

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.378-MA of 2013 (O&M)

Date of decision: 12th October, 2015

Ram Pal

...Applicant

Versus

Om Parkash and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Ashit Malik, Advocate, for the applicant.

Mr. Rajiv Sidhu, Advocate, for the respondents.

INDERJIT SINGH, J.

Learned counsel for the applicants wishes to withdraw the instant application qua respondent No.1 Om Parkash as he has died.

Dismissed as withdraw qua respondent No.1 Om Parkash.

Applicant Ram Pal has preferred this application under Section 378(4) Cr.P.C. seeking permission for leave to file appeal against respondent Om Parkash, Ram Kishan and Shimla, challenging the impugned judgment dated 17.05.2013, passed by the learned Judicial Magistrate 1st Class, Kurukshetra, whereby the complaint filed by him was dismissed and accused-respondents were acquitted.

It is mainly stated in the application that the applicant is filing the accompanying appeal which is likely to succeed. The learned trial Court vide judgment dated 17.05.2013, has wrongly acquitted respondent Nos.2 and 3 for the offence under Sections 323, 324, 325, 506, read with Section 34 IPC and acquitted respondent No.1 for the offences under Sections 323, 325, 506 read with Section 34 IPC. It is also stated in the application that the learned trial Court has misread the evidence produced by the

applicant and also ignored the settled proposition of law. It is prayed that leave be granted to the applicant to file appeal against the respondent.

Brief facts of the case are that on 29.11.2004 at about 11:00 a.m., there was quarrel between minor children of Dharambir, elder brother of complainant with children of accused-respondents Om Parkash and Ram Kishan. On the same day, at about 8:00 p.m., mother of complainant-petitioner Ram Pal (hereinreferred as 'the complainant') went outside the house for some domestic work . In the meantime, accused Nos.3 and 4 namely Bimla and Shimla while hatching criminal conspiracy with accused Nos.1 and 2 namely Om Parkash and Ram Kishan caught hold the mother of complainant and assaulted her with fist blows and slaps. The complainant rushed towards the place of occurrence and saw that accused Bimla and Shimla had been giving beating to his mother. Bimla had caught hold the mother of complainant from her hair and she was lying on the earth. Both the accused Bimla and Shimla had been beating her with fist blows and slaps. When the complainant reached the spot, accused Om Parkash armed with an axe in his hand and Ram Kishan armed with 'lathi', who were also standing nearby, came there and accused No.3 Bimla raised lalkara. Om Parkash inflicted axe blows on the head of complainant and accused Ram Kishan inflicted a lathi blow to the mother of complainant which hit on her mouth, due to which injuries were caused on her teeth and lips. Om Parkash

also inflicted various axe blow on the person of complainant from which the complainant rescued himself.

The learned trial Court, on the basis of evidence, convicted only accused Om Parkash under Section 324 IPC and acquitted remaining accused under Sections 323, 324, 325, 506, 120-B IPC. Accused Om Parkash is also acquitted of the charges under Sections 323, 325, 506, 120-B IPC.

Aggrieved against the said judgment, the applicant has preferred the instant application.

Notice of motion was issued.

Learned counsel for respondents appeared and contested this application.

At the time of arguments, learned counsel for the applicant withdrew the application qua respondent No.1 Om Parkash.

I have heard learned counsel for the applicant as well as learned counsel for respondents and have gone through the record.

After hearing the learned counsel for the parties and going through the record especially the impugned judgment, this Court finds that nothing has been pointed out how the findings returned by the learned Court below are perverse or against the evidence. Nothing has been pointed out as to which evidence has been misread or which evidence has not been considered by the learned trial Court. As discussed by the learned trial Court, only one injury i.e. Incised wound was found on the scalp on parieto temporal region

of Ram Pal. This medical evidence does not support and corroborate the oral evidence as well as averments of the complaint. As per complaint, so many injuries have been caused. As per oral evidence, there was no injury to the mother of complainant. The Court also discussed the injuries on her two teeth of upper jaw and held that she untruthfully stated that she never visited earlier to the dental surgeon despite the fact that her lower jaw teeth have already been removed. The Court below after discussing the oral as well as medical evidence and the fact that the complainant failed to establish the identity of accused Bimla etc. reached to the conclusion that prosecution has failed to prove the case beyond reasonable doubt. CW5 Dr. Vanita Singh in her statement before the Court, admitted that in her register, no injury relating to teeth has been shown. She also stated that no fresh bleeding has been shown in her report. The learned trial Court held that the statement of Bimla Devi, mother of complainant, witness is not corroborated.

From the aforesaid discussion, this Court finds that the reasoning given by the learned Court below is correct and as per law. and no ground to grant leave to the applicant to file appeal is made out.

Therefore, finding no merit in the instant application, the same is dismissed.

12th October, 2015
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(INDERJIT SINGH)
JUDGE