

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

**CRM A-1364-MA of 2015
Date of Decision : August 24, 2018**

Amrik SinghApplicant

Versus

State of Punjab and others Respondents

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

Present : Mr. R.S. Sekhon, Advocate
for the applicant.

T.P.S.MANN, J.

The accused, namely, Gurmail Singh @ Goni, Surjit Singh @ Soni, Satnam Singh @ Kaka and Mukhtiar Singh, who are respondents No. 2 to 5 herein and Kewal Singh, since dead, were tried for committing offence punishable under Sections 364/120-B IPC. Vide judgment dated 26.2.2015, learned Additional Sessions Judge, Ludhiana, after hearing learned counsel for the parties and on going through the record, acquitted respondents No. 2 to 5 of the charges against them. Aggrieved of the same, complainant Amrik Singh has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal.

According to complainant Amrik Singh, the accused were his neighbours and also in possession of a plot ownership of which vested with some other persons. The complainant had

purchased the said plot from its erstwhile owner for a valuable consideration, which was earlier in occupation and possession of the accused. While taking possession of the said plot from the accused by its previous owner, a quarrel had taken place. The complainant had been supporting the erstwhile owner of the plot in getting the possession from the accused. However, the accused had been openly threatening the complainant that they would take revenge from him at an appropriate time. Ultimately, the erstwhile owner succeeded in getting the possession of the plot from the accused and delivered the same to the complainant. The complainant raised construction over the plot with his own funds and started living with his family. On 19.7.2013, the complainant and his family members were sleeping the house. On the next morning at 6.00 a.m., respondent No.2-Gurmail Singh @ Goni came to the house of the complainant and took his son Dilbagh Singh @ Bagga with him for paying obeisance at the Gurudwara. The complainant and his son Dilbagh Singh @ Bagga did not suspect any bad intention on the part of accused Gurmail Singh @ Goni. While the complainant's son was about to leave the house, the complainant inquired from him as to where he was going, who also replied that he was going to the Gurudwara. The complainant's son went to the house of his maternal grand-father Mohan Singh for taking some money, who

also inquired from him as to where they all were going. At that time, respondents No. 2 to 4 were accompanying Dilbagh Singh @ Bagga. Respondent No.2 and his brothers disclosed about going to the Gurudwara for paying obeisance. Thereafter, all of them left. Darshan Singh, who was having furniture shop in the village of the complainant had seen respondents No. 2 to 4 and Dilbagh Singh @ Bagga going towards the city. Sarwan Singh son of Mohan Singh, who had also gone to Gurudwara and was leaving after paying obeisance, had seen respondents No. 2 to 4 and Dilbagh Singh @ Bagga there. However, all the accused returned to the village but Dilbagh Singh @ Bagga did not return. When inquired the accused came out with inconsistent and contradictory replies. The complainant and his family members searched for Dilbagh Singh @ Bagga but it was all in vain. On 20.9.2003, the accused while taking liquor together were talking with each other that they had killed Dilbagh Singh @ Bagga by pushing him into the canal at Gurudwara Philahi Sahib. On receiving message from Ex-Sarpanch Ram Kishan, the complainant and his relatives reached the canal at Guru Philahi Sahib. They engaged divers/swimmers, who made an attempt to locate his son. The complainant reported the matter to the police on 22.7.2003 but the police did not lodge the FIR as the accused had support of influential persons. Ultimately, on 12.9.2003, FIR

No. 405 under Section 365 IPC was registered at Police Station Basti Jodhewal, Ludhiana against Gurmail Singh @ Goni and his father Mukhtiar Singh @ Mukha but did not register the same against the other accused.

On the basis of the preliminarily evidence led by the complainant, the learned Ilqa Magistrate, summoned respondents No. 2 to 5 to stand trial under Sections 364/120-B IPC. Kewal Singh, who was also summoned as an accused, died on 19.10.2006 and, accordingly, proceedings against him were dropped as having abated. The case was, thereafter, committed to the Court of Sessions, where charge under Sections 364/120-B IPC was framed against respondents No. 2 to 5.

In support of its case, the prosecution examined PW1 HC Raj Kumar, PW2 Darshan Singh, PW3 Sarwan Singh, PW4 Mohan singh, PW5 Amrik Singh complainant and PW6 Mangal Singh.

When examined under Section 313 Cr.P.C., the accused denied the incriminating evidence brought on the record against them and pleaded that they were innocent and falsely implicated. In their defence, the accused examined PW1 complainant Avtar Singh.

After hearing learned counsel for the parties and on going through the record, learned trial Court by giving benefit of

doubt to the accused, acquitted them of the charge framed against them.

This Court has heard learned counsel for the applicant and perused the impugned judgment of acquittal.

According to the prosecution, the accused had motive to commit the crime as the complainant had purchased a plot of land from Satpal, which was in the possession of the accused and while taking possession, a quarrel had taken place between the accused and Satpal in which the complainant had supported Satpal. Keeping grudge in their mind, the accused took Dilbagh Singh @ Bagga to a Gurudwara for paying obeisance and they pushed him in the canal, as a result of which, he died. The prosecution was required to prove dimensions of the plot, copy of the agreement as well as the name of owner of the plot but no such steps have been taken. Even, the person, who was originally the owner has not been examined as a witness. Even otherwise, the accused would not have obtained any benefit by killing Dilbagh Singh @ Bagga.

PW4 Mohan Singh and PW5 Amrik Singh who claimed to have seen Dilbagh Singh @ Bagga in the company of the accused while leaving for the Gurudwara, did not see them at the Gurudwara. PW2 Darshan Singh deposed that Dilbagh Singh had worked in his shop in the year 2003 and he had seen Dilbagh

Singh @ Bagga going with four persons, who were not known to him. He had not seen anything else. Later on, he came to know that Dilbagh Singh @ Bagga was missing. In his cross-examination, he stated that the police has never recorded his statement.

PW4 Mohan Singh, who happened to be the maternal grand-father of Dilbagh Singh @ Bagga simply stated that the accused had come alongwith Darshan Singh to his residence and demanded Rs.50/- from him for paying obeisance at the Gurudwara. He had not seen the accused alongwith Dilbagh Singh @ Bagga at the canal or at the canal embankment where he drowned. According to PW3 Sarwan Singh, the brother of the complainant, he had seen Dilbagh Singh alongwith the accused at the Gurudwara. However, he did not remember their names. He was confronted with his previous statement, wherein, it was not so recorded. He deposed that he was resident of Meharban and his native village was in Amritsar. He was confronted with his previous statement where it was not so recorded.

PW6 Mangal Singh testified that he had overheard the accused, when they were taking liquor and talking with each other that they had killed Dilbagh Singh @ Bagga by pushing him into the canal. The accused had no occasion to confess their guilt and, that too, while sitting in the Ahata of a liquor vend in the

presence of 100/150 persons in a loud voice, which could be overheard by PW6 Mangal Singh. In his cross-examination, he stated that he had never shared any drink with these persons nor seen them taking drinks before the occurrence. He also deposed that he did not mention in his statement made before the Court that accused had told him about killing Dilbagh Singh @ Bagga by forcibly pushing him into the canal.

Ram Kishan, the village Sarpanch, to whom a telephone call was made by the accused about the throwing of the deceased, was not examined by the prosecution. As such, it cannot be said that accused Gurmail Singh @ Goni had made the call about drowning of Dilbagh Singh @ Bagga.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal passed by the learned trial Court. The application is devoid of any merit and, therefore, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

August 24, 2018
amit rana

(FATEH DEEP SINGH)
JUDGE

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