

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

Crl. Appeal D-976-DB of 2015
Date of Decision : November 19, 2015

Balwinder Singh

.....Appellant

VERSUS

State of Haryana and others

.....Respondents

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

Present : Mr. Karan Singh, 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 and order dated 12/13.2.2015 passed by the trial Court to the extent of acquitting respondents No.2 to 4, namely, Sandeep Kumar, Ashok Kumar and Ram Sarup of the charges against them. Prayer has also been made for enhancing the sentences of imprisonment of respondents No.5 and 6, namely, Amit Kumar and Salinder.

The case of the prosecution in nutshell is that on 15.10.2013 at about 5.30 p.m. when the appellant alongwith his brother Ilam Chand and one Dharam Singh was returning from temple and reached near outer road of their village, respondents

No. 5 and 6, namely, Amit Kumar and Salinder @ Kaka came on a motor cycle from the side of the village. Salinder, who was driving the motor cycle, hit the motor cycle in between the legs of appellant-Balwinder Singh as a result of which, Balwinder Singh fell down. Amit Kumar then gave knife blow in the abdomen and on the head of Balwinder Singh whereas Salinder gave kicks and fist blows to Balwinder Singh. Dharam Singh managed to rescue Balwinder Singh. Ilam Chand tried to catch hold of the assailants but they fled away on a motor cycle. After hearing the noise, respondents No.2 to 4, namely, Sandeep Kumar, Ashok Kumar and Ram Sarup came at the spot. Sandeep Kumar was armed with a sword while Ashok Kumar and Ram Sarup were carrying dandas. They inflicted injuries on the head and back of injured Balwinder Singh. The reason for causing injuries was said to be old enmity.

Having heard learned counsel for the appellant and on going through the impugned judgment, this Court finds that accused-Sandeep Kumar, Ashok Kumar and Ram Sarup were not present at the spot when Balwinder Singh was caused injuries by Amit Kumar and Salinder. They were shown to have reached the spot after Amit Kumar and Salinder had caused injuries to Balwinder Singh and fled from the spot. These three accused, namely, Sandeep Kumar, Ashok Kumar and Ram Sarup were not attributed causing of any injury to Dharam Singh or Ilam Chand.

Infliction of injuries by them to Balwinder Singh has not been corroborated by the medical evidence as no injury on the left arm or right hand or head or back of Balwinder Singh was found at the time of his medical examination by PW8 Dr. B.S.Gaba. The absence of external mark of injuries makes the case of the prosecution doubtful with regard to the involvement of accused- Sandeep Kumar, Ashok Kumar and Ram Sarup. This assumes significance in view of the delayed lodging of the FIR. The incident was said to have taken place on 15.10.2013 at about 5.30 p.m. whereas the FIR was lodged on 16.10.2013 at 3.00 a.m. i.e. after nine hours of the incident. Under these circumstances, no fault can be found with the impugned judgment to the extent of acquitting respondents No.2 to 4, namely, Sandeep Kumar, Ashok Kumar and Ram Sarup of the charges against them.

As regards the prayer made by the appellant for enhancement of sentence of imprisonment of respondents No.5 and 6, namely, Amit Kumar and Salinder, it may be noticed that no such right of appeal for enhancement of sentence of imprisonment has been accorded to the victim. The victim has been given right to appeal in case of acquittal of the accused or conviction of the accused for a lesser offence or for enhancement of compensation as is clear from the reading of proviso to Section 372 Cr.P.C. On the other hand, right to appeal for enhancement

of sentence of imprisonment has only been granted to the State under Section 377 Cr.P.C.

Faced with the above, learned counsel for the appellant submits that he may be allowed to withdraw the present appeal in so far as it pertains to his prayer for enhancement of sentences of imprisonment of respondents No.5 and 6, namely, Amit Kumar and Salinder with liberty to the appellant to seek any other remedy.

Resultantly, the appeal qua acquittal of respondents No.2 to 4, namely, Sandeep Kumar, Ashok Kumar and Ram Sarup of the charges against them is dismissed.

The appeal is, however, dismissed as withdrawn with regard to the prayer made by the appellant for enhancement of sentences of imprisonment of respondents No.5 and 6, namely, Amit Kumar and Salinder with liberty to him to seek any other remedy available under the law.

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

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**(GURMIT RAM)
JUDGE**