

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-38013-2017 and
CRA-D-182-DB-2015
Decided on: 01.12.2017

Lakhwinder Singh (since deceased) through his father Gurjant Singh

....Applicant

vs.

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Vivek Goel, Advocate,
for the applicant/appellant.

MAHABIR SINGH SINDHU, J.

The present application (CRM-38013-2017) under Section 378(4) Cr.P.C. and the appeal (CRA-D-182-DB-2015) have been filed by Gurjant Singh, father of applicant-Lakhwinder Singh (since deceased) for seeking special leave to appeal against the impugned judgment and order dated 13.11.2014 vide which learned Additional Sessions Judge, Moga, for short 'Trial Court' acquitted respondents No.2 to 4 of the charges under Section 302 and Section 302 read with Section 34 of Indian Penal Code, for short 'IPC', but only convicted respondent No.2-Ravinder Singh under Section 304 Part-II IPC.

2. The brief facts of the case are that as per allegations of the prosecution, Lakhwinder Singh son of Gurjant Singh made a statement dated 30.06.2012 (Ex.P-1) by alleging that he is working as a Mason and they are two brothers and both are married. His younger brother, namely,

Kulwinder Singh is working in the Army as Lance-Naik and was married with Suman @ Laxmi. For the last about three years, Suman had not been maintaining cordial relations with the family as well as with his brother Kulwinder Singh. It is further alleged that during previous night, i.e. 29.06.2012, Suman and Kulwinder Singh had altercation and she gave a telephone call to her parents and after receiving the same, her brother Ravinder Singh, mother Jasmail Kaur and cousin Rahul came to their house at about 11.00 a.m. After reaching there, all had taken tea and discussed family matters and while talking over the dispute between Suman and Kulwinder the night before, Suman blamed that she is being beaten and she wanted to go to her parental house. Upon this, Kulwinder Singh and his father Gurjant Singh had tried to persuade Suman; but she remained adamant to go alongwith her mother. Consequently, they exchanged hot words and grappled with each other. In the meanwhile, Rahul picked up a brick from the courtyard and hit on the head of the complainant and then his grand father Zora Singh came forward to dissuade them, but Ravinder Singh accused pushed Zora Singh and he fell down. Thereafter, Ravinder Singh sat on the chest of Zora Singh and he became unconscious. Upon hearing the hue and cry, neighbourers came there upon which Ravinder Singh, Rahul, Jasmail Kaur and Suman @ Laxmi slipped away. Thereafter, they arranged a vehicle and brought Zora Singh to Civil Hospital, Baghapurana, where he died.

3. On the basis of the above statement, an FIR No.39 dated 30.06.2012 under Section 302 & Section 302 read with Section 34 IPC, Police Station Smalsar was registered. After conducting the necessary investigation, report under Section 173 Cr.P.C. was submitted by the police

and during the course of investigation accused-Rahul was found to be juvenile and separate challan was presented before Principal Magistrate, Juvenile Justice Board, Moga and he is being tried separately. Thereafter, the case was committed to Ld. Sessions Court and Ld. Trial Court found that offences under Section 302 & Section 302 read with Section 34 IPC were made out. Consequently, the charges were framed against the accused to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution has examined seven witnesses and brought on record various documents. In view of the provisions of Section 313 Cr.P.C., all the incriminating circumstances were put to the accused, but they claimed innocence being falsely implicated. No defence witness was examined by the accused.

5. Ld. Trial Court after taking into consideration the entire material available on record, convicted the accused-respondent No.2- Ravinder Singh under Section 304 Part II IPC and imposed rigorous imprisonment for a period of five years alongwith fine of ₹10,000/- with default clause to further undergo RI for six months, but acquitted other two accused of the charges in entirety.

6. Hence, the present application for special leave to appeal.

7. Learned counsel for the applicant contended that there is sufficient evidence available on record to prove the guilt of respondents No.2 to 4 and thus, the Ld. Trial Court has wrongly acquitted respondents No.2 to 4 from the offences punishable under Section 302 and Section 302 read with Section 34 IPC.

8. Heard Ld. counsel for the applicant and perused the paper book, but this Court does not find any merit(s) in his submissions.

9. PW-1 Lakhwinder Singh, PW-2 Jasvir Singh and PW-6 Kulwinder Singh have supported the case of the prosecution as alleged in the initial version as in the statement dated 30.06.2012 (Ex.P-1) made by Lakhwinder Singh and even made an improvement to the effect that Ravinder Singh-respondent No.2 had pressed the neck of Zora Singh.

10. PW-5 Dr. Chamandeep Singh Bains deposed that on 01.07.2012, he had conducted the post mortem examination on the dead body of Zora Singh (deceased) and found the following injuries:-

“Bluish black contusions (2) measuring 10 x 2.5 cm on right upper part of chest and 8 x 4 cm on left upper part of chest. On dissection of chest blood was found present on the sub cutaneous tissues of chest.”

PW-5 further deposed that in his opinion, cause of death in this case was Asphyxia due to compression of chest, which is antemortem in nature and sufficient to cause death in ordinary course of nature. It has come on record that Zora Singh (deceased) was aged about 75 years and there is no medical evidence to prove the pressing of neck. Even in the post mortem examination report (Ex.P-20) also, there is no such injury to prove the pressing of neck of the deceased. Therefore, it is only on account of pressure on chest the Zora Singh died and that act is attributed to Ravinder Singh-respondent No.2 only. So far as accused Ravinder Singh is concerned, the Ld. Trial Court found that there was no intention on his part to murder Zora Singh; rather he pushed him and as a result he (Zora Singh) fell down and thereafter, he (Ravinder Singh) sat on his chest. Since, Zora Singh was an old aged person of more than 75 years of age, he could not bear the pressure of weight exerted by Ravinder Singh-respondent No.2 and, consequently, he died.

11. Resultantly, the case will rightly fall within the parameters of exception 4 to Section 300 IPC which is punishable under Section 304 Part-II IPC and the liability of respondent No.2 cannot be fastened for an offence punishable under Section 302 IPC. Exception 4 of Section 300 IPC reads as under:-

“Exception 4-- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

12. So far as the other two accused, namely Jasmail Kaur and Suman @ Laxmi, respondents No.3 and 4 are concerned, they have been acquitted by Ld. Trial Court by recording the conclusion that there was no pre-arranged plan by both of them for causing death of Zora Singh; rather it was only Ravinder Singh, who is held liable for the death of Zora Singh. Therefore, there is no evidence on record to establish that Jasmail Kaur and Suman @ Laxmi had any pre-arranged plan for causing death of Zora Singh. Even otherwise, none of the prosecution witness has stated that Jasmail Kaur and Suman @ Laxmi had participated in any manner to cause the death of Zora Singh.

13. In view of the above, this Court is fully in agreement with the reasoning given by learned Trial Court while acquitting respondents No.2 to 4 of the charges punishable under Section 302 and Section 302 read with Section 34 IPC being the possible view. Further, there is no material available on record to come to the conclusion that any perversity has been committed by the Ld. Trial Court. Hence, there is no merit in the present application to grant special leave to appeal.

14. Consequently, the application under Section 378(4) Cr.P.C. for special leave to appeal against the judgment of dated 13.11.2014 passed by Ld. Trial Court is hereby dismissed. Special leave to appeal is declined.

15. In view of the above, Criminal Miscellaneous No. 38013 of 2017 filed by the applicant for grant of special leave to appeal is declined and Criminal Appeal No.D-182-DB of 2015 is dismissed.

**(T.P.S. MANN)
JUDGE**

**(MAHABIR SINGH SINDHU)
JUDGE**

01.12.2017
Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No