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

CRM-A-1907-MA-2016 (O&M)
Date of decision:- 6.8.2018.

Som Nath @ Somi

.....Appellant.

Versus

State of Punjab and others

....Respondents.

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

Present: - Mr. Kulwinder Singh, Advocate
for the applicant-appellant.

....

Kuldip Singh, J.

This order will dispose of an application filed by the applicant-appellant under Section 378 (4) of the Code of Criminal Procedure for grant of leave to appeal against the judgment of acquittal dated 17.8.2016 passed by learned Sessions Judge, Sri Muktsar Sahib.

The perusal of the judgment shows that the deceased-Ritik son of the present applicant-appellant i.e. Som Nath @ Somi was friendly with the accused-Kapil Gabha @ Kappa and Adesh Kumar @ Anesh. The dead body of the deceased-Ritik was found lying at the railway track on 15.10.2014. Sita Ram, gangmate reported the matter to the police. On receipt of information, police reached at the spot and conducted the proceedings under Section 174 of the Code of Criminal Procedure, as the

legal heirs of the deceased-Ritik did not express any suspicion over any body. After the post mortem, dead body of the deceased was handed over to the legal heirs of the deceased. However, after about 2½ months i.e. on 29.12.2014, Som Nath father of the deceased filed an affidavit in the police station GRPs, Abohar stating therein that Indu Rani who is the sister of accused Kapil Gabha @ Kappa was having great love and affection with the deceased-Ritik. Kapil Gabha @ Kappa was suspecting that Ritik is doing wrong acts and gestures with his sister Indu Rani. Accused Kapil Gabha @ Kappa and his friend Adesh Kumar @ Anesh were doing job with Sethi Jarde Wala at Malout. On 14.10.2014, when his son did not return home till 9.00/10.00 pm they went to the house of Kapil Gabha @ Kappa but he was not available at his house. Then they went to the house of other accused Adesh Kumar @ Anesh, who was also not present at the house. They kept on searching for his son. During the search, they came to know that one boy has been run over by the train. He further stated that his son was 14-15 years old and there was no such reason to commit suicide. Now he has come to know that Kapil Gabha @ Kappa in connivance with Adesh Kumar @ Anesh while administering some intoxicants substance to Ritik took him to the railway track on his motor cycle and pushed him in front of the running train.

We have heard learned counsel for the applicant-appellant and have gone through the case file.

It also comes out that prosecution case is based on the

circumstantial evidence. As per the statement of gangmate i.e. PW-2 Sita Ram, dead body was found. PW-5 Jarnail Kumar stated that on 30.12.2014, Kapil Gabha @ Kappa came to his house at 12.30 pm and made extra judicial confession stating that he had made Ritik consume liquor and then pushed him in front of running train. Then there is witness of an extra judicial confession (PW-8) Rinku, who had visited accused near Ahata (Tavern) near railway track where he saw Kapil Gabha @ Kappa; Adesh Kumar @ Anesh and Ritik consuming liquor and when Ritik went away he overheard the accused making plan to intoxicate Ritik and pushed him under the train.

Learned Sessions Judge, Sri Muktsar Sahib disbelieved the extra judicial confession as undependable. The story of overhearing by Rinku (PW-8) and last seen by Anil (PW-7) was also disbelieved. It was held that in case of circumstantial evidence the guilt of accused must be cogently and firmly established.

In the present case, the chain of events is not interconnected. One of the witnesses only saw the deceased consuming liquor with the accused in the Ahata (Tavern). There is no eye witness of the occurrence. Even the driver of the train was not examined to say that some body had pushed the deceased in front of the running train. Therefore, the story of intoxicating Ritik by administering liquor and then pushing him in front of the running train is just a figment of imagination of the complainant. It is established law that guilt of the accused must be proved beyond all

reasonable doubts. Learned Sessions Judge after weighing the evidence of the prosecution held that the prosecution case is not proved beyond all reasonable doubts. He has taken one of the two possible views.

We do not find any illegality or infirmity in the findings recorded by learned Sessions Judge, Sri Muktsar Sahib. Therefore, the present application for grant of leave to appeal stands dismissed.

(A.B.CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

6.8.2018
preeti

whether speaking/reasoned	yes
whether reportable	no