

**243 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-719-MA-2018 (O&M)
Date of Decision: 23.01.2020

Sukhwant Kaur

.....Applicant/Appellant

VS.

State of Punjab and others

.....Respondents

**CORAM : Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mrs. Justice Archana Puri.**

Present : Mrs. G.K. Mann, Advocate,
for the applicant-appellant.

JITENDRA CHAUHAN.J.

This is an application for leave to appeal against the judgment dated 10.01.2018 Additional Sessions Judge, Amritsar, vide which the accused/respondent Nos. 2 to 5 were acquitted of the charges in FIR No. 203 dated 23.11.2010 registered under Sections 302 and 120-B IPC at Police Station Lopoke, Amritsar.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No. 2 are reproduced as under:-

“2. The present case was registered on the application of complainant Sukhwant Kaur moved by her before the police to the effect that she gave birth to four children. Her eldest daughter Shinder Kaur is married. Her younger son Pargat Singh had died in an accident and younger to him is Nishan Singh and her youngest daughter is Harjinder Kaur, who is studying. Her husband is doing work of selling milk. They are having a land dispute with Gulzar Singh son of Mahinder Singh and in this regard, a criminal case bearing FIR No.116/2009, under Sections 323, 324, 325 IPC was registered

at Police Station Chheharta. She further alleged that her son Nishan Singh had stopped Gulzar Singh to take forcible possession of their land. On 16.10.2009, her son Nishan Singh had gone to Khasa due to some domestic work. She also went to Bazar of Khasa, where her son Nishan Singh met her in Bazar of Khasa alongwith Daljit Singh and one other young man, aged about 20/22 years. She asked her son Nishan Singh to go back home, but her son told her that he was called by Daljit Singh and he would come back home after listening him. The complainant further alleged that at about 9:30 P.M., some one had knocked outer door of her house. Her daughter Harjinder Kaur opened the door and they saw in the light of bulb that a Sikh young man, who had muffled his face with Parna was standing near motorcycle told them that Nishan Singh had fallen down in the house of some one at village Chhidan. In reply, she asked him to drop her son in three-wheeler, if he was not well. The complainant further alleged that she recognized him from his voice that he was Daljit Singh. When she came forward in front of motorcycle, suddenly cloth (Parna) wrapped on face of said person removed and she saw that he was Daljit Singh, who went away from there on motor-cycle alongwith his other companion. Due to night time, she could not go to village Chhidan, but she informed her daughter Shinder Kaur on mobile phone of her father-in-law Joginder Singh and at about 6:00 a.m. her daughter Shinder Kaur alongwith her father came to her. When, they were talking, her daughter Harjinder Kaur received a telephonic call from Sakattar Singh, Sarpanch of village Chhidan that her son Nishan Singh is lying dead in the house of Daljit Singh and there is nobody in the house of Daljit Singh. At this, they all went to house of Daljit Singh at village Chhidan and on reaching there, they saw that Nishan Singh was lying dead on bed. She informed the police that Daljit Singh alongwith one other person had committed murder of her son Nishan Singh by administering him some poisonous substance, because, on 6.10.2009, her son Nishan Singh told

her that he gave warning to Gulzar Singh for not harvesting the crop from their land. She got alert her son Nishan Singh from Gulzar Singh and his sons. The complainant further alleged that Daljit Singh, Gulzar Singh, his sons Jarnail Singh and Angrej Singh and one unknown person in connivance with each other had committed murder of her son Nishan Singh. Daljit Singh is already facing many murder cases. Now, he has recently came out of jail.”

After completion of investigation, challan/report under Section 173 Cr.P.C was presented in the Court. As the offence under Section 302 IPC is exclusively triable by the Court of Session, the case was committed to the said Court.

Charges under Sections 302 and 120-B IPC were framed against the accused to which the accused did not plead guilty and claimed trial.

In order to prove its case, the prosecution had examined PW-1 Inspector Harjit Singh, PW-2 HC Gajjan Singh, PW-3 Sukhwant Kaur, PW-4 Harjinder Kaur, PW-5 ASI Avtar Singh, PW-6 HC Harpal Singh, PW-7 SI Balkar Singh, PW-8 Inspector (Retired) Tejinder Singh, PW-9 Rishi Ram, PW-10 Amrik Singh Powar, PW-11 ASI Parveen Kumar, PW-12 Dr. Gurmanjit Rai and closed the evidence.

The statements of the accused under Section 313 Cr.P.C were recorded in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication.

In defence evidence, Sakattar Singh Sarpanch was examined as DW-1.

After appraisal of evidence, the learned trial court vide impugned judgment dated 10.01.2018, acquitted accused/respondent Nos. 2 to 5 of the charges framed against them whereas, accused Daljit Singh was convicted under Section 302 IPC and sentenced to undergo RI for life and to pay fine of Rs.20,000/- with default stipulation.

Feeling dissatisfied with the impugned judgment, the present appeal has been filed by complainant, Sukhwant Kaur seeking conviction of accused/respondent Nos. 2 to 5 as well.

It is contended by the learned counsel for the complainant/appellant that the learned trial Court has committed a grave error in acquitting respondent Nos. 2 to 5. The learned trial Court has not appreciated the evidence in correct perspective. There was sufficient material on record to convict respondent Nos. 2 to 5 as well.

We have heard the learned counsel for the applicant/appellant and have gone through the case file very carefully.

The learned trial Court has acquitted respondent Nos. 2 to 5 on the following grounds:-

“1. Sukhwant Kaur in her cross-examination had admitted that girdarwaries in respect of the land in dispute were corrected in the name of Gulzar Singh and his sons and appeal filed against the said order of correction of girdawaries was dismissed on 22.11.2012. Since in the revenue record, names of Gulzar Singh and his sons were changed, they would have no reason or motive to kill son of Sukhwant Kaur.

2. *In the initial statements and complaint Ex.DA and DB, Sukhwant Kaur and Harjinder Kaur mother and sister of the deceased, had not named respondent Nos. 2 to 5 as accused. Thus, their names have been incorporated after improvements and deliberations.*

3. *The names of respondent Nos. 2 to 5 have come on record after long delay and moreover, there was no evidence on record to connect Gulzar Singh and his sons with Daljit Singh. There was no evidence at all with regard to involvement of respondent No.2 to 5 in the murder of Nishan Singh.*

4. *During investigation also, respondent Nos. 2 to 5 were found innocent. They were summoned to face trial along with accused Daljit Singh with the aid of Section 319 Cr. P.C.*

5. *The offence took place in the year 2009 whereas, the call details between accused Daljit Singh and Gulzar Singh were of June 2011. The same were of no help to the prosecution.”*

We have gone through the case file carefully and find that the judgment of acquittal has been rightly passed. It emanates from the record that the mother and the sister of deceased Nishan Singh had not named Gulzar Singh and his sons, namely, Angrej Singh, Jarnail Singh and Gurbhej Singh (respondent Nos. 2 to 5) in the initial complaint and the statements recorded under Section 161 Cr. P.C. Ex. DA and DB respectively as accused. Their names surfaced for the very first time in the statement of Sukhwant Kaur which was got recorded in the Court on 04.04.2016. Meaning thereby, the accusing finger was raised against respondent no. 2 to 5 after a long gap of six years. Not only

that, there is no evidence on record with regard to the conspiracy hatched between accused Daljit Singh and Gulzar Singh and his sons. The calls details do not help to the case of the prosecution as the offence took place in the year 2009 whereas, the call details pertain to June, 2011. There was no motive for Gulzar Singh and his sons to commit murder of Nishan Singh as admittedly the girdarwaries were already corrected in his name.

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 unless the judgment suffers from any perversity. In the cases of acquittal, there is double presumption in his 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.

In *Anil Kumar Gupta vs. State of U.P. 2001(2) RCR*

(Criminal) 292 SC it was held as under:-

“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".

(emphasis supplied)

11. 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".

In the instant case, the findings recorded by the learned trial Court are based on correct appreciation of evidence and do not suffer from any infirmity and perversity much less illegality.

Thus, the application seeking leave to appeal is hereby dismissed.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

23.01.2020.

SN

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