt to escape from the spot. EHC Surender Gunman also fired the shots at those young boys with his service revolver. Then those boys hit the police vehicle with their vehicle and their vehicle was also damaged. He received injuries on account of pelting of stones by those boys. The pellets of bullet also struck against the mirror of the vehicle. On hearing the noise, the residents of the locality also came out of their houses and the accused ran away from the spot. Intimation in this regard was transmitted to the Police Control Room and senior officers were also apprised of the incident.

On the basis of which, an F.I.R. was registered and investigation was commenced. The Investigating Officer took in his possession the splinters of glass and empty cartridges along with stones from

the spot. An application was also moved regarding to join accused ***Naushad son of Akbar, Nawab, Asjad, Nausad son of Tahir, Kasim and Mannu alias Munna*** in the investigation before the Court of CJM Karnal and on the basis of this investigation, their production warrants were got issued and disclosure statements of all these persons were recorded. Thereafter, accused ***Faizan, Sarik, Kala alias Rizwan*** were also joined in the investigation. One pistol 315 bore was recovered from the accused ***Kala alias Rizwan***, on the basis of his statement recorded under Section 27 of Indian Evidence Act.

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 respondents/accused free of cost and on the basis of *prima facie* case, the accused were charge-sheeted by the trial Court for commission of offence under Section 307/149 IPC, Section 13(2) of The Haryana Gauthansh Sanrakshan and Gauthamvardhan Act, 2015 and Section 25 of Arms Act.

To prove its case against the respondents, the prosecution has examined as many as fourteen (14) witnesses, which are as under:-

“ ***EHC Roshan Lal as PW-1, EHC Mukesh Kumar as PW-2, ASI Ram Phal as PW-3, EHC Surender as PW-4, Ramesh Kumar as PW-5, Satpal Singh Reader as PW-6, EASI Vir Shakti Singh as PW-7, Sultan Singh Retd. Sub Inspector as PW-8, H.C. Amarjit Singh as PW-9, ASI Parveen Kumar as PW-10, Dr. Narinder Kumar as PW-11, ASI Ishwar Singh as PW-12, EHC Irshad Ali as PW-13 and DSP Smt. Shakuntla as PW-14.***

3. On completion of prosecution evidence, the statement of accused/respondents 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 them and they pleaded their innocence and false implication.

On the basis of weak evidence led by the prosecution, the trial Court has acquitted the accused/respondents 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.

4. Learned counsel for the applicant has argued that all the prosecution witnesses stated in a single voice that respondents/accused committed the offences for which they have been charge-sheeted, but the trial Court has wrongly disbelieved the prosecution evidence. Recovery of the weapon of offence from possession of the one of the accused itself sufficient to prove the case of prosecution.

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

Admittedly, none of the accused was arrested on the spot by the police party on the day of alleged incident. It is, itself, the case of the prosecution that application was moved by the accused to join them in the investigation and on the basis of this application they were joined in the investigation, in the instant case. It is also not established by the prosecution that the weapon of the offence recovered from the possession from one of the accused belonged to him. Moreso, registration number of the vehicle in the occupation of the suspects, has no where pin-pointed by any of the prosecution witnesses. In this manner, we are of the view, the evidence

produced by the prosecution is of frail nature and the trial has rightly come to the conclusion that the prosecution has failed to prove its case beyond shadow of reasonable doubt.

6. 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.

7. 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 held that the prosecution had failed to prove its case against the accused-respondents 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 **application** is without any merit and, therefore, **dismissed**.
Leave to Appeal is declined.

(JASWANT SINGH)
JUDGE

March 28, 2019
'dk kamra'

(ARUN KUMAR TYAGI)
JUDGE

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