

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

201

CRM-A-378-MA-2016
Date of Decision: 8.1.2019

ASAMA NISHA

....Applicant.

Vs.

STATE OF HARYANA AND ORS.

....Respondents.

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Jagjot Singh, Advocate for
Mr. Kunal Dawar, Advocate for the applicant/appellant.

ANUPINDER SINGH GREWAL, J.

This application is filed for seeking leave to appeal against the order of acquittal dated 18.11.2015 of the respondents in a case registered vide FIR No.265 dated 1.7.2013 under Sections 302, 201/34 and 120B IPC, at Police Station Sarai Khawaja, Faridabad.

The case of the prosecution is that on 1.7.2013, a telephonic information was received in the control room about a dead body found in the drain near Basantpur colony. ASI Rajbir Singh, along with other police officials, rushed to the spot. The body was fished out from the drain and was identified by the residents of the area. The forensic team reached the place of the occurrence and took photographs.

After the identification of body, Jamal Sheikh presented an application stating therein that he is a resident of C-99, Basantpur colony, near Hanuman Mandir, Basantpur and one of his brother, namely, Guljar alias Mustak, aged about 28 years, was employed in

MTS Company at Okhla. On 30.6.2013 at about 09:00 p.m., he had seen his brother Guljar, roaming in the white car of Rajesh Tyagi and Sunil @ Sonu, who used to deal in sale and purchase of buffaloes. Since his brother did not return home till late night, therefore, he started searching for him. The mobile phone of his brother was found switched off and on 1.7.2013, while he was searching his brother, reached at the drain of Basantpur colony near NTPC and saw that many persons had gathered there and body of a young person was lying dead in the drain which he identified of his brother Guljar. There were injuries on his head and lot of blood had oozed out. He suspected that Sonu and Rajesh Tyagi, due to some grudge, had committed murder of his brother Guljar, by causing injuries on his head with stone and thereafter, in order to conceal the dead body, threw him in the drain. On the basis of his statement, FIR was registered and investigation was conducted by ASI Rajbir Singh. Sunil alias Sonu and Rajesh Tyagi were arrested and the case was committed to the Court of Sessions where they were charge sheeted accordingly by the Sessions Judge, Faridabad vide his order dated 7.11.2013. The accused did not plead guilty to the charge and claimed trial.

During the course of trial, the prosecution had examined 18 witnesses, namely Sarwan Kumar, Draftsman as PW-1, ASI Mukesh Kumar as PW-2, Constable Sandeep as PW-3, ASI Balraj Singh as PW-4, SI Ramesh Sharma as PW-5, Dr. Lokesh Gupta as PW-6, Bishan Singh Malik as PW-7, HC Birender Singh as PW-8, SI Suresh Chand as PW-9, ASI Brahm Parkash as PW-10, EASI Kuldeep Singh as PW-11, EASI Shamshuddin as PW-12, HC Jag Narain as PW-13, HC Mahesh

Kumar as PW-14, Ashwani Sharma as PW-15, Jamal Sheikh as PW-16, Asama Nisha as PW-17 and ASI Rajbir as PW-18.

The accused alleged false implication but did not lead any evidence in their defence.

Learned counsel for the applicant has contended that the trial Court has erroneously acquitted the accused (respondents No.2 to 4) even though there was overwhelming evidence against them in the form of last seen evidence as well as the disclosure statement of the accused which led to discovery of the weapons used in the offence.

We have heard learned counsel for the applicant and examined the record.

The trial Court, while acquitting the accused, has relied upon the material inconsistency in the prosecution case including the discrepancy in the last seen evidence. The complainant Jamal Sheikh, who was examined as PW-16, stated that he had seen the deceased on 30.6.2013 at about 9.00/9.30 p.m in the company of Rajesh Tyagi and Sunil alias Sonu when they were roaming in a white car and had suspected that his brother had been eliminated by them. However, in his testimony before the Court, he had also stated that Tejpal @ Teju was also seen with the accused when they were in the company of the deceased. In his cross examination, PW-16 had admitted that he knew Tejpal @ Teju for the last 20 years as they were residents of the same village but no explanation has been put forth as to why PW-16 did not name Tejpal @ Teju in the complaint made to the police. The particulars of the car, except its colour, were also not mentioned in the complaint. Asama Nisha, widow of the deceased, who had deposed as PW-17, had

stated that on 30.6.2013 at about 6:00 – 7:00 p.m., when she was present in her house, Sanjay Pandit and Ashwani Sharma (PW-15) had come to their house and asked her husband who was also present in the house that accused Rajesh Tyagi, Tejpal @ Teju and Sunil @ Sonu were calling him to the plot of Titoo for some talks. Thereafter, Sanjay Pandit and Ashwani Sharma had taken her husband along with them. However, PW-15 Ashwani Sharma had stated that on 30.6.2013, he was present in his house at about 9/9.30 p.m and had received a telephonic message from Guljar who had asked him to drop him to his house as he was under the influence of liquor and thereafter, Guljar left in a white colour car saying that the occupants of the car were his friends. This witness was declared hostile and was cross examined by the Public Prosecutor but nothing material could be elicited therefrom.

Further, the evidence regarding motive is also weak as neither PW-16 nor PW-17 have set out the specific motive which would have led the accused to kill the deceased. They had only stated that a quarrel had taken place between the deceased and the accused 2-3 days back but the genesis of the quarrel is not forthcoming in their testimonies. There are several other material discrepancies including the evidence pertaining to the recovery of the car which was stated by PW-7 Bishan Singh to have been recovered by the Crime Branch, Delhi from accused Rajesh Tyagi, but PW-5 SI Ramesh Sharma had stated that it was taken into possession by them pursuant to the disclosure statement of the accused.

Therefore, the view taken by the trial Court in acquitting the accused appears to be plausible one which would not warrant any interference in appeal against the acquittal.

Consequently, the application for grant of leave to appeal under Section 378 (4) Cr.P.C. stands dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

8.1.2019.

SwarnjitS

Whether speaking/reasoned :	YES/NO
Whether reportable :	YES/NO