

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

Crl. Misc. No. 18433 of 2016 and
Crl. A. No. D-1176-DB of 2014 (O&M)

DATE OF DECISION : 02.06.2016

Vidya Sagar

.... APPLICANT-APPELLANT

Versus

State of Haryana and others

..... RESPONDENTS

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

HON'BLE MR. JUSTICE RAMENDRA JAIN

1. *Whether Reporters of the local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the digest ?*

Present: Mr. Manu Bhandari, Advocate, for
Mr. Ashish Rawal, Advocate,
for the applicant-appellant.

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RAMENDRA JAIN , J.

Vidya Sagar, brother of deceased Raj Kumar, has filed the instant application under Section 378 (4) Cr.P.C., seeking leave to file appeal against the acquittal of respondents No.2 to 13 (in short “private respondents”), other than respondent No.11, under Section 302 read with Section 120 IPC, and respondent No.11 under Section 216 IPC, vide judgment dated 15.03.2013 passed by Additional Sessions Judge, Yamuna Nagar at Jagadhri.

The private respondents, other than respondent No.11, were booked and tried for the offence punishable under Section 302 read with

Section 120-B IPC, and respondent No.11 under Section 216 IPC, for committing the murder of Raj Kumar in the evening of 05.09.2009 at his home.

The prosecution in support of its case examined as many as nineteen witnesses.

The private respondents in their defence examined three witnesses.

On appraisal of evidence and hearing learned counsel for both the sides, the trial court did not find itself convinced with the prosecution story and resultantly acquitted the private respondents vide the aforesaid judgment.

Learned counsel for the applicant-appellant contends that the impugned judgment is based on surmises and conjectures. The trial court failed to appreciate that the motive behind the occurrence was long standing litigation between the private respondents and deceased Raj Kumar qua landed property under his possession. To grab the property of deceased Raj Kumar, as he was living alone in the village, the private respondents committed his murder. The ocular version of the prosecution was corroborated by the medical evidence. Recovery of axe used in commission of the crime from respondent No.2 Sube Singh was sufficient to hold all the private respondents guilty, in view of the flawless and trustworthy deposition of the prosecution witnesses.

After giving our thoughtful consideration to the submissions made by learned counsel for the applicant-appellant, we find the present application and the appeal completely meritless for the reasons to follow.

(i) The prosecution examined PW.3 Hari Chand as an eye witness to the murder of Raj Kumar. According to him, he had seen PW.2 Chanwa Ram and Ganesh Bahadur rushing out of the house of deceased Raj Kumar, shouting that “Lalaji has been killed”. However, PW.2 Chanwa Ram turned hostile and even did not state that he had seen PW.3 Hari Chand. Hence, presence of PW.3 Hari Chand at the time of the alleged murder of Raj Kumar by the private respondents is doubtful.

(ii) As discussed above, another eye witness of the occurrence, namely Ganesh Bahadur, has not been examined by the prosecution.

(iii) PW.3 Hari Chand is stated to have narrated the entire occurrence to PW.19 Inspector Bharat Bhushan, the Investigating Officer of the case. But the Investigating Officer recorded his statement qua identity of the deceased only. Had it been so, PW.3 Hari Chand was well within his powers to make a complaint against the Investigating Officer, but he did not adopt any such exercise. This requires to draw an adverse inference against him that he is not a trustworthy witness. More so, the conduct of PW.3 Hari Chand is quite unnatural. After witnessing the murder of Raj Kumar, he neither reported the matter to the police immediately after the incident, nor shouted for help to save the life of Raj Kumar, despite known to the deceased and his family members since many years. Even while conducting the inquest proceedings, PW.3 Hari Chand did not

disclose the name of private respondents as murderers of Raj Kumar. All the above factors clearly speak about his non-presence at the spot at the time of murder of Raj Kumar.

(iv) The testimony of PW.4 Amar Singh also does not inspire confidence. According to him, while standing outside the wall of the school of his village, he had heard conversation of the private respondents conspiring to kill Raj Kumar. Had it been so, after hearing such a serious conversation, he would not have gone to his home, rather ought to have informed the villagers or family members of Raj Kumar or Raj Kumar himself to save himself from the ill act of the private respondents. But he did not adopt any such recourse. Though he testified that he had informed the police immediately after hearing the aforesaid conversation, but no such statement was produced on record before the trial court. It also does not appeal to reason that the private respondents, who are inter-se related, would have conversed hatching a conspiracy to commit the murder of Raj Kumar at a public place. Such type of conversations always take place at some secret place. Since the private respondents are inter-se related, they could plan the murder of Raj Kumar in their own house.

(v) Another witness to the alleged conspiracy is PW.16 Pardeep Kumar, but he too does not appear to be truthful witness, because he disclosed about the alleged conspiracy of the private respondents to the police regarding murder of Raj Kumar on

20.09.2009, i.e. after 15 days of the murder. If he would have heard the alleged conversation of the private respondents, in that eventuality he would have informed Vidya Sagar, brother of Raj Kumar, immediately. Thus, he also seems to be an introduced witness.

(vi) The prosecution did not examine any witness to prove the charge against respondent No.11, who was booked and tried only under Section 216 IPC on the allegation that he had harboured the other private respondents.

(vii) As per the FSL report, axe and clothes of the deceased have not been proved to be having blood of deceased Raj Kumar. More so, the prosecution has failed to lead any evidence to prove that the weapon of offence, i.e. axe, was having the finger prints of respondent No.2 Sube Singh. Thus, mere recovery of axe from respondent No.2 Sube Singh is not sufficient to hold the private respondents guilty.

(viii) Mere absconding of the private respondents, particularly Randhir Singh and Mangu, is not sufficient to hold them guilty. If an innocent person is wrongly suspected of a grave crime, in such an eventuality, such person feels panicky and tries to evade arrest.

(ix) As discussed above, statement of the alleged eye witnesses, namely PW.3 Hari Chand, is not trustworthy, whereas PW.2 Chanwa Ram, another eye witness, turned hostile, and the statements of PW.4 Amar Singh as well as PW.16 Pardeep

Singh, who allegedly heard the conversation of the private respondents hatching conspiracy to commit the murder of Raj Kumar, are not reliable. In view of this, it appears to be a case of blind murder and the private respondents have been falsely implicated in this case.

Learned counsel for the applicant-appellant has miserably failed to put any dent in any of the findings recorded by the trial court. We have also gone through the impugned judgment and do not find any illegality or perversity in the same.

Consequently, the application being devoid of any merit is dismissed. Leave to appeal is, accordingly, declined. Resultantly, the appeal is also dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

June 02, 2016
ndj