

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

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CRM-A-1462-MA-2018 (O&M)  
Date of decision: 21.08.2023

Charanjit Saxena

...Applicant-appellant

Versus

State of Punjab and Others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

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Present : Mr. Vivek K. Thakur, Advocate for the applicant-appellant

Ms. Himani Arora, AAG Punjab

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**AMAN CHAUDHARY. J.**

1. The present application for grant of leave to appeal has been preferred against the judgment dated 20.11.2017 passed by the Court of learned Additional Sessions Judge, Barnala, whereby accused-respondent Nos.2 and 3 have been acquitted in FIR No.57 dated 06.07.2014 registered under Sections 306 and 34 IPC at Police Station Tapa, District Barnala.

2. The facts as emerge from the FIR are that complainant-Charanjit Saxena made a statement that his brother Bimlesh Kumar was married with one Preeti and they had four children. However, Preeti was having illicit relations with one Jatinder Kumar, due to which a dispute remained between husband and wife. On 03.07.2014, Bimlesh Kumar went to the house of Preeti, where a quarrel took place and he came back. Preeti came to their house and asked his father to advise his son Bimlesh Kumar, or otherwise, she will report the matter to the police. Next day i.e. 04.07.2014, when Bimlesh Kumar was not found at home, they went in

search of him and found his dead body in a canal, entangled in a tree. FIR was registered. After investigation, final report was presented in the Court, upon which the charge under 306 IPC was framed against the accused-respondents, to which they pleaded not guilty and claimed trial.

3. In order to prove its case, the prosecution examined 6 witnesses. On closing of the prosecution evidence, statements of the accused-respondents were recorded under Section 313 Cr.P.C. All the incriminating material was put to them, which they denied and pleaded innocence. In defence, the accused did not lead any evidence.

4. On evaluating the evidence led by the parties and hearing their respective counsel, the learned trial Court acquitted the accused-respondents herein.

5. Hence the present application for grant of leave to appeal.

6. Learned counsel contends that trial Court had wrongly acquitted the accused-respondents without taking into consideration the attending circumstances, which clearly show that Bimlesh Kumar had committed suicide on account of the fact that his wife having illicit relationship with accused-respondent No.3 Jitender Kumar and a day prior to the incident, a quarrel had taken place between the two. Thus, both the accused had abetted the suicide.

7. Heard and perused the file.

8. It would be profitable to refer the judgment of Hon'ble The Supreme Court in the case of **N. Vijayakumar v. State of Tamil Nadu** (2021) 3 SCC 687, wherein it was held thus:

"20.....Under Section 378 CrPC, no differentiation is made between an appeal against acquittal and the appeal against

conviction. By considering the long line of earlier cases this Court in the judgment in **Chandrappa v. State of Karnataka**, (2007) 4 SCC 415 has laid down the general principles regarding the powers of the appellate Court while dealing with an appeal against an order of acquittal. Para 42 of the judgment which is relevant reads as under: (SCC p. 432)

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, re- appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence G.A.No.28 of 1994 before it may reach its own conclusion, both on questions of fact and of law.

(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.

(4) 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.

(5) 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."

9. Adverting to the case in hand, learned trial Court has acquitted the respondents by holding thus:

"19. As per the complainant Charanjit Sexsena, who is brother of deceased Bimlesh Kumar, there remained dispute between Bimlesh Kumar and his wife Preeti due to illicit relationship

between Preeti and accused Jatinder Kumar and she was residing separately in a rented accommodation. There is no evidence on record about the rented accommodation where accused misbehaved with Bimlesh Kumar. The owner of said accommodation or neighbourer is not examined. It has come in the cross-eXamination of complainant Charanjit Sexsena that accused Preeti was living at a distance of half kilometer from their house. So, what happened Bimlesh Kumar and his wife Preeti on 03.04.2014 or 04.07.2014, no evidence is brought on record. The witness Charanjit Sexsena also admitted that there was a divorce petition between Preeti and Bimlesh Kumar and in the statement, copy of which is Ex.DC, Bimlesh Kumar admitted that he shall not harass Preeti in future. So, it was the onduct of Bimlesh Kumar, which is admitted by Charanjit Sexsena, complainant that he used to visit the house of accused Preeti where quarrel used to take place between them.

20. The allegations of illicit relation between Preeti and Jatinder Kumar, are also not proved on record as no witness is examined to show that Jatinder Kumar and Preeti were living together or they were seen together. Best witness was the owner of rented accommodation where the prosecution has alleged that Preeti was residing on rent, but that evidence is withheld by the prosecution.

21. There is no medical evidence on record to prove that Bimlesh Kumar committed suicide or he died due to drowning. Report of chemical examiner reveals that no poison was detected in the viscera. So, whether Bimlesh Kumar committed suicide or died other natural death, it can not be ascertained from the evidence on record. It is also in doubt if Bimlesh Kumar died natural death or committed suicide.

22. So from the above said discussion and findings, the prosecution Version has become doubtful and thus by giving benefit of doubt to accused, they stand acquitted from the charges framed against them.”

10. Hon’ble The Supreme Court in **Jafarudheen vs. State of Kerala**, (2022) 8 SCC 440, had held that, “While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal.

Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.”

11. The Court below has meticulously examined the evidence and arrived at the conclusion as the prosecution could not establish the guilt of the accused-respondents. No glaring defect in the procedure or that a patent error has been committed by the trial Court in ignorance of law, has been pointed out by the counsel for the applicant, which has resulted in flagrant of miscarriage of justice. There is not even an iota of evidence against the respondents, which would lead to his conviction and a perusal of the judgment shows that no other view is possible.

12. In view of the above, there being no perversity or illegality in the impugned judgment passed by the trial Court, whereby the respondents have been acquitted, the present application for leave to appeal is hereby dismissed being bereft of merit.

**(AMAN CHAUDHARY)**  
**JUDGE**

**August 21, 2023**  
M.Kamra

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