

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-A-1650-MA of 2016

Date of Decision : February 15, 2018

Aamir		Applicant
Vs.		
State of Punjab and others		Respondents

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

HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Rishu Garg, Advocate
for the applicant.

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DEEPAK SIBAL, J. :

Through the instant application filed under Section 378 (4) of the Code of Criminal Procedure, 1973 (for short – Cr.P.C.), the applicant seeks grant of leave to appeal against the judgment dated 25.07.2016 passed by the Additional Sessions Judge, Sangrur (for short – the trial court), through which the respondents no.2 and 3 have been acquitted of the charge framed against them under Section 302 read with Sections 34 and 201 of the Indian Penal Code, 1860 (for short – IPC).

The case of the prosecution, as borne out from the record is that on 29.10.2014, at about 08:30 PM, deceased Samir @ Sunny, who was an Electrician, had gone on his motorcycle to repair the electricity at the house of respondent no. 2-Shahid. At that time, the deceased was carrying with him a mobile phone with two sim cards bearing nos. 98766-86628 and 86962-04142. When he did not return till 10:00 PM, the complainant-

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Aamir son of Ateek Mohd., who was the deceased's elder brother, tried to call him but found his phone switched off. On 01.11.2014, a dead body was recovered from near a drain, on which acid had been thrown on the face with blood oozing out of the nose and mouth. The dead body was identified to be that of Samir @ Sunny. During the course of investigation, respondents no. 2 and 3 were arrested and the afore-referred motorcycle as also the mobile phone of the deceased were recovered from them. Respondent no. 3 confessed that he along with respondent no. 2 had committed the murder of Samir @ Sunny and after he had died, his motorcycle and mobile phone were stolen.

On the basis of the investigation, a report under Section 173 Cr.P.C. was filed before the competent court.

On finding respondents no. 2 and 3 to have prima facie committed offence under Section 302 read with Section 201 and 34 IPC, they were charged and on their pleading not guilty, were put on trial.

The trial court, after sifting the evidence brought on record, arrived at the conclusion that the prosecution had not been able to prove the guilt of respondents no. 2 and 3 beyond reasonable doubt and therefore, giving them benefit of doubt, acquitted them of the charges framed against them. Such acquittal of respondents no. 2 and 3 is the 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 the trial court erred in acquitting the accused-respondents no.2 and 3 of the charges levelled against them as there was overwhelming evidence on record to prove their guilt. Therefore, there was no reason in fact or in law with the trial court to acquit them.

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

Admittedly, the case of the prosecution is based on circumstantial evidence. The record reveals that no evidence was led by the prosecution to show that prior to his murder, the deceased was seen in the company of respondents no. 2 and 3. The alleged confession made by respondent no. 3, having admittedly been made in police custody, would be inadmissible in evidence. The alleged recovery of deceased's motorcycle and mobile phone from respondent no. 2 would also not support the case of the prosecution as there was no evidence brought on record by the prosecution to prove that the above articles were taken by respondents no. 2 and 3 after they had committed the murder of Samir @ Sunny. In fact, if respondents no. 2 and 3 had committed the murder of Samir @ Sunny, then it is highly improbable that within days thereafter, they would openly be riding his motorcycle and carrying his mobile phone in their pocket. No motive has also been shown by the prosecution for respondents no. 2 and 3 to commit the murder of Samir @ Sunny.

In view of the above, the present application is devoid of any merit and, therefore, dismissed.

Leave to appeal is declined.

(T. P. S. MANN)
JUDGE

(DEEPAK SIBAL)
JUDGE

February 15, 2018
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<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>