

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

Criminal Misc. 10091 of 2016 in/and
Criminal Appeal D-899- DB of 2015
Date of Decision : November 15, 2017

Mahipal Singh Yadav

.....Appellant

VERSUS

Sandeep and others

.....Respondents

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

Present : Mr. Sarfraj Hussain, Advocate
for the applicant/appellant.

T.P.S. MANN, J.

The appellant, who is father of the deceased has filed the present application (Criminal Misc. 10091 of 2016) under Section 378(4) of the Code of Criminal Procedure with a prayer for grant of leave to appeal and also the appeal (Criminal Appeal D-899-DB of 2015) for challenging the judgment dated 28.4.2015 passed by learned Additional Sessions Judge, Gurgaon whereby respondents No.3, 4, 6 and 8 were acquitted of the charges under Sections 323, 342, 307, 302, 201, 365 read with Section 120-B IPC, respondents No.1 and 7 acquitted of the charges under Sections 342, 201 read with Section 120-B IPC and respondents No.2 and 5 acquitted of the charges under Section 216 read with Section 120-B IPC.

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According to the prosecution, Praveen Kumar, son of complainant Mahipal Singh Yadav, had come to Gurgaon for job. The complainant had been talking to him on his mobile upto 15.10.2010. Praveen Kumar was staying in Gurgaon along with his friend Rajat in a rented accommodation in Sushant Lok, Gurgaon where Pankaj, Sachin, Chetan and Divesh were also staying. On 24.10.2010, the complainant spoke to his son's friend but thereafter he had no contact with him. As per the owner of the house, an altercation had taken place on 23.10.2010 in the flat between the boys and in the morning of 24.10.2010 those boys left in two cars but did not return. The complainant learnt that the boys, namely, Praveen Kumar, Rajat, Divesh, Pankaj, Chetan, Bhupinder, Sachin and Sandeep were missing. Accordingly, he started searching for his son Praveen Kumar. The complainant suspected that his son had been killed by the aforesaid boys or had been wrongfully detained.

Having heard learned counsel for the applicant and on going through the trial Court record which stands requisitioned, this Court finds that PW5 Ankit Sharma showed total ignorance about the incident whereas PW6 Bhupender introduced another version that he and Praveen Kumar were beaten by some unknown persons at a Dhaba in Sushant Lok area in October, 2010 where they had gone for taking meals. During their cross-examination also, they totally denied the prosecution case against

the accused. Further, PW4 Arvind Bhushan Sahani, the landlord of the ground floor which was leased out to Rajat-accused also turned hostile and, therefore, the accused could not be connected with the crime. Though he supported the prosecution case regarding various recoveries but the blood stains noticed on those articles were not found to be of human origin. At the same time, the blood stains on Baniyan and Capri were of human origin and blood group B but the blood group on bed sheet, mattress piece, cloth pieces could not be ascertained. There is also no evidence that the deceased had blood group B and also that the Baniyan and Capri was of the deceased. PW15 Mahipal Singh testified that when he visited the house of Arvind Bhushan Sahani on 7.11.2010, he did not notice any blood stains in the hallroom. PW15 Mahipal Singh was not a witness to the attack nor a witness to the last seen. He claimed to have obtained information about the involvement and conduct of the accused from Sandeep-accused and PW4 Arvind Bhushan Sahani but the said testimony is nothing but hearsay as neither Sandeep nor PW4 Arvind Bhushan Sahani claimed to have informed him. He also made improvements in his version contained in complaint Ex. PL dated 9.11.2010 while deposing before the learned trial Court as PW15 regarding having seen the shoes of his son in the house in question and talking to Sandeep, who allegedly informed him about the missing of the accused and Praveen Kumar after

24.10.2010 and missing of Chetan and Bhupinder from their houses. Moreover, there is neither any recovery from Divesh nor he is named by PW4 Arvind Bhushan Sahani and seeing him with Rajat, Pankaj, Chetan and Sachin in the flat. It is also the prosecution case that Chetan and Sachin had reached the flat on 24.10.2010 after giving of beatings to Praveen by Rajat and others. The recovery of motorcycle and mobile effected from those two accused did not help the prosecution as there is no evidence that the deceased was wrongfully confined by them. There is also no recovery from Rajat-accused which could connect him with the commission of the crime. Absence of Rajat from his house is at the same time a suspicious circumstance but that by itself would not prove his guilt in the absence of any cogent evidence against him. There is also no evidence as to how Manish and Satish-accused had harboured the other accused. Satish was not found involved in the occurrence. The recovery of Tata Safari from the residence of Manish has rightly been disbelieved by the learned trial Court.

In view of the above, it cannot be said that the prosecution has been able to prove the charges against the accused/respondents. The entire evidence led by the prosecution has been appreciated by the learned trial Court in its proper perspective so as to hold that the prosecution has miserably failed to prove its case beyond reasonable doubt.

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Resultantly, the application (CRM 10091 of 2016) is devoid of any merit and, accordingly, dismissed. Leave to appeal is declined and the appeal (Crl. Appeal D-899-DB of 2015) is consequently dismissed.

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

**(MAHABIR SINGH SINDHU)
JUDGE**

November 15, 2017
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Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO