

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No.A-92-MA of 2015

Date of Decision : May 23, 2016

Mewa Lal

....Applicant

VERSUS

Rajesh Kumar Panday and others

...Respondents

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

Present : Mr. Ashish Gupta, Advocate

T.P.S. MANN, J.

The complainant has filed the present application under Section 378(4) Cr.P.C. for the grant of special leave to appeal against the judgment dated 29.8.2014 passed by learned Additional Sessions Judge, Chandigarh whereby respondents No.1 to 3, namely, Rajesh Kumar Panday, Ashok Panday and Malti Panday stood acquitted of the charges under Section 302 read with Section 34 IPC.

Briefly stated, the prosecution case is that complainant Mewa Lal filed criminal complaint on the allegations that his uncle Brij Lal resided with him on the ground floor portion of House No.3910, Mauli Jagran Complex, Manimajra. At times, he would sleep on the roof of the house during summers. The complainant constructed a room and kitchen on first floor of the house which

was let out to accused Rajesh Kumar Panday w.e.f. 5.6.2006 on monthly rent of Rs.1,200/-. When the eye sight of Brij Lal became weak, he was treated from General Hospital, Sector 6, Panchkula and from hospital at Sohana, Punjab. At times, he used to be taken to General Hospital, Sector 16, Chandigarh for the treatment. The complainant used to work as cashier in Haryana Electricity Board. One day he requested accused Rajesh Kumar Panday to take Brij Lal to the Hospital in Sector 16, Chandigarh for eye check up and gave him Rs.1,500/- as expenses for purchase of medicines. Instead of taking Brij Lal to the hospital, accused Rajesh Kumar Panday took him to Estate Office, Chandigarh and got executed power of attorney, etc. fraudulently by mis-representing that these were required for check up in the hospital. Brij Lal was illiterate and believing accused Rajesh Kumar Panday, he affixed thumb-impression on the documents. In the evening, Brij Lal informed the complainant about getting his thumb-impression on certain papers. When the complainant made an enquiry, accused Rajesh Kumar Panday disclosed that he purchased the house from Brij Lal for a sum of Rs.3,65,000/-. The complainant asked him to show the papers, accused Rajesh Kumar Panday stated that he was earned his livelihood by sheer hard work and there was no question of purchasing the house. The complainant felt assured that no document has been executed by his uncle Brij Lal. However, when accused Rajesh Kumar Panday stopped paying rent despite repeated requests and also failed to vacate the premises and

claimed that he had purchased the house, the complainant enquired from his uncle Brij Lal about having to be any thumb-impressions on any document. When Brij Lal confirmed the factum of having putting thumb-impression on some documents, the complainant reported the matter to Police Post, Mauli Jagran. However, the police already had power of attorney, etc. bearing thumb-impressions of Brij Lal which were supplied by accused Rajesh Kumar Panday prior to the complainant's visit knowing fully well that the matter would crop up. When the papers were shown, Brij Lal stated that the thumb-impressions were taken fraudulently and he had not executed the documents. The complainant's uncle then got the power of attorney, Will, etc. cancelled by executing necessary deeds in the office of Sub Registrar, Chandigarh. He also got issued a notice through an Advocate regarding cancellation of the documents.

Further case of the prosecution is that on 1.5.2007, when Brij Lal wanted to sleep on the roof of the house, the complainant took him to the house of his neighbourer Chhedi Lal and requested him to let Brij Lal sleep on the roof. On the morning of 2.5.2007, Rattan Lal, Ram Naresh and Balram Singh saw the accused on the roof of the house where deceased was sleeping. They were assaulting Brij Lal by saying that he would not be spared as he had disclosed about the execution of Will, etc. to complainant Mewa Lal. Brij Lal was sobbing. Accused Ashok Panday and Malti Panday exhorted accused Rajesh Kumar Panday to teach a lesson

to Brij Lal by giving a blow on his head. Pursuant thereto, accused Rajesh Kumar gave stick blow on the head of Brij Lal. He was then thrown from the roof of the house and fell on heap of earth so as to make out that he had fallen therefrom. Subsequently, the dead body of Brij Lal was subjected to post-mortem and accused death was found to be cranio-cerebral injury, which was sufficient to cause death in ordinary course of nature. The matter was also reported to the police but no action was taken. Rather, the police recorded statement to show that the deceased himself had fallen from the roof of the house.

After recording preliminary evidence, learned Judicial Magistrate 1st Class, Chandigarh summoned the accused for the aforementioned offences. Upon appearance of the accused and their release on bail, the case was committed to the Court of Sessions, where they were charged under Section 302 read with Section 34 IPC, to which they pleaded not guilty and claimed trial. In support of its case, the prosecution examined PW1 Mewa Lal, complainant, PW2 HC Bikram Singh, PW3 Vijay Kumar, PW4 Ram Naresh, PW5 Dr. Amandeep Singh, PW6 and Ms. Neeta, Clerk, Copy Branch, District Courts, Chandigarh.

When examined under Section 313 Cr.P.C., all the three accused pleaded that they had been falsely implicated. According to them, Brij Lal died natural death and, thus, fact was reported by the complainant himself, while getting entry recorded in that regard in the register of Cremation Ground, Manimajra,

Chandigarh. Accused Rajesh Kumar Panday also stated that it was the complainant himself who had killed Brij Lal as the Brij Lal had sold property to him by executing all the necessary documents.

Having heard learned counsel for the complainant/applicant, this Court finds that in order to show the involvement of the accused in the commission of crime, i.e. of killing Brij Lal on the morning of 2.5.2007, complainant Mewa Lal in his complaint Ex.P1 had mentioned that Rattan Lal, Ram Naresh and Balram Singh had seen the accused on the roof of the house of Chhedi Lal, where the deceased was sleeping and they were assaulting Brij Lal. However, Rattan Lal and Balram Singh were not examined by the complainant in support of its case. Only Ram Naresh was examined as PW4 but he testified that on 2.5.2007, Brij Lal had died after having been made to fall from the roof of the house. He could not narrate anything else besides this and did not know who was behind the murder and as this witness not supported the prosecution version, he was got declared hostile by the learned Public Prosecution and confronted with his previous statement Ex.PW4/A. However, he deposed that he did not remember as to what statement he had earlier made before the Court nor he could remember whether he stated about the accused Rajesh Kumar Panday assaulting Brij Lal with a stick on his head after being exhorted by accused Ashok Panday and Malti Panday. He also testified that he had made previous statement in the Court but he did not know what was recorded as he was

illiterate.

In order to wriggle out of the entry made in the register of Cremation Ground, Manimajra, wherein he had described the death of Brij Lal as natural, complainant Mewa Lal, while stepped into the witness box as PW1, he stated that Ram Naresh and Vijay had told him after the cremation about accused Malti Panday and Ashok Panday exhorted accused Rajesh Kumar Panday to kill his uncle for getting the GPA cancelled. The explanation, so tendered, cannot be accepted. It being created just for the purposes of explaining the way the entry Ex.D in the register of the Cremation Ground.

According to complainant Mewa Lal, one Brighu Nath was also an eye-witness of the occurrence. However, complainant Mewa Lal did not produce him before the Court for the reason that he was bed-ridden, incapable of deposing, unable to speak and not in sound state of mind. Fact remains that the Court is bereft of the testimony of Brighu Nath regarding the ocular account of the occurrence.

The prosecution also examined Vijay Kumar as PW3, who testified that when the accused learnt about the cancellation of the GPA, they killed Brij Lal by throwing him from the roof. He went on to add that all the three accused had committed the murder of Brij Lal. In his testimony PW3 Vijay Kumar did not utter a single word that he was present at the time of the occurrence or

had witnessed accused Rajesh Kumar Panday causing an injury to Mewa Lal on the exhortation of accused Ashok Panday and Malti Panday. His testimony is nothing but hearsay and as such cannot be relied upon.

According to post-mortem report EX.CW4/A, cause of death was cranio-cerebral injury, which was ante-mortem in nature and sufficient to cause death in ordinary course of nature. The cause of death, as mentioned in the post-mortem report does not suggest at all that the death was homicidal. Rather the death was due to fall from the roof top.

In view of the above, no fault can be found with the impugned judgment of acquittal passed by the trial Court whereby the complaint filed by the complainant has been dismissed and the accused respondents acquitted of the charges under Section 302 read with Section 34 IPC.

The application is without any merit and, accordingly, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

May 23, 2016
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