

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

CRA-S-2941-SB-2015 (O&M)

Date of Decision: 06.01.2023

Malkit Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr.Peeush Gagneja, Advocate
for the petitioner.

Mr. Digvijay Nagpal, AAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

CRM-20741-2015

For the reasons stated in the application, the same is allowed
and the delay of 69 is condoned.

CRA-S-2941-SB-2015

1. The appellant, at whose father's complaint FIR No.148 dated 14.06.2014 under Section 306 IPC at Police Station Sadar Fazilka was registered, has preferred the present appeal seeking setting aside of judgment and order dated 24.02.2015 whereby learned Additional Sessions Judge, Fazilka (for short 'trial court') has acquitted the respondent on the ground that prosecution has miserably failed to prove the guilt of accused beyond reasonable doubt.

2. The brief facts emerging from the record are that the aforementioned FIR, was registered at Police Station Sadar Fazilka, under Section 306 IPC. The police, after completing investigation, filed its report

under Section 173 Cr.P.C. alleging commission of offence under Section

306 IPC. The police report (*challan*) was presented against respondent namely Sunil Kumar @ Sheela.

3. Learned trial Court framed charges against the respondent and recorded evidence of prosecution witnesses as well as defence witnesses. The prosecution examined 11 witnesses which included appellant PW1, Gurdev Singh-PW2 and Resham singh-PW4. Other witnesses were official witnesses. The trial Court after examining prosecution witnesses recorded statement of respondent under Section 313 Cr.P.C. The respondent denied case of prosecution and claimed innocence.

The trial Court came to a conclusion that accused-respondent has not committed alleged offence and prosecution has failed to prove the charge against the accused beyond any shadow of reasonable doubt. The accused cannot be linked with the death of deceased Manjit Kaur. The relevant extract of the judgment recorded by trial Court read as :

“22. I, further rely upon the pronouncement of the Hon'ble High court of Punjab and Haryana, titled the State of Punjab Versus Jaibinder Devi and others, 2011(1) RCR (Criminal), 459, wherein it has been observed by the Hon'ble High court:-” To convict a person under section 306 I.P.C, there has to be a clear mens rea to commit the offence- It requires an active act or direct act which led the deceased to commit suicide seeing no option- Act must have been intended to push the deceased into such a position that he/she committed suicide- Without a positive act on the part at the accused to instigate or aid in committing suicide, conviction cannot be sustained”. As such this court has to decide after taking into consideration the ingredients of

section 306 of the I.P.C as mentioned above that the accused Sunil Kumar abetted Manjit Kaur to commit suicide while jumping in the Gang Canal. As per the case of the prosecution, the accused and Manjit kaur deceased fled away from the house of the complainant in the intervening night of 11/12.6.2014. Thereafter on the next day, Prem Singh, grand father of accused Sunil Kumar stated that he received telephone call from Sunil Kumar that Manjit kaur had jumped in the Gang Canal. But there is no person, who saw the deceased Manjit Kaur while leaving the house of Malkit Singh complainant and accompanying to the accused in the intervening night of 11/12.6.2014. The prosecution has miserably failed to prove that accused and Manjit Kaur together run away from the house of the complainant and after that Manjit Kaur committed suicide as she felt insult due to her act of fleeing away from her house. Moreover, Malkiat Singh, i.e. husband of deceased Manjit Kaur in his cross examination admitted that he never made any complaint to the parents of the deceased Manjit Kaur regarding the character of his wife. He has not narrated even a single word that he knew earlier that his wife had illicit relations with accused Sunil Kumar nor he made any complaint to the police or any respectable of the village against the conduct of accused Sunil Kumar. Hence, this court cannot believe the version of the complainant/prosecution that Manjit Kaur deceased fled away from her house with accused Sunil Kumar and thereafter committed suicide. There is not an iota of evidence on file that accused directly or indirectly had

intention to provoke, incite or encourage to do the act which led the deceased Manjit Kaur to commit suicide by jumping in the Gang Canal. Hence, although, as per the opinion of the Medical Officer, who conducted the postmortem examination on the dead body of deceased Manjit Kaur, the cause of death of the deceased was due to drowning but the accused cannot be linked with the death of deceased Manjit Kaur. As such the prosecution has miserably failed to prove that accused Sunil Kumar abetted Manjit Kaur to commit suicide while jumping in the Gang Canal.

23. Therefore, considering all the facts and circumstances of the case, this court is of the considered opinion that the prosecution has failed to prove the charge against the accused beyond any shadow of reasonable doubt and as such by giving the benefit of doubt, the accused is acquitted of the charge framed against him. He is also discharged of the bail bond and surety bond. The case property if any, be disposed of according to rules after the expiry of period of appeal or revision, if any, filed and subject to decision thereof. File be consigned to the record room.”

4. Learned counsel for the appellant vehemently contended that the trial court has failed to appreciate the evidence led by prosecution. The statement of appellant which stood supported by statement of other witnesses leaves no room for doubt, however, the trial Court in a mechanical manner has acquitted the accused-respondent.

In support of his argument, learned counsel relied upon the judgment of Hon'ble Supreme Court in **Dammu Sreenu vs. State of A.P.,**

2009 (14) SCC 249.

5. Learned State counsel submitted that State has not filed appeal against the impugned order.

6. I have perused the record and heard arguments of the appellant. The present appeal is bereft of merit and in view of findings recorded hereinafter, deserves to be dismissed.

7. As per statement of Malkit Singh-PW1, in the intervening night of 11/12.06.2014 his wife had gone with Sunil Kumar and at about 11/12.00 p.m., he alongwith his family members started her search but could not trace out. Gurdev Singh-PW2 deposed that he resides with his brother Resham Singh (father of Malkit Singh and father-in-law of deceased). In the intervening night of 11/12.06.2014 at about 2.30/3.00 a.m., he woke up to check the lights of the tubewell and when he switched on the light, he found that Manjit Kaur was not on her cot. He made wake up his brother and his wife and then they started search of Manjit Kaur. There is stark contradictions in the statements of both the witnesses. From the statement of PW1, it appears that they were aware about leaving of deceased with respondent whereas as per statement of PW-2, the family of the deceased was not aware about leaving of deceased with respondent.

In **Madhu @ Madhuranatha v. State of Karnataka, (2014) 12 SCC 419**, Hon'ble Court has adverted with question of variation in statement of witnesses and held:

16. In Rohtash Kumar v. State of Haryana (2013) 14 SCC 434 this Court considered the issue of discrepancies in the depositions. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on

trivial matters which do not affect the core of the case of the prosecution must not prompt the court to reject the evidence in its entirety. Therefore, irrelevant details which do not in any way corrode the credibility of a witness should be ignored. The court has to examine whether evidence read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence, more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, so as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness.

A similar view has been reiterated in **State of U.P. v. M.K. Anthony (1985) 1 SCC 505, State v. Saravanan (2008) 17 SCC 587 and Vijay v. State of M.P. (2010) 8 SCC 191.**

8. Hon'ble Supreme Court in a catena of judgments including **Dhanapal v. State By Public Prosecutor, Madras, (2009) 10 SCC 401** while dealing with scope and powers of the appellate court in dealing with an appeal against an order of acquittal has elucidated:

(i) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(ii) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence

before it may reach its own conclusion, both on questions of fact and of law.

(iii) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(iv) **An appellate court, however, must bear in mind that in case of acquittal, there is double presumption 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 reinforced, reaffirmed and strengthened by the trial court.**

(v) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

8.1. A three judge bench of the Apex Court in **Ashok Kumar Singh Chandel Vs State of U.P. 2022 Live Law (SC) 915** has adverted with question of jurisdiction of High Court in appeals against acquittal. The Apex Court has held:

I. Jurisdiction of the High Court in Appeals Against Acquittals

73. This is the first preliminary submission and it is based on a principle laid down by this Court that in an appeal against acquittal, the criminal appellate court will not interfere with the acquittal unless there are substantial and compelling reasons. The common submission of all the counsels appearing for the Appellants is, therefore, that the High Court was not justified in reversing the order of acquittal.

74. The position of law with respect to the jurisdiction of the High Court in cases of appeals against acquittals is well established. After reviewing the judgments on this subject, this Court clarified in Chandrappa v. State of Karnataka (2007) 4 SCC 415 that:

“3. Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.”

75. It is sufficient to note the principle laid down in the Constitution Bench of this Court in M.G. Agarwal v. State of Maharashtra (1963) 2 SCR 405:

“16. ...But the true legal position is that

however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. This position has been clarified by the Privy Council in Sheo Swarup v. King Emperor and Nur Mohammad v. Emperor [AIR 1945 PC 151] ...

17. ...Similarly in Ajmer Singh v. State of Punjab [(1952) 2 SCC 709 : 1953 SCR 418] it was observed that the interference of the High Court in an appeal against the order of acquittal would be justified only if there are “very substantial and compelling reasons to do so”. In some other decisions, it has been stated that an order of acquittal can be reversed only for “good and sufficiently cogent reasons” or for “strong reasons”. In appreciating the effect of these observations, it must be remembered that these observations were not intended to lay down a rigid or inflexible rule which should govern the decision of the High Court in appeals against acquittals. They were not intended, and should not be read to have intended to introduce an additional condition in clause (a) of Section 423(1) of the Code. All that the said observations are intended to emphasise is that the approach of the High Court in dealing with an appeal against acquittal ought to be cautious because as Lord Russell observed

in the case of Sheo Swarup, the presumption of innocence in favour of the accused “is not certainly weakened by the fact that he has been acquitted at his trial”. Therefore, the test suggested by the expression “substantial and compelling reasons” should not be construed as a formula which has to be rigidly applied in every case. That is the effect of the recent decisions of this Court, for instance, in Sanwat Singh v. State of Rajasthan [AIR 1961 SC 715] and Harbans Singh v. State of Punjab [AIR 1962 SC 439] and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse...”

76. Following the Constitution Bench, this Court in *Ghurey Lal v. State of UP* (2008) 10 SCC 450 has formulated the following principles:

“69. The following principles emerge from cases

1. The Appellate Court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was

before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.

70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has “very substantial and compelling reasons” for doing so.

A number of instances arise in which the appellate court would have “very substantial and compelling reasons” to discard the trial court's decision. “Very substantial and compelling reasons” exist when:

i. The trial court's conclusion with regard to the facts is palpably wrong;

ii. The trial court's decision was based on an erroneous view of law;

iii. The trial court's judgment is likely to result in “grave miscarriage of justice”;

iv. The entire approach of the trial court in dealing with the evidence was patently illegal;

v. The trial court's judgment was manifestly unjust and unreasonable;

vi. The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

vii. This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction-the High Courts/Appellate Courts must rule in favor of the accused.

9. The judgment cited by learned counsel for the appellant does not support the case of the appellant because in the facts and allegations, it cannot be concluded that respondent has insulted the deceased.

10. In the case in hand, there are contradictions in the statements of the witnesses. There is allegation of abetment of suicide against the respondent. The ingredients required for invoking rigour of Section 306 IPC are that there should be *mens-rea* on the part of accused and he must have abetted the deceased to commit suicide. In the present case, there is allegation that deceased had left her home with respondent. There is no evidence disclosing abetment on the part of respondent to commit suicide.

The husband of the deceased in his statement as well as learned counsel for

the appellant had contended that the deceased had committed suicide due to insult. This is just bald allegation, however, there is no evidence disclosing that the respondent abetted the deceased to commit suicide. There is no evidence in the form of call detail record disclosing the presence of respondent with the deceased at the time of suicide. Oral allegation of leaving home by deceased with respondent is not sufficient to invoke rigour of Section 306 IPC. In the absence of any concrete evidence, the respondent cannot be held guilty.

11. As noted above, there is always presumption of innocence and in case of acquittal, there is double presumption. The burden lies upon prosecution to prove the guilt beyond reasonable doubt. The learned trial Court has passed a detailed, reasoned and speaking order and I find no infirmity in the said order. There is no manifest error, illegality or non-application of mind or non-appreciation of evidence which could compel this Court to form an opinion different from the opinion formed by the learned Trial Court. Finding no merit in the present appeal, I am of the considered opinion that appeal deserves to be dismissed and accordingly dismissed.

06.01.2023
anju

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>