

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1654-SB-2007(O&M)

Reserved on: 15.11.2022

Date of Decision: 24.11.2022

Jai Lal

...Appellant

vs.

Rajender and others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Argued by :Mr. N.R.Dahiya, Advocate and
Mr. Ramesh Kumar, Advocate
for the appellant.

Mr. Rahul Vats, Advocate
for respondent No.1.

Respondents No.2 and 4 stated to be dead.

Mr. A.S.Virk, Advocate
for respondent No.3.

N.S.Shekhawat J.

The present appeal has been preferred by the complainant against the judgment and order of acquittal dated 27.11.2006, passed by the learned Additional Sessions Judge (Fast Track Court), Bhiwani, whereby respondents No.1 to 4 were ordered to be acquitted of the charge under Section 306 /34 of Indian Penal Code (hereinafter referred to as 'IPC' for brevity).

The FIR in the instant case was got registered by the complainant, namely, Jai Lal S/o Dhanu Ram, resident of village Kolhawas by stating that he was resident of the above mentioned address and was an agriculturist. He had three sons. Ram Kumar was the eldest son, whereas, Dalip Singh and Krishan

Chand were younger to him. All three sons were living separately. A legal notice was received by his son Dalip Singh in October, 2002 by *dak*, which was sent by Mir Singh S/o Maha Singh, resident of Patharwa, District Mahendergarh, through his counsel Fateh Singh Sangwan, Advocate, Civil Court, Dadri for recovery of a sum of Rs.2,60,000/-. The said notice was duly replied by Dalip Singh through his counsel Sh. Nathu Ram Dahiya, Advocate on 14.10.2002. Thereafter, a complaint was filed on 05.11.2002 in this regard to the Station House Officer, City Dadri and a request was made to register a criminal case against Mir Singh S/o Maha Singh, Mahender Singh, Advocate, Satender Singh S/o Sheo Nath Singh, Rajender Singh S/o Ram Saran Singh and Fateh Singh Sangwan, Advocate under Sections 420, 468, 467, 469, 471, 384, 120-B and 34 of IPC. Due to this fact, Dalip Singh son of the complainant used to remain in a sad mood and used to roam here and there. On the last day i.e. on 17.11.2022, his son had taken his dinner and slept with his children and the complainant also slept in the drawing room. The complainant was informed by Ajay S/o Dalip Singh in the morning that Dalip Singh was missing from home since last night. He sent Ajay to search for Dalip Singh in the village and the complainant also searched for him. The complainant reached near a pond in the village, where several persons were present and were talking about a thick cloth sheet and a pair of slippers near a well. He identified those articles as belonging to his son. Ultimately, the dead body of his son Dalip Singh was taken out from the well and he left the villagers near the dead body of his son and went to the police station to report the matter to the police. On the basis of the said complaint, Ex.PC, the FIR under Sections 306, 34 and 109 of IPC was registered against the respondents/accused.

After completion of the investigation, the final report under Section 173 Cr.P.C. was submitted against the accused in the Court of learned Area Magistrate and since the case was triable by the Court of sessions, the same was ordered to be committed by the learned Area Magistrate. The accused were charge-sheeted under Sections 306 and 34 IPC.

Vide the impugned judgment, the learned Additional Sessions Judge (Fast Tract Court), Bhiwani held that the prosecution had miserably failed to prove its case beyond the shadow of reasonable doubt against the accused and all the accused were ordered to be acquitted by the trial Court. Learned trial Court held that the amount of Rs.2,60,000/- was being claimed from the deceased allegedly by the accused by fabricating certain documents and he had received a notice for making the payment thereof. It was also alleged that the deceased had suffered depression as he was called upon to make the payment by way of a legal notice and he shared his woes with his family members and also with his counsel at the time of drafting the reply to the legal notice. It was held that the deceased had already taken recourse to the legal procedure against the accused regarding the demand of payment made from him and had also made a police complaint against the accused. The legal notice was received by the deceased in the first week of October 2002, but he committed suicide on the night intervening 17/18.11.2022 that is after about one and a half month on the receipt of the notice. Learned trial Court further held that there was no nexus between the act of the accused Mir Singh in sending the legal notice to the deceased and that of the deceased committing suicide and it cannot be said that the accused Mir Singh and his accomplices instigated the commission of suicide by the deceased in any manner. The accused never

urged, goaded or provoked the deceased to take the extreme step of ending his life and did not provide any aid to the deceased to commit suicide. The accused Mir Singh intended to receipt of the payment of his alleged loan extended to the deceased and for that he would have been the last person to think of the death of the deceased. The learned trial Court further held that there was no evidence on the file to show that the deceased was left with no other option but to commit suicide. Even the deceased committed suicide after one and a half month of the receipt of the legal notice and immediately prior to that, there was no evidence that he was under such depression to end his life. Even the writing Mark PC, stated to have recovered from the pocket of the shirt of the deceased, which was found hanging at the house, had not been proved. Even the prosecution could not prove that the writing Mark PC was recovered from the pocket of the shirt of the deceased and the said writing was in fact written by the deceased himself.

It requires mention that State of Haryana had not filed any appeal before this Court, challenging the judgment of acquittal passed by the learned trial Court and the complainant had preferred the instant appeal challenging the judgment of acquittal arising out of a police case. The complainant preferred the instant appeal before this Court under Section 378 (4) of Cr.P.C. and even an application was filed by the complainant under Section 378(4) Cr.P.C. with a prayer to grant special leave to appeal as well.

During the pendency of the appeal, Jai Lal, the complainant expired and vide order dated 27.10.2009, his legal representative was ordered to be impleaded as the appellant in the instant appeal. It also requires mention that the accused Mir Singh, respondent No.2 and Satinder, respondent No.4 also expired during the pendency of the appeal before this Court.

I have heard learned counsel for the parties and with their able assistance; I have gone through the entire record of the case.

At the very outset, learned counsel appearing for respondents No.1 and 3 have raised a preliminary objection before this Court that the FIR, in the instant case, was registered on 18.11.2002 and the impugned judgment of acquittal has been passed by the learned trial Court on 27.11.2006; consequently, the complainant had no right to file an appeal against the judgment of acquittal passed by the learned Additional Sessions Judge (Fast Tract Court), Bhiwani under Section 378(4) Cr.P.C. Learned counsel for the respondents also submitted that the proviso to Section 372 Cr.P.C., whereby the victim has been granted the right to file an appeal against the acquittal was inserted w.e.f. 31.12.2009 and the same is prospective in nature. The legislative intent was very clear that the Amendment Act, 2008 shall come into operation/force from a date, as the Central Government made by a notification in the official Gazette appoints and such date was fixed to be 31.12.2009 through a Gazette Notification. Consequently, the appeal is not maintainable before this Court. Learned counsel for the respondents also placed reliance on the law laid down by full Bench of this Court in ***CRM No.790-MA of 2010 “M/s Tata Steel Ltd. Vs. M/s Atma Tube Products Ltd. and others”*** and the judgment of Hon’ble the Supreme Court in ***“Mallikarjun Kodagali (Dead) represented through Legal Representatives Vs. State of Karnataka and other”, 2018 (4) R.C.R. (Criminal) 781.***

The submissions made by learned counsel for the respondents have been opposed by learned counsel for the appellant and he contended that in view of the provisions contained in Section 378(4) Cr.P.C., the appeal was

maintainable before this Court. Chapter XXIX of Code of Criminal Procedure 1973, deals with the appeals. Section 372, as it stood prior to 31.12.2009 as follows:-

“No appeal to lie unless otherwise provided. - No appeal shall lie from any judgment or order of a criminal Court except as provided for by this Code or by any other law for the time being in force.”

Still further, Section 378 Cr.P.C. has been reproduced below:-

“378. Appeal in case of acquittal.

- [(1) Save as otherwise provided in sub- section (2) and subject to the provisions of sub-sections (3) and (5),-*
- (a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;*
 - (b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court [not being an order under Clause (a)] or an order of acquittal passed by the Court of Session in revision.]*
- (2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, [the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal-*

- (a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;*
- (b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.]*
- (3) *No appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.*
- (4) *If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.*
- (5) *No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.*
- (6) *If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub- section (1) or under sub-section (2).”*

Prior to the Amendment of Section 372 Cr.P.C., 1973, it is apparent that the victim did not have the right to file an appeal in Indian Judicial System. There has always been a consistent view that the State represents the victims of the crime. Every criminal offence was treated to be an offence against the State and the State alone had the power to investigate and prosecute such case. In

case, the State machinery decided not to take action on the complaint of the victim, the victim had a right to approach the Court either under Section 156 of Cr.P.C., 1973 or to file a complaint under Section 200 of Cr.P.C. As per the mandate of Section 156 Cr.P.C., the Magistrate could order an investigation to be done by the police.

Chapter XXIX of Code of Criminal Procedure, 1973 deals with the appeals. The appeal against judgments of acquittal are governed by the provisions of Section 378 of Cr.P.C. As per subsection (1) of 378 Cr.P.C., only the District Magistrate or the State as the case may be is entitled to direct the Public Prosecutor to file an appeal. Subsection (2) of Section 378 of Cr.P.C. deals with the cases investigated under the Delhi Special Police Establishment Act, 1946 and in those cases, the Central Government may also direct the public prosecutor to file an appeal. As per Subsection (3) of Section 378 Cr.P.C., no appeal to the High Court either under Subsection (1) or Subsection (2) shall be entertained except with the leave of the Court. Subsection (4) deals with the appeals filed by the complainant in case the order of acquittal is passed in any case instituted upon a complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal. Still further, Subsection (5) provides for the limitation for filing the petition for grant of special leave to appeal in terms of Subsection (4). Subsection (6) provides that in case the application for special leave to appeal filed by a complainant under subsection (4) is refused then no appeal from that order of acquittal shall lie under Subsection (1) or under Subsection (2). It clearly shows that the Cr.P.C. envisaged and granted a predominant role to the State, so far as the appeals against acquittal are concerned and the State alone

was entitled to file an appeal in cases, which were launched on the basis of a FIR. The only exception to this rule was in a complaint case, where the complainant could file an appeal under Section 378(4) of Cr.P.C. after seeking special leave to appeal, in case the appeal lay to the High Court.

As observed above, the victim/complainant in a State case had no right to file appeal against the judgment of acquittal. The right to appeal was vested for the first time in a 'victim' under the proviso to Section 372 of the Code inserted by the Code of Criminal Procedure (Amendment Act) 2008. Section 1(ii) of the Amendment Act clearly stated that "it shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint; and different dates may be appointed for different provisions of this Act". Still further Section 29 of the Amendment Act, 2008 pertaining to amendment of Section 372 of the Code states that "in Section 372 of the Principal Act, the following proviso shall be inserted, namely:- Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court".

The Central Government, by Notification No.S.O.3313(E), dated 30.12.2009, appointed 31.12.2009, as the date for the Act No.5 of 2009 to come into force, which was published in the Gazette of India, extraordinary, Part 2(ii) Section 3(ii), dated 30.12.2009. Hence, in absence of any express intention notified by the legislature to the contrary, it has to be concluded that the right of the victim, to prefer an appeal in terms of the said proviso to Section 372 Cr.P.C., became available to the victim(s) of all cases in which orders were

passed by any criminal Court acquitting the accused or convicting him for a lesser offence or imposing inadequate compensation, on or after 31.12.2009.

The amended provision of Section 372 Cr.P.C. has been reproduced below for ready reference:-

“372. No appeal to lie unless otherwise provided. - No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code by any other law for the time being in force:

[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.]

Thus, it is observed that right to appeal is a substantive right and it cannot be inferred by implication unless the statute expressly provides so. It can be safely laid down that the right to appeal given to a victim under the proviso to Section 372 of the Code is prospective in nature and has been made enforceable w.e.f. 31.12.2009. A victim has a right to prefer appeal in respect of three types of the orders referred to in the proviso 2 Section 372 Cr.P.C., if such order has been passed on or after 31.12.2009 and no such right was available to the complainant/victim prior to 31.12.2009. Consequently, the complainant in the instant case was not entitled to file the instant appeal under the provisions of Section 378 (4) Cr.P.C. The Hon’ble Supreme Court of India

has held in the matter of “***Mallikarjun KKodagali (Dead) represented through Legal Representatives Vs. State of Karnataka and other***” 2018 (4) R.C.R. (Criminal) 781 as follows:-

“74. What is significant is that several High Courts have taken a consistent view to the effect that the victim of an offence has a right of appeal under the proviso to section 372 of the Cr.P.C., 1973. This view is in consonance with the plain language of the proviso. But what is more important is that several High Courts have also taken the view that the date of the alleged offence has no relevance to the right of appeal. It has been held, and we have referred to those decisions above, that the significant date is the date of the order of acquittal passed by the Trial Court. In a sense, the cause of action arises in favour of the victim of an offence only when an order of acquittal is passed and if that happens after 31st December, 2009 the victim has a right to challenge the acquittal, through an appeal. Indeed, the right not only extends to challenging the order of acquittal but also challenging the conviction of the accused for a lesser offence or imposing inadequate compensation. The language of the proviso is quite explicit, and we should not read nuances that do not exist in the proviso.”

In view of the above observations, this Court is of the considered view that the instant appeal under Section 378(4) Cr.P.C. filed by the complainant against judgment and order of acquittal passed by the learned Additional Sessions Judge (Fast Track Court), Bhiwanit in case FIR No. 105 dated 18.11.2022, under Sections 306, 109 and 34 of IPC, is not maintainable before this Court and the present appeal is accordingly, dismissed.

The appellant/complainant has also filed an application i.e. CRM No.29863 of 2022 in the main criminal appeal under Section 391 Cr.P.C. read

with Section 482 of the Code of Criminal Procedure with a prayer to place on record certain additional document. Since the main appeal itself has been held to be not maintainable, the said application is also liable to be dismissed.

Pending application, if any, is also disposed off, accordingly.

Case property, if any, be dealt with, and destroyed after the expiry of period of limitation. The trial court record be sent back.

24.11.2022
hemlata

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes