

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-A-951-MA of 2016

Decided On : 23.04.2018

Sham Chand

....

Applicant

vs.

Sushil @ Bilu and another

....

Respondents

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

HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Paramjit Singh Jammu, 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 leave to appeal against the judgment dated 11.01.2016 passed by the Additional Sessions Judge, Sirsa (for short – the trial court), through which respondent no.1 has been acquitted of the charges framed against him under Sections 328, 302/34 of the Indian Penal Code, 1860 (for short – IPC).

Briefly stated, the case of the prosecution is that on 18.11.2013, at about 05:00 PM, one Kashmir @ Dara son of Sham Chand, while working with his father in the fields, told his father that he had received a telephonic call from one Sunil, who had asked him to reach Fatehabad as Sunil had some urgent work with him. Accordingly, Kashmir

left for Fatehabad and at about 06:30 PM, he made telephonic call to his father and told him that he was going with Sunil and that he would return soon. However, in the morning, Sham Singh came to know that his son Kashmir had been murdered by Sunil and his dead body was lying in a car bearing registration number HR-51-Z-6812 in Village Kharia. Sham Singh then went to Village Kharia and identified the dead body of his son. He found that his son had been shot by Sunil, his maternal uncle and other members of his family.

After the arrest of Sunil, during the course of investigation, on the strength of a disclosure statement suffered by Sunil, respondent no. 1 Sushil and one Sanjay Bhadu were also arrested.

On completion of investigation, report under Section 173 Cr.P.C. was filed before the competent court. Since the offence in question was exclusively triable by the Sessions Court, the case was committed to the Court of Sessions, which marked the same to the trial court for further proceedings.

The trial court, after sifting the evidence which had come on record, acquitted respondent no. 1 of the charges levelled against him by giving him the benefit of doubt as the trial court was of the opinion that the prosecution had failed to prove its case qua him. Such acquittal of respondent no.1 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 accused-respondent no. 1 of the charges levelled against him as there was overwhelming evidence on record to prove his guilt and therefore, there was no reason in fact or in law with the trial court to acquit him.

The submissions made by learned counsel for the applicant have been considered but the same do not warrant a favourable consideration.

It is the admitted position that the name of respondent no.1 – Sushil figured only in the disclosure statement of his co-accused Sunil. The only evidence collected by the prosecution against respondent no. 1 – Sushil was that he had demarcated the place of occurrence and had got recovered a motorcycle used in the crime, which belonged to co-accused Sanjay Bhadu. So far as demarcation of the place of occurrence by respondent no. 1 – Sushil is concerned, at the time it was got demarcated by him, the same was already in the knowledge of police and the motorcycle, which belonged to the co-accused Sanjay Bhadu, was recovered from a place, which was open and accessible to all and that too, after ten days of the occurrence. No public witness deposed against respondent no. 1 in the case. There is no other evidence found on the record which would implicate respondent no. 1 – Sushil.

In view of the above, there is no worthwhile reason found to interfere in the findings recorded by the trial court acquitting respondent no. 1 – Sushil by giving him the benefit of doubt. Accordingly, the present application is found to be devoid of any merit and, therefore, dismissed.

Leave to appeal is declined.

(T. P. S. MANN)
JUDGE

(DEEPAK SIBAL)
JUDGE

April 23, 2018

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