

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

Crl. Misc. A-1079-MA of 2016
Date of Decision : August 24, 2018

Prem SinghApplicant
VERSUS

State of Punjab and anotherRespondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present : Mr. Swarn Tiwana, Advocate
for the applicant.

T.P.S. MANN, J.

The applicant, whose brother Sucha Singh was murdered, has filed the present application under Section 378 (3) Cr.P.C. for leave to appeal against the judgment dated 2.3.2016 passed by learned Sessions Judge, Fatehgarh Sahib whereby sole accused-Mohinder Singh, who is respondent No.2 herein was acquitted of the charge under Section 302 IPC.

According to the prosecution, the applicant made statement before ASI Nirmal Singh that his brother-Sucha Singh was working as Chowkidar in Cooperative Society, Village Bagrian and on 10.5.1999 at about 6.00 a.m., he came to know that the dead body of his brother was lying on the left side of Patiala-Sirhind road near Fishery Farm, Bagrian. Accordingly, the applicant alongwith Gurmit Singh, Sarpanch, Rai Singh and Hari Singh of village Bagrian reached there and found that the dead body of Sucha Singh had been dragged for about one furlong and blood stains were there on the road. Due to the dragging, there

were injuries on both his feet and blood oozing. There were injury marks on the head and back also. According to the complainant, his brother died either due to accident with unknown vehicle and entangled in the vehicle or he was murdered by some unknown person, who had also dragged his dead body.

On the basis of the statement made by the complainant on the aforementioned lines, DDR No. 7 dated 10.5.1999 was lodged at Police Station Mulepur. After the enquiry, FIR No. 24 dated 28.5.1999 under Sections 302/34 IPC was registered. The applicant and his sister-in-law Charan Kaur made representation to the police by naming respondent No.2-Mohinder Singh and others as accused. The matter was investigated by the police and subsequently the offence was converted into Section 304-A IPC. After completion of investigation, the police prepared untraced report and, accordingly, cancellation report was presented in the Court. The applicant filed protest petition. The cancellation report was accepted and the protest petition was ordered to be treated as a criminal complaint.

After recording preliminary evidence, respondent No.2-Mohinder Singh was summoned to face trial whereas six others, who were also arraigned as accused in the protest petition, were not summoned. The case was, thereafter, committed to the Court of Sessions where respondent No.2-

Mohinder Singh was charged for committing the offence under Section 302 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 ASI Avtar Singh, PW2 Rai Singh, PW3 Bakshish Singh, PW4 Prem Singh-complainant, PW5 Dr. Balwinder Singh and PW6 Charan Kaur.

When examined under Section 313 Cr.P.C., the accused stated that he was innocent and falsely implicated in the case on account of enmity and party faction. In defence, he examined DW1 Jang Singh.

Having heard learned counsel for the applicant and on going through the impugned judgment of acquittal, this Court finds that there was neither any eye-witness of the occurrence nor any direct evidence led by the prosecution to connect respondent No.2-Mohinder Singh with the crime. The entire case of the prosecution was based on circumstantial evidence.

PW3 Bakshish Singh is the star witness of the prosecution. He had deposed before the trial Court that about fourteen years ago, he had noticed 7/8 persons fighting with Sucha Singh in the land of the accused. In his cross-examination, he admitted that while going from Bus Stand, Jakhwali to his village, the place of occurrence did not fall in the way. Further, he came to know on the next day that the dead body of Sucha Singh had been found but despite the same, he

did not report the matter either to the complainant or to the family members of the deceased or to the local police. He deposed that after 4/5 days of the occurrence, he had apprised the applicant but still his name nowhere figured either in the police investigation or in the complaint moved by PW6 Charan Kaur, wife of the deceased. PW3 Bakshish Singh was never taken by the applicant to the Police Station for getting his statement recorded.

PW2 Rai Singh, who was also set up as an eye-witness of the occurrence, did not support the prosecution case. He stated that he had not seen the dead body of Sucha Singh lying on the road nor his statement was recorded by the police during the investigation of the case.

PW4 Prem Singh while stepping into the witness box, re-iterated the averments made by him in the complaint. He also stated that on 11.5.1999, Rai Singh of his village had told him that on the night of 9.5.1999, Mohinder Singh, Baljinder Singh and Nahar Singh were dragging his brother after tying him with a tractor. He admitted that the police had visited the spot and prepared rough site-plan. The dead body of his brother Sucha Singh was lying on the road in front of the field of Nachattar Singh Numberdar. He also stated that the police visited and inspected the fields of accused-Mohinder Singh on that day in his presence. He also claimed to have mentioned about the shoes, vest, match box etc. belonging to his brother lying in the fields of Mohinder

Singh and this fact was mentioned in the applications Exs.CW-6/A to CW-6/C but on being confronted with the said applications he admitted that there was no mention about any of those facts therein. He also admitted that his sister-in-law Charan Kaur moved applications with his consent and consultation.

PW6 Charan Kaur, wife of deceased Sucha Singh, deposed about her husband working as Chowkidar in the Cooperative Society and on 9.5.1999 going to attend his duty in the evening and on 10.5.1999 at about 7.00 a.m., she came to know that her husband had died and the dead body lying on the road side near Fishery Farm. She further stated that her brother-in-law Prem Singh had strong suspicion against accused-Mohinder Singh for killing her husband, who had also named Baljinder Singh, Narinder Singh and 5/6 other persons as accused. During her cross-examination, she admitted that she had not stated in the complaints Exs. P-8 to P-10 that Prem Singh suspected accused-Mohinder Singh for committing the murder of her husband.

The post-mortem on the dead body of Sucha Singh was conducted by PW5 Dr. Balwinder Singh on 10.5.1999 at 3.35 p.m. The following injuries were noticed on the dead body:-

- “1. A lacerated wound 4 cm x 3 cm into bone deep was present on occipital region under lying occipital bone was fractured.

2. Left foot was crushed badly, right foot was crushed in its lateral half (4th and 5th metatarsal region).
3. Extensive lacerated wound 10 cm x 8 cm on right side of chest (where scoliosis was marked), bones (ribs adjoining wound), skin and muscles were missing due to friction injuries against earth/road.”

The cause of death in his opinion was haemorrhage and shock due to the injuries sustained by the deceased, which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. During his cross-examination, he deposed that if the body of the victim got entangled in a vehicle and the vehicle moved, the possibility of injuries No. 2 and 3 being caused could not be ruled out and if a fast running vehicle had hit the dead body of the victim and the backside of the head strike with force on the road, the possibility of injury No.1 could not be ruled out. As per PW5 Dr. Balwinder Singh, the possibility of all the injuries on the person of the victim having been received in a vehicular accident could not be ruled out. He also opined that all the injuries were on the backside showing that no vehicle hit the deceased from the front side and there was no injury on any part of the body caused by the impact of hit by a vehicle. He also deposed that the deceased could receive the injuries as a result of fall on the ground with force if he suddenly became unconscious and back of his head striking on the hard surface.

The applicant has filed the complaint after four years of the occurrence. While filing the criminal complaint, the applicant had introduced PW3 Bakshish Singh and Jai Singh. Not disclosing the relevant information to anybody at the earliest by the star witnesses of the prosecution goes to create serious doubt regarding the genuineness of the prosecution case.

The prosecution has not been able to prove or establish the chain of circumstantial evidence consistent with hypothesis of guilt of the accused by leading cogent and convincing evidence and, that too, beyond reasonable doubt. The false implication of accused-Mohinder Singh stands reinforced by his acquittal. The findings of acquittal recorded by the learned trial Court are not perverse. There is also no miscarriage of justice on account of the acquittal of the accused/respondent.

In view of the above, the application is devoid of any merit and, therefore, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

August 24, 2018
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(FATEH DEEP SINGH)
JUDGE

Whether speaking/reasoned.
Whether Reportable.

: Yes/No
: Yes/No