

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

**CRM-A-1589-MA of 2017**

**Decided On : 16.02.2018**

Madan Lal

....

Applicant

vs.

Ishwar Singh and others

....

Respondents

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

**HON'BLE MR. JUSTICE DEEPAK SIBAL.**

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Present : Mr. Salil Bali, Advocate  
for the applicant.

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**DEEPAK SIBAL, J. :**

Through the instant application filed under Section 378 (3) of the Code of Criminal Procedure, 1973 (for short – Cr.P.C.), the applicant seeks grant of leave to appeal against the judgment dated 28.04.2017 passed by the Additional Sessions Judge, Sirsa (for short – the trial court), through which the respondents have been acquitted of the charges framed against them under Sections 302/201 read with Section 120-B of the Indian Penal Code, 1860 (for short – IPC).

Briefly stated, the case of the prosecution is that on 27.03.2015, the police party found a dead body lying on a railway track. The dead body was later identified by the relatives of the deceased which included the applicant (father of the deceased). On 01.04.2015, the applicant appeared before the police and alleged that about six months ago, his son Anil had eloped with one Suman, who was stated to be the wife of

one Ishwar Singh Bishnoi but in actual was the wife of Rameshwar Bishnoi. He further went on to allege that Ishwar Bishnoi and Narsi used to threaten the applicant's sons namely Vinod and Sunil to the effect that since Suman had eloped with Anil, they would kill them. On 25.03.2015, Narsi along with 2/3 other persons chased Sunil on a tractor but Sunil managed to escape. On 26.03.2015, Vinod went out in the evening but did not return home till night. In the morning, the applicant came to know that Vinod had died and his dead body was lying on the railway tracks. According to him, Vinod was murdered by Ishwar Singh Bishnoi, Rameshwar, Manoj, Sonu, Narsi, Shimpu and Rajesh.

On the basis of above statement, FIR was registered and after investigation, all the accused except Manoj were challaned. Accused Manoj being a juvenile, was tried by the Juvenile Justice Board.

On completion of the investigation, report under Section 173 Cr.P.C. was filed before the competent court. Since offence under Sections 302/201 read with Section 120-B IPC was exclusively triable by the Sessions Court, the case was committed to the Court of Sessions Judge, Sirsa and thereafter, was entrusted to the court of Additional Sessions Judge, Sirsa, where the respondents on their pleading not guilty were tried.

The trial court, after sifting the evidence which had come on record, acquitted the respondents of the charges levelled against them as the trial court was of the opinion that the prosecution had miserably failed to prove its case qua them. Such acquittal of the respondents 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 of the charges levelled against them as there was overwhelming evidence on record to prove their guilt and 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.

In the absence of any direct evidence, the case of the prosecution is based on circumstantial evidence. The alleged motive that Suman had eloped with one of the brothers of the deceased was not proved by the prosecution as no evidence in this regard is found on the record. In fact, during the course of investigation, no evidence to establish the identity of Suman was even collected. There is further nothing found on record as to when did Suman elope as also what was her age. Rather, in his statement under Section 313 Cr.P.C., Rameshwar stated that Suman was residing with him. Thus, the prosecution woefully failed to establish the alleged motive.

The prosecution also did not produce any evidence with regard to the alleged chasing of Sunil by Narsi on his tractor on 25.03.2015. Such incident had also not been reported to the police. Sunil was also not examined.

As per the complainant, PW-2 Subhash and PW-4 Shiv Kumar

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told him that on 26.03.2015 at about 05:00 PM , the deceased was taken by Narsi on his tractor and that at 08:00 PM on the same day, Vinod and Narsi were seen consuming liquor in Mandi Adampur. Such statement is improbable in the light of the statement of the complainant that there was a high degree of enmity between the families. Even otherwise, PW-2 Subhash deposed that he came to know about Vinod's death on 27.03.2015 and on 30.03.2015, he told the complainant about the aforesaid incident that he had seen Vinod in the company of Narsi. It does not sound to reason that PW-2 Subhash, on having come to know on 27.03.2015 about Vinod's death, would not disclose about having seen Vinod with Narsi on 26.03.2015 and wait till 30.03.2015. Even PW-4 Shiv Kumar came to know of Vinod's demise on 27.03.2015 but immediately did not disclose that on 26.03.2015 he had seen Vinod in the company of Narsi.

It is also highly improbable that on 30.03.2015, through PW-2 Subhash and PW-4 Shiv Kumar, the applicant came to know that on 26.03.2015, his son Vinod was in the company of Narsi but for two full days i.e. 30.03.2015 and 31.03.2015, he did not disclose this fact to the police as admittedly, he went to the police for recording of his statement only on 01.04.2015. Even otherwise, had Sunil, the complainant's other son, been chased by Narsi on his tractor on 25.03.2015 coupled with the alleged animosity that was there between the family of the accused and the complainant, it is a wonder as to why on discovering and identifying the body of his son, did he not divulge such information to the police on 27.03.2015 itself.

As per statement of PW-4 Shiv Kumar, on 26.03.2015 at about 08:30 PM, he had seen Vinod and Narsi and at that time, they were drinking liquor. However, the Chemical Examiner's report shows that the deceased had not consumed liquor prior to his death. Further, as per version of PW-2 Subhash and PW-4 Shiv Kumar, on 26.03.2015, they had seen Vinod and Narsi on their tractor but the involvement of any tractor in the crime was not established by the prosecution.

It was the case of the prosecution that on the basis of disclosure statement by accused Rajesh, one pant (Ex.P-1) and one shirt (Ex.P-2) having blood stains were recovered from his house. Similarly, on the basis of disclosure statement of accused Sandeep @ Shimpu, one pant (Ex.P-4) and one shirt (Ex.P-5) having blood stains were recovered from his house and that on the basis of disclosure statement of accused Ishwar, one turban (Ex.P-3), which was also blood stained, was recovered from a godown. Recovery of a pair of slippers was also shown by the prosecution at the instance of accused Manoj. Report of Forensic Science Laboratory (Ex.P-Z) and result of serological analysis of blood clearly reveal that the blood on the stone pieces, over which Vinod's dead body was found and the *kurta pyzama* which he was wearing, were having blood group 'B' whereas the blood allegedly found from the slippers, pant (Ex.P-1) and shirt (Ex.P-2) allegedly recovered from the house of Rajesh and pant (Ex.P-4) and shirt (Ex.P-5) allegedly recovered from the house of Sandeep though were of human origin but its blood group was inconclusive. Thus, the recoveries cannot be linked with Vinod's murder.

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 16, 2018  
*monika*

*Whether speaking/reasoned* : *Yes/No*  
*Whether reportable* : *Yes/No*