

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

**CRM A-258-MA of 2018
Date of Decision : August 1, 2018**

Kishan Chand

.....Applicant

Versus

State of Haryana and another

.... 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, whose son Sanjay Kumar was done to death has filed the present application under Section 378(3) of the Code of the Criminal Procedure seeking grant of leave to appeal against the judgment dated 5.12.2017 passed by the learned Additional Sessions Judge, Mewat, whereby, respondent No.2-Altaf was acquitted of the charges under Sections 346, 302, 201 read with Section 120-B IPC, Section 25 of the Arms Act and Section 3(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

According to the prosecution, deceased Sanjay Kumar, aged 22/23 years had left for Modis Polytechnic College on 1.9.2014 in the morning. After attending the college, he returned up to Punhana-Jamalgarh turn and then disappeared. The applicant kept on searching for the deceased on his own but

to no avail. The deceased was carrying with him a mobile having No.97284-92693. Accordingly, FIR No. 364 dated 5.9.2014 under Section 346 IPC was registered on the statement made by the applicant at Police Station, Punhana. On 17.9.2014, the police received a telephone call that dead body of young man had been discovered in the Naharpur canal in a putrefied state. Accordingly, ASI Bhagwat Parshad and his police officials rushed to the spot and recorded statement of one Samsuddin that he was an agriculturist by profession and into fish farming. On that day, at about 1.00 p.m., he was at his fish farm and felt an urge to urinate. He went to Naharpur canal and noticed foul smell. On close observation, he found dead body, which was floating in the water. The applicant identified the dead body to be that of his son Sanjay Kumar. Offences under Section 302 and 120-B IPC were added. Inquest proceedings were conducted and the dead body, thereafter, sent for autopsy. Polygraph test of Jabir @ Jakir, Lukman, Chatar Singh, Altaf, Amzad and Rashid was conducted. On 29.1.2015, special team was constituted by Superintendent of Police and scaled site plan prepared by Samsuddin, SHO, Police Station Punhana. One motor-cycle bearing registration No. HR-28A-0846 used in the commission of the crime was taken into police possession. On 24.9.2015, Amzad and Altaf were arrested. In his statement before the police, Altaf confessed that as the deceased was having an affair with a girl from his clan,

Amzad had threatened the deceased many a time to stop contacting the girl but his threats fell on deaf ears. On 29.8.2014, the deceased had complained to Niyaz Mohammad, father of Amzad, who gave good amount of dressing down to the deceased. Accordingly, Altaf and Amzad decided to eliminate Sanjay. On 31.8.2014, they followed the deceased while he was going to the college. The deceased came to Punhana with his uncle Sunder and, thereafter, took an auto Rikshaw to reach his college. As such, they could not get an opportunity to kill him on his way to the college but on his way back at about 2.15 p.m., they again started following the deceased who had taken lift on a two wheeler till Punhana. They positioned themselves on the Katcha road leading to their village from where the deceased was expected to head for his village. As the deceased got down on the Katcha road, they forcibly made him sit on their motor-cycle and took him to an abandoned place where they shot him with the countrymade pistol, hitting him on his chest but he did not die. They dragged him into the bushes and after strangulating him with a shoe lace, threw his dead body in the bushes. They returned during the night to pull out the dead body from the bushes and threw the same in the drain. His books, identity card and mobile phone were hidden by Amzad whereas countrymade pistol and the used cartridge were concealed by him at the house of his relative in Bharatpur (Rajasthan). Accordingly,

Altaf accused led the police party to the scene of crime and got recovered countrymade pistol from an abandoned house.

Upon completion of investigation, Altaf accused was challaned by the accused whereas Amzad accused was declared juvenile.

Having heard learned counsel for the applicant and on going through the impugned judgment, this Court finds that though deceased Sanjay went missing on 1.9.2014 yet the FIR was lodged by his father only on 5.9.2014. While lodging the FIR, he did not name any person as a suspect who could be responsible for mysterious disappearance of his son. The dead body was discovered only on 17.9.2014 in a highly decomposed state and could be identified by the applicant only from the pair of trouser and the shoes on the dead body. Still thereafter, the police took almost an year to involve the applicant and Amzad in the case by recording the statement of one Ajay, who claimed to have seen the accused going with the deceased. The motive behind the crime was said to be the affair between the deceased and a girl, who was from the clan of the accused. However, no material has been brought on record by the prosecution to prove the said fact. Neither the identity of the girl was disclosed nor about the relationship of the accused with her. The prosecution neither alleged nor produced any evidence about extra judicial confession said to have been made by the accused. Whatever

was stated by Altaf while making statement before the police, cannot be made admissible qua the involvement of the accused in the commission of the crime. The said statement was relevant to prove the recovery of countrymade pistol only. Even no attempt was made to establish that the fired cartridge, which was said to have been hidden by Altaf having been recovered or being matched with the countrymade pistol, which was allegedly got recovered by Altaf accused.

In view of the above, there is no satisfactory, reliable and sufficient evidence available on the record, from which, it could be held that it was Altaf accused, who had fired at and killed deceased Sanjay. Accordingly, 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**

August 1, 2018
amit rana

**(FATEH DEEP SINGH)
JUDGE**

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No