

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

207

CRM-4382-2019 in/and
CRM-A-395-2019

Date of decision: 13.07.2022

State of Haryana

....Applicant/Appellant

Versus

Pardeep @ Sunny and others

...Respondents

**CORAM : HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present : Mr. Ankur Mittal, Addl. A.G. Haryana with
Mr. Saurabh Mago, A.A.G, Haryana.

Ms. Shaveta Sanghi, Advocate
for respondents No.1 and 2.

None for respondent No.3.

ASHOK KUMAR VERMA, J.

CRM-4382-2019

Present application has been filed under Section 5 of the Limitation Act read with Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for condonation of delay of 393 days in filing of appeal.

Reply dated 07.12.2019 to the application has been filed by respondent No.1. As per the said reply, the appellant-State has miserably failed to explain each and every day of delay in filing the accompanying appeal. Therefore, the present application may be dismissed.

For the reasons stated in the application which is supported by an affidavit of Satyapal, HPS, Deputy Superintendent of Police, Rewari, District Rewari, the delay of 393 days in filing the application for grant of leave to appeal is condoned.

Application stands disposed of accordingly.

CRM-A-395-2019

1. The applicant/appellant-State of Haryana has filed the present application under Section 378(3) of the Cr.P.C. for grant of leave to appeal against impugned judgment dated 19.09.2017 passed by the learned Additional Sessions Judge, Rewari in Sessions Case No.42 of 2016 titled as 'State Vs. Pardeep @ Sunny and others' whereby the accused/respondents were acquitted of the charges framed against them.

2. Briefly stated the factual matrix of the case referred to in the impugned judgment is that on 11.09.2016 an information was received in the police station to the effect that a firing had taken place in the area of Kewal Bazar and one person had sustained a bullet injury. On receipt of information, police party headed by Inspector/SHO Karambir Singh went to General Hospital, Rewari where they found dead body of Puran Chand lying in the dead house of the hospital. Statement of complainant-Ashok Kumar, brother of the deceased, was recorded who stated that his brother Puran Chand was a scrap dealer. On 11.09.2016 his brother Puran Chand had hired a private car to go to Rajasthan. At about 6:00 a.m. Beeru (respondent No.3) came to the house of his brother in Scorpio car bearing registration No.HR-36R-3501. When his brother sat in the car along with the bag containing Rs.5,00,000/- in cash, two young boys, who had worn black cap,

came on a motorcycle and one of them fired at the neck of his brother and snatched the bag containing the cash amount and fled away from the spot. His brother was died on the spot.

3. On the basis of aforesaid statement, the FIR was registered. Investigation was carried out. On the same day i.e. 11.09.2016 all the three accused/respondents were arrested. After completion of investigation and other usual formalities, challan/report under Section 173 of the Cr.P.C. was presented in the Court. The accused/respondents were charge-sheeted for commission of offences punishable under Section 302, 392 read with Section 397 of the IPC and Section 120B read with Section 34 of the IPC to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined as many as 13 witnesses, produced material documents and objects which were exhibited. Statements of accused/respondents were also recorded under Section 313 of the Cr.P.C. No evidence has been led by the accused/respondents in their defence.

5. On consideration of the material on record and submissions made by learned Public Prosecutor for the State and learned defence Counsel, the learned Additional Sessions Judge, Rewari acquitted the accused/respondents from all the charges framed against them with the observations that the prosecution has miserably failed to prove the identity and the guilt of the accused persons beyond a shadow of reasonable doubt.

6. Being aggrieved by and dissatisfied with the aforesaid judgment, present application for grant of leave to appeal has been filed by the applicant/appellant-State of Haryana.

7. Learned State counsel has argued that the trial court did not properly appreciate the prosecution evidence and acquitted the accused/respondents. The trial court erred in not considering the statement of PW-2 complainant-Ashok Kumar which was duly proved by PW-13 Investigating Officer-Inspector Karambir Singh. The trial court erred in not considering the disclosure statements of accused/respondents. The trial court did not consider the FSL report to the effect that a bullet recovered from the body of deceased and one bullet recovered from the place of occurrence had been fired from the country made pistol, recovered from accused Pardeep @ Sunny. The impugned judgment is based upon conjectures and surmises. Therefore, leave to appeal against the impugned judgment may be granted.

8. *Per contra*, learned counsel for respondents No.1 and 2 has submitted that the respondents have been rightly acquitted by the trial court. There is no cogent evidence on record to show that the respondents were involved in the commission of the offence. The prosecution has miserably failed to prove its case. No ground for grant of leave to appeal is made out.

9. Heard.

10. Before adverting to the facts of the case, it would be worthwhile to refer to the scope in acquittal appeals. It is well settled in catena of decisions that an Appellate Court has full power to review, re-appreciate and consider the evidence upon which the order of acquittal is founded. However, the Appellate Court must bear in mind that in case of acquittal, there is prejudice in favour of the accused, firstly, the presumption of innocence is available to him under the Fundamental Principle of Criminal

Jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of Law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reaffirmed and strengthened by the Trial Court.

11. A perusal of Lower Court Record shows that, when Ashok Kumar (complainant as well as brother of the deceased), who was the only eye-witness of the occurrence, appeared in the witness box as PW-2 deposed that two unknown boys came at the spot on a motorcycle and one of them fired a gun shot at his brother and snatched the bag carried by his brother containing Rs.5,00,000/- in cash and fled away from the spot. He also stated that the accused/respondents were not those persons who had shot his brother. He further stated that no statement Ex.PA was made by him before the police. He is illiterate and the police obtained his thumb impression on some blank papers. He was declared hostile by the prosecution. Even during his cross-examination nothing came on record which could help the prosecution. It is well settled law that not much reliance should be placed upon uncorroborated testimonies of hostile witnesses.

12. PW-10 ASI Bhagirath and PW-13 Inspector/SHO Karambir Singh were also failed to explain as to how the identity of the accused persons was got established. As per prosecution, it was Beeru (respondent No.3) who disclosed about the identity of two unknown boys who came at the spot on motorcycle. In their testimonies PW-10 ASI Bhagirath and PW-13 Inspector/SHO Karambir Singh deposed that accused/respondents were arrested on the same day of occurrence i.e. 11.09.2016 and accused Beeru

was interrogated for the first time on 12.09.2016. If accused Beeru, who disclosed the identity of two unknown boys, was interrogated for the first time on 12.09.2016 then how it was possible that accused Pardeep @ Sunny and Deepak @ Deepu were arrested on 11.09.2016. PW-10 ASI Bhagirath and PW-13 Inspector/SHO Karambir Singh had also admitted that no test identification parade was got conducted by them. So far as the call details of mobile No.7404343887 is concerned, the said number is shown to have been issued in the name of Veena wife of Dilbag r/o House No.174, Rewari. Thus, there is nothing on record to show that said Veena is related to accused Beeru in any manner. Even otherwise nothing has been brought on record to show that accused Beeru had made a phone call to co-assuced Pardeep @ Sunny and Deepak @ Deepu either prior to or after the occurrence. Even the owner of Scorpio bearing registration No.HR-36-R-3501 namely Ghanshaym Dass has not been joined by the Investigating Officer in the investigation so as to inquire as to whether he had employed accused Beeru as a driver on the aforesaid Scorpio. Neither any weapon or any cash amount nor the vehicle make Scoprio is alleged to have been recovered from the possession of accused Beeru. Neither any injury has been attributed to him nor has any weapon been recovered from him. There is no iota of evidence to connect accused Beeru with the commission of the alleged offence.

13. In addition to this, the prosecution has miserably failed to establish recovery of the country made pistols and live cartridges from the possession of accused persons. From the evidence on record particularly statement made by the only eye witness of the occurrence i.e. PW-2 Ashok

Kumar, it stands established that the pistols were recovered from the spot of occurrence and not from the possession of the accused persons. As per the prosecution case, the pistols and live cartridges were recovered from the possession of accused Pardeep @ Sunny and Deepak @ Deepu during their personal search. Both PW-10 ASI Bhagirath and PW-13 Inspector/SHO Karambir admitted that no specific mark of identification was put on the pistols and the live cartridges alleged to have been recovered from the possession of the accused persons. No independent witness was joined at the time of recovery. As per the statement made by PW-9 Constable Sandeep, Armourer only one pistol was produced before him by the Investigating Officer. However, the said pistols and the live cartridges alleged to have been recovered from the possession of accused Deepak @ Deepu were never sent to FSL for laboratory examination. So mere alleged recovery of pistol and two live cartridges from the possession of accused Deepak @ Deepu does not connect him with the commission of the alleged offence in any manner.

14. As per the FSL report the country made pistol and 10 live cartridges were examined in the Laboratory and 02 out of 10 live cartridges were used during test fire in the laboratory. The remaining live cartridges, test fired cartridges cases and test fired bullet were returned in the same parcel. However, the sealed parcel produced in the trial court contained country made pistol and 10 live cartridges. If 02 live cartridges had been used during test firing in the laboratory then how 10 live cartridges were produced in the trial court. So tempering with the case property also could not be ruled out. The FSL report without any corroborative evidence is also

not sufficient enough to connect accused Pardeep @ Sunny with the commission of the alleged offence. During his cross-examination PW-13 Inspector Karambir Singh has stated that the pistol Ex.P5 was recovered from the possession of accused Deepak @ Deepu and the pistol Ex.P1 was recovered from the possession of accused Pardeep @ Sunny. However, PW-10 ASI Bhagirath has stated that the pistol Ex.P1 and the live cartridges Ex.P3 and Ex.P4 were recovered from the possession of accused Deepak @ Deepu and the pistol Ex.P5 was recovered from the possession of accused Pardeep @ Sunny. There is major discrepancy and contradiction in the statements made by these 02 police officials, who are shown to be the only eye witnesses of the alleged recovery, which makes the prosecution story highly doubtful, especially when PW-13 Karambir Singh is also the Investigation Officer.

15. It may be noted that as per the settled legal position, when two views are possible, the judgment and order of acquittal passed by the trial Court should not be interfered with by the Appellate Court unless for the special reasons. A beneficial reference of the decision of the Supreme Court in the case of **State of Rajasthan versus Ram Niwas reported in (2010) 15 SCC 463** be made in this regard. In the said case, it has been observed as under:-

“6. This Court has held in Kalyan v. State of U.P., (2001) 9 SCC 632 :

“8. The settled position of law on the powers to be exercised by the High Court in an appeal against an order of acquittal is that though the High Court has full powers to review the evidence upon which an order of acquittal is passed, it is equally well settled that the presumption of innocence of the accused persons, as envisaged under the criminal jurisprudence prevalent in our country is further reinforced

by his acquittal by the trial court. Normally the views of the trial court, as to the credibility of the witnesses, must be given proper weight and consideration because the trial court is supposed to have watched the demeanour and conduct of the witness and is in a better position to appreciate their testimony. The High Court should be slow in disturbing a finding of fact arrived at by the trial court. In Kali Ram V. State of Himachal Pradesh, (1973) 2 SCC 808, this Court observed that the golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The Court further observed:

"27. It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilised society. Suppose an innocent person is convicted of the offence of murder and is hanged, nothing further can undo the mischief for the wrong resulting from the unmerited conviction is irretrievable. To take another instance, if an innocent person is sent to jail and undergoes the sentence, the scars left by the miscarriage of justice cannot be erased by any subsequent act of expiration. Not many persons undergoing the pangs of wrongful conviction are fortunate like Dreyfus to have an Emile Zola to champion their cause and succeed in getting the verdict of guilt annulled. All this highlights the importance of ensuring, as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice. Such a risk can be minimised but not ruled out altogether. It may in this connection be apposite to refer to the following observations of Sir Carleton Allen quoted on page 157 of "The Proof of Guilt" by Glanville Williams, second edition:

"I dare say some sentimentalists would assent to the proposition that it is better that a thousand, or even a million, guilty persons should escape than that one innocent person should suffer; but no responsible and practical person would accept such a view. For it is obvious that if our ratio is extended indefinitely, there comes a point when the whole system of justice has broken down and society is in a state of chaos."

28. The fact that there has to be clear evidence of the guilt of the accused and that in the absence of that it is not possible to record a finding of his guilt was stressed by this Court in the case of Shivaji Sahebrao, (1973) 2 SCC 793, as is clear from the following observations:

"Certainly it is a primary principle that the accused must be and not merely, may be guilty before a court, can be convicted and the mental distinction between 'may be' and 'must be' is long and divides vague conjectures from sure considerations."

"9. The High Court while dealing with the appeals against the order of acquittal must keep in mind the following propositions laid down by this Court, namely, (i) the slowness of the appellate court to disturb a finding of fact; (ii) the noninterference with the order of acquittal where it is indeed only a case of taking a view different from the one taken by the High Court."

8. In Arulvelu and another versus State reported in (2009) 10 Supreme Court Cases 206, the Supreme Court after discussing the earlier judgments, observed in para No. 36 as under:

"36. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshaling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."

16. In view of above, no case is made out for interference in the impugned judgment dated 19.09.2017 passed by learned Additional Sessions Judge, Rewari. Accordingly, the application filed under Section 378(3) of the Cr.P.C. for grant of leave to appeal, being devoid of merits, is hereby dismissed.

(RITU BAHRI)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

13.07.2022
Kothiyal

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