

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.34065 of 2017
and
Criminal Misc. No.A-2330-MA of 2017

.....

Date of decision:22.1.2018

State of Haryana

...Applicant

v.

Ramesh Kumar

...Respondent

....

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

.....

Present: Mr. Kuldeep Tiwari, Additional Advocate General, Haryana for
the applicant-State.

.....

Inderjit Singh, J.

Cr. Misc. No.34065 of 2017:

For the reasons mentioned in the criminal miscellaneous application, the delay of 101 days in filing this application for leave to appeal is condoned.

The criminal miscellaneous application is allowed.

Cr. Misc. No.A-2330-MA of 2017:

This criminal miscellaneous application has been filed under Section 378(3) of the Code of Criminal Procedure ('Cr.P.C.' for short) seeking leave to file an appeal against the judgment dated 22.3.2017 passed by Additional Sessions Judge, Hisar, vide which respondent-accused Ramesh Kumar was acquitted of the charges framed against him.

The above respondent-accused was made to face trial in FIR

No.138 dated 17.5.2015 registered at Police Station, Adampur, District Hisar for the commission of offence punishable under Section 302 IPC.

The brief facts of the prosecution case as noted down by learned Additional Sessions Judge, Hisar in the judgment dated 22.3.2017 are as under:-

“Brief facts of the prosecution case are that on 17.5.2015, an information was received in Police Station, Adampur from Ex. Sarpanch Hardwari Lal that dead body of Rajender @ Raja was lying on Sadalpur Chuli Bagrian road. On this information, SI Phool Kumar alongwith ASI Rajender, EASI Jagbir, Constable Anil, HC Vinod, HC Sushil Kumar reached to the place of occurrence in Govt. vehicle bearing No.HR-39B/3804, which was being driven by Constable Karanbir. Maya Devi wife of Rajender @ Raja was present at the place of occurrence. Her statement was recorded to the effect that she has two sons and one daughter. Her husband Rajender @ Raja was serving in Kiryana shop of Billu Seth resident of Adampur. Her husband used to return at home daily at around 9.00/10.00 p.m. On 16.5.2015 at around 9.00 a.m., her husband left for Adampur but did not come back till 9.00/10.00 p.m. at the house. She called again and again on his mobile phone. However, he did not receive the phone. In the morning, she asked her neighbour Sh. Hoshier Singh to search for her husband, who had not come back. On search at around 7.00 a.m., Sh. Hoshier Singh and

Sh. Keemati Lal informed her about the factum regarding lying of dead body of her husband and his cycle on Chuli Bagrian road. She alongwith above said persons went to the spot and saw the dead body of her husband and his cycle there. They noticed injuries with an axe on the head and neck of her husband. They also noticed an axe lying in the fields. The complainant submitted that her husband has been murdered by some unknown person by using an axe. She further submitted that about 10-12 days ago, an altercation had taken place between her and Subhash son of Atma Ram upon which her husband had scolded him. Subhash also threatened her husband to see him in future. The complainant showed suspicion that Subhash might be involved in the murder of her husband. The complainant requested for initiating legal action against the murderer of her husband.”

The charge was framed against the accused for commission of offence punishable under Section 302 IPC, to which he pleaded not guilty and claimed trial.

The prosecution to prove its case examined total sixteen witnesses i.e. PW-1 HC Vinod Kumar, PW-2 HC Sushil Kumar, PW-3 Constable Anil Kumar, PW-4 HC Nirmal Singh, PW-5 ASI Rajender Parsad, PW-6 Ram Singh, Patwari Halqa, PW-7 SI Satbir Singh, PW-8 Dr. Ashish Rana, PW-9 MHC Rohtash, PW-10 SI Phool Kumar, Investigating Officer in this case, PW-11 Sh. Anil Kumar, PW-12 Dr. Surjit, Senior Scientific

Assistant (Serology) FSL, Madhuban, Karnal, PW-13 SI Satbir Singh, PW-14 Maya Devi, complainant in this case, PW-15 Mange Ram and PW-16 Krishan.

The statement of accused was recorded under Section 313 Cr.P.C., wherein he was confronted with the evidence of the prosecution but he denied the correctness of the evidence and pleaded himself as innocent. In defence the accused examined HC Sammat Singh as DW-1 and DW-2 Dr. Narender Gupta.

The learned Additional Sessions Judge, Hisar, after hearing learned Public Prosecutor assisted by learned counsel for the complainant and learned counsel for the accused acquitted the accused of the charge framed against him. Aggrieved from this judgment dated 22.3.2017, the present application seeking leave to file appeal against acquittal has been filed by the State.

We have heard learned Additional Advocate General, Haryana appearing for the applicant-State and have gone through the record.

The present case is based on circumstantial evidence. The complainant Maya Devi, who is the wife of Rajender alias Raja (since deceased) got registered the FIR and shown her suspicion against one Subhash. No suspicion has been shown against the present accused-Ramesh Kumar.

A perusal of the record specially the judgment dated 22.3.2017 passed by the learned trial Court shows that the findings have been given as per evidence and law. Nothing has been pointed out as to how the findings

can be held as perverse or against the evidence and law. 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.

PW-14 Maya Devi and PW-16 Krishan-brother of Maya Devi have not supported the prosecution version. Furthermore, the axe was already lying near the dead body. There is no strong motive to commit the occurrence. The only incriminating evidence produced by the prosecution is blood stained clothes of the accused which he got recovered as per disclosure statement. The learned trial Court from the evidence found that the circumstances, under which accused remained missing from the village from the day of occurrence and the clothes of the accused being already recovered from far away place i.e. Jaipur on the demarcation of the accused, are not sufficient circumstances to connect him with the crime. We find that in case of circumstantial evidence the chain of circumstances should be so complete which only points to the guilt of the accused and none else. In the present case, the chain of circumstances is not complete. The axe had been recovered from the spot. On the blood stained clothes of the accused as per report Ex.P.46, the material was found disintegrated. The learned Additional Sessions Judge has rightly held that the prosecution has not been able to connect the accused with the crime by way of any scientific evidence of call details report, fingerprint report etc.

The learned Additional Sessions Judge has also doubted regarding the recovery of clothes from Kanta Palace Hotel, Jaipur. The trial

Court further found that PW-4 HC Nirmal Singh and PW-10 SI Phool Kumar gave contradictory statements in the Court. The trial Court also did not rely upon the memo vide which the clothes of the accused have been recovered and also another memo Ex.P.8, vide which the bill and identity card etc. were taken into Police possession. The trial Court also held that there is nothing in the FSL report regarding the blood group which was on those clothes. A perusal of the findings given by the learned Additional Sessions Judge in the judgment dated 22.3.2017 shows that these have been given after appreciating the evidence in right perspective. A reasonable doubt exists in the prosecution case and the prosecution has failed to prove the guilt of the applicant beyond a reasonable doubt.

The findings, in no way, can be held as perverse or against the evidence. Rather, the findings are correct and as per evidence and law, which do not require any interference from this Court and the same are upheld. The accused has 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(3) 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