

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-A-549-MA of 2016

Decided On : 27.02.2018

Raval Singh

....

Applicant

vs.

State of Punjab and others

....

Respondents

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

HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Sarju Puri, 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 10.11.2015 passed by the Additional Sessions Judge, Hoshiarpur (for short – the trial court), through which respondents No.2 and 3 have been acquitted of the charges framed against them under Sections 302, 201 and 120-B of the Indian Penal Code, 1860 (for short – IPC).

Briefly stated, the case of the prosecution is that on 30.04.2013, Harvinder Pal Singh found in the fields of one Gurdial Singh, a dead body of a woman, aged 35/36 years, which had a number of incised wounds. The body was at a distance of 5/6 feet from the road. After

conducting the post-mortem of the deceased, as the body could not be identified for 72 hours, the same was cremated. On 27.05.2013, Hardial Singh son of Gian Singh, who was the uncle of the deceased, identified the deceased as Balbir Kaur. The matter regarding the death of Balbir Kaur was investigated and it was found that respondents No.2 and 3 had committed her murder at the instance of her husband Sukhvir Singh @ Sukhi. Sukhvir Singh @ Sukhi could not be arrested and therefore, challan was presented only against respondents No.2 and 3. Since the offence under Section 302 IPC, for which the respondents were charged, was exclusively triable by the Court of Sessions, the case was committed to the Sessions Court by the concerned Illaqa Magistrate, from where it was assigned to the Court of Additional Sessions Judge, Hoshiarpur and it was this Court, where respondents No.2 and 3 were charged under Section 302, 201 and 120-B 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 to bring home the guilt of the respondents. It is such acquittal of the respondents which 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 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.

The case of the prosecution is based on circumstantial evidence. PW-3 Jarnail Singh was produced by the prosecution to prove that the deceased was lastly seen with respondents No.2 and 3. His testimony is not worthy of credence as he got his statement recorded with the police after 28 days from the date of occurrence. The explanation given by him for such delay is that he had gone to Muradabad in Uttar Pradesh (UP) to be with a friend of his who was unwell. After admitting to own a mobile phone which he says that he did not carry to Muradabad, he deposed before the trial Court that during his stay in Muradabad, he neither made a phone call to his house nor to any other family member. He further admitted to have also not received any phone call from his wife or any of his relative during the time that he stayed with his friend in Muradabad. In the present days, such explanation is highly improbable. Not only would a person who has a mobile phone carry the same when he is going to a far off place for a considerable period of time, it is also natural for a person to call his wife or any other family member to tell them that he had arrived safely at his destination. The deceased was closely related to Jarnail Singh's wife. It is unacceptable that she did not inform Jarnail Singh for a long period of 28 days with regard to her disappearance.

Further, Jarnail Singh deposed that he took the Howrah Mail from Jalandhar to Muradabad, which leaves Jalandhar at 08:00 PM. That being so, as he says, there was absolutely no reason for him to leave Banga for Jalandhar early in the morning as Banga is just about 1½ -2 hours away from Jalandhar. A perusal of his deposition further reveals that on his return from Muradabad, his wife told him that Balbir Kaur had been murdered on 30.04.2013. There is no evidence on record to show that on his return, his wife knew that Balbir Kaur had been murdered on 30.04.2013. There is also nothing on record which would establish that PW-3 Jarnail Singh actually went to Muradabad.

The extra-judicial confession of respondents No.2 and 3 before PW-5 Daya Singh is also not found proved. Admittedly, the accused were neither known to Daya Singh nor had he earlier seen them. He also did not know their parentage or their addresses. As per PW-5 Daya Singh, the accused did not disclose their names and addresses to him. It is not acceptable that the accused would confess to have committed a murder before such a person. Respondents No.2 and 3 were also never got identified by PW-5 Daya Singh.

So far as the alleged recovery of knife at the instance of respondents No.2 and 3 is concerned, that too cannot be linked to Balbir Kaur's murder. Head Constable Lal Singh deposed that on 05.06.2013, a parcel containing a knife was deposited with him and till the date of his deposition before the trial court, such weapon was never taken out of the *Malkhana*. That being so, the case of the prosecution that the knife, which

was recovered at the instance of the respondents, was shown to the doctor on 24.08.2013, cannot be reconciled. Further, PW-2 Harvinder Pal Singh, who was the first informant, deposed that on his information, the police reached the spot within 15 minutes where the dead body of Balbir Kaur was found and on search conducted by the police, a *dagger* was found in the nearby bushes. This further demolishes the prosecution's case that the murder weapon i.e. *dagger* or knife was got recovered as a result of a disclosure statement by the accused.

The case of the prosecution is that respondents No.2 and 3 committed the murder of Balbir Kaur on the instructions of her husband Sukhvir Singh as Sukhvir Singh and Balbir Kaur had strained relations. No evidence is found on the record to establish a link between respondents No.2 and 3 on one hand and Sukhvir Singh on the other.

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

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>