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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-2117-2019 (O & M)
Date of decision: 02.09.2024

Sachin Kumar

..... Appellant(s)

V/s

State of Haryana and ors.

...Respondent(s)

CORAM: HON’BLE MR. JUSTICE SUDHIR SINGH
HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Amaninder Preet, Advocate, as Amicus Curiae.
Mr. Dushyant Sharan, AAG, Haryana, for respondent No.1.

JASJIT SINGH BEDI, J.

The present application under Section 378(4) of Cr.P.C. has been filed for grant of leave to appeal against the judgment of acquittal dated 11.04.2019 passed by the Additional Sessions Judge, Karnal.

2. In brief, the prosecution case is that on 30.06.2016 at 9:15 A.M. S.I./SHO Manoj Kumar received information to the effect that on 29.06.2016 Amit son of Jagdish was admitted in Trauma Centre, Civil Hospital, Karnal after a quarrel. After receiving the information SI Manoj Kumar alongwith H.C. Mukesh Kumar reached Government Hospital,



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Trauma Centre, Karnal where the doctor had already referred the patient to higher centre i.e. PGI. On the same day, SI Manoj Kumar alongwith H.C. Mukesh reached Government Medical College and Hospital, Sector 32, Chandigarh, and got information that injured Amit, who was admitted, vide C.R No. 160620583, had already expired. After receiving this information, S.I. Manoj Kumar alongwith H.C. Balraj and Constable Kuldeep went to Sector 32, PGI Chandigarh and received a ruqa and thereafter, reached the mortuary where the dead body of Amit Kumar was found lying. Sachin Kumar was found present near the dead body, who got recorded his statement to the effect that he hailed from village Rindal, P.S. Kunjpura District Kamal, and he was serving in a private medicine company at Yamuna Nagar. On 29.06.2016 at about 9.00 P.M. he came to know that his cousin Amit son of Jagdish had been given knife blows and was admitted in Karnal Trauma Centre. After receiving the information, he reached Trauma Centre Karnal, where he met Naresh Kumar son of Jagdish Sharma, who told him that he was going to village Baragaon for personal work and at about 8.45 P.M. he received a telephonic call from Amit that six accused persons had inflicted him the knife blows. He shifted Amit Kumar with the help of other persons to Trauma Centre, Karnal and thereafter, he and his family members met Amit and then Amit disclosed that when he was going to his house after closing his shop in Sector 9, then, as he reached Rindal Road from Baragaon, then, from the front side, his motor cycle was stopped by six persons, who were riding on three motorcycles and that one of



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accused inflicted a DANDA blow on his head and the remaining accused started inflicting knife blows on him whereupon he fell down in the fields. He further disclosed that the accused persons inflicted the blows on the head, trunk, abdomen and neck and thereafter, they fled away. Out of the above-said persons, one of the accused was Jony son of Rameshwar and another was Rameshwar Pandit, resident of village Rindal, who resides in Balaji Temple Rindal, whereas the remaining four accused could not be identified by him. Thereafter, he made a telephonic call to Naresh Pandit, who shifted him to the hospital. The motive behind the occurrence was that the wife of Amit, his *Bhabhi* namely, Pinki, used to go to the temple and by using Black Magic the accused Jony took her under his control. As they objected to the same, then Pinki had gone to her parental house and came back after about 10-12 months. Prior to that, accused Jony Pandit had come to meet Pinki in the night and for that a Panchayat was also held and the matter was got compromised. Due to the above-said fact, accused Jony and his father Rameshwar Pandit were having a grudge against him. Accused Jony had also threatened him with dire consequences. As accused Jony and his father Rameshwar had inflicted knife blows causing serious injuries to Amit, they were to be arrested and punished accordingly. After recording his statement, it was duly read over and explained to the complainant Sachin and in token of its correctness, Sachin put his signatures in English. After obtaining MLR bearing No. AB/187/016/ KCGM, offences punishable under Sections 148, 149, 342, 302 and 506 IPC were found to have been made out and a ruqa



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was sent to Police station through Constable Kuldeep, on the basis of which, the formal FIR was registered. Copy of special reports were sent to Senior Police Officers and Ilaka Magistrate. Thereafter, the FSL team was called on the spot and SI/SHO alongwith his colleagues conducted the proceedings under section 174 Cr.P.C. and thereafter, the law was set into motion.

During the course of further investigation, post-mortem on the dead body was got conducted. Inquest proceedings under section 174 Cr.P.C. were conducted. Rough site-plan of the place of occurrence was prepared at the spot and thereafter, the accused persons were arrested and their disclosure statements were recorded. Recovery memos in pursuance to the disclosure statements were also prepared and the sketches of BINDA and knife were also prepared. The case history was received from the Government Medical College, Sector 32, Chandigarh. A rough site-plan of the place of occurrence was prepared. Call details were collected. Scene of crime visit report was prepared and rough site-plans of the place of recovery of articles at the instance of accused persons were also prepared. Sanction of prosecution was also obtained. Statements of witnesses under sections 161 Cr.P.C. were recorded. After completion of investigation, the challan was prepared and submitted in the Court.

3. As the case was triable by the Court of Sessions, the case was committed to the said Court and the charges came to be framed under Sections 148, 149, 342, 302 and 506 IPC.

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4. To prove its case, the prosecution examined PW-1 Rajbir Singh Patwari, PW-2 Babu Ram, PW-3 H.C.Surender Kumar, PW-4 H.C.Balraj Singh, PW-5 Sachin Kumar, PW-6 Dr.Ashish Verma, PW-7 Naresh Kumar, PW-8 H.C. Rishi Pal, PW-9 Rajesh Kumar, PW-10 H.C. Rajesh Kumar, PW-11 Dr. Harvinder Singh, PW-12 Inspector Manoj Kumar, PW-13 Bheera Ram, PW-14 EHC Santar Pal, PW-15 S.I. Surender Singh, PW-16 Parvesh Kumar, PW-17 C. Parmod Kumar and PW-18 Dr. Surjit Kumar, Senior Scientific Officer, and tendered the following documents.

Sr. No.	Exhibits	Documents
1.	Ex.P-1	FSL Report
2.	Ex.P-2	Site Plan
3.	Ex. P-3	Demarcation memo
4.	Ex.P-4	Sketch of knife
5.	Ex.P-5	Recovery memo of knife
6.	Ex.P-6	Recovery memo
7.	Ex.P-7	Recovery memo
8.	Ex.P-8	Demarcation memo
9.	Ex.P-9 -Ex.P-13	Disclosure statements
10.	Ex.P-14 -Ex. P-18	Recovery memos
11.	Ex.P-19	Statement of Sachin Kumar
12.	Ex.P-20	Copy of MLR
13.	Ex P-21	Ruqa
14.	Ex.P-22	PMR
15.	Ex.P-23	Endorsement

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16.	Ex.P-24	Statement of Naresh Kumar
17.	Ex.P-25	Endorsement
18.	Ex.P-26-P-28	Disclosure Statements
19.	Ex. P-29-P-30	Rough Sketches of wooden Binda
20.	Ex.P-31 & P-33	Applications
21.	Ex.P-32	PMR
22.	Ex.P-34	Police Proceedings
23.	Ex.P-35	Inquest Proceedings
24.	Ex.P-36	Site plant
25.	Ex.P-37 & P-38	Call details
26.	Ex.P-39	Recovery memo
27.	Ex.P-40	Crime scene visit report
28.	Ex.P-41	Disclosure statement
29.	Ex.P-42-P-45	Site Plants of places of recovery

5. Based on the evidence led, the private respondents No.2 to 6 came to be acquitted of the charges framed against them.

6. The learned counsel for the applicant contends that there was sufficient evidence on record to establish the guilt of the respondent-accused and the Trial Court had erred in acquitting them of the charges framed against them. The judgment of acquittal had been recorded on the basis of conjectures and surmises and on the basis of presumptions. In fact, the evidence led was sufficient to establish the culpability of the respondents.

He, therefore, prays that the leave to appeal be granted.



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7. The learned counsel for the respondent No.1-State while supporting the case of the applicant/complainant contends that the offence was established beyond reasonable doubt inasmuch as the medical evidence was consistent with the prosecution case and the recoveries of weapons had also been effected. Therefore, leave to appeal ought to have been granted.

8. We have heard the learned counsel for the applicant and the State and have gone through the record.

9. In order to establish the guilt of the accused, the prosecution examined as many as 18 witnesses in this case. The present case is based on circumstantial evidence and prosecution was duty bound to prove that all the above-said accused had caused the death of Amit by hatching a criminal conspiracy and with their common intention had caused the death of Amit. The most important witness in this case was PW-7 Naresh Kumar son of Jagdish to whom a telephonic message was received that Amit had suffered injuries with a knife on Rindal Road and Naresh reached on the place of occurrence and shifted Amit to Trauma Centre, Kanal. He categorically deposed that at that time Amit was unconscious and he did not disclose anything about the incident and even this witness refused to identify any of accused in the Court. The prosecution declared this witness hostile and the witness denied his statement Ex.P-24 but the counsel for the accused re-cross-examined this witness who again stated that he could not tell who had informed him telephonically. When he reached on the spot, blood was oozing out from the injuries of Amit who was lying in the field in an



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unconscious condition and was not in a position to speak or to utter any word and even in the hospital, the condition of injured was the same and he was not in a position to speak anything. He further said that he had accompanied the injured to Chandigarh and even on the way he remained unconscious and during that period also he did not utter any word nor was he in a condition to speak to anyone.

10. Dr. Ashish Verma PW-6 in his cross-examination categorically stated that the brother of deceased Amit namely, Rajesh, resident of village Rindal, was alongwith him at the time of medical examination. At the time of examination, the patient was disoriented, which means that the patient was not responding to commands. He further stated that the patient was not in a position to speak when he was medico-legally examined and due to that reason he did not disclose to him as to who caused injuries to him. The patient was semi-conscious and dis-oriented, so, there was no question of his speaking to anybody. Ruqqa was sent under his supervision and till the time the patient was dis-oriented and semi-conscious and in a state of shock because of which he was not in a position to speak at all. Some relatives of the injured had come to the Trauma Centre but at that time also the condition of the patient was critical and he was unable to speak and that is why he was referred to a higher centre. The patient was not in a position to recognize anybody nor could he talk to anybody coming to see him as long as he remained in the hospital at Karnal. The patient had arrived in the hospital at 9-9.15 P.M. and soon after he was taken to the OT for applying stitches.



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During that first treatment, the condition of patient was critical without any improvement and that is why he was referred to a higher centre for proper management.

11. In view of the statements of PW-6 Dr. Ashish Verma and PW-7 Naresh Kumar, statement of PW-2 Babu Ram can be seen according to which he was told by Naresh that he (Naresh) received a call from Amit that he has been given injuries by six persons, who were on three motorcycles. They also gave DANDA blows on his head and thereafter, gave knife blows and he fell down in the fields. After receiving this message, he (Babu Ram) met Amit who disclosed that six persons had attacked him out of which he could recognize Jony son of Rameshwar and Rameshwar. The police after investigation declared Rameshwar as innocent. PW-2 Babu Ram admitted that some unknown person had made a call to Rajesh and not deceased Amit. This witness also tried to improve his version by saying that Amit was crying due to pain because of the injuries throughout from Karnal to Chandigarh and they had left Karnal at about 10:15 PM. for Chandigarh and Amit was in senses and had been talking to them but again this version is contradictory to the statement of Naresh Kumar, the material witness in this case, who had categorically stated that on the way from Karnal to Chandigarh, the patient was unconscious and his condition was very critical and he was not in a position to speak to anybody. PW-2 is not the eye-witness and he was told about the occurrence by PW-7 Naresh but PW-7 Naresh has already resiled from his statement. So, there are material



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contradictions in the statement of PW-2, which are not in consonance with the prosecution case.

12. Similarly, the statement of PW-9 Rajesh Kumar that his brother-Amit was naming the accused is totally contrary to the statement of PW-6 Dr. Ashish Verma and PW-7 Naresh Kumar as per which the deceased was not in a position to speak.

13. As regards the recovery of the weapons of offence are concerned, Inspector Manoj Kumar-PW-12 stated that the knife recovered was blood stained. However, as per the report of the FSL, no blood could be detected on the said knife. Interestingly, according to the prosecution version two knives were taken into possession, i.e. one from the place of occurrence and the other was recovered in pursuance to the disclosure statement of accused-Jony. However, only one knife was produced before the Court which was not blood-stained and was admitted to be a new one. Similarly, the *danda* purportedly to be recovered at the instance of accused-Ankit did not have any specific identification marks and was one that could be easily procured in the market. Further, no person was joined in the investigation at the time of the recovery of the *danda* making the entire recovery process doubtful.

14. Further, there is no evidence to suggest that any call was made from the mobile phone of the deceased. Some unidentified person had made a call whose voice could not be identified by any of the prosecution



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witnesses. Thus, the prosecution version on this aspect also becomes doubtful.

15. The motive of the murder of Amit, which has been sought to be proved by the prosecution is that all the accused with their common intention alongwith Pinki caused the murder of Amit but as per the evidence available on the file nothing has been proved that accused Jony or his father Rameshwar were having any knowledge of Black Magic and no villager had ever moved any complaint against the accused Jony or his father to the police or to the Gram Panchayat of the village.

16. So far as the illicit relation of Jony with Pinki are concerned, although it has been alleged by PW-2 Babu Ram and PW-9 Rajesh Kumar that Pinki was under the influence of Black Magic, used to visit Bala Ji temple and fell in love with accused Jony and one day Jony was seen in the house of Pinki for which Amit had questioned him and one Panchayat was convened in which Jony had begged pardon and due to that he was having a grudge against Amit and his family, however, not even a single person of the Panchayat who attended that Panchayat for that complaint or even a Panch, Sarpanch, Nambardar, Chowkidar or any relative of complainant or the relative of accused Pinki who had attended the Panchayat appeared before the Court to say that Pinki was having any relation with Jony. So, the motive of murder could not be established in this case.



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17. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon’ble Supreme Court in *Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427* has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

18. In view of the aforementioned discussion and keeping in view the law laid down in *Kallu @ Masih & Ors. Case (supra)*, we find no reason to interfere with the well reasoned judgment of acquittal dated 11.04.2019 passed by the Additional Sessions Judge, Karnal. Therefore, the application for seeking grant of leave to appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

September 02, 2024

sukhpreet	Whether speaking/reasoned	: Yes/No
	Whether reportable	: Yes/No