

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM No.A-718-MA of 2014  
Date of decision : 03.08.2015

Kailash Sharma

..... Appellant

Versus

State of Punjab and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON  
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Satnam Singh Gill, Advocate  
for the applicant/appellant.

RAMENDRA JAIN, J.

The criminal application has been filed by the applicant-appellant under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment dated 12.03.2014 acquitting respondents No.2 and 3.

Brief facts relevant for decision of this application are that the appellant-complainant Kailash Sharma filed a criminal complaint under Sections 324, 326, 341 and 506 read with Section 34 of Indian Penal Code ('IPC' for short) against respondents No.2 and 3 with the allegations that he was beaten up on 13.07.2009 by them along with some unidentified persons. They also snatched his gold jewellery and some cash amount from him. Consequently, he had lodged FIR No.236 dated 16.07.2009 under Sections 324, 341 and 506 read with

Section 34 IPC. Later on, Section 326 was also added. However, the police did not take any action against respondents No.2 and 3 compelling him to file the complaint.

After recording preliminary evidence, the learned Sub Divisional Judicial Magistrate, Samana summoned respondents No.2 and 3 under the aforesaid sections vide order dated 22.09.2012. In pre-charge evidence, the appellant-complainant examined him as CW1 followed by CW2 Shiv Narain, CW3 Dr.Rajesh Kumar, CW4 HC Mehal Singh and CW5 Dr.Jarnail Singh.

Learned trial Court, after hearing both the sides and finding a prima facie case, framed charge against the respondents No.2 and 3 under Sections 324, 326, 341 and 506 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In post charge evidence, the appellant-complainant examined CW1 Dr.Jarnail Singh, CW2 Dr.Rajesh Kumar, CW3 HC Baljinder Kumar, CW4 himself and CW5 Shiv Narain and relied upon documents i.e. CW1/1&2 X-ray films and report, Ex.CW1/3 copy of X-ray report register, Ex.CW2/1&2 copy of his MLR & pictorial diagram Ex.CW2/3 opinion of doctor, Ex.CW3/1 copy of original FIR register pertaining to FIR No.236 dated 16.07.2009, Ex.PW4/2 application to DIG, Patiala dated

23.11.2009, Ex.CW4/4 to 6 receipts of registered cover and Ex.CW4/3 application to SSP dated 16.12.2009.

After closure of the prosecution evidence, statements of respondents No.2 and 3 under Section 313 Cr.P.C. were recorded, putting entire incriminating evidence brought on record against them by the prosecution, to which, they denied and pleaded their false implication.

The learned Trial Court after hearing learned counsel for the parties has found no merit in the complaint and dismissed the same vide impugned judgment dated 12.03.2014, thereby acquitting respondents No.2 and 3.

Learned counsel for the appellant-complainant has argued that the impugned judgment of the learned trial Court is based on surmises and conjectures. The learned trial Court has wrongly acquitted respondents No.2 and 3, because there was sufficient evidence and corroboration to the statement of the complainant to prove the guilt of respondents No.2 and 3. The ocular version of the appellant-complainant was also supported by the medical evidence. Hence, the learned trial Court has erred in not recording their conviction by giving them benefit of doubt.

We have given our thoughtful consideration to the submissions made by the learned counsel for the appellant-complainant.

Undisputedly, the police had filed cancellation report against FIR No.236 dated 16.07.2009 under Sections 324, 341 and 506 read with Section 34 IPC initially got registered by the appellant-complainant at Police Station Samana. Thereafter, he filed the present complaint.

As per the appellant-complainant, the alleged occurrence had taken place on 13.07.2009. In his preliminary evidence on 09.02.2010, he as CW1 deposed so. Even, eye-witness CW2 Shiv Narain on 12.10.2010 had also deposed that the alleged occurrence had taken place on 13.07.2009. On the basis of above depositions of the appellant-complainant and his eye-witness CW2 Shiv Narain, respondents No.2 and 3 were summoned to face trial.

Thereafter, in post-charge evidence also, the appellant-complainant as CW4 on 27.08.2013, again alleged that the occurrence had taken place on 13.07.2009. Even in his cross-examination, he did not make any effort to clarify the exact date of incident, rather reiterated the same as 13.07.2009. Contrary to it, in FIR No.236 dated 16.07.2009, he has shown the alleged occurrence on 15.07.2009. In post charge evidence too, the appellant-complainant did not try to clarify that the alleged occurrence, in fact, had taken place on 15.07.2009 and not on 13.07.2009, but due to clerical mistake, it was wrongly shown to have taken place on 13.07.2009.

The stand of the appellant-complainant is that before filing the complaint in the Court, he had not gone through its contents. Thus, he could not rectify the said mistake in the date of alleged occurrence. However, there is no substance in his above stand, because had it been so, there was sufficient opportunity for him to correct the alleged mistake by clarifying the correct date of incident as 15.07.2009 instead of 13.07.2009 in his cross-examination. Even, he did not ever move any application before the learned trial Court to correct the actual date of incident. Hence, his overall conduct has now estopped him to claim that mentioning of wrong date of incident was on account of clerical error.

The learned trial Court after appreciating the record, has observed that in the complaint, the appellant-complainant had mentioned that he was attacked by respondents No.2 and 3 with sharp edge weapons, but did not specify the same, nor gave its description. Injury No.1 as per MLR Ex.CW3/1 was an incised wound on the dorsem side of little finger in 'L' shape. Dr.Rajesh Kumar, who medico-legally examined the appellant-complainant, had specifically opined that the said injury could be possible by fall on a piece of glass. Injury No.2 suffered by the appellant-complainant was abrasion which was not possible by sharp edge weapon, rather it was a superficial injury. Dr.Rajesh Kumar also admitted in his cross-examination that injury No.1 shown in the pictorial diagram on right thumb was

by mistake, though it was on little finger. He also admitted that this 'L' shape injury was not shown in the pictorial diagram. Thus, it is evident on the record that the medical evidence led by the appellant-complainant was not in consonance with the ocular version.

CW5 Shiv Narain, the alleged eye-witness of the occurrence also did not support the appellant-complainant, because he has shown his ignorance about the weapon used in the commission of crime by respondents No.2 and 3. Hence, his testimony does not favour the appellant-complainant, in any manner.

Even otherwise, there are major contradictions in this case. In the complaint, the appellant-complainant alleged that respondents No.2 and 3 had snatched his gold ring and chain worn by him at the time of incident, besides, cash amount of ₹ 12,000/13,000/-. However, in his statement before the police Ex.PW4/1, he had stated that the above articles had lost at the time of occurrence. He was very well confronted by respondents No.2 and 3 on this aspect, but he could not give any satisfactory reply.

The alleged motive behind the occurrence that both the parties are journalist is also not so strong, which might have forced respondents No.2 and 3 to cause injuries to the appellant-complainant.

The learned trial Court has rightly held that when two views are possible, the view favouring the accused should be taken.

We have gone through impugned judgment and find no illegality or perversity in the same.

No other point was urged before us.

In view of the discussion above, the criminal miscellaneous application seeking leave to appeal against the acquittal of respondents No.2 and 3 is hereby declined.

( RAMENDRA JAIN )  
JUDGE

( S.S. SARON )  
JUDGE

03.08.2015  
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