

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-2326-MA of 2016

Date of Decision : November 27, 2018

Muse Khan

....Applicant

Versus

State of Haryana and another

....Respondents

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

Present : Mr. Kamal Chaudhary, Advocate
for the applicant.

T.P.S. MANN, J.

The applicant, namely, Muse Khan, whose uncle Usman was kidnapped by accused Mustafa has filed the present application under Section 378(4) Cr.P.C. for grant of special leave to appeal against the judgment dated 28.7.2016 passed by the learned Sessions Judge, Mewat, whereby the accused stood acquitted of the charge under Sections 364-A and 365 read with Section 34 IPC.

According to the prosecution, on 1.8.2014 at about 5.00 p.m., Usman was going back to his house from Punhana and when he was short of village Godhola, he was kidnapped by accused Mustafa, besides, Tahir, Iqbal, Ganesh, Jahaj @ Kala, Asina, Nizam and 4/5 unknown persons. All the accused were travelling in Bolero vehicle, Alto car and a motorcycle, whereas Usman was having a Scorpio vehicle. His vehicle was forced to come to halt by bringing a vehicle in front of the same. The applicant was informed of the

occurrence by Mubeen. The applicant kept searching for his uncle on his own and it was revealed that his uncle was being kept as hostage in the hills of village Lohsar.

It is further the case of the prosecution that after registration of the FIR, the investigation of the case commenced and Usman was got released. Accused Mustafa was arrested on 5.11.2014, who demarcated the place where Usman was held as hostage. The accused got recovered an amount of Rs.10,000/- and also the motorcycle used for kidnapping Usman.

Having heard learned counsel for the applicant and on going through the record, which stands requisitioned, this Court finds that during his cross-examination PW2 Usman stated that he had disclosed the entire facts to the applicant and others on 2.8.2014 itself. However, in the FIR lodged at the instance of the applicant, there was no mention of demand of ransom. The FIR was also silent with regard to payment of ransom. Further, PW4 Mubeen testified that an amount of Rs.6.5 lacs was handed over to Shokeen and Iqbal. However, he stated that the amount was not withdrawn from any bank nor any document was executed with regard to borrowing the amount, which was subsequently paid as ransom to the persons from whom he had borrowed the amount. PW3 Sub Inspector Vijay Pal testified that he had recorded the statement of PW4 Mubeen and Tayyub on 14.9.2014 at about 12.30 p.m. and names of above stated two witnesses and their addresses had come in the application moved by the applicant on

14.8.2014 but despite giving notices by the Investigating Officers, they did not appear before him nor they were produced by the complainant party. PW3 SI Vijay Pal also deposed that no identification memo regarding the diary was prepared and no sample of handwriting of Usman was obtained. In the cancellation report Ex.PW11/A, it was mentioned that FIR under Section 376 IPC stood registered against Usman and he was avoiding the law. PW12 ASI Kishan Pal Singh also stated that he had not brought any document to show that Usman came to him and disclosed the facts. He also stated that he had not prepared any document in this regard.

From a perusal of the prosecution evidence, it is made out that there were contradictions and deficiencies in the story of the prosecution and coupled with the fact that there was an inordinate and unexplained delay in lodging of the FIR, it would not be sufficient to convict the accused for the offences for which he stood charged.

Resultantly, the application is without any merit and, therefore, dismissed. Special leave to appeal is declined.

November 27, 2018
satish

(T.P.S. MANN) (AVNEESH JHINGAN)
JUDGE JUDGE

Whether reasoned/speaking : YES / NO

Whether reportable : YES / NO