

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

CRM A-1257-MA of 2017

Date of decision :18th December, 2018

Dalbir Singh

.... Appellant

Versus

State of Haryana and others

....Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. D.R. Punia, Advocate
for the applicant.

ARUN KUMAR TYAGI, J.

1. Dalbir Singh, applicant-complainant has filed the present application under Section 378 (4) of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of leave to appeal against impugned judgment dated 19.04.2017 passed by learned Additional Sessions Judge, Bhiwani in **Sessions Case No.46/2015** titled '**State Versus Bhagirath and others**', whereby the accused were acquitted of the charges under Sections 302 and 323 read with Section 34 of the Indian Penal Code, 1860 (for short 'the I.P.C.').

2. Briefly stated, the facts giving rise to the filing of the present application are that Dalbir Singh-applicant-complainant made statement to the Police alleging that on 02.09.2015 at about 8/9.00 p.m. he, his brothers Anil Kumar and Rinkesh and other members of the family were having dinner at their house. On hearing the cries of a woman outside their house in the street, his brother Anil Kumar went outside to see what

the matter was. He and his brother Rinkesh also followed Anil Kumar. They saw that their cousin brother accused Jitender alias Jeet son of Bhagirath was giving beatings to their cousin sister Bhateri daughter of Ranbir Singh in the street. Accused Bhagirath, Harpal son of Bhagirath, Manju wife of Harpal and Chanderpati wife of Bhagirath armed with lathis, jaillies and stones were also present there. On intervention by Anil Kumar, accused Jitender alias Jeet gave a blow on the neck of his brother Anil Kumar, who fell down. Thereafter, accused Bhagirath, gave a lathi blow on the chest of Anil Kumar. Accused Harpal and Chanderpati started pelting stones on him and his brother Rinkesh. Accused Jitender alias Jeet inflicted a lathi blow on his head on which he also fell down. After that all the accused persons inflicted injuries on his person and on the person of his brother Anil Kumar. They were rescued by his father Laxmi Narayan and Banarasi son of Satbir Singh. He and his brother Anil Kumar were shifted to General Hospital, Bhiwani where his brother Anil Kumar was declared brought dead. In view of his statement, FIR No.589 dated 03.09.2015 was registered under Sections 302 and 323 read with Section 34 of the I.P.C. in Police Station Sadar, Bhiwani. The Police investigated the case and on completion of usual steps of investigation on finding the evidence to be sufficient against accused Bhagirath, Jitender alias Jeet and Harpal, SHO Police Station Sadar, Bhiwani filed report under Section 173(2) of the Cr.P.C. against them.

3. After supplying copies of the report and documents to the above said accused, case was committed to the Court of Sessions by learned Additional Chief Judicial Magistrate, Bhiwani. On finding prima

facie case, charges under Sections 302 and 323 read with Section 34 of the I.P.C. were framed against the accused by learned Additional Sessions Judge, Bhiwani to which the accused pleaded not guilty and claimed trial.

4. To prove its case, the prosecution examined PW-1 Constable Deepak; PW-2 S.I. Shamsheer Singh; PW-3 H.C. Dharmender Singh; PW-4 Dalbir Singh son of Laxmi Narayan; PW-5 Dr. Sunil Kumar; PW-6 Rinkesh son of Laxmi Narayan; PW-7 H.C. Dalip Singh; PW-8 P.S.I. Sukhbir Singh; PW-9 Inspector Udmi Ram and PW-10 Inspector Pardeep Kumar and produced documents Exhibit P-1 to Exhibit P-24, Ex.P1/A, Ex.P2/A, Ex.P20/A and Ex.P-23/A. On closing of the prosecution evidence by the learned Public Prosecutor for the State, statements of accused under Section 313 Cr.P.C. were recorded wherein the accused denied commission of alleged offences and pleaded false implication. The accused produced copy of statement of PW-6 Rinkesh Ex.DA; Copy of MLR of accused Jitender Alias Jeet Ex.DB and copy of MLR of accused Harpal Ex.DC in their defence and closed their defence evidence.

5. On consideration of the material on record and submissions made by the learned Public Prosecutor for the State and learned Defence Counsel, learned Additional Sessions Judge, Bhiwani held that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and acquitted the accused by extending the benefit of doubt to them.

6. Feeling aggrieved, the applicant-complainant has filed the present application.

7. We have heard learned counsel for the applicant and have gone through the record.

8. Learned counsel for the applicant has argued that PW-4 Dalbir Singh injured-eye witness of the occurrence has fully supported the case of the prosecution and his testimony is corroborated by that of PW-6 Rinkesh. PW-5 Dr. Sunil Kumar has testified that deceased Anil Kumar died on account of pressure of assault precipitated through the injuries inflicted on his body by the accused. The accused had the motive to murder the accused due to previous enmity of altercation which took place between them. The recovery of weapons of offence was made and place of occurrence was demarcated as per disclosure statements of the accused. The learned Additional Sessions Judge, Bhiwani ignored the material evidence on record and wrongly acquitted the accused without properly appreciating the same. The impugned judgment suffers from material illegality and has resulted in miscarriage of justice. Therefore, leave to appeal against the impugned judgment may be granted.

9. On perusal of the material available on record and consideration of the submissions made by learned counsel for the applicant-complainant, we are of the view that the application is without any merit and deserves to be dismissed.

10. The case of the prosecution as set out in report under Section 173 (2) of the Cr.P.C. and also deposed to by PW-4 Dalbir Singh-complainant and PW-6- Rinkesh is that on 02.09.2015 at about 8/9.00 p.m., when Dalbir Singh, his brothers Anil Kumar and Rinkesh were, along-with other family members, having dinner in their house, they heard

cries of a woman on which Anil Kumar followed by Dalbir Singh and his brother Rinkesh went outside in the street, where they saw that accused Jitender alias Jeet son of Bhagirath was beating their cousin sister Bhateri. PW-4 Dalbir Singh has stated that when Anil Kumar tried to intervene accused Jitender alias Jeet pushed him and gave a lathi blow on his neck on which he fell down. After that accused Bhagirath and Jitender alias Jeet armed with lathi, bricks and stones, assaulted him and inflicted the injuries on his head, hand and left thigh. PW-6 Rinkesh has stated that accused Jitender alias Jeet, Bhagirath, Harpal, Chanderpati and Manju assaulted Dalbir Singh and Anil Kumar. Accused Jitender alias Jeet assaulted his brother with lathi. Accused Harpal pelted stones on Anil Kumar and caused injuries on his abdomen. PW-4 Dalbir Singh and PW-6 Rinkesh have stated that Dalbir Singh and Anil Kumar were taken to hospital where Anil Kumar was declared brought dead.

11. However, the case of the prosecution as to murder of Anil Kumar by the accused is not supported by the medical evidence. PW-5 Dr. Sunil Kumar who conducted post mortem examination on the dead body of deceased Anil Kumar observed following two injuries on his person:-

1. Abrasion of 1 x 0.5 centimeters on the right hand dorsum behind the little finger reddish in colour; and
2. Abrasion of 1 x 0.5 centimeters on the left hand little finger proximal phalanx reddish in colour.

PW-5 Dr. Sunil Kumar has stated that the cause of death of Anil Kumar was chronic ischemic heart disease with coronary artery

disease. In Histo-Pathology Report also it has been mentioned that the deceased was suffering from chronic heart disease. PW-5 Dr. Sunil Kumar has also stated that injuries No.1 and 2 on the person of deceased Anil Kumar were trivial in nature and not sufficient to cause the death. In his cross examination also PW-5 Dr. Sunil Kumar has stated that the injuries on the person of deceased Anil Kumar were superficial in nature and were not on vital parts of body; no organ/bone of deceased Anil Kumar was found damaged/fractured and such injuries could be result of fall or striking against any object. Statement of PW-5 Dr. Sunil Kumar that cause of death of Anil Kumar may be precipitated by the injuries on his body along-with the pressure of assault, being contrary to his own opinion and also the documentary evidence on record, cannot be accepted and has been rightly rejected by the learned Additional Sessions Judge, Bhiwani. Since deceased Anil Kumar cannot be said to have died due to injuries allegedly caused by the accused, they could not be convicted and have rightly been acquitted by learned Additional Sessions Judge, Bhiwani of the charge under Section 302 read with Section 34 of the I.P.C. framed against them.

12. The case of the prosecution and evidence produced in support thereof suffers from material deficiencies and patent falsehoods. The accused are stated to have the motive to murder deceased Anil Kumar due to some previous altercation but the details-when, where, how, why and in whose presence the altercation took place are missing. In any case, any such altercation does not incriminate the accused for commission of the subject offences as enmity is a double-edged weapon which could

animate commission of heinous crime with deliberation and consultation as well as false implication by concoction and manipulation. The genesis of the occurrence is alleged to be intervention by deceased Anil Kumar when accused Jitender alias Jeet was giving beating to his cousin sister Bhateri daughter of Ranbir Singh but Bhateri has not been examined as prosecution witness despite availability without any plausible explanation warranting drawing of adverse inference. Accused Bhagirath and Harpal and Manju wife of Harpal and Chanderpati wife of Bhagirath are stated to be present on the place of occurrence armed with lathies, jaillies and stones and to have assaulted Anil Kumar and Dalbir Singh but Manju wife of Harpal and Chanderpati wife of Bhagirath were found to be innocent. Accused Jitender alias Jeet is alleged to have given lathi blow on the neck of deceased Anil Kumar; accused Bhagirath is stated to have given a lathi blow on his chest and accused Harpal is stated to have given stone blow on his abdomen but no such injuries were found on his body by PW-5 Dr. Sunil Kumar at the time of conducting post mortem examination which proves that testimony of PW-4 Dalbir Singh and PW-6 Rinkesh is false in this regard. By testimony of PW-5 Dr. Sunil Kumar and Histo-Pathology Report deceased Anil Kumar is proved to be suffering from chronic ischemic heart disease with coronary artery disease but PW-4 Dalbir Singh has denied that his brother Anil Kumar was suffering from any heart disease. No doubt, defence taken by the accused as to accused Jitender alias Jeet and Harpal having suffered injuries on their person in the occurrence also implies admission of the occurrence, yet the onus of proving guilt of the accused beyond reasonable doubt lying on the

prosecution did not thereby shift to the accused. PW-4 Dalbir Singh and PW-6 Rinkesh have not explained injuries on the person of accused Jitender alias Jeet and Harpal which warrants drawing of inference against them as to suppression of the true origin and genesis of the occurrence and the accused cannot be said to have been proved beyond reasonable doubt to be the aggressors. The place of occurrence was already known to the police and cannot be said to have been discovered in consequence of the information given by the accused. The weapons of offence recovered from possession of the accused in accordance of their disclosure statements are not proved to be connected with the subject offences. In these facts and circumstances of the case, the prosecution cannot be said to have proved commission of offence punishable under Section 323 read with Section 34 of the I.P.C. by the accused beyond reasonable doubt.

13. The application fails to make out any arguable case for grant of leave to appeal and is devoid of any merit. Therefore, the application is dismissed and leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

18.12.2018

Kavneet Singh/Vinay

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*