

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

CRM-A-964-MA of 2013 (O&M)
Decided on:-20.05.2016.

Kanhiya Lal @ Kanhi Ram.

.....Applicant-appellant.

Versus

Hanuman and others

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Jitender Dhanda, Advocate
for the applicant-appellant.

HARI PAL VERMA, J.

CRM-5028-2016

This is an application for placing on record copies of statements dated 28.11.2008 (Annexures A-1 and A-2).

For the reasons stated in the application, the same is allowed and documents Annexures A-1 and A-2 are taken on record subject to all just exceptions.

CRM-A-964-MA-2013

This application has been moved under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal against the

judgment dated 27.9.2013 passed by learned Judicial Magistrate 1st Class, Hisar.

Briefly stated, the applicant-complainant has filed a complaint under Sections 323, 392 and 506 IPC against the respondents-accused. As per the complaint, on 18.9.2007 the complainant had gone to Hisar in connection with a court case. All the accused in collusion with each other entered his house and beat his wife and two sons in his absence. The accused also broke down the locks of one suitcase and box and took away with them cash, jewellery, one engine, one fan and one tubewell fan forcibly after threatening the family members of complainant with dire consequences of life. While leaving, they also destroyed the cotton crop and also threatened that if the land which was entered in the name of complainant by his mother was not changed in their name, they shall pick and kill him.

Thereafter, the wife of complainant came to the Court at Hisar and apprised the complainant about the aforesaid incident. The complainant came back to his house and reported the matter to the police at Police Station Adampur by moving an application there. However, the police challaned only accused No.1 to 3 under Section 107 read with Section 151 Cr.PC and did not proceed further. The complainant also approached the higher authorities, but no action against the culprits was taken. Hence, the present complaint was filed in the Court.

In his preliminary evidence, the complainant examined himself as PW1 and his wife Sona Devi as PW2 and closed the preliminary

evidence after producing copies of application Ex.P1 given to the police and mutation as Ex.P2. Thereafter, all the accused were summoned to face trial under Sections 323, 379 and 506 IPC vide order dated 13.3.2008 passed by the trial Court. In his pre-charge evidence, the complainant again examined himself as PW1 and his wife as PW2.

After considering the pre-charge evidence available on record, the accused were charge-sheeted under Sections 323, 379 and 506 IPC vide order dated 20.12.2012 passed by the trial Court. The accused did not plead guilty and claimed trial.

In his after-charge evidence, the complainant examined himself as PW1, his wife Sona Devi as PW2 and his son Dalip as PW3. Thereafter, statements of all the accused were recorded under Section 313 Cr.PC wherein they denied the allegations levelled against them and pleaded innocence. However, no evidence was led by the accused in their defence.

The trial Court vide impugned judgment dated 27.9.2013 acquitted all the respondents-accused by extending them the benefit of doubt as the applicant-complainant failed to prove the charge against them.

Feeling aggrieved, the petitioner-complainant has approached this Court by filing the present application.

Learned counsel for the applicant-complainant has argued that the trial Court has failed to appreciate the evidence and documents relied upon by the complainant which were otherwise proved on file. The respondents-accused were liable to be convicted, but the trial Court has not

appreciated the evidence of complainant as PW1, his wife Sona Devi as PW2 and his son Dalip as PW3. He has further contended that the findings of learned trial Court are based on conjectures and surmises and are not sustainable in the eyes of law. He has prayed for setting aside the impugned judgment and conviction of the respondents-accused.

I have heard learned counsel for the applicant-complainant and perused the paper book.

Perusal of the impugned judgment reveals that the incident has allegedly been occurred on 18.9.2007 whereas the present complaint was filed on 5.10.2007. The complainant has not explained as to how the delay has occurred in filing the complaint. Though in preliminary evidence, the complainant has produced an application Ex.P1, but no effort was made by the complainant to prove the said application on file.

Admittedly, the complainant as well as the respondents-accused are residents of same village, but no independent witness has been examined by him to prove his allegations. The complainant has deposed that the matter was reported to him by his wife. Thus, at the most, he is a hearsay witness and his evidence cannot be relied upon. Moreover, the other two witnesses examined by the complainant are his wife and son who are supposed to depose in his favour. As such, in the absence of any independent corroboration to the version of complainant, the testimony of complainant and his wife and son is not reliable.

Moreover, the complainant has also alleged that the respondents-accused had beaten his wife and son. However, the

complainant has failed to produce any medical evidence in support of his version. Therefore, the trial Court has rightly acquitted the respondents-accused by extending them the benefit of doubt.

In view of the above, this Court does not find any merit in the present application. Therefore, the impugned judgment dated 27.9.2013 passed by learned Judicial Magistrate 1st Class, Hisar is upheld and the present application is dismissed.

May 20, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE