

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

**CRM 24749 of 2016 and
CRA-D-577-DB of 2015**

Date of Decision : February 08, 2018

Wahidin, since dead, through his legal representatives		Applicant/ Appellant
Vs.		
Sahuni and another		Respondents

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

HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. Sandeep Kotla, Advocate
for the applicant/appellant.

* * *

DEEPAK SIBAL, J. :

The instant application filed under Section 378 (3) of the Code of Criminal Procedure, 1973 (for short – Cr.P.C.) and the appeal have been preferred by the victim seeking therein grant of leave to appeal against the judgment dated 16.12.2014 passed by Additional Sessions Judge, Mewat (for short – the trial court), acquitting the respondent-Sahuni of the charges framed against her under Sections 302/34 of the Indian Penal Code, 1860 (for short – IPC) read with Section 27 of the Arms Act, 1959 (though another accused before the trial court, namely, Rashid was convicted).

Briefly stated, the case of the prosecution is that there was a dispute of a boundary line between the fields of the applicant Wahidin and Sher Mohd. Demarcation was done but such demarcation was not to the satisfaction of Sher Mohd. leading to an altercation between the parties.

On 01.11.2011, the applicant's son Sabir, while coming from his field, was attacked by Sher Mohd., Ummardin, Rashid, Sahuni, Salman and Akil. Sahuni fetched a licensed revolver from her house and handed over the same to Rashid, who fired five shots at Sabir, as a result of which Sabir fell down and succumbed to his injuries in the hospital, where he was taken to.

During the course of investigation, Sher Mohd., Ummardin, Sahuni, Salman and Akil were found innocent. However, Rashid was found guilty of an offence under Section 302 IPC and resultantly challaned. Finding a prima facie case against him, the trial court charged him for commission of an offence under Section 302 IPC. On his pleading not guilty, Rashid was put to trial, during the course of which, on an application under Section 319 Cr.P.C., Sahuni was also summoned to face trial.

The trial court, after sifting the evidence which had come on record, found only Rashid to be guilty of having committed offence under Section 302 IPC. The trial court further being of the opinion that the prosecution had not proved its case beyond reasonable doubt qua Sahuni, while extending benefit of doubt ordered Sahuni's acquittal which is under challenge before this Court in the present proceedings.

Learned counsel for the applicant submitted that there was overwhelming evidence on the record of the trial court that respondent-Sahuni had actively participated in the crime and had she not given the revolver to her husband-Rashid, the crime would not have been committed

at all.

The above submissions made by learned counsel for the applicant have been considered but the same do not warrant a favourable consideration.

It is the admitted position that during investigation, respondent-Sahuni was found innocent. The statements by PW-1 Wahidin and PW-12 Abbas do state that Sahuni was present at the spot where Sabir was shot by her husband Rashid and that she brought the revolver and gave it to him but their statements are not found reliable for the simple reason that as per the case of the prosecution, Rashid and others were already in preparation to attack Sabir on account of previous rivalry. If that was so, Rashid would have reached the spot only after arming himself. Further, as per the case of the prosecution, there were five male members, who were waiting for Sabir to attack him and in such a situation, it is highly unlikely that Sahuni being a lady would have jumped into the fray and played an active role in the shooting of another person. It is not uncommon that members of the family of an accused are also roped in by complainants on account of existing rivalry. The facts of the present case reveal that in the present case also, Sahuni has been sought to be implicated for the same reason.

In view of the above, the respondent-Sahuni has been rightly acquitted by the trial court after giving her the benefit of doubt and we find

no infirmity in the findings of the trial court in acquitting her.

The present application and the appeal are devoid of any merit and, therefore, dismissed. Leave to appeal is declined.

(T. P. S. MANN)
JUDGE

(DEEPAK SIBAL)
JUDGE

February 08, 2018
monika

Whether speaking/reasoned

Whether reportable

:

:

Yes/No

Yes/No