

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

CRM A-2375-MA of 2016

Date of Decision : May 21, 2018

Bindu Sharma

.....Applicant

Versus

State of Haryana and others

.... Respondents

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

Present : Mr. Abhimanyu Singh, Advocate
for the applicant.

T.P.S.MANN, J.

The applicant, who is wife of deceased Vijay Kumar Sharma, has filed the present application under Section 378(4) of the Code of Criminal Procedure for grant of special leave to appeal against judgment dated 6.9.2016 passed by learned Additional Sessions Judge, Gurgaon, whereby, the accused, namely, Veenu, Shashi and Hari Om, respondents No. 2 to 4, herein, were acquitted of the charges under Sections 364, 302, 201 read with Section 120-B IPC.

Respondents No. 2 to 4 alongwith three others,

namely, Rahul, Ashish and Amit Kumar were tried for the aforementioned offences. The trial of the case ended in the acquittal of respondents No. 2 to 4 whereas their three co-accused were convicted under Sections 364/302/201/34 IPC and sentenced to undergo imprisonment for life besides paying fine of Rs.25,000/- each.

According to the prosecution, the applicant alongwith her husband Vijay Kumar Sharma and their children went to a marriage party on 7.12.2012 at 9.30 p.m. Vijay Kumar Sharma left them saying that he would return in about an hour but he did not return. His mobile phones were found switched off. The applicant called their manager, who brought them to their house. On 8.12.2002, Pardeep Kumar Sharma, brother of the deceased lodged missing report Ex.PA, whereupon, DDR Ex.PA/1 was recorded. On 9.12.2012, Pardeep Kumar Sharma came in the police station and moved written complaint Ex.PM, which reads as under:-

"It is submitted that I Pardeep Kumar Sharma son of Sh. Naga Sharma am resident of H.No. 50, Bhim Colony Katarpuri, Gurgaon and doing the work of trolla making. My real elder brother Vijay Kumar Sharma, who is resident of Gali No. 8, Rajiv Nagar, Gurgaon also works as a trolla maker, in front of trolla parking, Maruti, Gurgaon. On 7.12.2012, my brother Vijay Kumar

Sharma alongwith his wife Bindu and children had come to Sector 22, Gurgaon for attending a marriage function in his Swift Dzire Car bearing registration No. HR-26-BS-5222 of white colour who had come at about 9.30 p.m. Thereafter, my brother had left my Bhabhi and children in the marriage function, saying that he would return after one hour, till then they should take dinner. After saying so, he went away by his Swift Dzire car. When my brother did not turn up till late night, at about 11.00 p.m., my Bhabhi had made a call on both his mobile Nos. 9958610022 and 9858710022 but both the mobile phones were found switched off. After waiting till late night, my Bhabhi called her manager Sharif and returned home. On 8.12.2012, a complaint regarding missing of my brother alongwith car was also given and till today no clue has been received regarding my brother Vijay Kumar Sharma as well as his car. During this we have come to know that a person named Ashish son of Shyam Singh, Ashish's cousin Rahul son of Richpal, who were residing on rent in the house of my brother Vijay Kumar Sharma situated at Dharam Colony, Gurgaon, were also missing since that day. Mobile phone number of Rahul i.e. 9560653780 is also switched off. Two sisters of Ashish named as Shashi and Veenu both of whom are residing in Dharam Colony in the house of Vijay Kumar Sharma and are familiar with my brother Vijay Kumar Sharma and my brother used to visit them frequently and he also visited their permanent

residence at village Nasirpur, District Mainpuri (UP) once or twice in a marriage function. We are fully confident that above said Rahul and Ashish alongwith his other companions have kidnapped my brother Vijay Kumar Sharma. Kindly, necessary action may be taken. The colour of my brother's Swift Dzire Car No. HR-26-BS-5222 is white, Engine No. 1164132 and Chasis No. 133404. Cheque Books of different banks, a gold chain, diamond ring, ATM and debit cards were also with my brother Vijay Kumar Sharma. In the above said circumstances, I have moved this application regarding kidnapping of my brother and taking further necessary legal action. Please get some clue regarding my brother as well as missing vehicle.

Sd/-

Pardeep Kumar Sharma”

On the basis of the aforementioned complaint, FIR No. 305 dated 9.12.2012 under Sections 365/34 IPC was registered at Police Station Palam Vihar. During the investigation, ASI Sunil Kumar raided the rented premises of Ashish, Rahul, Veenu and Shashi but they were not found present. The dead body of the deceased was recovered by SI Hira Singh from the drain of village Matlabpur, Roorkee, District Haridwar. Inquest proceedings were conducted by the police of Police Station Gang Nahar, Roorkee. The dead body was, thereafter, identified to be

that of Vijay Kumar Sharma. On 12.12.2012, offences under Sections 364, 302/201/120-B IPC were added whereas Section 365 IPC was deleted.

This Court has heard learned counsel for the applicant and also perused the impugned judgment to the extent of acquitting respondents No. 2 to 4 of the charges against them.

According to the prosecution, respondents No. 2 to 4 were missing from their house when the police raided their house. However, all of them were arrested from Gurgaon itself on the same day. According to the prosecution, the other accused had called on the mobile phone of respondent No.2-Veenu stating that they had killed Vijay Kumar Sharma. However, excepting the oral version, nothing has come on record for connecting the details of calls made on the mobile phone. PW23 Surender Kumar and PW24 Sarvesh Kumar deposed that the call records were not available with them. The only evidence against the acquitted accused was their disclosure statements, which were recorded on 12.12.2012. On that very day, the dead body of Vijay Kumar Sharma already stood recovered. The disclosure statements made by the acquitted accused did not lead to discovery of new fact. Thus, the disclosure statements have no evidentiary value.

Apart from the above, there is no other evidence brought on record by the prosecution to connect respondents

No. 2 to 4 with the crime. As such, no case is made for any interference in the acquittal of respondents No. 2 to 4.

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

(T.P.S. MANN)
JUDGE

May 21, 2018
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No