

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

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**CRR-1699-2008****Decided on : 15.03.2023**

Surender Singh

... Petitioner

Versus

Umed Singh and Others

... Respondents

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

PRESENT: Mr. G. P. Singh, Advocate for the petitioner

None for respondent No.1

Mr. Vishal R. Lamba, Advocate for respondent No.2

Mr. Zorawar Singh Chauhan, DAG, Haryana

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**AMAN CHAUDHARY, J.**

1. The present revision has been preferred against the judgment dated 17.12.2007 passed by the Sessions Judge, Rewari whereby the accused have been acquitted of the charge under Sections 302, 201 and 34 IPC in FIR No. 69 dated 30.08.2003 registered at Police Station, Sadar Rewari.

2. Precisely, the facts of the case are that initially, the complainant had rented out his house to one Raju, but later he shifted to a neighbouring place. He frequently visited the house of the complainant with Manoj Kumar. Accused-respondent Nos.1 and 2 were named by Raju in his disclosure statement whereby the allegations of having caused the death of the son of the complainant were raised. The dead body was found floating in a canal and as per the postmortem report, the death had occurred due to injury to the neck and asphyxia which were ante-mortem in nature and sufficient to cause death in the normal course of nature.

FIR No. 69 dated 30.08.2003 was registered under Sections 302/201/34 against

accused-respondent Nos.1 and 2. After investigation, the final report under Section 173 Cr.P.C. was presented before the Court, to which they pleaded not guilty and claimed trial.

3. The prosecution in order to bring home the guilt of the accused, examined twelve witnesses. In their statements recorded under Section 313 Cr.P.C., the accused-respondents denied all the incriminating circumstances appearing against them and pleaded innocence and false implication due to ulterior motive. In defence, they examined DW-1 Anup Singh and DW-2 Hans Raj.

4. The trial Court having minutely scrutinized the entire evidence had extensively discussed the same as led by the parties and came to the conclusion that the prosecution had failed to prove its case and thereby acquitted the accused-respondents. Aggrieved complainant-petitioner preferred the present revision petition.

5. It is submitted on behalf of the petitioner that the trial Court has not correctly appreciated the statements of the witnesses or the evidence led by the prosecution and has thus, erroneously acquitted the accused-respondents. The prosecution has proved the motive and also the fact that the accused were accompanying the deceased at the last moment. There was sufficient evidence on record to connect the accused with the commission of crime.

6. Learned counsel for respondent No.2 had contended that the impugned judgments have been rightly passed by the Courts below and there is no illegality or perversity, which would warrant interference by this Court.

7. Heard learned counsel for the parties and perused the record.

8. The present revision petition filed by the complainant-petitioner against the acquittal of the accused-respondents, is prior to the amendment,

9. Before proceedings to consider the present case, it would be profitable to make a reference to the judgment of Hon'ble The Supreme Court in **Jafarudheen and Others vs. State of Kerala** 2022 SCC Online SC 495, wherein it was 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."

10. In **Sunil Kumar Sambhudayal Gupta and others vs. State of Maharashtra** 2011 (1) RCR (Criminal) 57, Hon'ble The Supreme Court had held thus:

"22. It is a well-established principle of law, consistently reiterated and followed by this Court is that while dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. Even though the appellate court is entitled to consider, whether in arriving at a finding of fact, the trial Court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. The trial court which has the benefit of watching the demeanor of the witnesses is the best judge of the credibility of the witnesses.

23. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The nature of the offence, its seriousness and gravity has to be taken into consideration. The appellate court should bear in mind the presumption of innocence of the accused, and further, that the

trial court's acquittal bolsters the presumption of his innocence. Interference with the decision of the Trial Court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference.

24. In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. A finding may also be said to be perverse if it is 'against the weight of evidence', or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (See: Balak Ram & Anr. v. State of U.P., AIR 1974 SC 2165; Shailendra Pratap & Anr. v. State of U.P., AIR 2003 SC 1104; Budh Singh & Ors. v. State of U.P., AIR 2006 SC 2500; S. Rama Krishna v. S. Rami Reddy (D) by his LRs. & Ors., AIR 2008 SC 2066; Arulvelu & Anr. v. State, (2009) 10 SCC 206; Ram Singh alias Chhaju v. State of Himachal Pradesh, (2010) 2 SCC 445; and Babu v. State of Kerala, (2010) 9 SCC 189)."

11. It would be apposite to refer to the judgment of the trial Court while acquitting the accused-respondents, the relevant paras whereof read thus:

"24. In this case, the deceased is said to have been seen alive by Rai Singh PW1 with the accused at about 5 or 5.15 p.m. on 27.8.2003. The dead body was spotted at about 3.30 p.m. on 30.8.2003 by Surender Kumar PW8 and his companions. There is a long gap of time between the aforesaid two times. Dr.J.K.Saini PW12 could not become specific in his opinion regarding the time that passed between the death and post-mortem examination. His opinion is that there had been a gap of 2 to 5 days between the time of death and of post-mortem examination. The post-mortem examination has been conducted on 31.8.2003 at about 11.10 a.m. If Dr.J.K.Saini PW12 is believed, the death of Deepak Kumar could occur between 11.10 a.m. on 26.8.2003 and the same time on 29.8.2003. No precise benefit could be derived from this opinion of the doctor. However, before it is said that the statement of RAi Singh does not qualify for last seen evidence, I may examine the circumstances on the basis of which his statement is claimed is liable to be discarded.

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27. The motive which is often dubbed as a double edged weapon is important in cases based on circumstantial evidence. However, sufficiency of motive and the evidence to prove it have to be objectively assessed. Accused Raju is claimed to have asked Surender Kumar to give him Rs.10,000/-. He was told by Raju that money was required for the treatment of phupha of Paramveer Singh. Surender Kumar refused to pay

him the amount and the accused is stated to have gone away. He did not try to behave abnormally on the refusal of Surrender Kumar to pay him the money. He did not utter a word thereafter and he went away. This circumstance on the face of it appears hardly sufficient to be the motive with the accused to commit the offence of murder.

28. However, motive lies deep in the heart of the accused and no generalization is possible about the gravity of the motive prompting a person to act in a particular way. Assuming that refusal of Surrender Kumar to give money to Raju was sufficient to move him in the direction of murdering Deepak Kumar, the allegation in this regard has surfaced only on 15.10.2003. A missing report was lodged with the Police Station Model Town, Rewari on 27.8.2003. It can be believed that true importance of the aspect of demand of Rs.10,000/- was not clear to the complainant on 27.8.2003. However, on 30.8.2003, the complainant came out specifically against Raju. He had suspected Raju and his friend Manoj to have abducted the child and to have killed him. If a few days back, Raju had asked for money from the complainant, it was not possible that this fact could not be associated with the death of Deepak Kumar by Surrender Kumar on 30.8.2003...”

12. In a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. Refusal to pay a sum of Rs.10,000/- as demanded by accused-Raju, for the treatment of relative of respondent-Paramveer Singh, as stated by the complainant during investigation was being termed as a motive for killing the son of the complainant, which however, was specifically denied during his cross-examination and thus, rightly contributed towards the acquittal of the accused-respondents by the trial Court.

13. An aspect as important which could associate the accused with the death of the deceased on 30.08.2003 is the last seen evidence, which was also found to be not believable on account of there being a gap between the last date of having seen the deceased alive and recovery of the body. The statement of PW1 Rai Singh of having seen the deceased and the accused moving towards the canal on 27.08.2003, wherefrom the dead body was recovered, does not seem credible inasmuch as that he had stated having left Rewari on 27.08.2003, where the

incident had taken place, to return on 14.10.2003, and only thereafter informed about the same to the complainant. However, in the cross-examination he stated to be there till 30.08.2003, when the body was brought out of the canal, but did not inform about this pertinent circumstance to either the complainant or the police till 14.10.2003. Therefore, the last seen evidence also cannot be said to be made out. The recovery of pair of hawai chappals was also rightly discarded in view of the fact that as per the statement of PW11, SI Ravi Dutt, the same were found lying in an open place, which was accessible to all, moreover, from very close to the scene of the occurrence and the exclusive knowledge thereof could not be ascribed to accused-Raju. All these factors clearly go to show that ultimately, despite the above, it is very difficult to pin-point recovery to the accused proving his commission of the crime. Further still, the disclosure statement in absence of any corroborative evidence cannot sustain. The evidence led, having fallen short of proving the guilt of the accused-respondents beyond reasonable doubt, the trial Court arrived at the right conclusion and took the plausible view after properly appreciating the evidence.

14. In **Majenderan Langeswaran vs. State (NCT of Delhi)** (2013) 7 SCC 192, Hon'ble The Supreme Court having found the material relied upon by the prosecution inconsistent and the infirmities in the case of the prosecution, considered number of earlier decisions, held that the conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to the circumstantial evidence that all circumstances must lead to the conclusion that the accused is the only one who has committed the crime and none else.

15. Having found that the motive has not been proved and the recovery being doubtful, there was no cogent evidence adduced by the prosecution before

compelled this Court to arrive at the conclusion that the accused had committed the alleged crime, merely on the basis of suspicion.

16. It is a settled position of law that a mere suspicion, however strong it may be, cannot be a substitute for acceptable evidence and no one can be convicted on the basis of it, as was held in **Chandrakant Ganpat Sovitkar vs. State of Maharashtra**, (1975) 3 SCC 16 by Hon’ble The Supreme Court.

17. Every case has its own journey towards the truth and it is the Court's role to undertake. Truth has to be found on the basis of evidence available before it. There is no room for subjectivity, nor the nature of offence affects its performance.

18. Hon’ble The Supreme Court in **Bhagwan Jagannath Markand vs. State of Maharashtra**, (2016) 10 SCC 537; **Raja vs. State of Karnataka**, (2016) 10 SCC 506; **Sadhu Saran Singh vs. State of U.P.**, (2016) 4 SCC 357; **Sambasivan & Ors vs. State of Kerala**, (1998) 5 SCC 412, held that where two views are possible on same evidence and findings recorded by lower court are not perverse, weightage to the decision of the trial Court should be given.

19. Applying the said principles to the facts of the present case, wherein the trial Court examined all aspects threadbare, this Court finds that the impugned judgment cannot be characterized as perverse. Sequentially, the revision petition sans merit, is hereby dismissed.

(AMAN CHAUDHARY)  
JUDGE

15.03.2023  
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| Whether reasoned/speaking? | Yes/No |
| Whether reportable?        | Yes/No |