

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No.A-135-MA of 2012

Date of Decision : July 29, 2015

Asfaq

.....Applicant

VERSUS

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Bhupinder Bagga, Advocate
for the applicant.

Mr. Praveen Bhadu, Asstt. Advocate General, Haryana
for respondent No.1-State.

Mr. J.S. Bedi, Senior Advocate with
Mr. Ravi Kamal Gupta, Advocate
for respondent No.2.

T.P.S. MANN, J.

The applicant, who is brother of the prosecutrix, has filed the present application for grant of leave to appeal against the judgment dated 12.4.2010 passed by the Sessions Judge, Faridabad whereby respondent-Mousim stands acquitted of the charges under Section 376 read with Section 511 IPC and Sections 302 and 201 IPC.

The prosecution case, in brief, is that on 1.4.2007 at 3.30 p.m. when the applicant returned home after working with Harun in his hotel at Sirohi, he found the prosecutrix missing. An attempt was made to search for her but remained futile. On the next morning at about 8.00 a.m. Shahista, daughter of Haji Nafis, came running while crying and disclosed that the prosecutrix was lying dead in a room of her cattle shed. Accordingly, the

complainant, alongwith his brother Salim and nephew Farukh, went to the cattle shed of Haji Nafis and found the prosecutrix lying dead. Her Chuni had been used to strangulate her. Blood had oozed out of her mouth and nose. Her face was swollen. Her feet had been gnawed by rats. Later on, the applicant made statement Ex.PW7/A before Sub Inspector Suresh Kumar, who had reached the spot. On its basis, FIR Ex.PR was recorded by ASI Ram Niwas. During the investigation of the case, blood stained earth was taken into possession from various places. The dead body was, thereafter, subjected to autopsy by Dr.Beena Sharma, who took vaginal swabs and ligature material, i.e. Chuni in two parts. On 7.4.2007, respondent-Mousim was produced by Lalu, ex-Sarpanch before the police after he made extra-judicial confession. Pursuant to disclosure statement Ex.PF made by Mousim, blood stained pant Ex.P1 and shirt Ex.P2 were got recovered by him.

Having heard learned counsel for the parties and on going through the impugned judgment, this Court finds that while stepping into the witness-box as PW12 Lalu, before whom accused Mousim was said to have made extra-judicial confession, did not support the prosecution case. He categorically deposed that neither Mousim came to him nor he made any confessional statement. He only deposed that accused Mousim was produced before the police on suspicion. Even during his cross-examination by the Public Prosecutor after getting him declared hostile, PW12 Lalu denied that accused had suffered any

confession before him.

Both PW7 Asfaq applicant and PW8 Mustakin have not stated about the involvement of accused Mousim in the commission of crime. They only deposed about missing of the prosecutrix from the house and, later on, her dead body being found from the cattle shed of Haji Nafis.

As regards various recoveries, at the instance of accused Mousim, suffice it to say that PW12 Lalu, who had produced accused Mousim before the police was not associated in effecting those recoveries. Further, no witness from the public was joined by the Investigating Officer, who could have lent independent corroboration to the prosecution case insofar it related to the various recoveries.

In view of the above, this Court finds that the prosecution has miserably failed to prove its case against accused Mousim. The prosecution evidence has been correctly appreciated by the learned trial Court. Therefore, no case is made out for any interference in the impugned judgment of acquittal.

Resultantly, the leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(MAHAVIR S. CHAUHAN)
JUDGE

July 29, 2015
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