

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

CRM No.A-1694-MA of 2016 (O&M)

Date of decision: April 19, 2018

Swinder Kaur

...Applicant

Versus

State of Punjab and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE A.B.CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.M.L.Saggar, Senior Advocate with
Mr.Rohit Joshi, Advocate
for the applicant.

INDERJIT SINGH, J.

CRM No.28763 of 2016

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 51 days in filing the application seeking leave to appeal, is condoned.

CRM No.A-1694-MA of 2016

Applicant-Swinder Kaur has filed this application under Section 378(3) Cr.P.C. seeking permission for leave to appeal against respondents State of Punjab and Satnam Singh, challenging the impugned judgment dated 26.04.2016 passed by learned Addl. Sessions Judge, Amritsar, vide which the accused-respondent was acquitted.

It is mainly stated in the application that accompanying appeal

is being filed which is likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to appeal be granted.

From the record, we find that challan was presented against accused Satnam Singh in case FIR No.194 dated 11.09.2014 under Sections 302 and 34 IPC. The brief facts of the prosecution case are that Sukhraj Singh @ Raja was working as a conductor and Rajinder Singh was working as a driver on Mini Bus. Both of them used to go and come together on the motorcycle of Sukhraj Singh @ Raja. On 11.09.2014, at about 7.00 p.m., when they reached little ahead of bridge canal minor Beharwala, one motorcycle with three persons came from the side of village Ranike. The person who was sitting last of all, on the said motorcycle, was carrying a hockey stick in his hand and the person, who was sitting in the middle, was armed with a *datar*. The person, who was driving the motorcycle, brought his motorcycle parallel to the motorcycle driven by Sukhraj Singh @ Raja. The person armed with hockey stick, gave its blow on the head of Sukhraj Singh, upon which, he stopped the motorcycle at once. Rajinder Singh immediately got down from the motorcycle and ran towards paddy fields and fled away and the assailants chased him. The person who was driving other motorcycle, brought out one *datar* from the motorcycle. Sukhraj Singh tried to sped away his motorcycle but the assailants managed to throw him along with the motorcycle. Two of the assailants gave *datar* blows to Sukhraj Singh on his head and other parts of the body. The person armed with hockey stick, ran after Rajinder Singh and also gave injuries. After causing injuries, all three assailants fled away towards village Ranike on their motorcycle along with weapons. Rajinder Singh came back to the spot and found Sukhraj Singh @ Raja dead. He informed the mother of deceased

about the occurrence. Later on, other persons reached on the spot. Inspector Harminder Singh received information that injuries have been caused to motorcycle riders by some unknown persons. He also came on the spot. Inquest proceedings were conducted. The dead body was sent for post mortem examination. Accused were apprehended. One *datar* was recovered as per disclosure statement of the accused, which was not stained with blood. Statements of witnesses were recorded. After necessary investigation, challan was presented against the accused.

On presentation of challan, copies of challan and other documents were supplied to the accused under Section 207 Cr.P.C. Finding prima facie case, the accused was charge-sheeted under Sections 302 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Dr.Jagdeep Singh, who conducted post-mortem examination on the dead body of Sukhraj Singh, PW-2 Rajinder Singh, complainant-eye witness, PW-3 Head Constable Vijay Kumar, PW-4 Mohinder Singh, PW-5 ASI Avtar Singh, PW-6 Head Constable Baljit Singh, PW-7 Swinder Kaur, PW-8 Gurmej Singh, PW-9 Harjit Singh, PW-10 SI Tejinder Singh, PW-11 Inspector Harminder Singh, PW-12 Head Constable Dalbir Singh, PW-13 ASI Mohan Singh, PW-14 Rishi Ram, Draftsman and PW-15 Head Constable Sarwan Singh.

In the statement under Section 313 Cr.P.C., accused denied all the incriminating evidence against him and pleaded his false implication. In defence, accused examined DW-1 Baj Singh.

Learned trial Court, after appreciating the evidence, acquitted

the accused-respondent vide impugned judgment dated 26.04.2016.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

We have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

The perusal of the record shows that PW-2 Rajinder Singh, who is eye witness to the occurrence, in the chief-examination, has specifically stated that he cannot identify the assailants, who had attacked upon Sukhraj Singh @ Raja and killed him. He does not know accused Satnam Singh present in the Court. He also stated that there was dark at the time of occurrence. He also ran away towards the paddy fields, due to which, he could not recognize the assailants. He did not see three persons, who were riding the motorcycle parallel to their motorcycle because they immediately made an attack on Sukhraj Singh and there was no occasion for him to see the assailants. This statement of eye witness creates doubt in the prosecution version regarding identity of the accused. There is no cogent evidence on record to connect the accused with the crime. The knife recovered was not blood-stained. PW-4 Mohinder Singh, who stated to have seen the accused, deposed that accused present in the Court was one of the persons, who had come on motorcycle. The clothes of three persons, who had come on motorcycle were smeared with mud and blood. In cross-examination, this witness admitted that three persons, who were riding on the motorcycle, were not previously known to him. He did not see Rajinder Singh at the spot and he also did not see Sukhraj Singh in the area of bridge canal Beharwala. He did not see the motorcycle of Sukhraj Singh on the spot on 11.09.2014 at about 7.30 p.m. This witness further stated in cross-examination that when he reached his village, everybody already heard that

Sukhraj Singh had been murdered. He also came to know about murder of Sukhraj Singh. He went to the house of Sukhraj Singh on the next day. He never went to the police station after 12.09.2014, when the police recorded his statement. He also stated that he did not disclose to the police that clothes of three persons were stained with blood. This is a material improvement in the statement of PW-4 Mohinder Singh. Otherwise also, his conduct of not going to the house of Sukhraj Singh on that very day, specially, when there was distance of 4-5 houses, to tell that he has seen three persons, also creates doubt. PW-7 Swinder Kaur, is mother of the deceased. She has not deposed regarding any suspicion on any person nor any motive has been given by her. She has simply stated that she came to know that three persons had murdered his son. The police told her that Satnam Singh, present in the Court, Sarwan Singh and one unknown person had inflicted injuries to her son and murdered him. PW-8 Gurmej Singh, who is brother-in-law of the deceased, has also not deposed regarding any motive for causing the murder.

As regarding, PW-9 Harjit Singh, who is witness to extra judicial confession, much reliance cannot be placed on his statement as he is Clerk to Sh.S.R.Chaudhary, Advocate, who appeared for the complainant. He also made material improvements in his statement, which also create doubt.

Keeping in view the evidence on record, we find that prosecution has failed to prove the guilt of the accused beyond doubt and learned trial Court, after appreciating the evidence in right perspective, has acquitted the accused. Learned counsel for the applicant has pointed out

that in this case, the investigation has not been conducted properly by the

Investigating Officer but on that ground, accused cannot be convicted by presuming some facts. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned trial Court. Eye witness has turned hostile and chain of circumstances is incomplete. No motive has been brought on record for committing murder. The recovery of knife, being not blood-stained, also cannot be held to complete the chain of circumstances.

In view of the above discussion, we find that the impugned judgment dated 26.04.2016 passed by learned Addl. Sessions Judge, Amritsar, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

(A.B.CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

April 19, 2018
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
No