

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

CRM No.A-257-MA of 2009 (O&M)
Date of decision: August 02, 2016

Rajesh

...Applicant

Versus

Krishan Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.S.K.Verma, Advocate
for the applicant.

Mr.Dharam Pal Balda, Advocate for
Mr.Sanjiv Sheoran, Advocate
for respondent No.1.

None for respondent No.3.

INDERJIT SINGH, J.

Applicant-Rajesh has filed this application under Section 378 Cr.P.C. seeking permission for leave to appeal against Krishan Kumar and other respondents, challenging the impugned judgment dated 13.02.2009 passed by learned Judicial Magistrate Ist Class, Jind, vide which the accused-respondent were acquitted.

It is mainly stated that judgment dated 13.02.2009 passed by learned JMJC, Jind is wrong, illegal, arbitrary and against the medical as well as oral evidence on record. It is further stated that learned trial Court has erred in acquitting the accused-respondents while giving benefit of doubt. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Rajesh filed a complaint against accused Krishan Kumar, Ram Mehar and Palwinder @ Kala under

Sections 323, 324, 325, 506, 392 and 34 IPC. The brief facts of the case as noted down in the judgment passed by learned JMIC, Jind, are as under:-

“2. The version of the complainant is that he is resident of Railway Colony, Jind and at present he is running a STD Booth on Railway Road, Jind. All the accused are also residing at Jind. His father is working in Indian Railway. A criminal case between the father of complainant and one GRP Head Constable Tara Chand (presently posted in GRP Narwana) is going on in a court at Jind. In that case, there is change of conviction of Tara Chand and other accused. Due to that case, said Tara Chand and his family members has inimical relation with the family of complainant. Accused No.1 is friend of Kulbir son of Tara Chand and accused No.2 and 3 are friends of accused No.1. On 29.03.2000 at about 11.00 P.M. complainant along with his mother was coming to his house from the STD booth. When complainant reached near water works, then accused No.1 met in a drunkard position. He took the complainant in Ram Lila ground. He asked the complainant to withdraw the case against HC Tara Chand. Complainant refused to withdraw that case. Immediately, then emerged accused No.2 and 3 there. Accused Krishan gave a blow on nose of the complainant with a brick. Palwinder alias Kala gave two knife blows on chest and left ear of the complainant. Then accused Ram Mehar pushed the complainant and the complainant's Kanpati (ear) struck against the pipe. Due to that profused bleeding started from nose, chest and ear of the complainant. Accused Krishan also snatched the complainant's golden chain from his neck which was of 2-1/2 tola. The complainant cried for help and the mother of the complainant reached at the place of occurrence. On seeing the complainant's mother, all the accused persons ran away from the spot but at that time they were threatening on that day the complainant had been saved and on any other day, they will kill the complainant. On hearing the cries of the complainant's mother, family members of the complainant and neighbourer of the complainant came there. In an auto rickshaw, the complainant was taken to police post, Patiala Chowk, Jind and the matter was reported to the police. A constable took the complainant to Civil Hospital, Jind. In Police post, the police officials got signatures of complainant on some papers and a register and they assured to take necessary action against the accused. At about 3.00 P.M. on 30.03.2000 he was medico legally examined in Civil Hospital, Jind and MLR No.RNB/72/2000 was prepared. Four injuries were found on the person of complainant/injury No.4 was advised for x-ray and ENT surgeon opinion. On 3.4.2000, radiologist of Civil Hospital, Jind opined fracture of nasal bone of complainant. The police instead of registering a case against accused for causing grievous injuries to the

complainant and to rob of the complaint, challaned the accused under Section 107/151 Cr.P.C. Hence, this complaint.”

The accused were summoned under Sections 323, 324, 325, 506 read with Section 34 IPC. Accused Ram Mehar died during the pendency of the trial and proceedings qua him were abated.

On the basis of pre-charge evidence, accused Krishan Kumar and Palwinder @ Kala were charged under Sections 323 and 506 IPC read with Section 34 IPC. The complainant examined himself as PW-1, Kanta Devi as PW-2 and Dr.Dhan Kumar as PW-3.

Learned JMJC, Jind, after appreciating the evidence, acquitted the accused-respondent vide judgment dated 13.2.2009.

Notice of motion was issued and learned counsel for respondent No.1 appeared and contested the application. Earlier, learned counsel for respondent No.3 was appearing but today, none appeared on behalf of respondent No.3.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that as per the complainant's version, accused Palwinder @ Kala was armed with knife and he gave two blows on his chest and left ear with knife. The perusal of the injuries shows that none of the injury is with sharp edged weapon. All the injuries are with blunt weapon. Injury No.1 is lacerated wound present over right side of chest, another lacerated wound was found on the anterior part of the external ear. Third injury was lacerated wound present over posterior and out region of the external ear and fourth injury was swelling.

Learned Magistrate had given benefit of doubt to the accused

and even at the time of arguments before this Court, learned counsel for the applicant failed to explain this material discrepancy regarding causing of injuries as no sharp edged weapon or pointed weapon injury has been given to the complainant. Therefore, the version of complainant creates reasonable doubt.

Further, in the impugned judgment, it is held that PW-3 Dr.Dhan Kumar had conducted radiological examination qua injuries but he did not find any fracture. The version regarding fracture on nasal bone was also found suspicious by the Court below. Learned Magistrate held that one more thing which goes against the case of the complainant is that the complainant tried to fabricate the document showing fracture of nasal bone and even tried to get it proved through the doctor, who denied the authorship of the same. It is further held that when the complainant appeared into the witness box, he alleged that pipe blow was given by accused persons whereas his initial version in the complaint was that his head was struck by the accused persons against a pipe.

Keeping in view the above discussion, I find that findings have been given after appreciating the evidence in right perspective. In no way, the findings can be held as perverse. The impugned judgment dated 13.02.2009 passed by learned JMJC, Jind, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

August 02, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No