

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-240-MA-2016

Date of decision: 14.03.2016

Virender Kumar

..... Applicant

Versus

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

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

PRESENT: Mr. Vivek Khatri, Advocate
for the applicant.

RAMENDRA JAIN, J.

Being aggrieved, from the judgment dated 02.12.2015, passed by the learned Additional Sessions Judge, Narnaul, acquitting respondents No. 2 to 7 under Sections 323, 307, 341 read with Section 34 of the Indian Penal Code (IPC), the applicant-complainant-Virender Kumar has filed the instant application under Section 378 (3) Cr.P.C., seeking leave to file the accompanying appeal.

2. In nutshell, on 10.09.2012, on receipt of ruqa along with

MLR of the applicant-complainant dated 27.08.2012, ASI Shiv Kumar of Police Station Nangal Chaudhary went to CHC, Nangal Chaudhary but did not find him admitted there. On coming to know that applicant-complainant had gone to S.K. Soni Hospital, Jaipur for his treatment, SI Jasbir Singh (PW-1) reached there and sought opinion of the doctor regarding fitness of the applicant-complainant. However, the treating doctor declared him unfit to make statement. No other person was found present with him. Resultantly, on 10.09.2012, ASI Shiv Kumar along with Constable Suresh Kumar, visited the house of applicant-complainant, who presented an application before him alleging that around 4/4.30 P.M. on 27.08.2012, when he was coming from Nangal Chaudhary on his tractor and reached near Mata Mandir, village Shehbazpur, respondent No. 4-Mahesh Kumar and one Deepak son of respondent No. 2-Leela Ram got stopped his tractor and started giving him fist and kick blows. In the meantime, respondents No. 5, 6 and 7 namely Billu, Khajan Singh and Krishan, who were armed with lathies also reached there. On seeing them, when he (applicant-complainant) tried to run away by leaving his tractor, aforesaid respondents No. 5 to 7 chased him. In the meantime, respondents No. 2 and 3 namely Leela Ram and Raghubir also reached at the spot and inflicted lathi blows to the applicant-complainant on his legs, as a result of which he fell down. All the respondents No. 2 to 7 had caused injuries to him with their lathies, while he was lying on the ground. In the meantime, Sharda, Neelam and Lali also reached at the spot in a Matadoor and inflicted stick blows on the mouth and other parts of the body of the complainant. On telling of

respondent No. 3-Raghubir that the applicant-complainant was still alive, respondent No. 6-Khajan Singh picked a brick and struck the same against the head of the applicant-complainant due to which he became unconscious. On receipt of information about the incident, brother of the applicant-complainant reached at the spot and witnessed the occurrence. On seeing him, respondents No. 2 to 7 and others fled away from the spot under mistaken belief that the applicant-complainant-Virender Kumar had died. The applicant-complainant was shifted to CHC, Nangal Chaudhary from where he was referred by the treating doctor to S.K. Soni Hospital, Jaipur.

3. On the basis of aforesaid application, formal FIR was registered. Necessary investigation was conducted. During investigation, statements of the relevant witnesses were recorded. After completion of investigation, final report under Section 173 Cr.P.C. was presented before the learned Judicial Magistrate Ist Class, Narnaul only against respondents No. 2 to 4 by placing the names respondents No. 5 to 7 in its column No. 2 as innocent.

4. On commitment of the case to the Court of Session by the learned Judicial Magistrate Ist Class, respondents No. 5 to 7 were summoned as additional accused upon the application of the prosecution under Section 319 Cr.P.C. Respondents No. 2 to 7 were charge-sheeted under Sections 323, 307, 341 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

5. The prosecution in support of its case examined as many as 9 following witnesses and relied upon certain documents.

6. PW-1 SI Jasbir Singh, testified that on 28.08.2012, he moved an application Ex. PW-1/A to the treating doctor of S.K. Soni Hospital, Jaipur, regarding the fitness of applicant-complainant-Virender Kumar whereupon vide opinion Ex. PW-1/B, the doctor declared him unfit to make statement. On 10.09.2012, on receipt of application of the complainant having endorsement of ASI Shiv Kumar, he had recorded formal FIR Ex. PW-1/C, after making his endorsement Ex. PW-1/D under Sections 341, 323 read with Section 34 IPC.

7. PW-2 Chander Bhan, deposed about preparation of final report under Section 173 Cr.P.C., after completion of investigation.

8. PW-3 SI Shiv Kumar is the Investigating Officer of the case. He has deposed about the steps taken by him during the course of investigation.

9. PW-4 Dr. Rakesh Lal, has proved C.T. Scan of the applicant-complainant-Virender Kumar Ex. PW-4/A and his report Ex. PW-4/B.

10. PW-5 Complainant-Virender Kumar has fully supported the prosecution case.

11. PW-6 Hoshiar Singh the alleged eye-witness of the occurrence has corroborated the statement of applicant-complainant (PW-5) in its letter and spirit.

12. PW-7 SI Sajjan Singh has testified about arrest of respondents No. 2 and 3, namely Leela Ram and Raghubir and their sufferance of disclosure statements Ex. PW-7/A and Ex. PW-7/B and pursuant thereto recovery of dandas from them vide memos Ex. PW-7/C and Ex. PW-7/D, respectively.

13. PW-8 HC Satender Kumar, has testified that he remained associated with the investigation of the case by PW-7 SI Sajjan Singh and corroborated his testimony.

14. PW-9 Dr. Arun Kumar, has proved the MLR of the applicant-complainant Ex. PW-9/A. He also proved ruqa Ex. PW-9/B besides, his opinion Ex. PW-3/C.

15. After closure of the prosecution evidence, statements of respondents No. 2 to 7 under Section 313 Cr.P.C. were recorded, putting entire incriminating evidence brought on record against them to which, they denied and pleaded their false implication. In defence, they examined DW-1 ESI Satish Kumar and DW-2 Laxmi Narayan.

16. After scanning the evidence brought on record and hearing learned counsel for both the sides, the learned trial Court acquitted respondents No. 2 to 7.

17. Learned counsel for the applicant-complainant contended that the impugned judgment is based on surmises and conjectures. The learned trial Court has committed a grave error in acquitting respondents No. 2 to 7 by ignoring foolproof evidence led by the prosecution against them.

18. After giving our thoughtful consideration to the submissions made by learned counsel for the applicant-complainant, we find no merit in the instant application for the reasons to follow.

- (i) Respondents No. 5 to 7 were found innocent by the police during investigation. However, upon an application under Section 319 Cr.P.C. before the

- learned trial Court, they were summoned as additional accused vide order dated 22.07.2014. The said order was challenged before this Court in ***CRR-2589-2014, (Billu and others Vs. State of Haryana and another)***, which was accepted vide order dated 30.10.2015. Resultantly, the aforesaid order dated 22.07.2014 was set aside. Hence, no conviction could be recorded against respondents No. 5 to 7. Since, no further appeal or revision has been filed against the order dated 30.10.2015, of this Court therefore, as a natural corollary, the impugned judgment qua acquittal of respondents No. 5 to 7 cannot be interfered with.
- (ii) As far as involvement of respondents No. 2 to 4 is concerned, the prosecution has not been able to prove their guilt beyond any reasonable shadow of doubt, because of contradictions in the ocular version and medical evidence which has rendered the prosecution case doubtful. According to the applicant-complainant, in the evening of 27.08.2012, respondent No. 4- Mahesh and one Deepak after stopping his tractor gave him fist and kick blows. Respondents No. 2, 3, 5 to 7 and three ladies, namely, Neelam, Sharda and Lali also inflicted him lathi blows. That apart, on exhortation of respondent No. 3-Raghubir, respondent No. 6-Khajan Singh, gave a forceful brick blow on the head of

- applicant-complainant on account of which he became unconscious. Meaning thereby, the applicant-complainant was caused various injuries on his person by 9-10 people. Contrary to it, as per his MLR he had suffered only two injuries (i) one lacerated wound on the right side of his head and (ii) blackening of eye.
- (iii) The history of assault given by the applicant-complainant and his father to the doctor of S.K. Soni Hospital, Jaipur, that he had received head injury at the hands of some unknown persons also creates suspicion about the prosecution story, because when the applicant had identified his assailants at the spot, he should have disclosed their names before the doctor. Not doing so, requires to draw an adverse inference that the things did not happen in the manner as narrated by the prosecution.
- (iv) Since, respondent No. 6-Khajan Singh was discharged by this Court vide order dated 30.10.2015 passed in ***CRR-2589-2014***, who was ascribed the role of forcefully hitting the applicant-complainant with a brick, therefore, the version of the applicant-complainant against the remaining respondents No. 2 to 4 has rightly been treated doubtful by the learned trial Court.
- (v) No motive was alleged or proved for causing the

- injuries to the applicant-complainant at the hands of respondents No. 2 to 7. Weapon of offences were also not produced before the learned trial Court and thus, the prosecution had failed to link the chain of events.
- (vi) There are major contradictions in the statements of prosecution witnesses. There is also no explanation in lodging the FIR late by 12 days. Contrary to it, respondents No. 2 to 7 by producing documents Ex. DW-1/B and Ex. DW-1/C have proved that there was a motive with the applicant to falsely implicate them.
- (vii) Though vide document Ex. PW-3/C injury No. 2 on the person of applicant was declared dangerous to life, but it was also found mentioned therein that there was no document available on the record to declare the said injury as dangerous to life. In these circumstances, the learned trial Court has rightly held that the opinion of doctor declaring injury No. 2 on the person of applicant-complainant as dangerous to life was of no consequence in the absence of any medical record.
- (viii) The prosecution has also not been able to prove that respondents No. 2 to 4 had any intention to murder the appellant-complainant. There is no corroboration to the statement of applicant.

19. We have carefully gone through the impugned judgment and

find no illegality or perversity in the same. The instant application being completely devoid of any merit is dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

March 14, 2016

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