

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

**Criminal Appeal D-837-DB of 2015
Date of Decision: November 17, 2015**

Mohd. Rafiq

.....Appellant

Versus

Satpal Singh and others

..... Respondents

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

Present : Mr. Dhirinder Chopra, Advocate
for the appellant.

T.P.S.MANN, J.

The appellant, who had received injuries in the occurrence in question has filed the present appeal for challenging the judgment dated 31.3.2015 passed by the learned Additional Sessions Judge, Sangrur, whereby the accused, i.e. respondents No. 1 to 8 were acquitted of the charges under Sections 392/394/395 IPC.

The case of the prosecution, in nutshell, is that on 23.10.2007, the appellant who was running a tea stall in front of the gate of Sohrab Factory, Malerkotla, was coming towards Malerkotla along with his servant Mohd. Aalam on a motor-cycle.

The motor-cycle was being driven by the appellant. At about 10.15 p.m., when they reached near rice mill, Nabha Road, Malerkotla, he saw two motor-cycles parked on the left side of the road. Three persons were sitting on each of them, who started chasing him. One of the motorcyclist applied brakes in front of the appellant and stopped him from moving. Another motorcyclist kicked him with his legs. As a result, the appellant fell down. The four persons, who were sitting behind those motorcyclists started beating him with the hockey sticks. The appellant was hit on his head, above ears, back and shoulder. He was also assaulted by arms and legs. On an alarm being raised, all the accused ran away from the spot and also took the motor-cycle of the appellant. After some time, the appellant's servant Aalam, who had fled from the spot, brought his brother Ramzan from the shop. He also brought his relative Sabir Ahmed, who got the appellant admitted in Civil Hospital, Malerkotla. On the basis of the statement made by the appellant, FIR No. 134 dated 24.10.2007 under Sections 392/394/395 IPC was registered against unknown assailants at Police Station Malerkotla.

Having heard learned counsel for the appellant and on going through the impugned judgment, this Court finds that though the appellant while lodging FIR had stated that unknown persons had assaulted him, yet it was Mohd. Aalam, employee of

the appellant who nominated the accused. Further, when the occurrence had taken place, it was dark all over. No material is available on the file to show that there was availability of light, in which, either the appellant or his servant Mohd. Aalam could identify the assailants. In case Mohd. Aalam knew about the identity of the assailants, such an information ought to have been passed on by him to the appellant and, that too, before lodging of the FIR. In the event of such an information being conveyed to him, the appellant would have named the accused while lodging the FIR. However, fact remains that no such mention was made in the FIR about the identity of the accused at the time of lodging of the FIR.

While deposing before the trial Court as PW1, the appellant stated that the police had shown him the accused in jail and before that, his statement was not recorded. If that was the position, the appellant had no reason not to name the accused who had caused injuries to him. The appellant also admitted that he knew accused Akhtar Ali and Mohd. Anwar @ Baghi, who are respondents No. 2 and 3, herein, since their childhood. He also admitted that the names of accused were disclosed to him by Mohd. Aalam. He further admitted that the accused had not muffled their faces. In such a situation, there was no earthly reason for the appellant to fail in identifying the accused. PW3

Mohd. Ramzan, brother of Mohd. Rafiq, deposed that the accused present in the Court had caused injuries to his brother Mohd. Rafiq. Under these circumstances, it is difficult to understand as to how he could have identified the accused to be the ones, who had assaulted the appellant.

In view of the above material available on the file, the prosecution was under a duty to arrange test identification parade so as to fix the identity of the accused. However, the fact remains that no such test identification parade was held. This has been so admitted by PW7 Inspector Parminder Singh, who was the Investigating Officer of the case.

There was delay of sixteen hours in lodging of the FIR and there is no explanation on the file in that regard. The unexplained delay in lodging of the FIR coupled with the fact that the names of the accused were not known to the appellant is fatal to the prosecution case. This assumes significance in light of the circumstance that Mohd. Aalam, who was shown to be present at the time of the occurrence did not support the prosecution case when he was examined as PW8. He was got declared hostile on the request of Additional Public Prosecutor.

As regards the recovery of the motor-cycle belonging to the appellant, it may be noticed that while effecting the

recovery at the instance of accused-Beant Singh, no independent witness was associated by the Investigating Officer. The hockey sticks Ex.MO-2 and Ex.MO-3 recovered during the investigation of the case were not shown to be broken despite the fact that they had been used for inflicting injuries. The hockey sticks were also not shown by PW7 Inspector Parminder Singh to the Medical Officer to seek his opinion whether the injuries were possible with those sticks or not. PW2 Dr. Lachhman Singh, Senior Medical Officer, CHC, Manupur, District Ludhiana, admitted in his cross-examination that most of the injuries on the person of the appellant could be caused with friendly hands.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal passed by the trial Court.

The appeal is devoid of any merit and, accordingly, dismissed.

**(T.P.S. MANN)
JUDGE**

November 17, 2015
amit rana

**(GURMIT RAM)
JUDGE**