

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1504-MA-2017 (O&M)

Date of decision: 07.08.2018

Brij Mohan Bali

.....Applicant/Appellant

versus

State of Haryana and others

.....Respondents

**CORAM: Hon'ble Mr.Justice A.B.Chaudhari
Hon'ble Mr.Justice Kuldeep Singh**

Present: Mr.G.S.Sullar, Advocate for the applicant/appellant
Mr.Vivek Saini, DAG Haryana

- 1. Whether Reporters of Local newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J.

This order will dispose of an application filed under Section 378(4) Cr.P.C. for grant of Special Leave to appeal against the judgment dated 3.1.2017 passed by the learned Sessions Judge, Ambala, vide which respondent nos.2 to 4-accused were acquitted of the charges framed against them.

Prosecution story is that on 6.8.2015, four persons, namely, Prince deceased and three accused, namely, Milap @ Lucky, Ashu Pandit and Devinder Singh @ Goldi were allegedly consuming liquor near the sewerage treatment plant at Naraingarh Road, Ambala City. Deceased

Prince was heavily drunken. He started taking bath in sewerage treatment plant tank. Dharminder PW reached there and found that Prince had consumed lot of liquor and was taking bath in 12-13 feet deep tank and was trying to come out of the tank. Dharminder took him out. However, the accused were allegedly stopping him from doing so. Thereafter, Dharminder left the tank. Thereafter, it is alleged that all the three accused were seen coming back from the sewerage treatment plant but the deceased Prince was not found. His dead body was detected by Rishab Gupta, who is a relative of Rajiv Kumar, who had taken a contract for sewerage treatment plant. Rishab was looking after the same. Dead body was noticed on 7.8.2015 at about 5.15 pm. Police took out the dead body and was prima facie of the opinion that it is a case of suicide. However, later on, on 7.9.2015 Brij Mohan Bali, father of the deceased made a complaint to the Commissioner of Police, stating that his son has been murdered. Thereafter, an inquiry was conducted and ultimately, all the three accused were arrested and challan was presented against them under Section 302 read with Section 34 IPC.

After recording entire evidence, the learned Sessions Judge, Ambala found that the charges are not proved. There is no motive on the part of the accused to commit the crime. It was found by learned Sessions Judge, Ambala that it appears that the accused along with deceased Prince had gone to the water treatment plant for merry making. They consumed liquor there. Deceased went to the water tank to take bath under the influence of liquor and was drowned. There is no cogent evidence to establish that the accused forced the deceased or instigated him to take bath.

We have heard learned counsel for the parties and have also carefully gone through the file.

In this case, there is only one witness, namely, Dharminder. Statement of Dharminder recorded in the Court clearly shows that he saw the accused as well as deceased consuming liquor on 6.8.2015 at about 6.00 p.m. near the tank. Prince was taking bath in the tank. Dharminder told him that water in the tank is dirty and is not good for taking bath so he should not take bath. All the accused told him that let Prince take a bath. They also told him that Prince is not coming out, on their asking and requested him to bring out Prince. Dharminder brought out said Prince from the water tank. But he was not able to stand up despite efforts. He left the place. Thereafter, subsequently, while taking tea at the roof of his house, he saw that only three persons left the place and Prince deceased was not with them.

We are of the view that the charges against the accused are of murder. It is proved from the statement of Dharminder, who is the only person, who had last seen the deceased with the accused that Prince was heavily drunken. Despite being restraint by the accused, he was taking bath in a dirty water in the tank, which was 12-13 feet deep. The accused had also complained to Dharminder that Prince is not coming out despite their request. Thereafter, Dharminder had brought Prince out but he was unable to stand. There are no allegations that accused threw Prince in the water tank. The accused had disclosed to the police that Prince again entered the water tank and drowned. Therefore, out of fear they left the spot. No injury was found on the dead body. Therefore, no fault can be found with the findings recorded by the learned Sessions Judge, Ambala that the deceased under the influence of heavy liquor, was taking bath in the tank and was drowned. There is no evidence that the accused either pushed, instigated or forced him to take bath.

Therefore, no fault can be found with the findings recorded by learned Sessions Judge, Ambala.

Consequently, the application for grant of Special Leave to appeal is dismissed.

(A.B.Chaudhari)
Judge

(Kuldip Singh)
Judge

07.08.2018

gk

Whether speaking/ reasoned:	Yes
Whether Reportable:	No