

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

CRM-A-840-MA of 2017

Date of Decision: July 11, 2017

State of Haryana

.....Applicant

Versus

Ravi and others

..... Respondents

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

HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present : Mr. Kapil Aggarwal, Addl. A.G., Haryana.

T.P.S.MANN, J.

The State of Haryana has filed the present application under Section 378(3) of the Code of the Criminal Procedure for grant of leave to appeal against the judgment dated 25.5.2016 passed by the learned Sessions Judge, Ambala. Vide impugned judgment, the learned trial Court acquitted the respondents of the charges under Sections 148 and 302 read with Section 149 IPC.

As per the prosecution, Angrej Singh, father of deceased Amandeep @ Kadar got recorded his statement before Inspector-Rajnish Yadav on 9.9.2014 stating therein that on 8.9.2014 his son Amandeep @ Kadar, who used to ply a three wheeler auto, left home at 10.00 p.m. taking his three wheeler to Railway Station Ambala Cantt. At about 1.30 a.m., during the

same night, he received information that some young boys had hired three wheeler of his son from the railway station for going to B. D. Flour Mills, Ambala Cantt. and that in front of House No. 71-A, Satsang Vihar, those young boys had killed his son. On receiving the information, the complainant and his relatives reached the spot and saw his son lying dead in the street in front of House No.71-A, Satsang Vihar with injuries on his head and blood oozing from the same whereas the three wheeler was lying at some distance. He suspected that some unknown persons had killed his son due to some old enmity. Accordingly, Inspector Rajnish Yadav forwarded the statement of the complainant to Police Station Mahesh Nagar, where on its basis FIR No.244 dated 9.9.2014 under Sections 148, 149 and 302 IPC was registered.

It is also the case of the prosecutrix that on 10.9.2014, the complainant moved a written complaint to the police that the boys who had hired the three wheeler of his son and killed him due to old enmity were Ravi, Ravi Kant and Chandan @ Vicky and he was sure that these boys had killed his son due to old enmity. On 5.10.2014, Amit Kumar son of Jagdish Kumar made his statement before the police that at about 12.00 midnight on the night intervening 8/9.9.2014, the deceased was with him at Railway Station Ambala Cantt., where three boys, namely, Ravi

Kant, Chandan @ Vicky and Sarwan came for hiring the auto of the deceased for going to B. D. Flour Mills and fare was settled at Rs.150/-. Thereafter, he, i.e. Amit Kumar alongwith the deceased took the three boys in the auto. He also stated that he knew Ravi Kant, Chandan @ Vicky and Sarwan earlier as they were doing work of tea vendor at the stall of Ravi. Further, when they reached near Hathi Khana Mandir, Ambala Cantt., three more persons came on a motor-cycle, who stopped the auto. Ravi alighted from the motor-cycle and boarded the auto and started for the destination. At about 12.30 a.m., they reached Satsang Vihar behind the mill. Ravi alighted from the auto and started beating the deceased. Ravi Kant, Chandan @ Vicky and Sarwan also started beating the deceased. He and Amandeep @ Kadar after alighting from the auto tried to run away. He became perplexed. Ravi Kant, Chandan @ Vicky, Sarwan and Ravi started hitting them with brick bats. Gaurav and Sandeep kept on watching while sitting on the motor-cycle. Due to fear Amit Kumar fled away from the spot but while doing so, he turned back to notice that all the accused were beating the deceased with brick bats. Amit Kumar further stated that on the next day, he left by Golden Temple Train to Dadar Mumbai to his Fufa, as his Fufa had met with an accident. He returned from there on 5.10.2014 and got recorded his statement before the police.

Having heard learned State counsel and on going through the impugned judgment, this Court finds that in the initial statement made by complainant Angrej Singh on the basis of which the FIR was registered, he had not named any of the accused, rather he stated that some unknown persons had killed his son due to enmity. It was on the following day, that he submitted a written complaint, wherein, he named the accused to be the ones, who had killed his son due to old enmity. If the murder had been committed on account of old enmity, then nothing stopped the complainant from naming the accused in the first instance while making statement before the police.

Amit Kumar was projected by the prosecution as an eye witness of the occurrence. Though the occurrence had taken place on the night intervening, i.e. 8/9.9.2014 at about 1.30 a.m., yet he appeared before the police only on 5.10.2004 and claimed that the accused had caused injuries to the deceased. His explanation in not making statement before the police immediately after the occurrence that he had left for a train to Dadar Mumbai as his Fufa, who was living there had met with an accident, has to be taken with a pinch of salt. He claimed himself to be close to the deceased as he was working as a helper for helping passengers to board the auto at Railway Station Ambala Cantt., where the deceased also used to park his auto, it was

expected of him to have informed the police or in any case inform the father of the deceased about the occurrence immediately thereafter and the involvement of the accused in the same. It seems that he has come with a false plea of leaving for Mumbai and returning from there on 5.10.2004.

Apart from the testimonies of Angrej Singh and Amit Kumar, the prosecution relied upon the circumstantial evidence by way of disclosure statements suffered by the accused and pursuant to the same, identifying the place of occurrence. The police had already reached the spot of crime on the night of occurrence itself. Nothing new had been revealed by the accused while suffering their disclosure statements. Further, Ravi and Ravi Kant accused had allegedly suffered disclosure statements leading to recovery of a cemented brick and cemented piece of stone stained with blood, respectively. However, from the photographs Ex.P32 to Ex.P35, which were clicked by Inspector Rajnish Yadav at the spot during the night itself, numerous cemented pieces were lying at the spot. PW13 ASI Dharamvir, who had also joined the investigation admitted in his cross-examination that the street was damaged where the dead body was lying and the debris and stones were lying here and there, which were smeared with blood but they were not taken into possession. Even otherwise, it cannot be said that the accused

would take blood stained cemented pieces from the spot and conceal them somewhere and, thereafter, getting the same recovered.

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. The leave to appeal is declined.

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

July 11, 2017
amit rana

**(MAHABIR SINGH SINDHU)
JUDGE**

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No