

******* Vs. *******

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SooperKanoon Citation : sooperkanoon.com/1071843

Court : Punjab and Haryana

Decided On : Apr-02-2013

Appellant : *****

Respondent : *****

Judgement :

CRM No.10224 of 2013 in/and CRM-A No.79-MA of 2013 -1- IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH ***** CRM No.10224 of 2013 in/and CRM-A No.79-MA of 2013 Date of decision :

2. 4.2013 Baljit Kaur @ KakaApplicant-appellant versus Baaj Singh and othersRespondents CORAM: Hon'ble Mr.Justice Jasbir Singh Hon'ble Mr.Justice Inderjit Singh Present:- Mr.Rakesh Nagpal, Advocate, for the applicant/appellant --- Jasbir Singh, J.

CRM No.10224 of 2013 After hearing counsel for the applicant, application is allowed.

Delay of 8 days in filing the appeal stands condoned.

CRM-A No.79-MA of 2013 This application has been filed under Section 378 (4) Cr.P.C.seeking leave to file an appeal against judgment dated 16.11.2012 ordering acquittal of respondents No.1 to 3 of the charges framed against them.

The above respondents were made to face trial in FIR No.317 dated 19.11.2010 Police Station Rania, for commission of offences punishable under Sections 302 and 201/34 IPC.

It was an allegation against them that they, in the intervening night of 13/14.11.2010, had murdered son of the applicant namely; Gurjant Singh.

It is necessary to mention here that the applicant is the wife of respondent No.1.

The process of law was started on a statement made by the CRM No.10224 of 2013 in/and CRM-A No.79-MA of 2013 -2- applicant-complainant (PW-2).The trial Judge has noted the following facts regarding case of the prosecution :- 2.

Briefly stated, as per the prosecution version, on 19.11.2010 Baljeet Kaur alias Kaka wife of Baaj Singh moved complaint Ex.PB against Baaj Singh, Sonu and Mohan Singh son of Santokh Singh, inter-alia, on the allegations that she was married with Baaj Singh about 35 years ago and she along with her husband and children was residing at Mohalla Himmatpura, Ward No.4, Rania, District Sirsa, for the last 20 years and not she was residing at her parental home at Dhani Shobha Singh, Village Kariwala.

She had one son namely Gurjant Singh, aged about 17 years who was studying in 10+2 class.

Her husband was a drunkard and used to quarrel with her and her son Gurjant Singh.

She has further alleged that about 10-11 months ago accused Baaj Singh tried to kill Gurjant Singh with gandasi but at that time her father Chand Singh and her nephew Satnam Singh came and rescued him.

On 23.1.2010 Gurjant Singh had also given a complaint to Police Station Rania but later on the said matter was got compromised.

She has further alleged that her husband Baaj Singh had illicit relations with a widow named Jaggo, who was a teacher for the last 4-5 months and her son Gurjant Singh knew about the same and he used to object about the said illicit

relation and Baaj Singh also used to quarrel with them and asked her to take divorce and go to Dhani Shobha Singh.

The complainant has further alleged that on the intervening night of 13/14.11.2010 she along with her son Gurjant Singh and Baaj Singh were sleeping in the room and at about 3.00 A.M.in the night she heard the cries upon which she saw that her husband and her son Gurjant Singh were not present on their cots.

She went to another room and saw that CRM No.10224 of 2013 in/and CRM-A No.79-MA of 2013 -3- Baaj Singh, Mohan Singh and Sonu alias Gurvinder Singh were throttling her son.

She raised a noise but Baaj Singh put a cloth on her mouth and she became unconscious.

When she regained consciousness, all the accused told her that Gurjant Singh had committed suicide by hanging with a fan.

At about 3.00 P.M.she saw the face of Gurjant Singh and at that time also she was not fully conscious and she saw that tongue of her son was coming out of his mouth and his lips were also having cut marks.

The complainant has further alleged that all the accused have killed her son by throttling and at about 4.00 P.M.they cremated the dead body of her son and at about 8.00 P.M.on the same day they lifted the ashes of his son and immersed the same into the Ghaghar river.

After recording statement of the applicant, FIR Ex.PC was recorded against respondents No.1 to 3.

The Investigating Officer went to the place of occurrence, got prepared a rough site plan of that place with correct marginal notes.

Name of Baaj Singh-respondent No.1 came into light on recording statement of Makhan Singh (PW-10).before whom it was alleged that he had made an extra judicial confession, admitting that he along with others had committed murder of Gurjant Singh.

He was arrested on 2.12.2010.

On interrogation, he suffered a disclosure statement, which led to the recovery of a piece of cloth with which he and respondent No.2 had strangled the deceased.

It was further stated by him that he had cremated the dead body without getting post mortem done upon the same.

The Investigating Officer recorded statements of the witnesses CRM No.10224 of 2013 in/and CRM-A No.79-MA of 2013 -4- and after collecting other evidence, submitted final report in Court.

Copies of the documents were supplied to the respondents-accused as per norMs. Case was committed to the competent Court for trial vide order dated 11.3.2011 and 1.10.2011.

The respondents-accused were charge sheeted, to which they pleaded not guilty and claimed trial.

It is necessary to mention here that respondent No.3 Mohan Singh was summoned to face trial on an application moved by the prosecution under Section 319 Cr.P.C. on 10.6.2011.

The prosecution produced 11 witnesses and also brought on record documentary evidence to prove its case.

On conclusion of the prosecution's evidence, separate statements of all the respondents-accused were recorded under Section 313 Cr.P.C. Incriminating evidence on record, was put to them, which they denied, claimed innocence and false implication.

They also led evidence in defence.

It was specifically stated by respondent No.1 that complainant Baljit Kaur had illicit relations with one Gamdoor Singh (brother-in-law) of Baljit Kaur) and she was also living with above said person at his house.

Her relationship with Gamdoor Singh was objected by respondent No.1 and the deceased.

On account of that he has falsely been implicated in this case.

Death of Gurjant Singh was natural.

The applicant had participated in the cremation of the deceased.

Ashes of the deceased were collected on third day of the cremation, in presence of the complainant and her relatives.

The respondents-accused also led evidence in defence.

CRM No.10224 of 2013 in/and CRM-A No.79-MA of 2013 -5- The trial Judge on appraisal of evidence, came to a conclusion that the prosecution has failed to prove its case.

By giving benefit of doubt, the respondents-accused were acquitted of the charges framed against them.

The trial Judge has rightly taken delay in reporting the matter to the police, as a circumstance against the prosecution.

It was stated by the applicant-complainant (PW-2) that occurrence had taken place on the intervening night of 13/14.11.2010 at about 3.00 A.M.The matter was reported to the police only on 19.11.2010.

No explanation has been given for above said delay.

Except statement made by the applicant-complainant, there is no other evidence on record to say that respondent No.1 had any motive to kill the deceased (his own son).To discard statement made by the applicant, the trial Court has observed as under :- 22.

Moreover, the testimony of Baljeet Kaur PW2 is not worth relying upon in view of the fact that she has failed to explain as to why she did not whisper about the strangulation of her son by her husband Baaj Singh with the help of his nephews

accused Sonu and Mohan Singh despite the fact that there were 100-200 persons present in the house before cremation and her father and other relatives had also reached her house before cremation.

The complainant has given the explanation that she was intoxicated by accused Baaj Singh by putting a piece of cloth on her mouth and that is why she could not disclose the matter to any body, is not worth relying upon because there is absolutely no evidence on the file in order to infer that she remained unconscious and she was given medical treatment.

It is highly unbelievable that if a CRM No.10224 of 2013 in/and CRM-A No.79-MA of 2013 -6- mother who had seen the killing of her grown up child would not disclose the name of murderer to her relatives, neighbours or villagers on the same day rather the matter had been reported to the police by filing a complaint Ex.PB on 19.11.2012 on the basis of which FIR Ex.PC was registered i.e. approximately after a period of six days of the death of Gurjant Singh and this delay in this case raises suspicion.

Baljeet Kaur PW2 has gone to the extent in deposing that when she became semi conscious after 5-6 hours of alleged strangulation then accused Baaj Singh, Sonu and Mohan Singh showed a blanket which was hanging with the ceiling fan in the room and disclosed that Gurjant Singh had committed suicide by hanging with the ceiling fan with the said blanket.

She has also deposed that when she saw the face of her son Gurjan Singh, she found that his tongue was coming out of his mouth and lips were having cut marks but if she had suspected a foul play in the death of her son Gurjant Singh then she could have disclosed the said factum to any of her relatives and other persons when her father and several villagers were present there.

Her testimony is also liable to be discarded in view of the fact that she has stated that after four hours of cremation of the dead body of Gurjant Singh, accused Baaj Singh, Sonu and Mohan Singh had lifted the last mortal remains and ashes of her son and threw the same in Ghaghar river around 8.00 P.M. on the same day whereas PW1 Jai Gopal, Manager, Swarag Dham, Rania has clearly stated that

the last mortal remains and ashes were collected on the third day of the cremation and that too in the presence of 30-40 persons.

After going through the testimony of Baljeet Kaur PW2 it emerges that she regained consciousness on 16.11.2010 but CRM No.10224 of 2013 in/and CRM-A No.79-MA of 2013 -7- there is nothing on the file that she remained unconscious during the said period w.e.f.14.11.2011 to 16.11.2011.

There is nothing on the file that she was ever treated by any doctor to make her conscious and she has become unconscious on account of some intoxicant allegedly administered to her by her husband accused Baaj Singh.

Testimony of Baljeet Kaur PW2 also stands belied from her own deposition that on 21.11.2010 when her father Chand Singh PW3 came to her house then accused Baaj Singh disclosed that Gurjant Singh was strangulated by him and he has destroyed the evidence by throwing the bones and ashes in the 'Ghaghar' river whereas she has narrated the aforesaid factum in her application Ex.PB dated 19.11.2010 which is the basis of FIR Ex.PC.

Many other discrepancies were also found by the trial Court in her statement.

The prosecution has failed to prove on record that respondent No.1 was an addict.

Alleged making of extra judicial confession before Makhan Singh, was also discarded by the trial Court by noting that the said witness is neither a Panch/Sarpanch or Numbardar of the Village.

He is closely related to the applicant.

It has also come on record that this witness had not, even once, visited any police station or produced any culprit before the police.

Cause of death was also not ascertained because dead body was cremated without getting the post mortem done on it.

In our opinion, the view taken by the Court below is perfectly justified and as per evidence on record.

Their Lordships of the Supreme Court in 'Allarakha CRM No.10224 of 2013 in/and CRM-A No.79-MA of 2013 -8- K.Mansuri v.

State of Gujarat, 2002(1) RCR (Criminal) 748', held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

A Division Bench of this Court in 'State of Punjab v.

Hansa Singh, 2001(1) RCR (Criminal) 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 Honble Supreme Court in Ashok Kumar v.

State of Rajasthan, 1991 (1) SCC 166. 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.

Similarly, in State of 'Goa v.

Sanjay Thakran, (2007) 3 SCC 755', and in 'Chandrappa v.

State of Karnataka, (2007) 4 SCC 415', 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.

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 CRM No.10224 of 2013 in/and CRM-A No.79-MA of 2013 -9- 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.

Similarly, in the case of 'State of Rajasthan v.

Shera Ram alias Vishnu Dutta, (2012) 1 SCC 602', the Honble 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.

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 CRM No.10224 of 2013 in/and CRM-A No.79-MA of 2013 -10- 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.

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.

Accordingly, the application is dismissed.

(Jasbir Singh) Judge (Inderjit Singh) Judge 2.4.2013 Ashwani

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