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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-250-MA-2016 (O&M)

Date of Decision: 03.02.2020.

State of Haryana

... Applicant/Appellant

Versus

Sandeep Kumar @ Ganja and another

... Respondents

CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI

Present : Mr. Sukhdeep Parmar, D.A.G., Haryana
for the applicant/appellant.

Ms. Suman Bishnoi, Advocate for Mr. S.N. Sharma, Advocate
for respondent No.2.

JITENDRA CHAUHAN.J.(ORAL)

This is application under Section 378(3) of Code of Criminal Procedure has been filed seeking leave to appeal against the judgment of acquittal dated 05.08.2015, passed by Learned Sessions Judge, Ambala vide which accused/respondents stand acquitted in case FIR No.121 dated 07.04.2014, registered under Sections 302, 394 read with Section 34 IPC, at Police Station Mahesh Nagar, District Ambala.

Brief facts of the present case as noticed in paragraph No.2 of the impugned judgment are as under:-

“According to prosecution case, on 07.04.2014, a telephonic information was received at P.S. Mahesh Nagar to the effect that on Ambala-Jagadhri road, on the

bank of Begna river, dead body of a person was lying in eucalyptus trees having injury marks. Receiving this information, Inspector Rajnish Yadav (PW15), SHO of the police station along with other staff, went to the spot, where Harjinder Singh (PW2) son of deceased Jaswant met him and got recorded his statement.

It was stated by said Harjinder Singh that he was resident of Vashisht Nagar, Ambala City. He has two sisters, both of whom are married. His father Jaswant Singh (deceased), aged about 65 years, had retired from Air Force about 20 years back, who was now running a 'kiryana' shop in the house itself. His father used to visit Bias Satsang in Punjab. On 04.04.2014, his father had left to attend Satsang at Bias (Punjab) by train, stating that he shall return by the night of Sunday. However, he did not return by the night of Sunday. On that day i.e. 07.04.2014 at about 8.00 am, he (Harjinder Singh) received information that dead body of his father was lying on Ambala-Jagadhri road, village Khudda Kalan on the banks of Begna river in eucalyptus trees. On this, he with his friend Satvinder went to the spot and found the dead body of his father with injury marks on his eyes. Blood was oozing out of the head. There were other injury marks as well. The bag, blanket, sheet, cap etc., which had been taken by his father, were lying there, apart from a danda of safeda tree. Harjinder Singh stated that some unknown person had murdered his father on the night intervening 06/07.04.2014. He prayed for taking necessary action ”.

Upon presentation of final report under Section 173 Cr.P.C., charges under Sections 302 and 394 read with Section 34 IPC, were framed against the accused, to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Gulab Chand as PW-1; Harjinder Singh as PW-2; Dharam Pal as PW-3; Kuldeep Singh as PW-4; Dr. Suresh Kansal as PW-5; Sanjeev Kumar as PW-5/A; SI

Mehal Singh as PW-6; SI Mehal Singh as PW-7; HC Matlub Hussain; ASI Subhash Chander as PW-9; C. Ramesh as PW-10; C. Sukhwinder Singh as PW-11; C. Sunil Kumar as PW-12; S. Gurbachan Singh Oberoy as PW-13; ASI Dharamvir Singh as PW-14 and Inspector Rajnish, I.O. of the case as PW-15.

When examined under Section 313 Cr.P.C., the accused denied all the incriminating evidence appearing against them and pleaded false implication. They Could not lead any evidence in defence and the same was closed .

After appraisal of the evidence, the learned trial Court vide judgment dated 05.08.2015, acquitted the respondents of the charges framed against them.

Hence the instant application.

Learned counsel for the applicant submits that the judgment of acquittal has caused grave miscarriage of justice. Though there is no direct evidence is fully proved. The disclosure statement of the respondents have been fully corroborated by the recoveries made and it was for the respondents to explain as to how ATM card landed in his possession. On the other hand, learned counsel for respondent No.2 submits that impugned judgment has been passed on correct appreciation of law.

Heard.

The Court below has acquitted the accused/respondents on the following grounds:-

1. *There was no basis or material with the Investigating Officer against the respondents so as to arrest them;*
2. *Demarcation of the place of occurrence by the respondents in pursuance of their disclosure statements vide*

memos Ex. P-28 and P-29 is meaningless in view of the fact that Investigating Officer Inspector Rajneesh himself admitted in his cross examination that place of occurrence was already in the knowledge of police;

3. Neither any independent evidence was joined at the time of interrogation nor any such attempt was made, as per statement of PW-14 ASI Dharamvir;

4. Immediately after the arrest of the respondents on 15.04.2014, they were interrogated and that interrogation was reduced into writing. However, such writing has not seen the light of the day. PW-14 ASI Dharamvir failed to satisfactorily explain this lapse. There is nothing on record to suggest that I.O. ever attempted to identify any passenger of the three wheeler allegedly used in the crime;

5. No efforts whosoever were made to lift the finger prints from the articles found from the spot so as to compare them with the finger prints of any of the respondents;

6. It has come in evidence of the prosecution that the respondents had thrown all the belongings of the deceased from the bag, but PW-17 admitted that the articles as found from the spot were not lying scattered. Rather the documents were in the pocket of the deceased;

7. On the basis of disclosure statements made by the respondents though resulted into recovery of the ATM card of Punjab National Bank belonging to the deceased from respondent-Nitesh but there is no evidence at all that there was even any attempt to use the ATM card after the commission of the crime;

8. The place of recovery of ATM card is an open and accessible which casts serious doubt on the veracity of the prosecution case;

9. There is absolutely no evidence to link the recovered three-wheeler at the instance of respondent-Sandeep with the crime; and

10. *There is also no evidence on the part of the prosecution that anybody saw the deceased boarding the three wheeler near Delux Dhaba, Ambala Cantt. on the intervening night of 6/7.04.2014 which means that the evidence of the deceased last seen in the company of respondents is also missing.*

This Court has re-scanned the entire evidence available on record and finds that the judgment of acquittal has been passed on correct appreciation of facts by the Ld. Trial Court. There is no perversity or illegality in the impugned judgment. Hon'ble the Supreme Court in **Baldev Singh Vs. State of Haryana, 2010(3) SCC(Cr1.)634**, held as under:-

7. In Padala Veera Reddy v. State of A.P. and Ors. (AIR 1990 (2) RCR (Criminal)26, it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests: "(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

In the instant case, the disclosure statement made by respondent-Nitesh resulting into recovery of an ATM card belonging to the deceased and identification of place of occurrence do not connect him with the commission of crime as the place of occurrence was already in the knowledge of the police and the recovery of ATM card appears to be doubtful in the light of the fact that the said ATM card was not even attempted to be used. Likewise, the disclosure statement of respondent-Sandeep with regard to the three wheeler used in the crime, its recovery and the identification of the spot of the crime do not complete the chain of circumstances so as to unerringly point towards the guilt of the respondent-Sandeep. The last seen evidence is also not reliable. The argument of the learned State counsel that the judgment of acquittal passed in favour of respondents under Sections 302/394 read with Section 34 IPC has caused grave miscarriage of justice, is not tenable in the absence of any legal evidence.

Even otherwise, it is a settled law as has been held in ***C. Antony Vs. K.G. Raghavan Nair***, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused persons. In the cases of acquittal, there is double presumption in their favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

Similarly, in '***Anil Kumar Gupta Vs. State of U.P.***, 2011 AIR (SC) (Criminal) 922, Hon'ble the Supreme Court has held as under:-

“8. *Shri R.K. Shukla, learned senior counsel appearing for the appellant mainly contended that the High Court in the process of reappreciating the evidence, ignored the vital evidence on record which proves the innocence of the appellant. It was submitted that the approach of the High Court is completely contrary to the decision of this Court in 'Ramesh Babulal Doshi v. State of Gujarat, 1996(3) R.C.R.(Criminal) 188 : (1996) 9 SCC 225'* which was followed by this Court in '*Dwarka Das & Ors. v. State of Haryana, 2002(4) R.C.R. (Criminal) 794 : (2003) 1 SCC 204'* The submission was that the High Court miserably failed to examine the reasons given by the trial Court for recording the order of acquittal.

9. *Learned counsel for the State of U.P. supported the impugned judgment mainly relying on the circumstances that on that fateful night, the appellant alone was in the company of the deceased and it is one of the strong circumstances to hold that it is the appellant who administered poison to the deceased.*

10. *In Ramesh Babulal Doshi, this Court held that "the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence, cannot constitute a valid and sufficient ground to interfere an order of acquittal unless it comes to the conclusion that the en approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal, the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are pal ably wrote, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only- reappraise the evidence to arrive at its own conclusions".*

11. In *Dwarka Das*, this Court following the decision in *Ramesh Babulal Doshi*, further observed that 'there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice".

12. In *Chandrappa & Ors. v. State of Karnataka*, 2007(2) R.C.R.(Criminal) 92 : 2007(1) R.A.J. 841 : (2007) 4 SCC 415 this Court reappreciating the aforesaid principles, further observed that "in case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless he is proved to be guilty by a competent court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened but reinforced, reaffirmed and strengthened by the trial Court. Though the above principles are well established, a different note was struck in several decisions by various High Courts and even by this Court. It is, therefore, appropriate if we consider some of the leading decisions on the point". Having stated so, this Court also held that an appellate Court has full power to reappreciate, review and reconsider the evidence upon which the order of acquittal is founded. But it is well established that if two views are

possible on the basis of evidence on record and one favourable view to the accused has been taken by the trial Court, it ought not to be disturbed by the appellate Court.”

In view of the above, the impugned judgment of acquittal does not suffer from any illegality much less perversity and does not call for any interference by this Court. Accordingly, the instant application *sans* merit and is hereby dismissed.

Leave declined.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

03.02.2020

ps-I

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No