

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A 1515-MA-2017 (O&M)
Date of decision : 01.04.2019

Abdul Rahman

.....Applicant

Versus

State of Haryana and others

..... Respondents

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

Present: Ms.Divya Sharma, Advocate for
Ms.Preeti Sharma, Advocate (Legal Aid Counsel)
for the applicant
Mr.Apporv Garg, DAG Haryana
Mr.Sunny Bhardwaj, Advocate
for respondent nos.2 and 3

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.

Abdul Rahman complainant has filed this application under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment dated 18.01.2017 passed by learned Additional Sessions Judge, Bhiwani vide which both the accused-respondents, namely, Parmod and Satender @ Lila were acquitted of the charges framed against them under Section 302 read with Section 34 IPC and 25 of the Arms Act.

Facts of the case are that Islaam @ Chohotu, aged 23 years was

working in Pardeep Trading Company, Gaushala Market, Bhiwani. He used to go to attend duty at 9.00 a.m. and come back at 10.00 p.m. On 26.11.2014 as per routine, he went to attend the duty but did not come back at night. Next day, at about 4.00 a.m., Abdul Rehman (PW4) complainant, father of the deceased, received a phone call that dead body of his son Islaam @ Chohotu is lying in front of Railway Bridge, Bhiwani. Thereafter, Abdul Rahman along with his son Abdul Rafiq reached there. He found that his son Islaam @ Chohotu has been murdered by someone with gun shot. Accordingly, he made a statement (Ex.PW4/A) to Inspector Sandeep Sharma (PW26), on the basis of which, formal FIR was registered. Police prepared site plan, inquest report and also clicked the photographs. Post mortem of the dead body was got conducted. On 2.2.2015, Akbar Khan brother of the deceased told the police that he has suspicion that Parmod accused has killed his brother. Accordingly, Parmod was arrested on 3.2.2015. A Mobile phone was recovered from him. On 26.02.2015, Abdul Rahman, father of the deceased, made a supplementary statement to the police, in which he stated that his son was murdered by accused Parmod. Accused Parmod was again joined in the investigation with the permission of the Court and interrogated, on which he suffered disclosure statement (Ex.PW6/A) and also demarcated place of occurrence. On 6.3.2015, accused Satender @ Lila, who was already in police custody in FIR No.111 of 2015 under Section 307 IPC and 25 of Arms Act, Police Station City, Bhiwani, was arrested in this case. He suffered a disclosure statement (Ex.PW24/A) and disclosed that he has kept concealed country made pistol used in the crime in a rented room in Sector 17, Rohini, Delhi. He also demarcated the place of occurrence. However, while on way to Delhi, he

stated that he has made a false statement and that weapon has already been recovered from him in FIR No.747 of 2015 under the Arms Act by the Delhi Police.

In support of its case, the prosecution examined as many as 26 witnesses.

In the statement under Section 313 Cr.P.C., accused denied the correctness of the evidence led against them. Accused did not lead any evidence in defence.

After hearing the Public Prosecutor, learned defence counsel and going the evidence, learned Additional Sessions Judge, Bhiwani acquitted the accused.

We have heard learned counsel for the complainant-applicant, learned State counsel and learned counsel for the respondents-accused and have also carefully gone through the file.

Admittedly, as per statement of Dr.Ved Pal Singh (PW11), who conducted the postmortem on the dead body of Islaam @ Chohotu, the deceased died due to gun shot injury. There was a blackening showing that the shot was fired from a close range on the chest which proved fatal. There were entry and exit wounds on the dead body. In this case, the prosecution relied upon the confession made by both the accused in their disclosure statements. However, the confession made in the disclosure statement is not admissible in evidence. The prosecution also led evidence to prove the enmity between the accused and the deceased. For this purpose, they have examined Abdul Rafiq, brother of the deceased and Abdul Rahman, father of the deceased. Their cross-examination, shows that both of them had heard about the quarrel between accused Parmod and the deceased on the

Diwali day. Accused Abdul Rafiq was away to Delhi on the Diwali day. Therefore, their statements regarding quarrel between deceased and Parmod was discarded as hearsay.

The prosecution also relied upon mobile call details, which shows that the accused Parmod was present around the place of occurrence. However, the said evidence cannot be relied upon to convict the accused as so many people could be at the said place at the time of occurrence. Moreover, as per the call details, even if presumed that the mobile no. 7206940704 belongs to Parmod, it was active at BTM road Kishan Colony and Lalru Road at the time of occurrence. It does not suggest that he was present near the Railway Station Toshan Bridge.

PW1 Subhash has stated that he has seen both the accused near the place of occurrence, just before the occurrence. However, he does not say that he had seen the deceased in the company of two accused. In this case, two pistols were recovered from the accused Satender @ Lila by the Delhi police when he was arrested by the Delhi Police. However, the said pistols were never sent to FSL to determine as to whether anyone of these was used in committing the crime. This is a case of circumstantial evidence. The entire chain is not complete to point out that accused are the only persons who could commit the crime. It is merely a suspicion. It is established law that suspicion, however strong, cannot take place of the positive proof and cannot be made basis of conviction.

Learned Additional Sessions Judge, Bhiwani after carefully examining the evidence, came to the conclusion that the prosecution could not prove its case against the accused beyond reasonable shadow of doubt.

The trial Court has taken one of the possible views which is neither perverse

nor illegal and is rather justified in the given circumstances.

As such, we do not find any illegality in the impugned judgment.

Accordingly, application under Section 378(4) Cr.P.C. for grant of leave to appeal is dismissed.

(Rajiv Sharma)
Judge

(Kuldip Singh)
Judge

01.04.2019

gk

Whether speaking/ reasoned:	Yes
Whether Reportable:	Yes