

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

CRA-D No. 188-DB of 2015

Date of Decision: May 14 , 2015.

Munish Kumar

..... APPELLANT (s)

Versus

State of Haryana and another

..... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. S.S.Sahu, Advocate
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Present appeal has been preferred by complainant Munish Kumar son of Nihal Chand challenging judgment dated 31.07.2014 passed by the learned Additional Sessions Judge, Fatehabad acquitting respondent No.2 – Surender Kumar of the charges for offences punishable under Sections 195/196/420/120B IPC.

Prosecution in this case was set in motion on complaint, Ex.P1 by appellant – Munish Kumar to the Inspector General of Police, Hisar Range averring that a fight took place between him and respondent No.2 – Surender

Kumar relating to water supply on 17.06.2009. Both the parties received injuries. However, Surender Kumar in a criminal conspiracy with Dr. Makhan Lal (died during trial) after fabricating a false medico-legal report, got a case registered against the complainant under Section 326 IPC. Suspicion was raised against Dr. Makhan Lal who had allegedly asked for money from the complainant as well for rendering a particular medico-legal report in respect to his aunt and cousin brother who had also received injuries. A Board of Doctors was constituted by Deputy Commissioner, Fatehabad at Govt. Hospital, Fatehabad for medical re-examination of Surender Kumar. Respondent No.2 – Surender Kumar did not appear before the said board of doctors, who nevertheless opined that injuries suffered by Surender Kumar were with a blunt weapon. Thereafter, Section 326 IPC was deleted and case was registered under Section 325 IPC. A complaint was also submitted against Dr. Makhan Lal to Director General, Health, Haryana for taking departmental action against him, who was found guilty in the inquiry. On these allegations, instant complaint was submitted before Inspector General of Police, Hisar Range and legal action was prayed for.

Formal FIR No.72 dated 09.02.2011 (Ex.P2) was registered on the basis of this complaint. On completion of investigation, challan/report under Section 173 Cr.P.C. was filed against the accused. Charge was framed against respondent No.2 – Surender Kumar and Dr. Makhan Lal (since deceased) on 07.03.2013. Accused pleaded innocence and claimed trial.

Learned trial court on appreciation of the facts, circumstances and evidence on record, acquitted respondent No.2 – Surender Kumar of the charges

against him. Accused Dr. Makhan Lal passed away during the pendency of the trial. Aggrieved therefrom, instant appeal has been preferred by the complainant – Munish Kumar.

Learned counsel for the appellant vehemently argues that complainant Munish Kumar, PW3, has specifically stated that in the incident which occurred on 17.06.2009, Surender Kumar in criminal conspiracy with Makhan Lal prepared a false medico-legal report and a case under Section 326 IPC was falsely registered against the complainant on this basis. Furthermore, Board of Doctors constituted on the orders of Deputy Commissioner, Fatehabad had opined that injuries suffered by Surender Kumar were with a blunt weapon. Dr. Makhan Lal was found guilty in the preliminary inquiry. Inquiry report (Ex.P11) has been proved by PW8 Dr. O.P. Mittal. There is sufficient and overwhelming evidence on record to connect the accused with the offence in question. Learned trial court has grossly erred in acquitting respondent No.2 of the charges against him. In these circumstances, learned counsel for the appellant submits that the impugned judgment be set aside and the respondent accused be convicted as charged and sentenced in accordance with law.

We have heard learned counsel for the appellant and carefully gone through the file.

It has specifically come on record that on coming to know of the opinion given by the board of doctors constituted by the Deputy Commissioner, Fatehabad, respondent No.2 – Surender Kumar immediately moved an application for re-examination as it was averred that he had never been served any notice for such medical examination. On his application, a Board of Doctors

of Post Graduate Institute of Medical Science (PGIMS), Rohtak was constituted consisting of Dr. Rajesh Rohilla, Assistant Professor of Orthopaedics, Dr. Jyotsna Sen, Professor of Department of Radiology and Dr. S.K.Dhatarwal, Professor of Forensic Medicine for examining the said respondent. They examined the injured Surender Kumar who duly appeared before them. As per their report (Ex.P18), it was found that injury No.1 was indeed grievous in nature caused by a sharp weapon.

It has also come on record that all the accused facing trial relating to the incident dated 17.06.2009 in which Surender Kumar had got injured, have been held guilty and convicted for the offence punishable under Section 326 IPC, besides, other offences on 03.02.2014 (Ex.D4).

In this view of the matter, much credence cannot be placed upon the opinion given by the board of doctors constituted on the orders of Deputy Commissioner, Fatehabad who had surprisingly given their opinion without even examining the injured.

It is further revealed that as per the final inquiry report dated 22.02.2012 (Ex.D3) conducted against Dr. Makhan Lal, allegations were not proved against him.

In view of the facts and circumstances as above, we find no illegality or infirmity in the impugned judgment which would warrant interference by this Court. It is a settled position that strong, compelling or substantial reasons have to be pointed out for setting a judgment of acquittal. No such ground has been pointed out by the learned counsel for appellant to interfere with the impugned judgment.

We find no illegality, infirmity or perversity in the judgment dated 31.07.2014 passed by learned Additional Sessions Judge, Fatehabad which warrants interference by this Court.

Consequently, this appeal is dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

May 14 , 2015.
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