

CRM-A-66-MA of 2017

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-66-MA of 2017

DATE OF DECISION: MAY 1 , 2017

ALMUDEEN

...APPLICANT

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASHI.**

PRESENT: MR. VISHAL SHARMA, ADVOCATE FOR THE APPLICANT.

M. JEYAPPAUL, J.

1. Aggrieved by the acquittal of respondents No.2 to 8 who were charged under Sections 148, 149, 302 and 120-B IPC, complainant Almudeen has filed the present application praying for special leave to prefer an appeal.

2. The trial Court convicted accused Saddiq and Irshad for the offence punishable under Sections 304 Part II read with Section 34 IPC and the other 7 accused who are respondents No.2 to 8 were acquitted by the trial Court.

3. The case, in brief, of the prosecution is that the complainant party had an enmity with the accused party on account of a scuffle that took place between the mother of PW2 and accused party about 3 days earlier. All the accused armed with deadly weapons came to the house of the complainant and attacked Islam.

4. On the side of the prosecution, as many as 19 witnesses were examined and 35 documents were marked/exhibited. On the side of the

defence, DW1 to DW3 were examined.

5. Learned counsel appearing for the applicant vehemently submitted that the trial Court has totally ignored the evidence of PW2 and PW4 who were the eye witnesses to the occurrence. Further, the trial Court has erred in applying a different yardstick to respondents No.2 to 8 for recording acquittal. The medical evidence on record would establish that the deceased who was also suffering from some heart ailment died due to the head injuries he received. Therefore, he prays for special leave to prefer an appeal.

6. PW11 Dr. Sudeep Saini who was the Member of Medial Board, conducted autopsy of the deceased. He has noted the following 4 injuries:-

- “1. Linear abrasion present over dorsal aspect of 2nd phalanx of right hand middle and index fingers.*
- 2. Linear abrasion of size 1 cm first inter phalangeal joint of left hand, middle finger posteriorly on dissection extra vasation of blood present in soft tissue.*
- 3. Diffuse swelling present over left side parieto temporal region on dissection extra vasation of blood present in soft tissue with SDH and contusion of brain tissue.*
- 4. Left side lung adherent to chest wall, fibrosed and congested.”*

7. He has opined that the cause of death was ischaemic heart disease induced by head injury which was sufficient to cause death in the ordinary course of nature.

8. PW2, the complainant herein who lodged the first information

report never spoke about the nature of weapons held by respondents No.2 to 8. He had also not come out with a specific role played by each and every accused in his first information report. The trial Court has rightly noted that injuries noticed by PW11 on the dead body of the deceased did not correspond with the nature of weapons wielded by the accused.

9. It is the case of the prosecution that 8th respondent Ashmeena delivered a brick blow on the chest of the deceased. It is to be noted that no such injury was found on the person of the deceased as per the post mortem report issued by PW11. PW2 has made a substantial improvement in the allegations he had made in his complaint Ex.P-1. PW4 had also come out with a contradictory version. She had also made substantial improvement in the previous statements suffered by her. Respondent No.8 was already given a clean chit by investigating official, but she was summoned by the trial Court invoking the provisions under Section 319 Cr.P.C.

10. In our considered view, the trial Court has rightly acquitted respondents No.2 to 8, as there is no satisfactory evidence to establish the charges framed as against them.

11. In view of the above, special leave to appeal sought for by the complainant is declined and the application is accordingly dismissed.

(M. JEYAPPAUL)
JUDGE

May 1, 2017
Gulati

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether Reportable : No
Whether Speaking/Reasoned : Yes