

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-46-MA-2016 (O&M)

Date of decision: 29.10.2018

Kehar Singh

.....Applicant

versus

State of Punjab and others

.....Respondents

**CORAM: Hon'ble Mr.Justice A.B.Chaudhari
Hon'ble Mr.Justice Kuldip Singh**

Present: Mr.Ranjivan Singh, Advocate for the applicant

- 1. Whether Reporters of Local newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

This order will dispose of an application filed by Kehar Singh complainant under Section 378(3) Cr.P.C. for grant of leave to appeal against judgment of acquittal dated 6.10.2015 passed by learned Sessions Judge, Roop Nagar in the case in hand under Section 302 read with Section 34 IPC.

A perusal of the judgment shows that the case was registered on the statement of Kehar Singh, who stated that his son Sarabjit Singh @ Gola was to come back from Andhra Pradesh after wheat harvesting. On 27.5.2014 at about 7.00 p.m., Sarabjit Singh @ Gola informed that he has reached Morinda and will come home. He was coming on a three wheeler of Jagjit Singh alias Happy, resident of village Saheri. He further stated that his dinner should be prepared. However, Sarabjit Singh did not return at night. In the morning, Kehar Singh went to the house of Jagjit Singh @

Happy, who informed that Sarabjit Singh was dropped at bus stand Kainaur, where he met his friends Harpreet Singh alias Kheelu, Ranjit Singh alias Raja, Avtar Singh and Gurinder Singh, all are accused in this case, who are also residents of village Samana Kalan. Sarabjit Singh had told Jagjit Singh that he would go to his village along with said persons. Thereafter, Kehar Singh returned to his village and along with Amar Singh son of his uncle; namely Bhajan Singh went to the house of Harpreet Singh alias Kheelu to inquire about his son. But he was told by Harpreet Singh that he does not know anything about Sarabjit Singh. Rather, he said that he had gone to Morinda to purchase some medicines. Thereafter, when complainant was going along with Amar Singh to lodge the report and reached near the crossing of village Rasulpur, he saw that people have gathered near the tubewell motor on the left hand side. He also went there and found a bag belonging to his son lying near the water tank. The bag contains clothes of his son. Thereafter, he saw that dead body of his son Sarabjit Singh was lying in the dry well. He left Amar Singh at the spot and lodged report with the police. He suspected that Harpreet Singh alias Kheelu, Ranjit Singh alias Rajan, Avtar Singh and Gurinder Singh have committed murder of his son. According to the complainant, motive for the crime was that during panchayat elections they had altercation with the accused persons and later on the matter was compromised. Harpreet Singh alias Kheelu had threatened them to teach a lesson.

On the basis of the said statement, FIR was registered under Section 302 read with Section 34 IPC. Dead body was taken out from the well. Inquest report was prepared. Site plan was also prepared. After postmortem, dead body was handed over to family members of the

deceased. All the accused were arrested on 30.5.2014. During interrogation, accused Harpreet Singh alias Kheelu suffered a disclosure statement that he had concealed a brickbat used in the crime and he could get the same recovered. Accordingly, the brickbat was recovered which was taken into police possession protection vide order dated 30.10.2014. Accused were charge sheeted under Section 302 read with Section 34 IPC to which they pleaded not guilty. After recording evidence of the prosecution, statements of the accused were recorded, in which they denied their involvement in the crime.

After hearing learned Additional Public Prosecutor for the State assisted by counsel for the complainant and learned counsel for the accused, learned Additional Sessions Judge, Roop Nagar acquitted the accused.

We have heard learned counsel for the applicant and have also carefully gone through the file.

In this case, statement of Kehar Singh shows that he was informed by Jagjit Singh driver of three wheeler that he had dropped the deceased at bus stand Kainaur and deceased had accompanied all the accused. Jagjit Singh was examined as PW4. In his statement, Jagjit Singh stated that he drives his Auto from Kharar to Chandigarh. He never plied his Auto from Morinda to Kharar. On 27.5.2014, Sarabjit Singh @ Gola boarded his Auto from Morinda and requested him to drop at Samana but he refused. Sarabjit Singh told him that he will give Rs.50 or Rs.100 for dropping him at village Samana. When he was going to drop Sarabjit Singh and reached near brick kiln of Kainaur, deceased asked him to stop his auto and alighted there. It was about 7.00 p.m. Deceased told that from there he will go to his village on his own. He called one of his friends, who was

Harpreet Singh. He could not see the other persons. Said Jagjit Singh was declared hostile. But he denied that Sarabjit Singh accompanied the said persons.

Statement of Doctor shows as many as 8 injuries on the person of the deceased. The investigating officer SI Harkirat Singh proved disclosure by accused Harpreet Singh. In this way there is no eye witness. Case is based on circumstantial evidence. The only evidence is of 'last seen'. However, Jagjit Singh Auto driver was declared hostile. He only stated that the deceased himself asked him to stop the vehicle at Kainaur where he alighted stating that he will go to his village on his own. One Harpreet Singh was there but he denied that he accompanied the said accused. He also did not identify the remaining accused. In this case, there is no evidence that the deceased had accompanied all the accused. He had requested auto driver to drop him at village Samana but himself alighted at village Kainaur. The claim of the complainant Kehar Singh is that there was an old enmity with the accused on account of Panchayat elections. If it was so, then the deceased would not accompany the accused at about 7 p.m. when it was going to be dark. In this way, evidence of 'last seen' is also not proved. Therefore, the chain of events is not proved to show that the accused had committed murder of deceased. One brickbat was recovered at the instance of accused Harpreet Singh. The brickbat is easily available. Therefore, from the mere recovery of brickbat, one cannot assume that the accused killed the deceased with said brickbat. Trial Court also took into consideration delay in lodging the FIR. The complainant Kehar Singh came to know about death of his son in the morning but police reached at 2.00 p.m. and FIR was registered at 4.00 p.m. Therefore, the learned Sessions

Judge came to the conclusion that there is no evidence to connect the accused with the crime. Trial Court also held that the motive behind the occurrence is also not proved.

It being so, trial Court has taken the only possible view on the basis of the evidence. There is no ground to grant leave to appeal. Application is accordingly dismissed.

(A.B.Chaudhari)
Judge

(Kuldip Singh)
Judge

29.10.2018

gk

Whether speaking/ reasoned:	Yes
Whether Reportable:	No