

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1807-MA of 2016 (O&M)

DATE OF DECISION: DECEMBER 13, 2016

STATE OF HARYANA

...APPLICANT

VERSUS

MUKESH AND OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE G.S. SANDHAWALIA.**

PRESENT: MR.ASHOK MUTHREJA, DAG, HARYANA
FOR THE APPLICANT.

M. JEYAPPAUL, J.

CRM-31394-2016

1. The State of Haryana has filed the application praying for condonation of delay of 29 days in filing the appeal. We are convinced with the reasons assigned for the delay. Therefore, the delay is condoned and the application is allowed.

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2. Aggrieved by the acquittal of accused Mukesh and Rakesh who were charged under Sections 302/34 IPC and Section 3 of SC/ST Act, the State of Haryana has filed the present application praying for grant of leave to prefer an appeal.

3. The brief facts of the case of the prosecution are that PW3 Naveen had seen accused Mukesh and Rakesh taking Pawan (since deceased) on a bike. Accused Mukesh and Rakesh were asking Pawan to swim in the canal. But Pawan was replying that he would prefer to swim at

Kendriya Vidyalaya swimming pool by making necessary payment. Accused Mukesh and Rakesh forced Pawan for swimming in the canal. The father of deceased Pawan lodged a complaint that his son Pawan who left his house for Central School for learning swimming on 10.5.2015 did not return to house. He suspected that his neighbour Mukesh might have kidnapped his son.

4. PW11 Dr. Pankaj Chhikara, Assistant Professor, PGIMS, Rohtak conducted post mortem examination on the dead body of Pawan and opined that Pawan had died due to ante mortem drowning. He had also observed that the deceased had consumed alcohol before his death.

5. The trial Court having adverted to the evidence on record returned a verdict of acquittal.

6. We heard the submissions made by learned counsel appearing for the State.

7. We find that the case of the prosecution rested on circumstantial evidence. The vital circumstance relied upon by the trial Court was that PW3 Naveen spotted the accused alongwith deceased before the occurrence. He also witnessed the accused forcing Pawan to swim in the canal.

8. The medical evidence discloses that the deceased had consumed alcohol before his death. There had been a gap of 48 hours between the time at which the accused were found in the company of the deceased and the time at which Pawan was found dead. The intervening events that might have taken place in the meantime would have contributed

for the death of the deceased. In other words, the last seen theory projected by the prosecution is found to be weak, inasmuch as the death of Pawan had not taken place immediately after the accused were found in the company of the deceased. As rightly pointed out by learned trial Court, Pawan who was admittedly not knowing swimming might have made an attempt to swim in the canal in an inebriated condition and invited voluntary death.

9. In the above facts and circumstances, we are of the considered view that the verdict of acquittal passed by the trial Court does not warrant reappraisal. Therefore, leave sought for is declined and the application is dismissed.

(M. JEYAPPAUL)
JUDGE

December 13, 2016
Gulati

(G.S. SANDHAWALIA)
JUDGE

Whether Reportable

No

Whether Speaking/Reasoned

Yes