



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**CRM-A-504-2019 (O&M)
Date of Decision: 03.07.2025**

Jagsir Singh

....Applicant/appellant.

VERSUS

State of Punjab and another

....Respondents.

**CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Sandeep Sharma, Advocate for
Mr. Rajesh Bhateja, Advocate for the applicant/appellant.

Mr. Aftab Singh Khara, Senior Deputy Advocate General,
Punjab.

ANUPINDER SINGH GREWAL, J. (Oral)

CRM-7482-2019

This is an application seeking condonation of delay of 81 days in filing the appeal against the judgement of acquittal of the respondents.

For the reasons stated in the application, which is supported by an affidavit, we are of the considered view that it would be in the interest of justice if the delay is condoned and the appeal is heard and decided on merits. Accordingly, the application is allowed and delay of 81 days in filing the appeal is condoned.

Main Case

This appeal by the complainant is directed against the judgement of the trial Court, whereby respondent No.2 has been acquitted in FIR No.58 dated 29.06.2016 under Section 304 of the IPC, Police Station Smalsar.

2. Learned counsel for the appellant submits that the trial Court has not considered the testimony of the appellant-Jagsir Singh, who was an eyewitness to the entire incident being the husband of the deceased. In his complaint as well as in his deposition before the trial Court as PW-3, he had stated that on 22.06.2016, he was riding the motorcycle while his wife was pillion rider. On their way to their shop situated at Village Pank Garaian Khurd and as they reached near a gas agency, there was a stationary tractor-trolley loaded with gas cylinders. Suddenly, respondent No.2 had intentionally opened the 'dalla' (tailgate) of the trolley, which hit his wife on her knees and she fell down and sustained major injuries. The motorcycle also went out of control and the appellant was also injured. His wife was immediately rushed to the Guru Gobind Singh Medical College and Hospital at Faridkot, from where she was referred to PGIMER, Chandigarh, as her condition was serious but unfortunately, she succumbed to her injuries on 29.06.2016. However, the trial Court has erroneously acquitted respondent No.2 although there was overwhelming evidence warranting his conviction.

3. Heard.

4. The case of the prosecution is that on 22.06.2016, the complainant- husband of the deceased along with his wife Kulwinder Kaur was going on a motorcycle, which was being driven by him, from their Village Sahoke to their shop in Village Pank Garaian Khurd. At around 4:15 pm, when they reached near Akaal Bharat Gas Agency, they saw a tractor-

trolley parked outside the front gate of the gas agency. As he was about to pass through the stationary trolley, respondent No.2 opened the '*dalla*' of the trolley intentionally, which hit his wife on her knees due to which he lost control of the motorcycle and both of them fell down and sustained several injuries. However, his wife had become unconscious at the spot, who was taken to Guru Gobind Singh Medical College and Hospital at Faridkot with the help of Jaskaran Singh (PW-4), who is their relative and was also following them on his motorcycle. Since his wife had suffered major injuries and her condition was critical, she was referred to PGIMER, Chandigarh. However, on 29.06.2016, his wife succumbed to her injuries. It was on 29.06.2016, that on the basis of statement of the complainant, FIR against respondent No.2 was registered and the investigation was conducted by ASI Faily Singh (PW-5). On 06.07.2016, the trolley involved in the incident was taken into possession and respondent No.2 was arrested on 15.07.2016.

5. After completion of the investigation, the challan was presented in the court and respondent No.2 was charge-sheeted for the commission of offence punishable under Section 304 of the IPC, to which he pleaded not guilty and claimed trial. To prove the charge against respondent No.2, the prosecution had examined total five witnesses including PW-1 Dr. Shikha Gupta, HC Boota Singh as PW-2, Jagsir Singh-complainant as PW-3, Jaskaran Singh as PW-4 and Investigating Officer ASI Faily Singh as PW-5. After the conclusion of prosecution evidence, the statement of respondent No.2 was recorded under Section 313 Cr.P.C. wherein he had stated that he has been falsely implicated and took the plea of alibi that he was in his office at Smalsar at the time of the occurrence. To support his case, the defence examined 3 witnesses namely, Dr. Sukhjinder Singh as DW-1, Resham Singh

as DW-2 and Amarjit Singh as DW-3. Thereafter, the defence closed its evidence and the trial Court after appreciating the evidence on record had arrived at the conclusion that the prosecution evidence suffers from material contradictions and acquitted respondent No.2 of the charge under Section 304 of the IPC at the conclusion of the trial.

6. The first witness examined by prosecution was the doctor who had conducted the postmortem of the deceased on 29.06.2016. She stated that she had found the following injuries on the person of the deceased:-

“1) C-Shaped surgically stapled craniotomy wound of length 28 Cm. present over the right side of the scalp with upper end being 5 cm above the middle of right eye brow and lower end being 1 cm behind the upper attachment of right ear with underlying craniotomy of front parieto temporal bone with bony flap (1 in number size 14 cm x 9 cm) placed in right side of anterior abdominal wall.

2) Blackish scabbed abrasion of size 3 cm x 1 cm present over right knee joint.

3) Blackish scabbed abrasion of size 3 cm x 1 cm present over left knee joint.

4) Blackish scabbed abrasion of size 8 cm x 3 cm present over medial aspect of left elbow joint.”

The cause of death was cerebral damage consequent to blunt trauma to head. All the injuries were ante mortem in nature and were caused with a blunt weapon/force.

7. PW-2 deposed that the tractor-trolley in question was taken into possession by the police on 06.07.2016, vide memo Ex.PW-2/A. The Investigating Officer ASI Faily Singh, who was examined as PW-5 had deposed that he had recorded the statement of the complainant on 29.06.2016 and registered the FIR. Thereafter, he prepared the inquest report and took tractor-trolley in possession on 06.07.2016 and arrested respondent No.2 on

15.07.2016.

8. The star witness and an eyewitness to the incident i.e. the complainant was examined as PW-3. He reiterated his version as stated in the FIR but added that at the time of the incident he suffered injuries on his left shoulder and right ankle and became unconscious at the spot. He further deposed that both the complainant and his wife were rushed to the nearby Hospital at Faridkot.

9. PW-4 who is stated to be another eyewitness to the occurrence, has stated that he is the nephew of the complainant/appellant, and on that day, at around 4/5pm, he was on his motorcycle following the complainant. Suddenly, as they reached near Akal Bharat Gas Agency, respondent No.2 had opened the back '*dalla*' of the trolley which hit his aunt (deceased) on her knees as a result of which she fell down from the motorcycle, her head hit the road and thereafter, she became unconscious. He also stated that the complainant also fell at some distance and sustained injuries. He then called one Gardor Singh, cousin of the complainant, who took his aunt to Guru Gobind Singh Medical College and Hospital in Faridkot.

10. After prosecution evidence, the defence examined Dr. Sukhjinder Singh as DW-1 in support of his case who testified that he was informed on 22.06.2016 by one Manpreet Singh that complainant- Jagsir Singh and his wife Kulwinder Kaur (deceased) had met with an accident. He reached at the spot and gave first aid to the injured and the complainant had then informed him that their motorcycle got slipped due to rain and it was him who had recommended the complainant to take the injured to hospital to seek further medical attention due to her high blood pressure. The other two witnesses DW-2 and DW-3 had also deposed to the effect verifying the fact that it was

indeed a rainy day of the date of the alleged occurrence.

11. The trial Court after conjoint reading of the testimonies of all the prosecution as well as defence witnesses had arrived at conclusion that the version of complainant(PW-3) losing conscious was exaggerated. In addition to this, DW-1 specifically stated that it was complainant who had told him that their motorcycle slipped due to rain, when he had reached at the spot to give first aid to his wife-deceased. Therefore, the material inconsistencies in the statements of the PW-3 and PW-4, despite their being the eyewitnesses to the occurrence, were also weighed in by the trial Court before arriving at the verdict of acquitting respondent No.2.

12. At the outset, it would be apposite to deal with the relevant legal provision relating to Section 304 of the Indian Penal Code, which is reproduced hereunder for ready reference:-

“304. Punishment for culpable homicide not amounting to murder.-

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

The law relating to Section 304 of the IPC requires that there must be an intention to cause death or such bodily injury which is likely to cause death, to warrant a conviction under this provision. However, in the instant case the prosecution has failed to bring on record any material to suggest that respondent No.2 harboured any such intention. The key prosecution witnesses i.e. PW-3 and PW-4, have also not deposed anything to

establish that respondent No.2 and the deceased were acquainted prior to the incident or that respondent No.2 bore any animosity towards the deceased or was seeking an opportunity to harm her.

13. After careful perusal of the record before us, we are of the clear view that it was a case of road accident which had been given garb of a criminal offence, as there is an unexplained delay of 7 days in lodging the FIR. The incident is stated to have taken place on 22.06.2016 while the FIR was lodged only on 29.06.2016 when the wife of the applicant had succumbed to her injuries. The complainant had stated in his deposition before the trial Court that even he had sustained injuries in the occurrence and had remained unconscious for two days after the incident. Even assuming that the applicant was unconscious for two days, there is no plausible explanation as to why he failed to lodge the FIR upon regaining consciousness. He chose to wait for another five days before registering of FIR. Furthermore, there is nothing on record to suggest that the complainant sustained any such injuries or received treatment at any hospital, thereby casting further doubt on the veracity of the allegations.

14. It was further argued by the learned counsel for the appellant that the trial Court failed to properly appreciate the testimonies of the complainant (PW-3) and another alleged eyewitness to the occurrence, Jaskaran Singh (PW-4). However, their statements suffer from material inconsistencies. While PW-3 stated in his deposition that respondent No.2 had intentionally opened the 'dalla' of the tractor-trolley, which allegedly struck the knees of his wife, but he later informed DW-1, who had administered first aid to the injured, that they had slipped on the road due to rain. PW-3 also admitted that

it was a rainy day, consistent with the deposition of the defence witnesses. PW-4, on the other hand, gave contradictory statement regarding the events immediately following the incident. He first claimed that he and the complainant took the injured to the hospital, but later stated that Gardor Singh, cousin of the complainant, was called to take victim to hospital, as the complainant had also fainted. PW-4 further contradicted PW-3 by denying that it was raining on the date of occurrence and stated that the complainant had not sustained any injury. Most significantly, PW-4 attributed the accident to the motorcycle having struck the stationary trolley which is completely inconsistent with the allegation that respondent No.2 had intentionally caused the injury by opening the 'dalla' of the trolley.

15. The trial Court rightly relied upon the honest and consistent testimony of DW-1, who had attended to the deceased immediately after the incident. He deposed that on 22.06.2016, he was informed by Manpreet Singh that the complainant and his wife had fallen on the road after their motorcycle had slipped. He provided first aid to the victim, who had sustained a head injury and was lying unconscious at the time. He was consistent in his version that the complainant had also informed him that their motorcycle had slipped due to rain. This witness was cross-examined at length but the prosecution was unable to discredit his version of the testimony.

16. It is, therefore, significant to note in this background that the evidence led by the defence gains greater credence. Reliance can be placed on the judgement of the Supreme Court in the case of **Dudh Nath Pandey v. State of U.P., (1981) 2 SCC 166**, wherein it was observed as under:-

“19. ...Defence witnesses are entitled to equal treatment with those of the prosecution. And, courts ought to overcome their traditional, instinctive disbelief in defence witnesses. Quite often, they tell lies but so do the prosecution witnesses. ...”.

17. It is trite that the judgement of acquittal would not be lightly interfered by the Appellate Court as the presumption of innocence of the accused is reinforced by a judgement of acquittal. Even if another view is possible on appreciation of evidence, the finding of acquittal would prevail. Reference can be made to the judgement of the Supreme Court in the case of **Chandrappa and others vs. State of Karnataka (2007) 4 SCC 415**. The relevant extract thereof is reproduced hereunder:-

“42. 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 emphasize 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 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.”

18. We are, therefore, of the considered view that judgement of acquittal appears to be well reasoned and based upon proper appreciation of evidence. In the result, the appeal against order of acquittal of respondent No.2 stands dismissed.

Pending application(s), if any, also stands disposed of.

(ANUPINDER SINGH GREWAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

03.07.2025

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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No