

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1696-MA of 2017

Date of Decision : May 21, 2018

Mohit Gupta

....Applicant

VERSUS

Vikram @ Bakra

....Respondent

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

Present : Mr. Abhinav Gupta, Advocate
for the applicant.

T.P.S. MANN, J.

The applicant, who is brother of the deceased has filed the present application under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal against the judgment dated 31.3.2017 passed by the learned Sessions Judge, Jhajjar.

Vide impugned judgment, the trial Court acquitted the accused-Vikram @ Bakra, the sole respondent herein, of the charges under Sections 377 and 302 IPC.

According to the prosecution, on 11.4.2014, an information was received on telephone in Police Station City, Bahadurgarh to the effect that dead body of a person was lying in Indira Park, near the office of Fire-Brigade. Accordingly, ASI Narender Kumar, alongwith fellow officials, reached the said place where the applicant was found present,

who got his statement recorded that he was running a grocery

shop at Railway Road, Bahadurgarh and his brother Mukesh was working a courier. On 10.4.2014, at about 7.30/8.00 p.m. Mukesh left his house for roaming but did not return home during the night. Search was effected and in the morning his dead body was found in Indira Park, Bahadurgarh. There was a baniyan on his body, whereas the remaining clothes, i.e. shirt, pant and underwear were found lying nearby. Several injury marks were there on his face. Some stones and bricks were also lying near the dead body. Mukesh had been killed by someone by causing injuries with bricks and stones. Said Mukesh was aged about 35 years and was unmarried. He was having no enmity with anyone. One empty bottle of liquor, three empty glasses and one empty bottle of cold drink were lying near the dead body. It appeared that Mukesh had been murdered after being administered some intoxicating substance in liquor.

It is also the case of the prosecution that on the basis of statement made by complainant an FIR under Section 302 IPC was registered. The dead body was subjected to post-mortem. During investigation, the accused was arrested on 12.4.2014 and on interrogation, he disclosed that on 10.4.2014 at about 9.00 p.m., he had accompanied Mukesh for a walk. There was some altercation with Mukesh on a petty issue. In the meantime, Ankit Gupta, cousin of

Mukesh came there, who pacified both of them. The accused

went out of the park. After 1-1½ hours, he again came to park and saw Mukesh sleeping on a bench. With bad intention, he removed the clothes and committed carnal intercourse with him. Mukesh told him that he would report the matter to the police and started putting on his clothes. He had just worn the baniyan when the accused pushed him and made him to fall on the ground. He then caused injuries on his head with a brick stone, which was lying nearby. He also caused injuries on the neck of Mukesh with a stone. Pursuant to his disclosure statement, the accused got recovered stones and bricks used by him in the commission of the crime, besides the lower and baniyan worn by him at the time of the occurrence.

Having heard learned counsel for the applicant, this Court finds that when ASI Narender Kumar had reached the spot, he found Mohit Kumar present near the dead body of his brother Mukesh Kumar. ASI Narender Kumar testified that some unknown person had provided the information about the presence of the dead body to the police. However, PW1 Mohit Kumar did not state that he informed the police about the dead body of Mukesh. Further, the involvement of the accused in the commission of crime came to be disclosed by PW2 Ankit, who had seen the accused and the deceased quarrelling in Indira Park on 10.4.2014 at about 8.30/9.00

to return to his house. However, the deceased had told him that accused insisted upon him to either bring liquor or give him money, which establishes that by that time neither the accused nor the deceased had taken liquor. On the other hand, the report of the FSL indicated liquor in the viscera of the deceased. Besides, three plastic glasses were found at the spot. That would show that liquor was subsequently brought after PW2 Ankit had left the spot.

When the dead body was taken into possession by the police, only baniyan was available on the same, whereas the shirt, pant and underwear of the deceased were lying at some distance from the dead body. As per the report of the FSL, semen was detected on the underwear of the accused. However, no semen was detected on the anal/rectal swabs of the deceased. No injury on the private parts, especially the anus/rectum was noticed at the time of the post-mortem on the dead body of Mukesh. Under these circumstances, the commission of offence of sodomy upon the deceased is not proved. Alleged recovery of blood stained stone and blood stained clothes of the deceased at the instance of the accused is of no help to the prosecution because it was highly improbable that accused would keep or conceal such like items in his possession. Even no independent witness was joined by the police at the time of recovery of the aforementioned articles. There is also no evidence on record to

prove that the clothes which were recovered at the instance of the accused belonged to him.

Vide an order of even date, this Court has allowed the application filed by the applicant for bringing on record Annexures A1 and A2 as additional evidence. Annexure A1 is the application-cum-representation made by father of the accused wherein he admitted indirect involvement of his son in the commission of the crime alongwith others and Annexure A2 is the report prepared pursuant to the said representation. However, even these two documents do not prove the complicity of the accused in the commission of the crime.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal.

The application is without any merit and, therefore, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(FATEH DEEP SINGH)
JUDGE

May 21, 2018
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Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO