

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

CRM A-2123-MA of 2016

Date of Decision : September 26, 2017

Kulwinder Singh

.....Applicant

VERSUS

Subhash Chander and another

.....Respondents

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

Present : Mr. Gurmeet Singh Saini, Advocate
for the applicant.

T.P.S. MANN, J.

The complainant has filed the present application under Section 378(4) of the Code of Criminal Procedure seeking grant of special leave to appeal against the judgment dated 6.8.2016 passed by learned Additional Sessions Judge, Fazilka whereby the accused/respondents stood acquitted of the charges under Sections 120-B and 302 of the Indian Penal Code.

According to the complainant, both the respondents were known to his father and they had come to his house to hand over invitation card on the occasion of marriage of Harpreet Singh, son of respondent No.2-Amarjit Singh which was to be solemnized on 20.9.2009. On 19.9.2009, respondent No.1-Subhash Chander took Gurcharan Singh, father of the

complainant with him for participating in the marriage of his son. On 20.9.2009, father of the complainant told him on telephone that the respondents had stopped him from returning and he would stay at the house of Amarjit Singh during the night. On 21.9.2009 at about 2.00 a.m., the son of respondent No.1-Subhash Chander came to the house of the complainant and asked him to talk to his father on mobile phone. Respondent No.1-Subhash Chander informed the complainant that his father had suddenly died and he was coming to Ferozepur with his dead body. At about 5.00 a.m., both the respondents reached the house of the complainant alongwith the dead body of his father and placed it in the courtyard. In the meantime, Gulab Singh and Jatinder Singh also came to his house and in their presence and in the presence of the complainant and his family members, both the respondents asked the complainant to cremate the dead body immediately and not to wait the post-mortem as it was a case of sudden death. The complainant and his family members looked at the dead body and found that there was bruish mark blows on the right side and back side of his neck and injuries were present on toe of the right leg, thumb of left hand, left arm and head whereas tongue was coming out from his mouth and there was blood in the nose as well. When the complainant and others asked the respondents about the injuries then both of them left

the spot without saying anything. The complainant and his family members became suspicious about the death of his father and it appeared that both the respondents in connivance with Amarjit Singh and Harpreet Singh had murdered Gurcharan Singh after inflicting injuries to him. When the complainant alongwith Gulab Singh, Jatinder Kumar and Vipin Kumar was on way to Abohar for getting post-mortem examination conducted, the police met them and recorded his statement on the basis of which FIR No. 279 dated 21.9.2009 under Sections 302/34 IPC was registered at Police Station City, Abohar. The post-mortem examination on the dead body was conducted in Civil Hospital, Abohar. Various injuries on the dead body of Gurcharan Singh were mentioned and cause of death was described as injury on the head. Thereafter, the police alongwith the complainant and others went to the spot at the house of respondent No.2-Amarjit Singh where they found one girl, namely, Mona, daughter of respondent No.2-Amarjit Singh whereas the remaining family members were absent. When she was asked about the death of Gurcharan Singh, she did not reply and, instead, fled away from the spot. The complainant and the police inspected the spot and found some blood present on the pillow placed on a cot at the roof of the house of respondent No.2-Amarjit Singh and shoes of his father were also lying on the roof. One Khurpa stained with blood

was also present there. Its handle was broken. Photographs of all the material objects were taken and perusal thereof showed that father of the complainant had been killed. The accused had not given any information to the Police Station at Abohar regarding the death of Gurcharan Singh in the house of respondent No.2- Amarjit Singh nor got him admitted in the hospital. The complainant, further, alleged that respondent No.1- Subhash Chander was retired Sub Inspector and well known in the Police Department. Therefore, he managed to get an enquiry conducted from SP(D), Ferozepur and brought false facts on record that Gurcharan Singh had died by falling from the stairs in a drunken condition and false witnesses were set up to show that on the day of the occurrence, no fight had taken place in their presence and as per the post-mortem report nothing was mentioned about the liquor and the father of the complainant did not consume any liquor as it was a Navratra. On 10.2.2010, respondent No.1-Subhash Chander met Harbans Singh son of Puran Singh and confessed his guilt before him. The police was duly informed by Harbans Singh but the police stated that a cancellation report had been prepared which would be filed in the Court. The complainant also filed a complaint before the Punjab Human Rights Commission. In spite of the same, no action was taken by the police against the respondents. Ultimately, on

19.8.2010 a report favourable to the respondents was filed in the Court to which the complainant did not agree. The cancellation report was sent back for further investigation but again the police did not take any action against the respondents. Left with no other option, the complainant filed the present complaint before the learned Ilqa Magistrate. The cancellation report qua FIR No. 279 dated 21.9.2009 was ordered to be tagged with the complaint.

After hearing learned counsel for the complainant and going through the preliminary evidence brought on record, learned Ilqa Magistrate ordered the summoning of the two respondents, namely, Subhash Chander and Amarjit Singh for the commission of offences under Sections 302/120-B IPC whereas the complaint qua the remaining two accused was dismissed vide order dated 29.11.2013.

After hearing learned counsel for the parties and on going through the evidence brought before the Court, learned Additional Sessions Judge, Fazilka after holding that the prosecution had not been able to complete the chain of circumstances to prove the guilt of the accused for committing the murder of Gurcharan Singh beyond reasonable doubt, acquitted them of the charges framed against them. Hence, the present application seeking grant of special leave to appeal.

Having heard learned counsel for the applicant and on going through the impugned judgment of acquittal as well as the record, this Court finds that the prosecution examined Harbans Singh as PW4 to prove that respondent No.1-Subhash Chander had made extra judicial confession before him on 10.2.2016. Said Harbans Singh admitted in his cross-examination that his wife was sister of father of deceased Gurcharan Singh and he alongwith Kulwinder Singh was residing in the same Basti. Further, respondent No.1-Subhash Chander was resident of Ghumhar Mandi, Ferozepur and as such, he did not reside in the same locality in which PW4 Harbans Singh resided. PW4 Harbans Singh is not shown to be a person of any authority which could induce accused-Subhash Chander to make extra judicial confession before him. According to the complainant, PW4 Harbans Singh told him about the extra judicial confession made by accused-Subhash Chander on 10.2.2016 and on the next day, he alongwith Harbans Singh reached the Police Station and reported the matter to the police, but no action was taken by the police. However, in his cross-examination, PW4 Harbans Singh admitted that in respect of the occurrence in the present case, enquiry was conducted twice. He, further, admitted that he did not appear in the said enquiries and made statement regarding extra judicial confession made by accused-Subhash Chander. He

did not assign any reason as to why he did not appear before the Enquiry Officers.

According to the complainant, he alongwith the police had inspected the place of occurrence where all the persons including accused-Amarjit Singh fled away except his daughter Mona. He, further, stated that accused-Subhash Chander in the proceedings under Sections 107/151 Cr.P.C. admitted that Gurcharan Singh, father of the complainant was murdered and the blood stained articles pointed towards the involvement of the accused in the commission of the crime. However, it has come in evidence that immediately after the death of Gurcharan Singh, both the accused had taken the dead body to the house of the complainant. In case, they had committed the murder of Gurcharan Singh, they would not have gone to Ferozepur for handing over the dead body to his family.

As regards the application made by Subhash Chander-accused before the police in the proceedings under Sections 107/151 Cr.P.C., no benefit of the same can be given to the prosecution as the original application has not been proved by the prosecution. The recovery of blood stains on the pillow which was lying on a cot on the roof of the house of Amarjit Singh-accused and of shoes of the deceased besides blood stained Khurpa and the photographs Exs. P1 to P9 have not been proved

by the prosecution. Even the negatives of the photographs were not brought on record and so also the Photographer who had allegedly clicked those photographs. On the other hand, the accused have proved on record site-plan of the house of Amarjit Singh-accused as Ex.D3 and the stairs duly shown as well as place mark A where the blood had fallen. If the deceased had died on the roof on account of result of injuries, as alleged by the complainant, the stairs would not have become blood stained as depicted in the site-plan Ex. D3.

According to the accused/respondents, deceased-Gurcharan Singh had consumed excessive liquor and was sleeping on the roof of the house alongwith other guests and at about midnight, he got up to urinate and accidentally fell from the stairs and as a result, received injuries and died. Through PW5 Dr. K.D.Vashisht stated that no liquor or its smell was present in the stomach of the deceased but the viscera was not sent to the Chemical Examiner. The accused also got proved photographs of the marriage party from the complainant, who identified the photographs to be of his father and also identified the photographs of Subhash Chander-accused. A perusal of those photographs clearly proved that deceased-Gurcharan Singh was taking liquor in the marriage function. The plea of the accused that the deceased attended the marriage and due to excessive

drinking fell from the stairs and sustained injuries and subsequently he died gets further support from the testimony of PW5 Dr. K.D.Vashisht, Member of the Board of Doctors when he stated that the possibility of falling from the stairs and receiving injuries could not be ruled out. Even otherwise even a normal human being, who while sleeping on the roof and getting up to answer the call of nature during night could fall from the stairs accidentally.

After the registration of the FIR, an enquiry was conducted by DW2 Sh. H.S Pannu SP(D), Ferozepur on the application submitted by Ramesh Rani, wife of accused-Subhash Chander. DW2 Sh. H.S.Pannu deposed that during the enquiry, statements of complainant-Kulwinder Singh, Jatinder Kumar and Gulab Singh were recorded whereas from the other side, statements of applicant Ramesh Rani, Surjit Singh, Kuldeep Kaur, Harpreet Singh, Vikram, Darshan Kaur, Manjit Kaur, Vijay Kumar, Satnamjit Kaur, Rajinder Singh, Mukesh Kumar, Lavlish Sharma and Suresh Kumar were recorded. After thorough enquiry, the Enquiry Officer concluded that the deceased had fallen from the stairs due to which he sustained injuries on his body and subsequently died. As such, he recommended the cancellation of the FIR. Dissatisfied with the same, the complainant moved an application dated 28.1.2010 before the Punjab Human Rights

Commission, Chandigarh, seeking an enquiry from an independent/impartial Officer of the Police. On this application, the Punjab Human Rights Commission directed the ADGP, Punjab to get an enquiry conducted. Sh. Ramandeep Singh SP (Crime), Ferozepure Range conducted the requisite enquiry and submitted his report Ex. DW1/A to the effect that he examined 20/25 witnesses from both the sides and also examined Vikram Singh of Talwar Nursing Home, Abohar and concluded that the deceased had fallen from the stairs due to which he sustained injuries on his body and subsequently died.

In view of the above, no fault can be found with the impugned judgment passed by the learned trial Court whereby the entire evidence has been minutely scanned and appreciated to hold that the prosecution has miserably failed to prove its case against the accused/respondents. The present application filed under Section 378(4) of the Code of Criminal Procedure is devoid of any merit and, therefore, dismissed.

Special leave to appeal is declined.

(T.P.S. MANN)
JUDGE

September 26, 2017
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(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No

CRM 38312 of 2016 in
CRM A-2123-MA of 2016

Kulwinder Singh Vs. Subhash Chander and another

Present : Mr. Gurmeet Singh Saini, Advocate
for the applicant.

Heard. Sufficient cause has been shown for
condoning the delay in applying for special leave to appeal. The
present application is, therefore, accepted and the delay of 9
days in applying for special leave to appeal is condoned.

(T.P.S. MANN)
JUDGE

September 26, 2017
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(MAHABIR SINGH SINDHU)
JUDGE