

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-A-2412-MA of 2016

Decided On : 27.02.2018

Parikh

....

Applicant

VS.

Jahid and others

....

Respondents

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

HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. Johan Kumar, Advocate
for the applicant.

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DEEPAK SIBAL, J. :

Through the instant application filed under Section 378 (4) of the Code of Criminal Procedure, 1973 (for short – Cr.P.C.), the applicant seeks grant of special leave to appeal against the judgment dated 30.07.2016 passed by the Additional Sessions Judge, Faridabad (for short – the trial court), through which the respondents have been acquitted of the charges framed against them.

Briefly stated, the case of the prosecution is that respondent no.3-Saakir owed money to Hussain. On 20.09.2009 at about 08-08:30 PM, there was a scuffle between Hussain on one side and Saakir, Jahid, Khitti, Amin and Nafis on the other. Idu, who was Hussain's father, reached the spot where the respondents abused him. They also gave slap and fist

blows to Idu, Hussain and his brother. Idu was then pushed into the drain, as a result of which, he sustained multiple grievous injuries, to which he succumbed in the hospital where he was taken.

The police lodged FIR No. 276 dated 21.09.2009 under Sections 304/34 of the Indian Penal Code (for short – IPC). On the ground that the police was not investigating the case properly, Parikh son of Idu filed a complaint before the court of Judicial Magistrate Ist Class, Faridabad. After adducing preliminary evidence, the respondents were summoned for having committed the offence under Sections 304/323/34 IPC and after securing their presence, the complaint case was committed to the court of Sessions Judge, Faridabad from where it was assigned to the Additional Sessions Judge, Faridabad. Thereafter, the respondents were charged under Section 304/34 IPC and on them pleading not guilty, put on trial.

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.

No evidence was led by the prosecution to the effect that Idu had died due to injuries caused by the respondents. A copy of the post-mortem report as also the opinion expressed by the doctors of PGIMS Rohtak clearly reveal that Idu's body had no visible external mark of injury and that as per the opinion of board of doctors, Idu had died on account of chronic ischemic heart disease with coronary artery disease. Further, PW-3 Dr. S. K. Ahlawat testified that Idu did not die an unnatural death. Meaning thereby that the cause of his death was natural. DW-2 SI Daya Nand, while appearing before the trial court, categorically submitted that after investigation of the case, the police did not find the respondents to have committed the murder of Idu and resultantly, a cancellation report was filed before the competent court. PW-2 Jamil, who was examined by the prosecution as an eye-witness, did not support the prosecution's case and DW-1 Jaid categorically deposed that Idu died as a result of a heart attack and that no occurrence, as alleged by the applicant, ever took place between the accused and the complainant.

In view of the above, the present application is found devoid of any merit and, therefore, dismissed.

Special leave to appeal is declined.

(T. P. S. MANN)
JUDGE

(DEEPAK SIBAL)
JUDGE

February 27, 2018
monika/kd

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