

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

212

CRM-A-402-2021

Date of decision: 14.07.2022

State of Haryana

....Applicant/Appellant

Versus

Satya Narayan

...Respondent

**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.

ASHOK KUMAR VERMA, J.

1. The applicant/appellant-State of Haryana has filed the present application under Section 378(3) of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of leave to appeal against impugned judgment dated 24.12.2020 passed by the learned Additional Sessions Judge, Gurugram in Sessions Case No.44 of 2017 titled as 'State Vs. Satya Narayan' whereby the accused/respondent was acquitted from the charges under Section 302 of the Indian Penal Code, 1860 (for short 'the IPC') and under Section 27(1) of the Arms Act and convicted under Section 25(1B)(a) and 30 of the Arms Act, 1959.

2. Briefly stated the factual matrix of the case referred to in the impugned judgment is that on 14.03.2017 a telephonic information was received in the police station from Rockland Hospital, IMT Manesar to the effect that Jitender s/o Nawal Singh has been taken to the hospital in dead

condition and requested for sending police. On this police party reached at Village Dhorka where complainant Rajnish w/o Jitender presented an application to the effect that she is a house hold lady and her husband Jitender runs a Parchoon shop in the village and his brother-in-law Satya Narayan is retired from Army. On 14.03.2017 at about 3:30 p.m. a quarrel regarding shamlat land has taken place between her husband Jitender and her brother-in-law Satya Narayan and her brother-in-law fired four shots upon her husband which hit on his chest, stomach and hand. In the meantime, her father-in-law Nawal Singh reached there and on seeing him her brother-in-law fled away from there. Thereafter, after arranging the vehicle her husband was taken to hospital but he died on the way.

3. On the basis of aforesaid complaint, the FIR was registered. Investigation was carried out. During investigation, on 15.03.2017 accused/respondent was arrested and his disclosure statement was recorded. 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/respondent was charge-sheeted for commission of offences punishable under Section 302 of the IPC and Section 27(1), 25(1B)(a) and 30 of the Arms Act to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined as many as 20 witnesses, produced material documents and objects which were exhibited. On the other hand, the defence also examined 02 witnesses.

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, Gurugram acquitted the

accused/respondent from the charges under Section 302 of the IPC and 27(1) of the Arms Act and convicted him under Section 25(1B)(a) and 30 of the Arms Act.

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 committed grave illegality by giving much weightage to the evidence of hostile witnesses. The trial court did not properly appreciate the other prosecution evidence. The prosecution has placed sufficient material on record to link the accused with the alleged offence by proving the recovery of weapon of offence from him and the comparison of bullet extracted from the body of the deceased with that of pistol recovered from the accused. Therefore, leave to appeal against the impugned judgment may be granted.

8. Heard.

9. Before advertng 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.

10. As per the prosecution, the alleged occurrence was witnessed by the complainant-Rajnish wife of deceased, Tanya daughter of the deceased and Naval Singh father of the deceased. However, when these witnesses appeared in the witness box as PW-2, PW-3 and PW-4 respectively, they turned hostile from their earlier version and have not supported the prosecution case. They have categorically deposed that on 14.03.2017 some unknown person had fired gun shots upon the deceased and accused Satya Narayan was not present at the spot. Even during their cross-examination nothing came on record which could help the prosecution. Rather they have deposed that they are having cordial relations with accused Satya Narayan. It is well settled law that not much reliance should be placed upon uncorroborated testimonies of hostile witnesses.

11. Further, the defence witnesses Sanjay DW-1 and Jaivir DW-2 deposed that the accused Satya Narayan was working as Security Guard in ISY Enterprises, Gurugram and on 14.03.2017 he remained on duty from 8.00 a.m. to 8.00 p.m.

12. Moreover, there is also delay of 11 days in sending the weapon to the FSL. The weapon was got recovered on 16.03.2017 whereas it was sent to FSL on 27.03.2017. In these circumstances, possibility of tampering with the bullet cannot be ruled out.

13. In their deposition PW-14 Lal Chand (retired Inspector) and PW-15 Jai Parkash Sub Inspector have submitted that on 16.03.2017 they have got recovered licenced pistol alongwith two live cartridges from the

kotha of the field of the accused/respondent at his instance. As per the armed licence Ex.P26, the licence was issued at District Doda, Jammu and Kashmir which was only meant for District Doda. It is proved that the accused/respondent has contravened the conditions of the licence for carrying the pistol and two live cartridges beyond the territory of District Doda, Jammu and Kashmir. Thus, the trial court rightly convicted the accused/respondent under Sections 25(1B)(a) and 30 of the Arms Act.

14. 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.”

15. In view of above, no case is made out for interference in the impugned judgment dated 24.12.2020 passed by learned Additional Sessions Judge, Gurugram. Accordingly, the present application filed under Section 378(3) of the Cr.P.C., being devoid of merits, is hereby dismissed.

(RITU BAHRI)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

14.07.2022
Kothiyal

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