

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRM-A-1005-MA-2014 (O&M)**

**Date of decision : 17.01.2019**

**Ram Singh**

**..... Applicant.**

**Versus**

**Shiv Shakti Rice Mills and others**

**..... Respondents.**

**CORAM : HON'BLE MR. JUSTICE KULDIP SINGH**

Present:- Mr. Wazir Singh, Advocate for the applicant.

None for respondents.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

**KULDIP SINGH J. (ORAL)**

Heard.

Present application has been filed under Section 378(4) of the Criminal Procedure Code for grant of leave to appeal against the judgment of acquittal dated 18.3.2014 passed by Judicial Magistrate Ist Class, Karnal.

The brief facts of the case are that FIR No. 349 dated 28.11.2009 was registered against the accused persons namely Nathi Ram and Madan Lal under Section 304-A of the Indian Penal Code in Police Station Nissing on the basis of the statement of complainant-Ram Singh that his son Raj Kumar was working in Shiv Shakti Rice Mill as a worker. On the date of occurrence i.e. 28.11.2008 he was allegedly asked by the owners of the Mill i.e. the accused No. 2 and 3 namely Nathi Ram and Madan Lal sons of Kishori Lal to go to the roof of the shed for the purpose of construction/welding work. Raj Kumar fell from the roof which is at the

height of 12 and 12 ½ feet and died. As per the evidence led by the complainant. Ram Singh received a telephonic information that Raj Kumar sustained injuries and he visited the mill. Raj Kumar was lying injured in the vehicle and when questioned, Raj Kumar told that '*mujhe banio ne mara hai*'. Thereafter, he could not speak. When he was taken to the hospital he was found dead.

The police initially registered the FIR in question. However, after investigation, cancellation report was presented stating that no offence is made out. Present complainant presented the protested petition which was treated as complaint. Complainant examined himself and also examined Jai Bhagwan, contractor who is stated to be an eye witness. They also examined Dr. Rakesh Mittal, Medical Officer, J.H. Karnal as CW-3, who conducted the post mortem of the deceased-Raj Kumar. After recording the preliminary evidence complaint was dismissed.

Learned counsel for the applicant contends that as per the evidence of Jai Bhagwan, contractor that Raj Kumar did not want to climb the shed of the building but he was forced by the accused namely Nathi Ram and Madan Lal to do so. Under the threat and fear, Raj Kumar climbed up the roof of the building and fell down. However, learned trial Court found that before the police, Jai Bhagwan-contractor made the statement that Raj Kumar is doing the working of building when the accident took place. He had stated that at the time of occurrence both the accused were in their office and they did not forced Raj Kumar to climb the shed. It was on the basis of the statement that cancellation report was presented.

Jai Bhagwan-contractor further stated before the police that Raj Kumar fell

down because his foot slipped from the shed. It is stated before the Court that Raj Kumar was compelled by both the accused to climb the shed and when he refused he was threatened that he will not be paid wages and he was given kicks on his buttock. Thereafter, due to fear, Raj Kumar climbed the roof where the building work was going on and thereafter, he fell down.

Learned trial Court has relied upon the discrepancies in the statement of Jai Bhagwan made before the police and the Court acquitted the accused and dismissed the complaint.

I am of the view that even if the statement of Raj Kumar made in the Court is taken as a gospel truth even then the offence under Section 304-A of the Indian Penal Code is not made out. At the most, Raj Kumar who was working as labourer in the mill was asked to climb the roof as the construction/welding work was going on. Jai Bhagwan, constructor was stated to be doing welding work. Asking the workers to climb the roof for help in the construction work is not an illegal, rash or negligent act. After climbing the roof, one will not fall automatically but there must be a reason i.e. the slipping of the foot or some other reason for falling from the roof. Therefore, mere asking the workers to climb the roof by the owners is neither rash nor negligent act. It is done in routine by the workers on the building including the roof, therefore, it cannot be assumed that the owners had the knowledge that their act of asking the workers to climb the roof to help in the construction/welding work is likely to cause the death of the worker. It appears to be a purely industrial accident from which criminal offence is sought to be made. Police, during the investigation, has already found that no offence is made out.

I do not find any infirmity in the judgment of acquittal dated 18.3.2014 passed by Judicial Magistrate Ist Class, Karnal.

Dismissed.

17.01.2019  
*preeti*

(KULDIP SINGH)  
JUDGE

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|-----------------------------|-----|
| Whether speaking / reasoned | Yes |
| Whether Reportable:         | No  |