

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

Criminal Misc. No. A-611-MA of 2017

Date of Decision : August 17, 2017

Pushpa

....Applicant

Versus

Niyamat Masih

....Respondent

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

Present : Mr. Munish Puri, Advocate
for the applicant.

T.P.S. MANN, J.

The complainant has filed the present application under Section 378(4) Cr.P.C. for grant of special leave to appeal against the judgment dated 18.10.2016 passed by learned Sessions Judge, Pathankot, whereby the accused/respondent stood acquitted of the charges under Section 302 read with Section 34 IPC.

According to the prosecution, Avtar Masih, Bittu and Niyamat Masih accused suspected Pawan Masih, since deceased, of having illicit relations with Baby wife of Avtar Masih accused. As such, the aforementioned three accused were nursing a grudge against Pawan Masih and always wanted to kill him. Those accused had

warned Pawan Masih not to have illicit relations or carry on the same any more but Baby did not desist and kept on visiting Pawan Masih, which caused ill-will between Pawan Masih deceased and the aforementioned three accused.

Further case of the prosecution was that on 26.10.2008 Pawan Masih had gone to take medicine from Purana Taragarh. At about 3.00 p.m., the complainant, who was wife of Pawan Masih and Rani, wife of brother of Pawan Masih also left their house for going to Purana Taragarh and were at a distance of 200/300 yards when they saw Avtar Masih, Niyamat Masih, Bittu and one Tinku alighting from a Tata Sumo jeep. Avtar Masih, Bittu and Niyamat Masih picked up handles of kassis from the jeep, while Tinku was empty handed. Tinku, however, slapped Pawan Masih and caught hold of him from his arms. He pushed Pawan Masih down. Avtar Masih, Bitu and Niyamat Masih gave one injury each with their respective handles of Kassis to Pawan Masih, who fell down and became unconscious. All the accused forcibly put him in their vehicle and fled away. Pushpa and Rani raised an alarm but none came to their help. They returned to their house. About one hour later, Tarsem Masih told complainant Pushpa and Rani that the accused had thrown the dead body of Pawan Masih underneath a drain bridge. The matter was reported to the police which was followed by the police officials coming to the place where the dead body of Pawan Masih had been thrown and inquest

proceedings were held. The police, however, refused to record the statements of complainant Pushpa and her sister-in-law Rani and as such, no action was taken against the accused. Left with no other option, the complainant filed a private criminal complaint on 29.11.2008. On the basis of the preliminary evidence examined by the complainant, the learned Judicial Magistrate summoned all the accused under Section 302 read with Section 34 IPC. Presence of Avtar Masih, Tinku and Bittu accused was procured, whereas Niyamat Masih accused could not be arrested and he was declared proclaimed offender. Charge under Section 302 IPC was framed against Avtar Masih, Tinku and Bittu, to which they pleaded not guilty and claimed trial. After conclusion of the trial, the aforementioned three accused, namely, Avtar Masih, Tinku and Bittu were acquitted of the charge by learned Sessions Judge, Pathankot vide judgment dated 7.11.2015. Subsequently, Niyamat Masih accused was arrested and he was charged to face trial under Section 302 read with Section 34 IPC.

Having heard learned counsel for the complainant and on going through the impugned judgment passed by the learned trial Court, this Court finds that at the trial of Avtar Masih, Tinku and Bittu, complainant-Pushpa and eye-witness Rani did not support the prosecution version and had turned hostile and for that reason the trial Court acquitted the said three accused. However, now at the trial of Niyamat Masih accused, the complainant and the other eye-witness

have changed their statements. Thus, the complainant and Rani have given different versions at different times. Further, the occurrence in question had taken place on 26.10.2008, whereas the complaint was filed on 29.11.2008. No explanation had been given by the complainant in order to explain the delay in filing of the complaint.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal passed by the learned trial Court.

The application is without any merit and, therefore, dismissed. Special leave to appeal is declined.

	(T.P.S. MANN) (MAHABIR SINGH SINDHU)
August 17, 2017	JUDGE JUDGE
satish	

Whether reasoned/speaking : YES / NO

Whether reportable : YES / NO