

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

CRM A-1225-MA of 2016

Date of Decision : May 14, 2018

Jagsir Singh

.....Applicant

Versus

State of Punjab and others

.... Respondents

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

Present : Mr. Naveen Sharma, Advocate
for the applicant.

T.P.S.MANN, J.

The complainant, namely, Jagsir Singh has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment dated 17.3.2016 passed by the learned Additional Sessions Judge, Sri Muktsar Sahib.

Vide impugned judgment, learned trial Court acquitted Sukhdev Singh and Sukhjot Kaur accused, respondents No. 3 and 4 herein of all the charges against them whereas respondent No.2-Sukhmander Singh @ Mander Singh accused, respondent No.2 herein, was convicted under Sections 177 and 411 IPC and

sentenced to undergo imprisonment besides directed to pay fine. He was, however, acquitted of the remaining charges. The complainant is aggrieved of the acquittal of the accused/respondents No. 2 to 4.

According to the prosecution, Sukhmander Singh @ Mander Singh accused got registered FIR No. 59 dated 13.8.2011 under Sections 304-A, 279, 337 and 427 IPC at Police Station Sadar Sri Muktsar Sahib with the allegations that on 13.8.2011, he alongwith Sukhjit Kaur and their two children, namely, Lovepreet Kaur and Mandeep Singh, Anil Kumar and Sukhdev Singh was going to Mata Naina Devi and when their car reached on Bathinda road, suddenly a vehicle came from the opposite side and took a turn towards Malout road. As a result, the said vehicle struck with their car. All four of them suffered injuries whereas Lovepreet Kaur died in the accident. On 13.9.2011, ASI Balbir Singh alongwith other police officials was present at Bus Stand of village Sanghudhaun in connection with investigation of the case where a secret informer told him that the car bearing registration No. PB03-D-7276 of while colour, in which, Sukhmander Singh @ Mander Singh was travelling, was stolen by him from Gidderbaha City and a case bearing FIR No. 100 dated 1.9.2011 under Section 379 IPC was registered at Police Station Gidderbaha. In the above mentioned accident, Lovepreet Kaur, aged about 12

years, who had died, was not the daughter of Sukhmander Singh @ Mander Singh, rather, she was the daughter of Kashmir Singh. Mother of the other girl Sukhjit Kaur was having illicit relations with Sukhmander Singh @ Mander Singh. On 13.8.2011, Sukhmander Singh @ Mander Singh, Sukhjit Kaur alongwith two children and Anil Kumar, friend of Sukhmander Singh @ Mander Singh, was coming from Gidderbaha and when their car reached Bathinda road bye-pass near Sainik Rest House, it met with an accident. Sukhmander Singh @ Mander Singh wrongly identified Lovepreet Kaur deceased as his daughter and so did his brother Sukhdev Singh. All the four accused, namely, Sukhmander Singh @ Mander Singh, Sukhjit Kaur, Sukhdev Singh and Anil Kumar in pursuance of a criminal conspiracy, concealed their offence and in order to destroy the evidence, cremated the dead body of Lovepreet Kaur without informing her father Kashmir Singh. Accordingly, FIR under Sections 411, 177, 201 read with Section 34 IPC was registered against the accused.

Upon completion of investigation and presentation of challan, learned Additional Chief Judicial Magistrate, Sri Muktsar Sahib charged the accused for the aforementioned offences, to which, they pleaded not guilty. During the trial of the case, accused Anil Kumar suffered confessional statement and, accordingly, he was convicted and sentenced for the

aforementioned offences vide judgment dated 30.1.2014 passed by the Additional Chief Judicial Magistrate, Sri Muktsar Sahib. When the trial was pending, complainant Jagsir Singh filed a criminal complaint against the accused regarding the same occurrence alleging that the car had not met with an accident rather accused Sukhmander Singh @ Mander Singh and others in criminal conspiracy with each other had caused the death of Lovepreet Kaur but gave it the shape of an accident. He also alleged that he was married to Sukhjit Kaur about 15 years ago and from this wedlock two children, namely, Manpreet Singh aged 13 years and one daughter, Lovepreet Kaur, aged 12 years were born. Thereafter, Sukhjit Kaur developed illicit relations with Sukhmander Singh @ Mander Singh and, accordingly, she went with Sukhmander Singh @ Mander Singh without his consent. On 27.6.2008, Sukhmander Singh @ Mander Singh took his wife alongwith minor children without his consent. He informed the police. Thereafter, Sukhjit Kaur and Sukhmander Singh @ Mander Singh returned his children to him on the intervention of the police. On 27.7.2011, Sukhjit Kaur took his children by administering some poisonous substance to him and his parents. Thereafter, his daughter Lovepreet Kaur informed him on telephone that Anil Kumar, friend of Sukhmander Singh @ Mander Singh used to tease her and when she told this fact to

Sukhjit Kaur and Sukhmander Singh @ Mander Singh, they had beaten her. On 13.8.2011, Sukhjit Kaur and Sukhmander Singh @ Mander Singh in connivance with Anil Kumar and Sukhdev Singh murdered his daughter Lovepreet Kaur by inflicting injuries on her head. All of them converted the murder of Lovepreet Kaur into a road accident. The complainant had moved an application to the SSP and higher police authorities for enhancement of offence under Sections 302, 201, 203, 205, 419, 411, 177 and 120-B IPC in case FIR No. 65 dated 13.9.2011 registered at Police Station Sadar, Sri Muktsar Sahib but no action was taken upon the same. He then filed a private criminal complaint. After recording the preliminary evidence, the Additional Chief Judicial Magistrate, Sri Muktsar Sahib summoned the accused to face the trial. The presence of Sukhmander Singh @ Mander Singh, Sukhjit Kaur and Sukhdev Singh was procured. Accused Anil Kumar was declared proclaimed offender. The case was, thereafter, committed to the Court of Sessions. The Additional Chief Judicial Magistrate also forwarded the file of the trial in FIR No. 65 dated 13.9.2011 to the Court of Sessions for its trial with the complaint case as that case was also based upon the same occurrence. '

The trial Court after minutely scanning the evidence, acquitted Sukhdev Singh and Sukhjit Kaur accused of the charges against them whereas Sukhmander Singh @ Mander

Singh accused was convicted and sentenced for committing offence under Sections 177 and 411 IPC only but acquitted him for the other offences. Such judgment passed by the learned trial Court is subject matter of challenge in the present proceedings.

Learned counsel for the applicant while reiterating the submissions made on behalf of the prosecution before the trial Court submitted that Sukhdev Singh and Sukhjot Kaur accused have been wrongly acquitted despite the fact that there was overwhelming evidence on record clearly proving their guilt. It is also submitted that Sukhmander Singh @ Mander Singh accused has wrongly been acquitted under Sections 302 read with Section 120-B IPC, 203 read with Section 120-B IPC and 201 read with Section 120-B IPC. The submissions made by learned counsel for the applicant have been considered but the same do not warrant acceptance.

The case is based upon circumstantial evidence. The complainant has based his case upon the conversation of accused Sukhmander Singh @ Mander Singh, Sukhdev Singh and Anil Kumar with each other on 14.8.2011, which was overheard by PW4 Kulwant Singh and PW7 Rachhpal Singh. At the time of the incident, Lovepreet Kaur was sitting on the back seat of the car but no other occupant of the car had suffered any injury. Therefore, death of Lovepreet Kaur having taken place on

account of accident is highly improbable. However, PW4 Kulwant Singh has testified that he went with Rachhpal Singh to Civil Hospital to enquire about the health of his relative. In order to establish the presence of PW4 Kulwant Singh at the Civil Hospital, the prosecution was duty bound to prove that some relative of his was admitted in the said hospital. However, no such record has been placed on the file. PW4 Kulwant Singh admitted that complainant Jagsir Singh was his cousin in brotherhood. If that be so, they would have created hue and cry in the hospital itself after coming to know that the accused had murdered Lovepreet Kaur and were going to cremate her dead body. They could have informed the police but no such steps were taken in that regard.

In the State case, the prosecution had examined Kala Singh who claimed himself to be an eye-witness of the accident as he was following Sukhmander Singh @ Mander Singh and others on his scooter. He deposed that a woman alongwith two children and another person were sitting in the car and when the car reached Bathinda-Malout bye pass, it met with an accident against an animal and also hit a kikkar tree and the passengers, who were sitting in the car received injuries and one girl, namely, Lovepreet Kaur died in the accident. The testimony of Kala Singh is contrary to that of PW4 Kulwant Singh. Moreover, Kala Singh

was an independent witness, who was not related to either of the parties. He was eye-witness of the occurrence. On the other hand, PW4 Kulwant Singh was related to the complainant being his cousin. As such, direct evidence by way of testimony of PW Kala Singh is to be accepted in preference to that of PW4 Kulwant Singh.

The prosecution case that none of other occupants of the car excepting Lovepreet Kaur had suffered any injury is not proved as Kala Singh had deposed that persons sitting in the car had received injuries. Further, as per medical ruqa No. 17 received from Usha Bansal, Nursing Home, Sri Muktsar Sahib, Sukhjit Kaur was admitted there with accidental injuries.

PW Kala Singh in the State case has deposed about the car meeting with an accident hitting a stray cattle and after going out of control hit a kikkar tree. Therefore, the information given to the police on the basis of which FIR was registered was not false with regard to the cause of death of Lovepreet Kaur. At the same time, it was false with regard to the manner of accident as Sukhmander Singh @ Mander Singh stated that the accident had taken place with another vehicle bearing registration No. PB-046-H-0046 whereas as per the testimony of PW Kala Singh the vehicle hit a cattle and, thereafter, a kikkar tree. As such, only Sukhmander Singh @ Mander Singh accused is guilty

for commission of offence under Section 177 IPC. There is also no evidence on record that accused Sukhjit Kaur knew about the car in possession of Sukhmander Singh @ Mander Singh to be stolen property. Furthermore, the accused did not try to secretly cremate the dead body of Lovepreet Kaur. The accused also did not cause any disappearance of evidence by cremating the dead body. Thus, the prosecution has failed to substantiate the charges, which stood framed against Sukhdev Singh and Sukhjit Kaur accused. At the same time, Sukhmander Singh @ Mander Singh has been rightly convicted under Sections 177 and 411 IPC only and acquitted for the remaining offences.

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

(T.P.S. MANN)
JUDGE

May 14, 2018
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No