

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-2947-2019 (O&M)

Date of Decision: 28.02.2020.

Jagnaib Singh

.....Applicant/Appellant

VS.

State of Punjab and others

.....Respondents

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

Present : Mr. L.S. Sekhon, Advocate,
 for the applicant.

JITENDRA CHAUHAN.J. -

1. This is an application for leave to appeal against the judgment dated 18.09.2019 passed by Sessions Judge, Barnala, vide which the accused/respondents No. 2 to 7 were acquitted of the charges in FIR No.64 dated 30.07.2017 registered under Sections 302, 148 read with Section 149 IPC and Sections 25, 27 of Arms Act, at Police Station Tallewal, District Barnala.

2. 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 prosecution case, in nut shell, is that the instant FIR Ex.Pw11/B was registered on the statement Ex.PA of complainant Jagnaib Singh son of Nachhattar Singh resident of village Chunga got recorded by him with Inspector Kamaljit Singh, SHO of P.S. Tallewal on 30.07.2017, inter-alia, alleging that he does agricultural work and they are two brothers and one sister. Beant Singh

is his younger brother and is doing agricultural work. On 29.04.2017, his younger brother Beant Singh was beaten by Jagtar Singh, Avtar Singh sons of Jarnail Singh, Ajmer Singh son of Bhagwan Singh, Gurwinder Singh son of Ajmer Singh and Gurpreet Singh son of Nirmal Singh at village Sehna, regarding which FIR No.26 dated 01.05.2017 U/s.308,451,323,427,148,149 IPC was registered at PS Sehna Ex.PX against the said persons. The accused persons of above said FIR were pressurizing them to compromise the matter. On 29.07.2017, he alongwith his father Nachhattar Singh had come to the house of his uncle Swaran Singh for some domestic purpose. At about 7.15 pm, when they were to return and were standing at the gate of the house of his uncle Swaran Singh, who was also present alongwith them, one Barlero vehicle no.PB-29D-9731 stopped which was being driven by Gurpreet Singh son of Nirmal Singh, nearby them. Jagtar Singh son of Jarnail Singh armed with 12 bore gun, Ajmer Singh son of Bhagwan Singh armed with 12 bore gun, Avtar Singh son of Jarnail Singh, Gurwinder Singh son of Ajmer Singh, Nirmal Singh son of Bhagwan Singh and Jarnail Singh son of Bagwan Singh alighted from the said car. Gurpreet Singh remained sitting in the car while keeping the car in start position. After alighting from the car, Avtar Singh and Gurwinder Singh raised lalkara to teach a lesson for getting the case registered against them. Avtar Singh told Jagtar Singh to fire shot in the chest of Nachhattar Singh. In the mean while Jagtar Singh fired shot from 12 bore gun towards his father Nachhattar Singh, which bullet hit on the right side of chest of his father, as a result of which, his father fell down and thereafter Ajmer Singh also fired shots from his 12 bore

gun. When he alongwith his uncle raised hue and cry, the said persons ran away from the spot alongwith their respective weapons while sitting in the said Balero vehicle. They took their father to civil hospital, Barnala where he was declared brought dead. The motive behind the occurrence was that the said persons gave beatings to his brother Beant Singh at Sehna and they got the case registered against them and they were pressurizing them to get the matter compromised and as they (complainant) did not agree, the above said persons committed murder of their father Nachhattar Singh.”

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

4. Charges under Sections 302, 148 read with Section 149 IPC and Sections 25, 27 of Arms Act were framed against the accused to which the accused did not plead guilty and claimed trial.

5. It is pertinent to mention here that during the trial, on the application moved by the prosecution under Section 319 Cr.P.C., additional accused Ajmer and Nirmal Singh were summoned to face trial along with the co-accused.

6. In order to prove its case, the prosecution had examined Jagnaib Singh, complainant as PW1, Dr.Raj Kumar as PW2, Sukhdev Singh as PW3 (wrongly written as PW2), Swaran Singh as PW4, HC Sukhwinder Singh as PW5, Gursewak Singh, Patwari as PW6, Daljit Singh, Clerk as PW7, Resham Singh, Senior Assistant as PW8, C. Ramkaran

Singh as PW9, HC Yadwinder Singh as PW10, Inspector Kamaljit Singh as PW11, HC Balwinder Singh as PW12. Learned Public Prosecutor tendered certain documents and thereafter closed the evidence of prosecution.

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

8. The accused in their defence evidence examined SI/LR Ranjit Singh as DW1, HC Harmandeep Kumar as DW2, Sukhwinder Singh, Record Keeper as DW3, ASI Kewal Singh as DW4. Accused tendered a few documents and thereafter closed their defence evidence.

9. After appraisal of evidence, the learned trial court vide impugned judgment dated 18.09.2019, acquitted Avtar Singh @ Khehra, Gurwinder Singh @ Binder, Gurpreet Singh, Ajmer Singh, and Nirmal Singh of the charges framed against them, however, accused Jarnail Singh was acquitted of the offences punishable U/s.148, 302 read with Section 149 of IPC, but convicted for the offence punishable U/s.27 of Arms Act. Accused Jagtar Singh was also held guilty and was convicted for the offences punishable U/s.302 of IPC and U/s.25 of Arms Act.

10. Feeling dissatisfied with the impugned judgment, the present appeal has been filed by the complainant.

11. It is contended by the learned counsel for the complainant that the learned trial Court had acquitted the accused persons on the ground of inordinate delay in lodging the FIR; that there was previous enmity between the complainant party and accused party and that was

why all the male members respondents' families namely, Ajmer Singh, Jarnail Singh and Nirmal Singh were roped in as accused. No role had been attributed to Nirmal Singh and Jarnail Singh by the eye witnesses. The version of the eye witnesses with regard to Ajmer Singh that he also fired a shot from his gun was belied from the testimony of Investigating Officer Kamaljit Singh, SHO, who in his cross-examination has admitted that he had not found any pellet mark on the gate of the house in question. He had admitted that only one gun shot was fired at the time of occurrence. Involvement of accused Jagtar Singh for causing death of Nachhattar Singh is proved beyond reasonable doubt. Accused, namely, Nirmal Singh, Avtar Singh, Gurwinder Singh were not shown to be armed with any weapon, whereas accused Ajmer Singh was alleged to have been armed with .12 bore double barrel gun and having used that gun in the occurrence, but from the investigation it was proved that no second gun shot was fired in the occurrence. Testimony of prosecution witnesses was doubted with regard to accused Ajmer Singh having fired any gun shot. In this way, involvement of other accused except accused Jagtar Singh was doubted and by extending the benefit of doubt, Avtar Singh @ Khehra, Gurwinder Singh @ Binder, Gurpreet Singh, Ajmer Singh, and Nirmal Singh were acquitted of the charges framed against them, however, accused Jarnail Singh was acquitted of the offences punishable U/s.148, 302 read with Section 149 of IPC, but convicted for the offence punishable U/s.27 of Arms Act. Accused Jagtar Singh was held guilty and was convicted for the offence punishable U/s.302 of IPC and U/s.25 of Arms Act.

12. We have heard the learned State counsel and have gone through the case file very carefully.

13. The learned trial Court has acquitted the respondent-accused persons while discussing on various points, which reads as under:-

“26. In the present case, the prosecution has categorically proved beyond any reasonable doubt that accused Jagtar Singh fired from his 12 bore DBBL gun on the person of Nachhattar Singh and 12 bore DBBL no.15404-90 alongwith three live cartridges were recovered on the basis of disclosure statement Ex.Pw5/E1 made by accused Jagtar Singh and in pursuance of that disclosure statement, Jagtar Singh has got recovered DBBL gun, which when checked was found containing two empty cartridges of KF special 12 bore alongwith three live cartridges, same were taken into police possession vide memo Ex.Pw5/F and when gun alongwith empties and cartridges were sent to FSL, as per report of FSL Ex.PX, it was found that gun was used and pellets and wad recovered from the body of Nachhattar Singh was found to be pieces of 12 bore cartridges. So, it is proved from the report Ex.PX that one plastic cushion wad and small lead pellets recovered from the body of deceased Nachhattar Singh were the components of 12 bore cartridge and 12 bore DBBL bearing no.15404-90, which was found to be in working condition was recovered from the possession of accused Jagtar Singh, same was found containing two empty cartridges and as per testimony of prosecution witnesses, it is the accused Jagtar Singh, who has fired gun shot on the person of Nachhattar Singh causing death

of Nachhattar Singh. So, involvement of accused Jagtar Singh for causing death of Nachhattar Singh is proved beyond any reasonable doubt.

27. *As per evidence on record, 12 bore DBBL no.15404-90 is licensed weapon of accused Jarnail Singh. Report of verification of licence is Ex.Pw7/B. So, it is proved on record that accused Jarnail Singh allowed his licensed weapon to be misused by accused Jagtar Singh thereby offence U/s.27 of Arms Act is proved against accused Jarnail Singh.*

28. *However, there is doubt about involvement of remaining accused as there is deliberate delay of 15 hours in registration of the case and that delay could not be explained reasonably. There is previous enmity between the parties. The remaining accused namely Nirmal Singh, Avtar Singh, Gurwinder Singh are not shown to be armed with any weapon, whereas accused Ajmer Singh is alleged to have been armed with 12 bore DBBL and having used that gun in the occurrence, but from the investigation, it is proved that no second gun shot was fired in the occurrence. So, testimonies of prosecution witnesses appears to be doubtful with regard to accused Ajmer Singh having fired any gun shot. In such circumstances, involvement of other accused except accused Jagtar Singh appears to be doubtful and benefit of doubt can be extended in their favour in view of the facts and circumstances of the case.”*

14. We have gone through the case file carefully and find that the judgment of acquittal has been rightly passed in the given set of facts. There is no reason to differ from the view taken by the learned trial Court.

15. 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 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.

16. 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".

17. 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.

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

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

28.02.2020.

Satyawan

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