

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No. D-1131-DB of 2015

Date of Decision : October 20, 2015

Pal Singh

.....Appellant

VERSUS

State of Punjab and others

.....Respondents

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

Present : Mr. C.S. Jattana, Advocate
for the appellant.

T.P.S. MANN, J.

Appellant Pal Singh, who had received injuries in the occurrence in question has filed the present appeal for challenging the judgment dated 28.1.2013 passed by learned Additional Sessions Judge, Ludhiana whereby respondents No.4 and 5 were acquitted of the charges under Sections 452, 460, 307, 323 read with Section 34 IPC. Prayer has also been made for enhancing the sentences of imprisonment of respondents No. 2 and 3.

The case of the prosecution, in nutshell, is that on 8.4.2005 at 7.30 p.m. the appellant went to the house of respondent Balbir Singh for collecting the amount of Rs.5,000/- from him on account of sale of milk. Bachittar Singh, who had stood as guarantor for the said amount was present there. Both Balbir Singh and Bachittar Singh stated that they did not owe any amount to the appellant and, therefore, he be taught a lesson for demanding money time and again. At about 11.00 p.m., someone knocked at the gate of the house of the appellant. The mother of the appellant enquired as to who was there. A woman talked to her and requested for opening the gate. When the appellant's mother opened the gate then all of a sudden Balbir Singh and his wife Rajinder

Kaur, Bachittar Singh and his wife Manjit Kaur, Lakhwinder Singh and

7/8 other persons forcibly entered his house. After committing criminal trespass, all the accused pushed his mother. Lakhwinder Singh raised a *lalkara* that the appellant be caught hold of and not allowed to go scot free. Balbir Singh, who was armed with a *kirpan*, inflicted a blow on the head of the appellant with an intent to kill him. In order to rescue himself, the appellant raised his right hand. Bachittar Singh gave a *dang* blow on the face of the appellant. The accused inflicted kick blows to him, besides giving slaps to his mother Harbans Kaur and wife Harjit Kaur. All the accused, thereafter, fled away in a vehicle and on the scooters parked in the street.

The trial Court believed the prosecution case qua accused Balbir Singh and Bachittar Singh and after convicting them for offences under Sections 307/323/34, 452 and 460 IPC, sentenced them to undergo imprisonment for five years. At the same time, respondents Manjit Kaur and Rajinder Kaur were acquitted of the charges against them.

Having heard learned counsel for the appellant and on going through the impugned judgment, this Court finds that though Manjit Kaur and Rajinder Kaur were said to be present at the time of the occurrence yet they were not attributed causing of any injury either to the appellant or his mother or his wife. Further, PW3 Harbans Kaur, the appellant's mother, who was also the eye-witness of the occurrence in question had not named either Manjit Kaur or Rajinder Kaur as accused in her statement under Section 161 Cr.P.C. The stand taken by her while appearing before the trial Court and naming Manjit Kaur and Rajinder Kaur was clearly an improvement. Under these circumstances, no case is made out for any interference in the impugned judgment to the extent

against them.

As regards the prayer made by the appellant for enhancing the sentences of respondents Balbir Singh and Bachittar Singh, this Court finds that no appeal is competent at the instance of the appellant in view of the proviso to Section 372 Cr.P.C. which gives right of appeal to the victim only qua acquittal of the accused or conviction of the accused for lesser offence or for enhancement of compensation. At the same time, appeal for enhancement of sentence of imprisonment is maintainable only under Section 377 Cr.P.C. and, that too, at the instance of the State and not the victim.

Faced with the above, learned counsel for the appellant submits that the appellant may be allowed to withdraw the present appeal insofar as prayer made by him for enhancement of sentence of imprisonment of respondents Balbir Singh and Bachittar Singh is concerned with liberty to the appellant to seek any other remedy available under the law.

The appeal is, hereby, dismissed qua challenge to the acquittal of respondents Manjit Kaur and Rajinder Kaur.

However, the appeal qua challenge to the enhancement of sentence of imprisonment of Balbir Singh and Bachittar Singh is dismissed as withdrawn with liberty to the appellant to seek any other remedy available under the law.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

October 20, 2015