

## IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

CRM-A No.368 of 2022 (O&amp;M)

Date of Decision:12.10.2023

Darshan Singh

... Applicant/Appellant

Versus

Sukha and another

... Respondents

2. CRM-A No.360 of 2022

Prem Singh

... Applicant/Appellant

Versus

State of Punjab and others

... Respondents

**CORAM : HON'BLE MR. JUSTICE RAJ MOHAN SINGH  
HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Jaswinder Singh Grewal, Advocate  
for the applicant-appellant in both the applications.

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**HARPREET SINGH BRAR, J. (ORAL)**

1. By this common order, two applications bearing CRM-A Nos.368 and 360 of 2022 filed under Section 378 (3) Cr.P.C. seeking grant of leave to appeal, are being disposed of as similar issue is involved in both the applications. CRM-A No.368 of 2022 has been preferred by the applicant Darshan Singh against the judgment dated 02.11.2021 passed by the learned Additional Sessions Judge, Rupnagar in the complaint case bearing S.C. No.62 of 05.06.2018 filed under Sections 304, 120-B and 34 IPC; whereas CRM-A No.360 of 2022 has been preferred against the judgment dated 02.11.2021 passed by the learned Additional Sessions Judge, Rupnagar in FIR No.14 dated 22.02.2012 registered under Section 304 IPC at Police Station Kiratpur Sahib whereby the accused, arrayed as respondents No.1 and 2 in CRM-A No.368 of 2022 and respondents No.2 and 3 in CRM-A No.360 of 2022 respectively, were acquitted. For the sake of brevity, facts are being enumerated from CRM-A No.360 of 2022.

**FACTUAL BACKGROUND**

2. The case of the prosecution as projected before the learned trial Court is that on 22.02.2012, a telephonic message was received in the police station that a person namely Dilbag Singh, resident of village Mianpur Khera had died due to electrocution. On receipt of the said message, ASI Darshan Lal along with police party had reached at the spot and recorded statement of the complainant-Prem Singh, who was brother of deceased-Dilbag Singh. He stated that he was eldest amongst five brothers and was working as a mason. The deceased-Dilbag Singh was his younger brother and he was working as an agriculturist. On 22.02.2012, Dilbag Singh went to his fields in the morning at about 7.30 AM. The complainant had informed the wife of deceased-Dilbag Singh that he would visit Dilbag Singh in the fields but when he did not find him in the fields, he returned and asked the wife of Dilbag Singh to take tea for Dilbag Singh in the fields. Thereafter, the complainant had left for his work. At about 1.30 PM on the same day, he was informed by his brother namely Krishan Singh that the dead body of his brother Dilbag Singh was lying in the fields of Jaswinder Kaur widow of Avtar Singh and that he died due to electrocution. The fields were fenced by the accused Sukhpal Singh @ Sukha and Raghbir Singh with iron wires in order to protect the crop from wild/stray animals and they had also connected the said fence with electric current. The deceased-Dilbag Singh came in contact with the electric fence and died due to electrocution. The accused Sukhpal Singh @ Sukha and Raghbir Singh were brothers of the owner of fields namely Jaswinder Kaur and therefore, legal action must be taken against them. On the basis of the said statement of the complainant, an FIR was registered against the accused.

2.1 In pursuance of the aforesaid FIR, the accused Sukhpal Singh @ Sukha was arrested and statements of witnesses were recorded under Section 161

Cr.P.C. The co-accused Raghbir Singh was found innocent during the course of investigation and his name was mentioned in column No.2 in the final report submitted by the police under Section 173 Cr.P.C.

2.2 Accused Sukhpal Singh @ Sukha was declared proclaimed offender vide order dated 01.02.2013, however, he had surrendered in the Court on 18.04.2014. Thereafter, a supplementary challan was presented against Sukhpal Singh @ Sukha in the trial Court on 07.05.2014.

2.2. Copies of documents as required to be supplied under Section 207 Cr.P.C to the accused Sukhpal Singh @ Sukha were supplied to him free of cost. On finding a *prima facie* case against him, charges were framed under Section 304 IPC.

2.3 Vide order dated 17.01.2020, the co-accused Raghbir Singh was summoned as an accused on the application filed by the complainant. On putting in appearance by Raghbir Singh, charge was amended on 22.01.2020 and the accused Sukhpal Singh @ Sukha and Raghbir Singh were charged under Section 304 IPC read with Section 34 IPC, to which both the accused pleaded not guilty and claimed trial.

2.4 In order to prove its case, prosecution examined as many as 9 witnesses. Thereafter, all incriminating circumstances were put to the accused and their statements were recorded under Section 313 Cr.P.C. They denied all allegations and pleaded their innocence. In their defence, they had examined 5 witnesses. The learned trial Court examined all the witnesses and after appreciation of the evidence led before it, came to the conclusion that the prosecution had failed to prove its case beyond the shadow of reasonable doubt and thus, acquitted both the accused.

2.5 At this stage, it is also worthwhile to note that a criminal complaint No.SC-62 dated 05.06.2018 under Section 304, 120B, 34 IPC was filed by the complainant Darshan Singh on similar allegations as levelled in the FIR case against the accused persons namely Sukhpal Singh @ Sukha and Raghbir Singh wherein also they were acquitted vide separate judgment dated 02.11.2021.

2.6 Aggrieved by both the judgments dated 02.11.2021 passed by the learned trial Court in the complaint case as well as the FIR, the applicants/appellants have approached this Court for seeking leave to appeal by way of instant applications.

### **CONTENTIONS**

3. Learned counsel for the applicant/appellants in both the applications assails the judgments dated 02.11.2021 passed by the learned trial Court in the complaint as well as the FIR case, acquitting both the accused by contending that the prosecution has miserably failed to prove its case beyond the reasonable shadow of doubt, however, the learned trial Court has gravely erred in coming to the conclusion that no cogent evidence was adduced by the prosecution to prove that the deceased-Dilbag Singh had come into contact of live electric wires of fence installed in the fields of Jaswinder Kaur by the accused persons.

4. It is argued that the complainant Prem Singh, who was examined as PW-8, categorically stated that on 22.02.2012 at about 1.30 PM he had received a telephonic message about death of his brother Dilbag Singh due to electrocution. His dead body was found lying in the fields of Jaswinder Kaur, wife of Avtar Singh, where iron wires were installed in which electric current was run by the accused. The deceased came in contact with said wires and died on the spot. He further deposed that he came to know from his brothers Darshan Singh and Joginder Singh that accused had installed the iron wires in the fields of Jaswinder Kaur being her brothers. They told Darshan Singh and Joginder Singh that

fencing of iron wires was done to protect the crops from wild/stray animals in which electric current would also flow. They were advised by Darshan and Joginder Singh to put some precautionary board so that no human being comes in contact with the live wires but they ignored them. On 22.02.2012, when deceased-Dilbag Singh went to irrigate his fields by using water motor of Jaswinder Kaur for which he was paying rent of Rs.40/- per hour, he came in contact with the electric wires and died. The accused persons had knowledge that their act was likely to cause death or bodily injury to any person but despite that they intentionally did not take any precautionary measure to avoid any human contact with electric wires, therefore, the said act of theirs amounts to culpable homicide.

5. It is further argued that the accused-Sukhpal Singh @ Sukha was authorized by Jaswinder Kaur to collect rent for the use of water motor installed in her fields @ Rs.40/- per hour from the deceased-Dilbag Singh and therefore, the finding rendered by the trial court that there was no relation between Jaswinder Kaur and accused-Sukhpal Singh @ Sukha is fallacious. The land of other co-accused Raghbir Singh was adjacent to the land of Jaswinder Kaur and therefore, the accused-Sukhpal Singh @ Sukha being care taker of fields of Jaswinder Kaur along with co-accused Raghbir Singh installed fence of iron wires around the fields of Jaswinder Kaur which was connected with electric current. The deceased-Dilbag Singh came in contact with electric wires and died and therefore, the accused persons deserve conviction as they are responsible for the death of Dilbag Singh.

6. It was further argued that as per the postmortem report, the deceased-Dilbag Singh had died due to electric current burn injury - 2 inch long x 1 inch broad on the dorsum of right foot in the middle, evidence of which was brushed

aside by the learned trial Court. The court of learned Civil Judge (Sr. Division), Anandpur Sahib vide order dated 29.01.2018 had awarded compensation to the legal heirs of deceased-Dilbag Singh, which proves the fact that the deceased had died due to the acts of accused persons in the fields of Jaswinder Kaur. Even the police had recovered the wires and wooden stick from the spot and therefore, the accused persons were liable to be convicted. Thus, the counsel for the applicant(s)/appellant(s) seeks grant of leave to appeal against the judgments dated 02.11.2021 passed by the learned trial Court.

### **ANALYSIS AND OBSERVATION**

7. We have heard learned counsel for the applicant(s)/appellant(s) in both the applications and have perused the record with his able assistance.

8. The argument raised by the counsel appearing for the applicant/appellant that deceased had died due to electrocution as he came in contact with the wires installed in the fields of Jaswinder Kaur in which electric current was run by accused-respondents has no force. First of all, if, as per the prosecution version, Darshan Singh and Prem Singh, who were brothers of the deceased, were aware of the factum of fencing done by the accused persons in the fields of Jaswinder Kaur which was connected with electricity supply, making it hard to believe that as prudent persons they did not caution their family members. The prosecution has also failed to prove that the accused-Sukhpal Singh @ Sukha was brother of Jaswinder Kaur, rather the accused-Sukhpal Singh @ Sukha in his defence stated that he neither had any relation with Jaswinder Kaur nor did he have any land in village Mianpur. DW-1 Kuldeep Singh deposed that the accused-Sukhpal Singh @ Sukha was resident of village Shahpur Bela and he was not the brother of Jaswinder Kaur. DW-2 Baliya Singh and DW-3 Kartar Singh proved the pedigree table Ex.D1 of Avtar Singh son of Hakam Singh, according to which,

there was no relation between accused Sukhpal Singh @ Sukha and Jaswinder Kaur.

9. Further, DW2 Paramvir Singh, Patwari had proved the documents Ex.DW4/A i.e. *aks musavi*, according to which, the land in possession of the complainants namely Prem Singh and Darshan Singh and others was situated in Khasra No.91/1 min whereas the land of accused-Raghubir Singh and Jaswinder Kaur was situated in Khasra No.108 and 107/2 respectively. Therefore, it is crystal clear that in between the land of complainant party and Jaswinder Kaur, there were holdings of other persons. Surprisingly, the prosecution did not examine the most material witness Jaswinder Kaur to establish its case for the reasons best known to it. The prosecution has also failed to establish the link evidence qua source of electric supply to which the iron fencing was connected; as to whether the electricity was supplied from any transformer or from the water motor of Jaswinder Kaur, despite the admitted fact that the wires and the wooden stick was removed by the police itself. There is not an iota of evidence to prove that the electric current was still running in the wires when the dead body of Dilbag Singh was found near the fence. The accused Raghubir Singh in the complaint case had produced in his defence DW-7 Lambardar of the village, who testified that there was a dispute between Balwant Singh cousin of accused Raghubir Singh and brother of the complainant Prem Singh over the issue of drainage of water. The learned trial Court also took note of the fact that the accused Raghubir Singh was found innocent in the police investigation and therefore, his name was kept in column No.2. He was summoned subsequently as an additional accused on the application filed under Section 319 Cr.P.C. Even the complaint was filed by the complainant after an unexplained delay of 10 months. There was no eye witness to the incident and whole case of the

prosecution was based on circumstantial evidence, which it failed to prove beyond a reasonable shadow of doubt.

10. Moreover, it is settled proposition of law that the finding of acquittal recorded by the learned trial Court cannot be disturbed merely because another view is possible. If two views are possible, the one which favours the accused would invariably prevail over the other.

11. The Hon'ble Supreme Court has articulated the above principle in the following decisions:

- a) A three Judge Bench of Hon'ble Supreme Court in **Kali Ram v. State of H.P., 1973 (2) SCC 808**, speaking through Justice H.R. Khanna, has held as under:

*“25. Another golden thread which runs through the web of the administration of justice in criminal cases 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...”*

- b) A two Judge Bench of Hon'ble Supreme Court in **Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415** has laid down the parameters with regard to the power of appellate Court while dealing with an appeal against an order of acquittal. Speaking through Justice C.K. Thakker, the following was held:

*“35. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;*  
*(1) An appellate Court has full power to review, reappraise 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 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 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.”

**CONCLUSION**

12. In view of the facts and circumstances of the case, we find that the defence has been successful in making a serious dent in the prosecution case and that the prosecution has miserably failed to establish its version beyond reasonable doubt. Therefore, we find the view taken by the learned trial Court to be reasonable and logical. Learned counsel for the applicant(s)/appellant(s) has failed to point out any perversity or illegality in the findings recorded by the learned trial Court, which would warrant interference by this Court. As such, there is no merit in the present applications and the leave to appeal is declined. Resultantly, both the main appeals are also dismissed.

**(RAJ MOHAN SINGH)**  
**JUDGE**

**(HARPREET SINGH BRAR)**  
**JUDGE**

**October 12, 2023**

Pankaj\*

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No