

(2012) 09 P&H CK 0285

High Court Of Punjab And Haryana At Chandigarh

Case No: CRM-A-1063-MA of 2011 (O and M) and CRM No. 71681 of 2011

Harcharanjit Singh

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision: Sept. 13, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 378(4)
- Penal Code, 1860 (IPC) - Section 302

Hon'ble Judges: Jasbir Singh, Acting C.J.; Rakesh Kumar Jain, J

Bench: Division Bench

Advocate: Ranjit Saini, for the Appellant; Sandeep Vermani, Addl. AG, Haryana and Mr. G.C. Shahpuri, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Jasbir Singh, Acting Chief Justice

CRM No. 71682 of 2011

Allowed as prayed for.

CRM-A-1063-MA of 2011 (O & M) & CRM No. 71681 of 2011

1. This petition has been filed u/s 378(4) Cr. P.C. seeking leave to file an appeal against judgment dated 25.10.2010 vide which respondent No. 2 was acquitted of the charges framed against him. It is necessary to mentioned here that vide the above judgment, a co-accused of respondent No. 2, namely, Gursharan Kaur, was convicted for commission of an offence u/s 302 IPC and sentenced to undergo imprisonment for life vide order dated 27.10.2010. It was alleged against both the accused that they in conspiracy with each other, had committed murder of Dalwinder Singh, husband of Gursharan Kaur. Heard.

2. The process of law was started on a statement made by Harcharanjit Singh PW-12 brother of the deceased, whereupon FIR No. 205 was registered against both the accused on 15.8.2008 in Police Station Farakpur, District Yamuna Nagar. In his complaint Ex. PO, Harcharanjit Singh PW-12 alleged "that his brother Dalwinder Singh was married to Gursharan kaur, daughter of Gurmukh Singh, the accused on 28.2.2008. On the first day of her marriage, Gursharan Kaur disclosed to Dalwinder Singh that she had relations with one boy prior to her marriage and as such she did not want to live with him. She hardly remained at the matrimonial home for about five months and during that period she visited her parental house for about 2/3 times. Gursharan Kaur, the accused had been staying at her parental house from 7th July, 2008. Prior to that his parents invited the parents of Gursharan kaur in connection with matter of her relations with a boy and tried to make Gursharan Kaur understand. In the said meeting, Jagtar Singh (Maternal uncle), Devender Singh (neighbourer) and other family members were also present. On 6.8.2008 a relative of Gursharan Kaur namely Harpal Singh, resident of Vishnu Nagar, Yamuna Nagar telephoned deceased Dalwinder Singh and asked him that he should come to Yamuna Nagar and further instructed him to come alone and not bring anyone along with him. On 10.8.2008 Dalwinder Singh came to Yamuna Nagar at his in-laws house. Dalwinder Singh disclosed to his friend Devender Singh on telephone that Harpal Singh, uncle (Fuffar) of Gursharan Kaur asked him to meet the said boy with whom his wife had relations. It is further alleged that on 15.8.2008 at about 7.00 A.M. Satnam Singh, resident of Patti, a mediator in the marriage of Gursharan Kaur, and Balwinder Singh came to their house and disclosed that condition of Dalwinder Singh was very serious and had been taken to Hospital and asked them to go to Yamuna Nagar. Hearing the news complainant and his other family members reached at the house of Gursharan kaur and found Dalwinder Singh lying dead." So suspicion was raised by the complainant Harcharanjit Singh PW-12 that his brother Dalwinder Singh was killed by his wife by giving him some poisonous substance. After receipt of above complaint, investigation was started, Gursharan Kaur was taken into custody and on interrogation, she disclosed her relations with respondent No. 2 stating that both had conspired to kill Dalwinder Singh by giving him poison. Gursharan Kaur also made an extra judicial confession before Inder Singh. After recording her statement, the Investigating Officer arrested respondent No. 2 in this case. Post mortem on the dead body of Dalwinder Singh was conducted by Dr. Abhinav PW-1 on 16.8.2008. After receipt of Forensic Science Laboratory Report, it was opined that death was due to consumption of Malathion Poisoning (an organo phosphorous pesticide). In the meantime, Investigating Officer Inspector Randhir Singh PW-17 went to the place of occurrence, prepared rough site plan Ex. PT with correct marginal notes and took into possession a bag of the deceased containing pouches of tobacco tablets. Mobile phone of the deceased was also taken into possession.

3. On completion of investigation, final report was put in Court for trial. Copies of the documents were supplied to both the accused as per norms. The case was committed to the competent Court for adjudication. The accused were charge sheeted to which they pleaded not guilty and claimed trial. The prosecution produced 18 witnesses and also brought on record documentary evidence to prove its case.

4. On conclusion of the prosecution's evidence, separate statements of the accused were recorded u/s 313 Cr. P.C. Incriminating material existing on record was put to them, which was denied by them as incorrect. They pleaded innocence and false implication, however, they led no evidence in defence.

5. The trial Judge on appraisal of evidence found accused Gursharan Kaur guilty of the charges levelled against her whereas respondent No. 2 was acquitted of the charges framed against him by giving him benefit of doubt. It was an allegation against respondent No. 2 that Gursharan Kaur in conspiracy with him, had committed murder of her husband. It was further allegation against him that he had relations with his co-accused. The trial Judge has noted that to bring home the guilt of respondent No. 2, the prosecution has relied upon statements made by PW-12 to PW-14, complaint Ex. PO, statement made by co-accused Gursharan Kaur and call details of the mobile phones allegedly inter-se the accused. The trial Judge after going through the evidence on record, observed that both the accused had relations as alleged, however, it was rightly opined that there is no evidence to criminally prosecute respondent No. 2 for murder of Dalwinder Singh. When giving benefit of acquittal to respondent No. 2, it was observed as under :-

Evidently, there is statement of co-accused Gursharan Kaur Ex. PR against the accused which has not led to any recovery of any poison from her and accused Bhushan Saini. Nor in her disclosure statement she revealed about the telephone on which she allegedly had been talking with accused Bhushan Saini. There is no statement of accused Bhushan Saini admitted having planned to kill deceased administering some poison and he procured the same for co-accused Gursharan Kaur. In the disclosure statement of accused Bhushan Saini Ex. PM he simply spoke about the use of mobile phone bearing No. 04168-96330 and offered to get recovered it. It has not led to recovery of any poison from him.

It is settled preposition of law that the statement of co-accused against other accused is inadmissible in the evidence. Thus, the disclosure statement of Gursharan Kaur Ex. PR, whereby she implicated the accused Bhushan Saini in criminal conspiracy to kill her husband cannot be used against him.

Now coming to the fact of recovery of mobile hand set Ex. P7 at the behest of accused Bhushan Saini in pursuance of his disclosure statement Ex. PM, relevancy of call details Ex. PK, pertaining to SIM No. 94168-96330, statement of Sunny PW-9, who allegedly gave the aforesaid SIM to the accused, are concerned, they too have

failed to connect the accused with the offence.

As far as statement of PW-9 is concerned, according to him he gave the SIM 94168-96330 to the accused way back in 2006, who allegedly took on the pretext to use for two days but did not return the same to him. However, he was confronted on the omission of recording above facts in his statement before police, The very allegation that accused used to talk with co-accused over the phone in question goes. He alleged him as a registered subscriber of the SIM in question. However, no evidence has appeared to said respect. PW-8 and PW-18 have admitted that they did not collect any evidence to know the ownership of the SIM in question. In view thereof, it is not prudent to rely upon the oral account of PW-9 of having handed the SIM to accused. However, if the statement of PW-9 is taken as such, it is vague and not inspiring. Admittedly, he did not lodge any protest or complaint against the accused for not returning his SIM. It is improbable that he would allow the accused to use the SIM for such a long period. Admittedly, conversation details have not been taken by the police as admitted by PW-8. Concededly, no evidence has appeared regarding the phone of co-accused Gursharan Kaur, used by her for indulging in talks with co-accused. Thus, the calls details Ex. PK are of no consequence. Furthermore, Gursharan Kaur has not alleged in her disclosure statement that she used to speak on telephone with the accused at the number in question. Thus, recovery of the phone is of no value to connect the accused with the commission of offence of conspiracy. PW-18 the Investigating Officer on the other hand admitted that SIM in question was not recovered when the handset Ex. P-7 was recovered in pursuance of the disclosure statement. In view of the same, the calls details carry no value. Furthermore, PW-18 and PW-11 are discrepant on the point of recovery of SIM along with the mobile set and admittedly, no independent witness was joined by the Investigating Officer at the time of recovery. Thus, this has made the recovery doubtful. PW-18 admitted that he did not find the ownership of the handset Ex. P7. Thus, mere recovery of handset is again of no consequence. It is no case of the prosecution that they saw the accused Bhushan Saini in company of co-accused any time immediately prior to the incident or on the day of the incident thus live link is also missing.

In view of the aforesaid discussion, the prosecution led no admissible, legal and cogent evidence against the accused so as to connect him with the commission of the offences so as to hold that he anyway hatched conspiracy with the co-accused in the murder of deceased, procured the poison as alleged. Per discussion, it is a case whereby benefit of doubt needs to be given to the accused Bhushan Saini and same is hereby given to him.

6. This Court feels that the finding given by trial Judge is perfectly justified and as per evidence on record. It has been rightly held that there is no legal evidence on record on the basis of which respondent No. 2 could have been convicted. It was case of the prosecution that the SIM Card No. 94168-96330 was recovered from

respondent No. 2, however, it was discovered that no attempt was made by the prosecution to establish ownership of the above said SIM Card. It was also rightly held that statement made by a co-accused cannot be taken as a circumstance against another accused. The statements made by PW-12 to PW-14 were also rightly discarded by the trial Court and the opinion formed by it is as per evidence on record.

7. Their Lordships of the Supreme Court in "Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Cri) 748", held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

8. A Division Bench of this Court in "State of Punjab v. Hansa Singh, 2001(1) RCR (Cri) 775", while dealing with an appeal against acquittal, has opined as under:-

We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble Supreme Court in Ashok Kumar Vs. State of Rajasthan, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.

9. Similarly, in State of Goa Vs. Sanjay Thakran and Another, and in Chandrappa and Others Vs. State of Karnataka, it was held that where, in a case, two views are possible, the one which favours the accused has to be adopted by the Court.

10. In "Mrinal Das & others v. The State of Tripura, 2011(9) SCC 479", decided on September 5, 2011, the Supreme Court, after looking into many earlier judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

An order of acquittal is to be interfered with only when there are "compelling and substantial reasons", for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed.

11. Similarly, in the case of State of Rajasthan Vs. Shera Ram @ Vishnu Dutta, the Hon'ble Supreme Court has observed as under:-

7. A judgment of acquittal has the obvious consequence of granting freedom to the accused. This Court has taken a consistent view that unless the judgment in appeal is contrary to evidence, palpably erroneous or a view which could not have been taken by the court of competent jurisdiction keeping in view the settled canons of criminal jurisprudence, this Court shall be reluctant to interfere with such judgment of acquittal.

8. The penal laws in India are primarily based upon certain fundamental procedural values, which are right to fair trial and presumption of innocence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefit of such presumption which could be interfered with only for valid and proper reasons. An appeal against acquittal has always been differentiated from a normal appeal against conviction. Wherever there is perversity of facts and/or law appearing in the judgment, the appellate court would be within its jurisdiction to interfere with the judgment of acquittal, but otherwise such interference is not called for.

12. Thereafter, in the above case a large number of judgments were discussed and then it was opined as under:-

10. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.

13. Counsel for applicant-appellant has failed to show any error in law on the basis of which interference can be made by this Court in the judgment under challenge.

14. Otherwise also, no plausible explanation has been furnished for causing delay of 354 days in filing the appeal. Accordingly, both the applications are dismissed.