

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

CRM A-1617-MA of 2017

Date of decision: 21st November, 2018

Beant Singh

.... Applicant

Versus

State of Punjab and others

....Respondents

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

Present : Mr.Arunjeet Singh Kakkar, Advocate
for the applicant.

ARUN KUMAR TYAGI, J.

The complainant-Beant Singh, brother of deceased Kaku Singh, has filed present application under Section 378 (3) of the Code of Criminal Procedure, 1973 (for short the Cr.P.C.) for grant of leave to appeal against impugned judgment dated 17.11.2016 passed by learned Sessions Judge, Sri Muktsar Sahib in **Sessions Case No.10 of 20.08.2014** titled '**State Versus Gurmeet Singh and others**' whereby accused Jagtar Singh and Gurtej Singh were acquitted of the charge under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC').

Briefly stated, the facts giving rise to the filing of the present application are that on 28.10.2009, Beant Singh made statement to S.I. Davinder Singh of Police Station, Kotbhai. In his statement, Beant

Singh averred that they are three brothers and all of them are working as masons. Jagat Singh, Jagtar Singh and Gurtej Singh sons of Balwinder Singh have illegally taken possession of land owned by his father Gurtej Singh and elder paternal uncle Thakar Singh. In this regard, his father Gurtej Singh and elder paternal uncle have filed case in the Court at Bathinda. Out of that grudge, Jagat Singh and others caused injuries to his father Gurtej Singh and uncle Gurdev Singh and others, regarding which a criminal case is pending against them in the Court at Bathinda which was fixed for hearing on 30.10.2009. His brother Kaku Singh was doing construction work at village Alamwala but on 28.10.2009 he had gone to Ablu in connection with the above said case. On that day at about 7.00 P.M., he, (Beant Singh) and his elder paternal uncle Thakar Singh were returning from village Kotli to their house at village Ablu. When they reached near the house of Mander Singh, they found his brother Kaku Singh lying underneath his motorcycle, with injuries on his head and right knee cap, multiple abrasions and broken left arm and right leg, near the water channel of water works, surrounded by many people. Since Jagat Singh, Jagtar Singh and Gurtej Singh often used to threaten the complainant party due to pending land dispute, he had the reason to believe that they in connivance with each other had caused injuries to his brother Kaku Singh and thereby murdered him and tried to give it colour of an accident.

In view of his statement FIR No.111 dated 28.01.2009 was registered under Section 302 read with Section 34 of the IPC in Police

Station, Kotbhai. The police investigated the case. During investigation, Jalour Singh made statement to the police on 30.10.2009 that on 28.10.2009, when he was present at his house alongwith Baltej Singh, then Gurmeet Singh alongwith Kanta alias Kulwant Singh came to him and disclosed that on that day some time earlier, when they were coming on tractor trolley from village Ablu to Kotli and reached near the house of Mander Singh, Kaku Singh, who was riding motorcycle, struck against their tractor, fell on the water works side and died due to the accident and that out of fear they had run away from the spot. The police also recorded statement of Baltej Singh. On 15.11.2009, Darshan Singh also made statement to the police regarding making of extra judicial confession by Gurmeet Singh before him. On finding that accused Jagat Singh, Jagtar Singh and Gurtej Singh had not murdered Kaku Singh, who had died in accident caused by accused Gurmeet Singh, the police deleted Section 302 of the IPC and investigated the case as one under Sections 279 and 304-A of the IPC. On completion of usual steps of investigation, S.H.O. filed Charge-Sheet against accused Gurmeet Singh.

Charges under Section 279 and 304-A of the IPC were framed against Gurmeet Singh to which he pleaded not guilty and claimed trial. The prosecution examined four witnesses. Thereafter, on application filed by the prosecution under Section 319 of the Cr.P.C., Jagat Singh, Jagtar Singh and Gurtej Singh were summoned to face trial under Section 302 read with Section 34 of the IPC. Due to the offence under Section 302 of IPC being exclusively triable by the Court of

Sessions, learned Judicial Magistrate 1st Class, Sri Muktsar Sahib committed the case to the Court of Sessions. Accused Jagat Singh died before commencement of the trial. On finding prima facie case, charge under Section 302 read with Section 34 of the IPC was framed against accused Jagtar Singh and Gurtej Singh and charges under Sections 279 and 304-A of the IPC were framed against accused Gurmeet Singh who pleaded not guilty and claimed trial. To prove its case, the prosecution examined 19 witnesses. On closing of the prosecution evidence by the Public Prosecutor, statements of the accused under Section 313 of the Cr.P.C. were recorded. In their statements under Section 313 Cr.P.C. the accused pleaded false implication. However, the accused did not lead any defence evidence. The learned Sessions Judge held that the prosecution had failed to prove the commission of offence punishable under Section 302 read with Section 34 of the IPC by accused Jagtar Singh and Gurtej Singh and offences punishable under Sections 279 and 304 A of the IPC by accused Gurmeet Singh and accordingly acquitted them of the charges framed against them.

Feeling aggrieved the complainant has filed the present application for grant of leave to appeal against the impugned Judgment dated 17.11.2016 qua acquittal of accused Jagtar Singh and Gurtej Singh of the charge under Section 302 read with Section 34 of the IPC.

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

Learned counsel for the applicant-complainant has, while reiterating the submissions made on behalf of the prosecution before the learned Sessions Judge, Sri Muktsar Sahib, submitted that if Kaku Singh had not died in the accident then the only thing left is that he was murdered by respondent No.2-Jagtar Singh & respondent No.3-Gurtej Singh. The learned Sessions Judge, Sri Muktsar Sahib did not appreciate the facts and circumstances of the case and overlooked the evidence on record while acquitting them which resulted in miscarriage of justice. Therefore, the leave for filing of appeal against the impugned judgment may be granted.

On perusal of the material on record and consideration of the submissions made by the learned counsel for the applicant-complainant, we are of the view that the application is devoid of any merit and no case for grant of leave for filing of the appeal against impugned judgment is made out.

Before advertng to the arguments of learned counsel for the applicant, it needs to be noticed that in the present case, accused-Gurmeet Singh was tried for alleged commission of offences punishable under Sections 279 and 304-A of the IPC for having caused death of Kaku Singh by rash and negligent driving of Tractor Trolley and accused-Jagtar Singh and Gurtej Singh were tried for alleged commission of offence punishable under Section 302 read with Section 34 of the IPC for having murdered Kaku Singh and on trial, they were

acquitted of the respective charges by the learned Sessions Judge, Sri Muktsar Sahib.

Accused-Gurmeet Singh was alleged to have made extra judicial confession on 30.10.2009 to Jalour Singh in the presence of Baltej Singh and Kanta alias Kulwant Singh and on 15.11.2009 to Darshan Singh whereas Rajwinder Singh and Mander Singh were alleged to have witnessed the occurrence. PW-3 Kulwant Singh alias Kanta and PW-11, Darshan Singh did not support the case of prosecution. The prosecution did not examine Jalour Singh and Baltej Singh. PW6-Rajwinder Singh and PW7-Mander Singh had deposed as to having witnessed causing of accident by accused-Gurmeet Singh with motorcycle of deceased-Kaku Singh by rash and negligent driving of Tractor Trolley and thereby causing of his death. However, PW6-Rajwinder Singh and PW7-Mander Singh did not inform either the police or the relatives of the deceased and their statements regarding the occurrence were recorded by the Investigating Officer on 25.03.2010 with un-explained inordinate delay of about five months. PW2-Beant Singh also stated that Gurmeet Singh was falsely implicated in the case by the police on their own by creating false story and he did not participate in the commission of crime. In these circumstances, PW6-Rajwinder Singh and PW7-Mander Singh, being intrinsically untrustworthy, were rightly disbelieved by the learned Sessions Judge, Sri Muktsar Sahib and accused-Gurmeet Singh was rightly acquitted by giving benefit of doubt. The impugned judgment is not challenged by the

applicant, so far as acquittal of accused-Gurmeet Singh of the charges under Sections 279 and 304 A of the IPC is concerned.

So far as the arguments of the learned counsel for the applicant are concerned, merely because accused-Gurmeet Singh has been acquitted of the charges under Sections 279 and 304-A IPC by the learned Sessions Judge, Sri Muktsar Sahib by giving benefit of doubt, does not by itself substantiate the case of the applicant as to murder of Kaku Singh by accused-Jagat Singh (since deceased), Jagtar Singh and Gurtej Singh. As per their own version, PW2-Beant Singh and PW18-Thakar Singh were returning from village Kotli to their house at village Ablu and when about 7 p.m. they reached near the house of Mander Singh they saw deceased-Kaku Singh lying, with injuries on his head, right knee cap, multiple abrasions and fractured left arm and right leg, underneath the motorcycle near the water channel of water works, surrounded by many people. Therefore, PW2-Beant Singh and PW18-Thakar Singh cannot be said to have witnessed the occurrence and their testimony as to murder of Kaku Singh by accused-Jagat Singh (since deceased), Jagtar Singh and Gurtej Singh being hearsay, is liable to be discarded. Even though in his statement, PW18-Thakar Singh has averred that the persons who had gathered at the spot, had informed them that murder of Kaku Singh had been committed by accused Jagat Singh (since deceased), Jagtar Singh, and Gurtej Singh but he was confronted with his statement recorded under Section 161 of the Cr.P.C. wherein, it was not so recorded and therefore, this part of the statement

is liable to be rejected as an improvement prompted by after-thought. In any case, the Investigating Officer did not join and the prosecution has not examined any of the persons who had gathered at the spot at the time of alleged occurrence to support this prosecution version. Consequently, there is no direct or circumstantial, oral or documentary evidence to incriminate accused-Jagat Singh (since deceased), Jagtar Singh and Gurtej Singh for having committed murder of Kaku Singh.

In view of the above discussion, the application being devoid of any merit is dismissed and leave for filing of appeal against the impugned judgment is declined.

(T.P.S.MANN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

November 21, 2018

kvs

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>