

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

**Reserved on 08.08.2022
Pronounced on : 24.08.2022**

(i) CRM-A-2158-MA-2016
Palwinder Kaur ..Applicant/Appellant

Versus

State of Punjab and another ..Respondents

(ii) CRM-A-50-MA-2018
Palwinder Kaur ..Applicant/Appellant

Versus

State of Punjab and another ..Respondents

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

Present: Mr. S.S. Bhinder, Advocate
for the applicant/appellant in both the cases.

Mr. H.S. Grewal, Addl. A.G., Punjab.

Mr. Gagandeep Singh, Advocate for
Mr. A.S. Manaise, Advocate
for respondent No.2 in CRM-A-2158-MA-2016.

ASHOK KUMAR VERMA, J.

1. This order will dispose of CRM-A-2158-MA-2016 and CRM-A-50-MA-2018 as common questions of law and facts are involved in both the appeals.

2. The applicant/appellant has filed the present applications under Section 378(4) of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of leave to appeal against impugned judgment dated 16.09.2016 passed by learned Additional Sessions Judge, Gurdaspur in

Sessions Case No.3 titled as 'Palwinder Kaur Vs. Paramjit Kaur and another' whereby accused-Paramjit Kaur was acquitted from the charges framed under Sections 302/307/120B of the Indian Penal Code, 1860 (for short 'the IPC') and against the judgment dated 28.09.2017 passed by Principal Magistrate, Juvenile Justice Board, Gurdaspur in CIS No.JJS 45 of 2017 titled as 'Palwinder Kaur Vs. Arshpreet Kaur @ Ashu' whereby accused-Arshpreet Kaur (Juvenile) was acquitted from the above-said charges.

3. A cursory look at the paper-books would reveal that the complainant and the accused who resided in the same village, were having close relations for the last three generations. Ardeep Singh, son of the complainant, fell in love with Arshpreet Kaur @ Ashu, daughter of Palwinder Kaur and both developed illicit relations. Ardeep Singh and Arshpreet Kaur @ Ashu intended to marry but the family members of the complainant did not agree. On 28.04.2022 at about 7/8:00 p.m., the complainant was cooking vegetable of lady fingers in open kitchen which is adjoining to the fields of accused. The complainant went inside her room in order to put the dried clothes in order and when she returned back, she saw Paramjit Kaur stirring spoon in the said vegetables and upon asking by complainant, Paramjit Kaur replied that she has put some water in the vegetables as it were over-heated. Simultaneously, Navdeep Singh (son) and Surjit Singh (brother-in-law) of the complainant also arrived at the spot and Surjit Singh told the complainant that Paramjit Kaur has put something in the vegetables upon which the complainant replied that she had put some water as disclosed by her. At about 9/10:00 p.m. when the complainant, her

son-Ardeep Singh, husband-Satwinder Singh and servant-Chottu took food, they started vomiting and had loose motions. Thereafter, Surjit Singh and Navdeep Singh arranged a vehicle and made efforts to shift them to Hospital. When Navdeep Singh was helping Ardeep Singh to get into a vehicle then Ardeep Singh fell down and died and after keeping his dead body in the house of Surjit Singh, remaining family members of the complainant were shifted to G.N.D. Hospital, Amritsar where they were medically treated and their lives were saved. Post mortem on the dead body of Ardeep Singh was conducted on 29.04.2002 and viscera was sent for chemical examination. Despite strenuous efforts made by the complainant and her family members, no case was registered against Paramjit Kaur and her daughter. Thereafter the complainant filed writ petition before this Court which was disposed of with the observation that petitioners were at liberty to file a regular complaint. Hence the complaint was filed by the complainant.

4. On going through the contents of the complaint as well as arguments advanced by learned counsel for the complainant, the accused were ordered to be summoned to face trial by the trial court for the commission of offence under Sections 302/307/120-B of the IPC. Since accused Arshpreet Kaur was found to be juvenile, her case was sent to the Juvenile Court, Gurdaspur whereas case qua accused Paramjit Kaur was committed to the Court of Sessions.

5. In order to prove its case, the prosecution examined as many as 05 witnesses.

6. On consideration of the material on record and submissions made by learned counsel for parties, the learned Additional Sessions Judge,

Gurdaspur acquitted accused-Paramjit Kaur vide judgment dated 16.09.2016 and Principal Magistrate, Juvenile Justice Board, Gurdaspur acquitted accused-Arshpreet Kaur @ Ashu vide judgment dated 28.09.2017.

7. Being aggrieved by and dissatisfied with the aforesaid judgments, present applications for grant of leave to appeal have been filed by the applicant/appellant.

8. Learned counsel for the appellant argued that the trial court has not considered the statements of the prosecution witnesses and unnecessarily relied upon the statements (Ex.DB) recorded by the police during the enquiry. The trial Court has wrongly arrived at the conclusion that water cannot be used in 'Bhindi' vegetables for its cooking and putting of water in the vegetables is a story concocted by the accused-Paramjit Kaur. The trial Court has wrongly arrived at the conclusion that there was an inordinate delay in filing the complaint whereas the actual facts are that when the police failed to register FIR immediately after the incident, two applications dated 28.02.2002 and 23.11.2002 were moved by the husband of the appellant/complainant to the police but no action was taken. Then the husband of the appellant/complainant filed writ petition under Section 482 of the Cr.P.C. before this Court and it was only after that the appellant/complainant filed the present complaint. Hence the delay has been duly explained. Learned counsel has further submitted that the medical evidence fully supported the ocular version of appellant/complainant (PW-1) as well as Surjit Singh (PW-2) that accused-Paramjit Kaur has put poison in the vegetables thereby causing death of Ardeep Singh. Accused Paramjit Kaur had also confessed before the complainant that mistake has been

committed by her on the insistence of her daughter to kill Ardeep Singh and poison was arranged by her and the same was put in the food.

9. At the last bastion, learned counsel for the appellant has strenuously argued that the trial court has committed palpable errors while passing the impugned judgments thereby having lost in oblivion. There is cogent, clinching and convincing evidence which clearly proved that accused Arshpreet Kaur @ Ashu (juvenile) had physical relations with deceased-Ardeep Singh and she became pregnant and when complainant and her husband refused to accept the proposal of her marriage with their son, the accused took revenge from the family of appellant/complainant. The presence of accused Arshpreet Kaur @ Ashu (juvenile) with her mother Paramjit Kaur is proved by the evidence. Therefore, the impugned judgments dated 16.09.2016 and 28.09.2017 acquitting the accused Palwinder Kaur and Arshpreet Kaur (juvenile), respectively, are liable to be brushed aside.

10. *Per contra*, learned counsel for respondent No.2-Paramjit Kaur has submitted that she has been rightly acquitted by the trial court. The prosecution has failed to prove the guilt of the accused beyond reasonable doubt. There is an inordinate and unexplained delay of 05 years in filing of the complaint. The versions of the complainant do not inspire confidence as lot of improvements have been made by the complainant at the time of filing the present complaint. After appreciation of the evidence on record, the trial Court has rightly acquitted respondent No.2-Paramjit Kaur.

11. We have given our thoughtful consideration to the submissions made by the learned counsel for the parties. Before taking a dig into the quagmire of submissions and counter-submissions made by the parties, it would be worthwhile to refer to the limited scope of interference by this Court in matters of acquittal appeals. It is well settled in a 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. No innocent people have to suffer the rigors of law.

13. The perusal of Lower Court Record reflects that the alleged occurrence has taken place on 28.04.2002. Satwinder Singh, husband of the complainant, at the time of post-mortem on the dead body of Ardeep Singh (deceased) on 29.04.2002 categorically suffered statement during proceedings under Section 174 of the Cr.P.C. that he does not suspect the role of anybody in the death of his son, as he was not having enmity with anybody and the occurrence took place on account of consuming lady finger vegetables in dinner by the family. Satwinder Singh had moved 02 complaints on 28.08.2002 and 23.11.2002 to the police i.e. after period of 04 and 07 months, respectively and thereafter filed the petition under Section

482 of the Cr.P.C. before this Court on 10.02.2003 after a lapse of almost 9/10 months. It is admitted by PW-2 Surjit Singh that Harjinder Singh (brother-in-law) of accused Paramjit Kaur had come to mourn the death of Ardeep Singh, after 3-4 days in the presence of other villagers, who alleged to have informed that Paramjit Kaur mixed poison in the vegetables then why they were not getting registered the case against her. In pursuance of which PW-2 stated to have convened Panchayat and discussion was held in the Gurudwara of the village, but accused-Paramjit Kaur stated to have not come there which fact was mentioned by PW-2 in his statement Mark 'A' portion 'C' to 'C1'. It is evident that the complainant have not suo-moto put the police machinery in motion but at the instance of Harjinder Singh (brother-in-law) of the accused-Paramjit Kaur, who has dispute with her. Furthermore, it is evident from the cross-examination of PW-3 Navdeep Singh that they came to know regarding the pregnancy of Arshpreet Kaur (juvenile) after one month of the occurrence, therefore, this could be also one of the reasons for initiating the proceedings against the accused and as such an after-thought story concocted by the complainant cannot be ruled out. An inordinate unexplained delay of more than 05 years is certainly fatal to the case of the complainant under the given circumstances and the delay is as much that the possibility of false implication of the accused cannot be ruled out. Hon'ble Supreme Court in its judgment passed in **P. Rajagopal and others Vs. State of Tamil Nadu : 2019 (5) RCR (Criminal) 627** has observed that the Court may reject the case of the prosecution in case of inordinate delay in lodging the FIR because of the possibility of concoction of evidence by the prosecution. However, if the delay is satisfactorily

explained, the Court will decide the matter on merits without giving much importance to such delay. The Court is duty bound to determine whether the explanation afforded is plausible enough given the facts and circumstances of the case. The delay may be condoned if the complainant appears to be reliable and without any motive for implicating the accused falsely. This view of ours is supported by the judgments of the Hon'ble Supreme Court in **Apren Joseph Vs. State of Kerala : 1973 (3) SCC 114** and **Mukesh Vs. State (NCT of Delhi) : 2017 (6) SCC 1.**

14. Furthermore, there is lack of conformity and consistency between the statement of PW-1 Palwinder Kaur and the version made in the complaint. PW-1 Palwinder Kaur made averment in the complaint that accused Arshpreet Kaur had made 8/10 telephonic calls on 28.04.2002 from 10 a.m. to 4 p.m. whereas in her statement Ex.DB she stated that it was 8/10 days prior to the incident, accused Arshpreet Kaur had made telephonic calls in her house. In this regard, there is no documentary evidence brought on record by the complainant. In her testimony PW-1 Palwinder Kaur stated that she had gone to the house of accused Paramjit Kaur at her instance which itself shows that there is lack of clinching evidence in the story of the prosecution. Furthermore, in her statement Ex.DB, PW-1 did not mention the said fact. In her statement Ex.DB complainant Palwinder Kaur submitted that accused Arshpreet Kaur asked Paramjit Kaur to kill Ardeep Singh, otherwise she would commit suicide. Arshpreet Kaur and her son Ardeep Singh had illicit relation and she wanted to get married with her son but they did not agree and due to this reason she wanted to eliminate her son by causing his death. However, on being confronted with Ex.DB, these facts

were not found recorded. In her testimony and statement Ex.DB, Palwinder Kaur stated that Surjit Singh PW-2 and Navdeep Singh PW-3 have also come to the house and Surjit Singh PW-2 told that Paramjit Kaur was putting something in the vegetables to which Palwinder Kaur replied that vegetables were overheated so she put water, however, on being confronted with Ex.DB this fact was not found recorded. Therefore, this is an improvement made by the complainant in the complaint and thus concoction of the prosecution story cannot be ruled out.

15. Furthermore, there is no evidence against accused Arshpreet Kaur @ Ashu (juvenile) that she has purchased poison on or before 28.04.2002 and handed over to her mother Paramjit Kaur. Even her presence at the place of occurrence is highly doubtful as in her statement recorded before the police Palwinder Kaur has not stated anything regarding presence of Arshpreet Kaur @ Ashu at the place of occurrence.

16. So far as the extra judicial confession made by the accused Paramjit Kaur is concerned, suffice it to say that with regard to this aspect, when the appellant/complainant appeared for her statement in the Court, she remained silent and she has not uttered even an iota of word in this regard. It is also highly improbable that accused Paramjit Kaur would make extra judicial confession before the appellant/complainant that on the insistence of her daughter Arshpreet Kaur to kill Ardeep Singh, she arranged poison and put the same in the food. Therefore, this aspect of the case is of no help to the complainant. It is a settled proposition of law that extra judicial confession is very weak type of evidence and unless it inspires solid confidence or is fully corroborated by some other clinching evidence,

ordinarily conviction of the offence of murder should not be made solely on the evidence of extra judicial confession. Extra judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, extra judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra judicial confession of the co-accused. This view of ours is fortified by the judgments of Hon'ble Supreme Court in ***State of M.P. Through CBI and others Vs. Paltan Mallah and others : 2005 (3) SCC 169***, ***State of Punjab v. Bhajan Singh and others, (1975) 4 SCC 472***, ***Gopal Sah vs. State of Bihar (2008) 17 SCC 128*** and ***State of Rajasthan vs. Kistoora Ram (Criminal Appeal No.2119/2010 decided on 28.7.2022)***.

17. It is further settled proposition of law that 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. Reference in this regard be made from the judgment of Hon'ble Supreme Court passed in the case of ***State of Rajasthan versus Ram Niwas : (2010) 15 SCC 463***. Thus the view taken by the trial court cannot be said to be either impossible or perverse warranting interference by this Court.

18. In view of above, we are of the considered opinion that there are only hyperbolic allegations made by the prosecution in its story without any factual basis thereby trying to paint the accused as villain. In this view of the matter, no fault can be found with the impugned judgments dated 16.09.2016 and 28.09.2017 passed by learned Additional Sessions Judge,

Gurdaspur and Principal Magistrate, Juvenile Justice Board, Gurdaspur, respectively.

19. Resultantly, the present applications filed under Section 378(4) of the Cr.P.C., being devoid of merits, are hereby dismissed. Leave to appeal is declined.

(RITU BAHRI)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

24.08.2022
Kothiyal

Whether speaking/reasoned
Whether Reportable

Yes
Yes