

SR. No.231

CRR-2111-2008 (O&M)
Date of decision:12.02.2024

Mohan Lal

...Petitioner

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON’BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Nand Lal Sammi, Advocate for the petitioner.
Mrs. Sheenu Sura, DAG, Haryana.

N.S. SHEKHAWAT, J.

1. The petitioner has laid challenge to the judgment dated 09.08.2008 passed by the Sessions Judge, Yamuna Nagar, whereby the accused-private respondents were ordered to be acquitted of the charges.
2. Along with the present petition, a communication dated 16.09.2008, issued by the Advocate General, Haryana, has been attached and it has been mentioned therein that no proposal has been received from the District Magistrate, Yamuna Nagar for filing an appeal in the present case.
3. Criminal law was set into motion with the filing of the complaint by Mohan Lal (petitioner), who is father of Gulshan Kumar (since deceased). As per him, his son Gulshan Kumar, aged about 29 years, had been working as a driver on a three-wheeler of Ashok Kumar of his own village and he started sleeping on the flour mill of Ashok Kumar, about 15 days prior to the occurrence. On 10.12.2007, Gulshan Kumar neither went

to the flour mill of Ashok Kumar nor to his house. In the morning of 12.12.2007, his mother Maya Devi went to the house of Ashok Kumar to know about the well being of Gulshan Kumar, however, she was informed that he had not come to his house or the mill since the evening of 10.12.2007. Gulshan Kumar (since deceased) used to give all his earnings to Satish Kumar, accused/respondent No.2 as he had made a false promise to get him married. At about 07.00 PM on 12.12.2007, Ashok Kumar went to the house of the complainant and told him that the dead body of Gulshan Kumar was lying in the fields of Raju Mehta. On getting this information, the complainant/petitioner along with Ashok Kumar, Binder, son of Sarpanch and other respectables went to the spot and found the dead body of Gulshan Kumar lying there. The police was informed. The dead body did not bear any mark of injury. The complainant initially raised the suspicion that his son Gulshan Kumar had been killed by Satish Kumar-accused/respondent No.2 with the help of some other persons as Gulshan Kumar was having illicit relations with his wife. The police had initially registered the FIR under Section 302 IPC in the present case.

4. After presentation of the report under Section 173 Cr.P.C., the prosecution examined 10 witnesses, namely, Dr. Manisha Singh as PW-1; C. Sham Lal as PW-2; Satish Kumar as PW-3; ASI Ram Dutt as PW-4; Rajiv Sharma as PW-5; HC Mehar Singh as PW-6; ASI Ran Singh as PW-7; Mohan Lal as PW-8; SI Harvinder Singh as PW-9 and Inspector Des Raj as PW-10.

5. In their statements under Section 313 Cr.P.C., the accused-respondents denied the allegations levelled by the complainant/petitioner

and stated that they had been falsely involved in the present case at the

instance of Ashok Kumar, who was already inimical towards the respondents. The accused/private respondents were interrogated by the police for more than two months, however, they were found innocent in the present case.

6. After conclusion of the trial, the trial Court, vide its judgment dated 09.08.2008, held that the prosecution had miserably failed to prove its case against private respondents and they were ordered to be acquitted.

7. Challenging the impugned judgment, the petitioner has filed the present revision petition before this Court.

8. Learned counsel for the petitioner contended that in the present case, the prosecution had led sufficient evidence to prove the complicity of the private respondents in the crime. He further submitted that in pursuance of the disclosure statements, the accused had identified the place, where they had burnt the pillow and a motorcycle was recovered at the instance of Ran Singh, accused/respondent No.4. Apart from that, Gulshan Kumar was unmarried and he was allegedly having illicit relations with the wife of Satish Kumar. Consequently, Satish Kumar and other co-accused had motive to commit the crime. He further contended that from the testimonies of various prosecution witnesses, the motive stood proved against all the private respondents, who had actively participated in commission of crime. He further contended that even from the statement of PW-1 Dr. Manisha Singh, who had conducted the post-mortem examination on the dead body of Gulshan Kumar, it was apparent that the cause of death in the present case was asphyxia, due to throttling. Even the prosecution had led sufficient evidence to prove the involvement of all the private respondents in the present case.

9. On the other hand, learned counsel for the State has vehemently opposed the submissions made by the learned counsel for the petitioner and submitted that there is no patent illegality in the impugned judgment passed by the trial Court and thus, the present petition is liable to be dismissed.

10. The present case was ordered to be admitted by this Court on 25.11.2008 and the record shows that the private respondents had been served, still there is no representation on behalf of the private respondents.

11. I have heard the learned counsel for the petitioner as well as the State and perused the record carefully.

12. Learned counsel for the petitioner submitted that in pursuance of the disclosure statements suffered by the accused, the place was identified by the accused, where the pillow was burnt and the motorcycle was ordered to be recovered from Ran Singh. In fact, such weak evidence was hardly of any help to the present petitioner. It was a case of blind murder and the entire prosecution case was based on circumstantial evidence. The place, where the pillow was burnt, was already in the knowledge of the complainant as well as the police. Consequently, the identification of the place, by the accused in the present case was of no help to the prosecution. Apart from that, the trial Court had rightly observed that recovery of motorcycle at the instance of Ran Singh, accused/respondent, was hardly relevant as the prosecution could not lead any evidence to show that the motorcycle was used in the commission of crime. Even, there was no evidence to prove that the dead body of Gulshan Kumar was carried on the motorcycle and was thrown in the sugarcane fields by the accused. Even the trial Court had rightly observed that no incriminating material was recovered from the place of occurrence. Thus, when no incriminating material was

recovered from the place of occurrence and the said place of occurrence was already in the knowledge of police, it would be hardly any evidence, which could be relied upon by this Court in reversing the judgment passed by the trial Court.

13. Still further, learned counsel for the petitioner has vehemently argued that Gulshan Kumar was unmarried and was having illicit relations with wife of Satish Kumar, respondent No.1/accused. However, in the same breath, the complainant submitted that Gulshan Kumar used to give money to Satish Kumar. In fact, the statement made by the complainant in this regard was self contradictory. Further, the petitioner/complainant could not examine any witness to corroborate his case that his son Gulshan Kumar had illicit relations with the wife of Satish Kumar, respondent No.1/accused. Still further, the trial Court had rightly observed that murder of Gulshan Kumar had taken place between 10th-12th December 2007 and for about two and a half months, i.e. 22.02.2008, the investigation was conducted by the police and no incriminating evidence could be collected against the private respondents. However, all of a sudden, there was change of investigation in the present case and the investigation of the case was taken over by Inspector Des Raj on 23.02.2008 and on 24.02.2008, all the accused were arrested. Thus, the findings recorded by the trial Court are based on due appreciation of evidence and there are no reasons to set aside the well reasoned findings recorded by the trial Court.

14. It has been held by the Hon'ble Supreme Court in the matter of **'Bhaskarrao and others Vs. State of Maharashtra, 2018 AIR (SC) 2222** as follows:-

*“14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in **Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974** -*

"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge.vThis Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion

that the view taken by the Court below on its consideration of the evidence is erroneous."

15. In *Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867*, this Court observed:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

15. Keeping in view the above referred discussion and the law laid down by the Hon'ble Supreme Court, it can be safely concluded that the impugned judgment passed by the trial Court is based on sound reasons and there is no illegality or perversity in the appreciation of the evidence by the trial Court. Thus, the present petition is hereby dismissed. Pending application(s) if any, shall also stand disposed of, accordingly.

12.02.2024

mks

**(N.S. SHEKHAWAT)
JUDGE**

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO