

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1376-MA of 2015

.....

Date of decision:22.1.2018

Luxmi Devi

...Applicant

v.

State of Haryana and others

...Respondents

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**Coram: Hon'ble Mr. Justice A.B. Chaudhari
Hon'ble Mr. Justice Inderjit Singh**

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Present: Mr. Rao Ajender Singh, Advocate for the applicant.

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Inderjit Singh, J.

This criminal miscellaneous application has been filed under Section 378(4) of the Code of Criminal Procedure ('Cr.P.C.' for short) seeking leave to file an appeal against the judgment dated 10.7.2015 passed by Additional Sessions Judge, Narnaul, vide which respondents No.2 to 4-accused were acquitted of the charges framed against them.

The above respondents No.2 to 4-accused, namely, Khajan, Shyam Lal and Dharmender were summoned by the learned Judicial Magistrate Ist Class, Mohindergarh under Section 302 read with Section 34 IPC in the complaint filed by Luxmi Devi.

The brief facts of the prosecution case as noted down by learned Additional Sessions Judge, Narnaul in the judgment dated 10.7.2015 are as under:-

“In brief, the prosecution case is that on 19.08.2010 at about 9

p.m. one application of complainant Om Parkash son of Yadram resident of Kanina was received in the police post with the contents that he hails from village Kanina. His son Vikram who is drowned in the dig/water tank. He was not knowing the swimming. There were three/four boys with him namely Khajan son of Gordhan, Shyam Lal son of Maru Ram, Dharmender son of Sher Singh who all enjoyed a birthday party and consumed liquor and beer jointly and thereafter went to take bath in the government water tank. As having the enjoyment Vikram got a push by the accused persons and Vikram was not knowing swimming. The present occurrence was seen by Raju son of Sh. Mahadev who was grazing the goats near the tank. As the PW Raju was watching the act of accused persons he was also pushed by the accused persons and thereafter Raju son of Mahadev told her about all the occurrence. Occurrence took place at 1 O'clock. After having the help of villagers the dead body of Vikram could be taken out of the water by the police after five hours and then dead body was taken to hospital. This occurrence had been told to her by Raju who was grazing the sheep. All the accused had run away from the spot. After receiving application rapat No.25 dated 19.08.2010 at 9 p.m. was registered. After receiving the application and after registration of rapat No.25 Balwant Singh HC alongwith Constable Sher Singh, HC Vidhyanand reached on the government water tank where they came to know that Vikram son of Om Parkash, caste Chamar resident of Kanina has been drowned while he was taking bath in the government water tank.

The information was given to fire brigade and then fire brigade along with the officials reached on the spot and with the help of villagers dead body was taken out from the government water tank. After receiving the information DSP Mohindergarh and SHO Kanina also reached on the spot where application was moved to them. Body was got post mortem and inquest report under Section 174 of Cr.P.C. was also prepared. Copy of the rapat was sent for information. After that the complaint was written word by word as per the contents of the application and copy of the same was sent to SDM Mohindergarh and senior police officials. After that DSP Mohindergarh conducted the inquiry and investigated the matter thoroughly and polygraph test of accused persons was conducted in which they were also found innocent and on the basis of that accused Shyam Lal, Khajan and Dharmender were declared innocent and FSL report was also sent according to which Vikram was drown by falling in the water tank accidentally and cancellation report was sent. After cancellation report notice under Section 160 of Cr.P.C. was given to the complainant but she was not satisfied for the same and filed the complaint before the Illaqa Magistrate titled Om Parkash Vs. Shyam Lal etc. under Sections 302/201/34 of IPC and Section 120-B of IPC with the contents that she is bona fide resident of Kanina Tehsil and District Mohindergarh. Accused Khajan Singh, Shyam Lal and Dharmender are the neighbours of the complainant. Khajan Singh, Dharmender and Rameshwar have illicit relations with the wife of Shyam Lal and deceased Vikram

had objected for the visit of the accused persons in the house of Shyam Lal off and on. Unsocial elements used to gather in the house of Shyam Lal and used to consume liquor and in the loud voice they were always using unparliamentary language due to which neighbourers in the mohalla were having bad effect. The son of the complainant lodged objections of that to Shyam Lal and then some altercation had taken place between them.

The son was born to Dharmender and after that the accused persons hatched a conspiracy by an excuse of giving party called Vikram by all the accused in the house of Shyam Lal on 9.08.2010 and they all consumed liquor and intentionally took Vikram to the water tank of public health for the excuse of taking bath. Vikram was standing on the stairs and was not knowing swimming and after so many efforts when Vikram did not come inside the water tank for bath then all the three accused forcibly pushed Vikram in the water tank and forcibly drown Vikram. All the episode was seen by Raju son of Mahadev, a shepherd boy who was grazing the goats and sheep. As PW Raju raised alarm then all the accused also ran towards him in order to caught him but Raju ran away from there and narrated the whole occurrence to the complainant. After hearing the news of drowning of Vikram he (sic.- she) and his (sic. - her) family members became perturbed and thereafter dead body was cremated. All the occurrence seen by Raju was told to him and he (sic. - she) (complainant) narrated the whole to the police but the police in connivance with accused persons twisted the matter and only

registered a DDR and thereafter, cancellation report was filed by the police which is wrong and illegal. Then complaint under Section 302/201/120B/34 of IPC was filed and requested for sending the same to police station under Section 156(3) of Cr.P.C. and on the basis of which formal FIR No.285 dated 13.11.2010 under Section 302/201/120B/34 IPC was registered in police station Kanina and machinery of law was sent into motion.

During the course of further investigational process matter was duly investigated by the SHO and DSP and thereafter cancellation report was filed and in response to that protest petition was filed by Luxmi Devi wife of Om Parkash explaining the whole facts mentioned in the complaint and it was requested that the protest petition may kindly be accepted and accused may be punished for the offences committed by them. After that the matter was heard and considered and accused were arrested and case was committed to the Court of Session and same was received by way of assignment and the same was checked and registered on 26.09.2014 and charge against the accused persons was framed on 07.10.2014. Copies of challan along with other documents were supplied to the accused persons free of costs and then charge was framed and all the questions were put to the accused persons but they denied the facts of the charge and requested for contest of the case.”

The prosecution in support of its case examined PW-1 Rajesh alias Raju, PW-2 Luxmi Devi, PW-3 Om Parkash, PW-4 Dr. Sachin and PW-5 HC Suresh Kumar.

The statements of accused were recorded under Section 313 Cr.P.C., wherein they were confronted with the evidence of the prosecution but they denied the correctness of the evidence and pleaded themselves as innocent. In defence the accused examined DW-1 Pyare Lal retired DSP, DW-2 Suresh retired SHO and DW-3 SI Sube Singh.

The learned Additional Sessions Judge, Narnaul, vide judgment dated 10.7.2015 acquitted the accused. Aggrieved from this judgment dated 10.7.2015, the present application seeking leave to file appeal against acquittal has been filed by the complainant-Luxmi Devi.

We have heard learned counsel appearing for the applicant and have gone through the record.

In the present case, PW-1 Rajesh alias Raju was an eye witness to the occurrence. He stated that in the year 2010 at about 1.00 p.m., when he was grazing the goats and reached near the water tank in the Banni of Village Kanina, Binder was caught hold and threw in the water tank. He further stated that Binder and Vikram were caught hold by the accused present in the Court and threw in the water tank. He again stated that Vikram was caught hold by all the accused present in the Court and threw in the water tank and he further deposed that Vikram was caught hold by all the three accused present in the Court and threw in the water tank then he became unconscious and he cannot tell what happened after that. He stated the incident to Luxmi Devi-mother of Vikram then she went in the Banni. He did not know anything further in this case.

In cross-examination, the witness has admitted that after this

incident, in three different incidents, three persons had died by drowning into the said water tank. He also admitted that the local administration had banned to take bath in the said tank due to the earlier deaths which took place while taking bath. He further deposed that on the date of occurrence there was rain through out whole day.

The learned trial Court appreciated the evidence produced on the record and found the statement of eye witness not believable. Otherwise also, the witness is not deposing any incriminating fact against the accused. The Court held that from the statement it looks that all of them were enjoying, consuming liquor and taking bath in the tank etc. In the FIR also no strong motive has been given for the murder of Vikram. The learned trial Court further held that the prosecution had examined PW-1 Rajesh alias Raju, who was the sole eye witness in the case and other witnesses, namely, Luxmi Devi, Om Parkash, Dr. Sachin and HC Suresh Kumar, who had tried to corroborate the version of the complainant. The Court further held that the first version i.e. Rapat No.25 dated 19.8.2010 is that deceased along with all the accused had consumed liquor/beer and thereafter they went to take bath in the government water tank and they were enjoying there. As per the complainant, they were taking Mauj/Masti and Vikram (deceased) was pushed in the water tank, meaning thereby at the time of pushing Vikram in the water tank there was no intention of any of the accused to kill him and this fact has been clarified by PW-1 Rajesh alias Raju that firstly Binder was caught hold and threw in the water tank. He further stated that Binder and Vikram were caught hold by the accused and threw in the water

tank. Then Vikram was caught hold by all the accused and threw in the water tank and then he became unconscious and he cannot tell what happened after that. The Court held that all this shows that all the accused as well as the deceased were taking bath in their light mood as per version of Raju, eye witness and they were enjoying the birthday that is why they were throwing each other in the water tank. The Court further appreciated the evidence i.e. statement of Rajesh alias Raju that he fell unconscious which means that he does not know as to what happened after that. At that time before he became unconscious, all were enjoying and throwing each other in the water tank.

A perusal of the findings given by the learned Additional Sessions Judge shows that the evidence has been appreciated in the right perspective. The Court further held that on the basis of entire report Ex.DA, result of polygraph test Ex.DB and cancellation report was prepared by SHO PS Kanina and it was furnished. The SHO found the accused innocent on the basis of polygraph test also.

At the time of arguments, nothing has been pointed out as to which material evidence has been misread by the Court below and as to which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings given by the learned trial Court are perverse or against the evidence or law. No illegality has been committed by the learned trial Court while giving the findings as per evidence and found that the prosecution has failed to prove the guilt of the accused beyond a reasonable doubt.

The findings, in no way, can be held as perverse or against the evidence. Rather, the findings are correct as per evidence and law, which do not require any interference from this Court and the same are upheld. The accused have been rightly acquitted by the Court below.

In view of the above discussion, we do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous application filed under Section 378(4) Cr.P.C. seeking leave to appeal, the same is dismissed.

(A.B. Chaudhari)
Judge

(Inderjit Singh)
Judge

January 22, 2018.

hsp

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