

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-A-1592-MA-2016  
Date of Decision: 10.04.2019

Sher Singh

.....Applicant

Versus

Mahinder and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN  
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. S.P.S. Aulakh, Advocate, for the applicant.

Mr. N.S. Shekhawat, Advocate,  
for respondent Nos. 1 to 3.

Mr. S.S. Pannu, DAG, Haryana.

**Harnaresh Singh Gill, J.**

Applicant-Sher Singh, being the son of deceased Joginder Singh (complainant), has filed the present application under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment dated 15.07.2016 passed by the learned Sessions Judge, Yamuna Nagar at Jagadhari.

Vide impugned judgment, the trial Court has acquitted respondent Nos. 1 to 3 of the charges under Sections 341, 325, 323 and 302 read with Section 34 IPC.

As per the case of the prosecution, on 8.5.2015 deceased Joginder Singh was admitted in C.H.C. Radaur, wherefrom he was referred to Civil Hospital, Yamuna Nagar, but was taken to Gaba Hospital, Yamuna Nagar. Police team reached Gaba Hospital. After seeking opinion of the Doctor regarding his

fitness, the statement of deceased-Joginder Singh had been recorded. In his statement, said Joginder Singh stated that he had gone to the tubewell of Parmal Singh on his motorcycle where, while having his meal, he had also consumed half bottle of liquor. At about 8.00 p.m., when he was coming back, he had been struck danda blows on his head by two persons, whom he could not identify and that as a result of the same, he fell down on the ground and was also given slaps by them. The police party reached the spot and recovered two blood stained *dandas*, which were converted into sealed parcels. Accused Mahinder was arrested on 18.5.2015. Injured-Joginder Singh died on 21.5.2015. On 25.5.2015 accused Mahinder suffered a disclosure statement and pursuant thereto, he had got recovered motorcycle from his house in village Kungal. On the said day accused Anuj Kumar was also arrested. On 28.5.2015, accused Sachin was arrested. Both these accused had also suffered disclosure statements as regards their participation in the occurrence.

Finding a prima-facie case, charges were framed against the accused under Sections 341, 325, 323 and 302 read with Section 34 IPC.

The prosecution examined as many as 21 witnesses. Among them are PW10-Dr. Vijay Parmar, Medical Officer, CHC Radaur; PW17-Dr. B.S. Gaba of Gaba Hospital, Yamuna Nagar and PW19-Dr. Rishu Goel, Medical Officer, General Hospital, Yamuna Nagar, who was a member of the Board, which had

conducted post mortem on the dead body of deceased-Joginder Singh.

Statement of the accused under Section 313 Cr.P.C. were recorded in which they pleaded innocence and alleged false implication. In defence, they did not examine any witness.

As noticed above, vide judgment dated 15.07.2016, the learned trial Court acquitted respondent Nos.1 to 3 of the charges framed against them.

We have heard learned counsel for the parties, but we do not find any merit in the present application seeking leave to appeal.

The learned trial Court, while passing the impugned judgment of acquittal has taken into consideration the testimony of PW10-Dr. Vijay Kumar, Medical Officer, C.H.C. Radur. The said witness stated that on 7.5.2015, Joginder Singh was brought to C.H.C. Radaur and as informed by him and the attendant, he had met with a road side accident. He further stated that the patient was smelling of alcohol, as a result of which, there was slur in his speech. It was found that from the medical evidence, it stood proved on record that the deceased had consumed half a bottle of liquor and at the time of his having been taken to C.H.C. Radur, as stated by the Doctor, there was slur in his speech, meaning thereby that the deceased was under the influence of liquor. Thus, the possibility of the deceased having met with a roadside accident could not be ruled out and this was what the deceased and his attendant had told the Doctor Vijay Kumar. Still further, it was found that though

the prosecution version was that blood stained dandas were got recovered from the spot on 9.5.2015, yet the said recovered articles were not deposited with Malkhana till 9.6.2015 i.e. for a complete period of one month. The Investigating Officer, was not able to explain the reason behind the dandas not having been deposited with the Malkhana till 9.6.2015 and that this very fact indicated towards the recovery story being an afterthought. Still further, it was found that in the absence of the identity of the assailants, the recovery of dandas, even if taken into consideration, the same would be of no help. None of the witnesses examined was a witness to the occurrence and that when the deceased himself was fit to make the statement and did so, his not having named any of the assailants, would belie the prosecution version that the deceased had told PWs Gurmeet Singh, Som Nath and Vikram Singh about the identity of the accused at a later point of time, stood falsified. The identity of the accused having not been established, the casual connection between the injuries inflicted on the person of the deceased and his resultant death, would not be relevant either.

As noticed above, the learned trial Court has, while passing the impugned judgment of acquittal, discussed the entire evidence threadbare and has come to the conclusion that the prosecution was not able to prove its case against the accused beyond the reasonable doubt. In our opinion, the reasoning given by the learned trial Court is a plausible one. Nothing has been pointed out to show that there is any misreading or misinterpretation of evidence on the part of the

learned trial Court. The missing link between the establishment of identity of the assailants and the huge delay in depositing the weapon (dandas in this case) used in the occurrence with the Malkhana, creates a dent in the very story of the prosecution. Even such delay remained unexplained and yet further it could not be explained and/or established on record as to why the deceased told about the identity of the assailants to PWs Gurmeet Singh and others at a later point of time, when at the time of making his statement before the Police, on the basis of which the FIR was registered, he did not name any assailants. For all these reasons, we find no infirmity or illegality in the impugned judgment of acquittal.

Consequently, the application seeking leave to appeal is dismissed. Leave to appeal is declined.

**(RAKESH KUMAR JAIN)**  
**JUDGE**

**(HARNARESH SINGH GILL)**  
**JUDGE**

10.04.2019  
ds

Whether Speaking/ Reasoned:  
Whether Reportable:

Yes/ No  
Yes/ No