

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

**CRM-A-160-MA-2016**

Date of decision: 9<sup>th</sup> July, 2018

Rajesh

... Applicant

Versus

State of Haryana & another

... Respondents

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

Present: Mr. Sandeep Kumar, Advocate for  
Mr. Vikram Singh, Advocate for the applicant.

**FATEH DEEP SINGH, J.**

Two accused, namely Rakhi, against whom the present application has been filed, and her co-accused convict Sandeep alias Saria were tried in case bearing Sessions Case CIS No.444 of 2013 alongwith another accused Karambir, since declared proclaimed offender, by way of Sessions case CIS No.855 of 2014, both pertaining to FIR No.72 dated 03.05.2012 under Sections 302/34, 120-B IPC and Section 25 of the Arms Act, Police Station Baroda and vide impugned judgment of conviction dated 19.10.2015 and order of sentence dated 20.10.2015 Rakhi was acquitted giving benefit of doubt, while Sandeep was held guilty under Section 302 IPC and Section 25 of the Arms Act.

Heard Mr. Sandeep Kumar, Advocate appearing on behalf of Mr. Vikram Singh, Advocate for the applicant and perused the records of the case.

As per the submissions of learned counsel for the applicant, complainant Amarjit got recorded a statement that on 03.05.2012 around 9:00 a.m. his cousin Ved Pal (since deceased), husband of Rakhi, had gone to Gohana for fetching money from his commission agent Mahender and thereafter, on the asking of one Raj, Mahender Singh handed over a cheque of rupees five lacs to Ved Pal, which he got encashed and thereafter left on his motorcycle towards his village along with the cash amount. By another quirk of fate, complainant along with one Rajesh while going to Gohana on their way near the canal between villages Chhicharana and Madina noticed a dead-body lying on the road with a motorcycle nearby, and on stopping, identified the dead-body of Ved Pal who was having injuries on his left ear and right cheek with a fire-arm injury on the back side of his shoulder. On the basis of this statement, a case was got registered and during investigation, it was revealed that Sandeep, Rakhi and Karambir had committed murder of Ved Pal after hatching a conspiracy.

On completion of investigation, challan against Sandeep and Rakhi was presented in the Court, whereas Karambir was declared proclaimed offender. Accused were charged and both of them denied the allegations.

Prosecution, at the time of trial, examined PW1 Amarjeet, PW2 Rajesh, PW3 ASI Joginder, PW4 EASI Sant Lal, PW5 Rohit, PW6 Jagdish, PW7 Ravinder, PW8 Surender, PW9 Dalbir Jeet, PW10 Sanjay, PW11 Dr. Parveen, PW12 HC Sandeep, PW13 Raj Singh, PW14 LC Manju, PW15 Ms. Chanchal Clerk, PW16 HC Ramesh, PW17 Constable Vijay, PW18 HC Suresh, PW19 Inspector Sumit, PW20 LC Kavita, PW21 EHC Mehar Singh, PW22 Dr.Randeep and thereafter closed the evidence.

The accused, in their statement under Section 313 Cr.P.C., denied the allegations but did not lead any evidence in their defence.

Appreciating the submissions of learned counsel for the applicant, neither PW1 Amarjeet nor PW2 Rajesh are witness to this occurrence and have only discovered dead-body of the deceased Ved Pal lying with injuries on the roadside. As far as the role of accused convict Sandeep is concerned, the evidence is entirely on a different footing, as consequent upon his arrest on 24.05.2012 in the presence of PW5 Rohit, he was interrogated by the police while in police custody and he has made a disclosure statement Ex.PW5/A leading to the recovery of motorcycle bearing registration No.DL-4S-BU-3809 alongwith a country-made pistol Ex.P1 which was taken into police possession through memo Ex.PW5/C. Rough sketch of the pistol Ex.PW5/D was prepared and an empty cartridge Ex.P2 was also recovered.

The only semblance of evidence that is sought to be brought about against Rakhi is through the testimony of PW7 Ravinder, who has stated that Rakhi is his aunt and on her asking he had bought a SIM card on 07.03.2012 and Rakhi had been using the same. The other witness is PW8 Surender, brother of deceased Ved Pal, who claims that while on 02.05.2012, he was coming from his fields near the gate of the house of deceased, he heard conversation between Rakhi and someone on mobile phone regarding eliminating Ved Pal, and claims that it appeared that Rakhi was having illicit relation with the person she was talking on phone and subsequently, the next day around 1:00 p.m. he heard the news of murder of his brother. This witness was declared hostile and in cross-examination by the State, had sought to put forth that Rakhi and Ved Pal often used to have quarrel. Even another witness, PW10 Sanjay, who claimed earlier before the investigating agency that his motorcycle bearing registration No.DL-4S-BU-3809 make Hero Honda was borrowed by Sandeep and Karambir of his village, but did not support the prosecution story to that effect. The only semblance of evidence other than the aforesaid witnesses is the testimony of PW20 LC Kavita regarding suffering of disclosure statement Ex.PW14/A by Rakhi, present respondent No.2. However, it is not the case of the prosecution through this witness as to recovery of any incriminating article at the behest of this accused while in police custody, thus not much is told against this accused in the testimony of PW20.

Since it is the case based on circumstantial evidence and therefore, as per the settled proposition of law, each and every link in the chain of the prosecution story should be connected in such a manner that it leads to irresistible conclusion that it could be none but the accused who were responsible for the crime. However, in the present case, no tangible evidence worth credence has come forth against Rakhi. The claim of the applicant's counsel is that call details between the mobile phone of Sandeep and the one in possession of Rakhi stand duly proved by secondary means, however it has been rightly concluded by the Court below that electronic record by way of secondary evidence cannot be taken in evidence unless the requirements under Section 65B of the Evidence Act stand fulfilled, and which certainly to the mind of this Court, has not been adhered to, which was the mandatory pre-requisite to make it a legal piece of evidence. Moreover, to the very specific query of this Court, SIM card bearing No.8685837166 is not in the name of Rakhi nor there is any tangible evidence to bring about the fact that it was being used by her when it is in the name of PW7 Ravinder himself, and therefore, in the absence of any documentary proof from the service provider, the call details Ex.PW3/A to Ex.PW3/C cannot be even remotely connected and taken to be a legitimate piece of evidence.

The Court below has considered each and every piece of evidence threadbare against Rakhi and has rightly come to a conclusion that the prosecution has miserably failed to prove its case

against her. No illegality or perversity could be discovered and thus, the findings qua this respondent need to be upheld.

In the light of what has been detailed and discussed above, there is no merit in the case. The application for grant of leave to appeal filed by the applicant stands dismissed. Leave to appeal is declined.

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

**(FATEH DEEP SINGH)**  
**JUDGE**

**July 9, 2018**  
*rps*

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |