

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-545-MA-2016 (O&M)

Date of decision: 17.05.2016

Rajan Gupta

..... Applicant

Versus

State of Punjab 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. M.K. Dogra, Advocate
for the applicant.

RAMENDRA JAIN, J.

CRM-9093-2016

Heard.

Sufficient cause has been shown to condone the delay in applying for leave to appeal. The application is, therefore, accepted. The delay of 42 days in applying for leave to appeal is condoned.

CRM-A-545-MA-2016

Respondents No. 2 to 8 (in short 'the private respondents') along with Kuldip Singh (Proclaimed Offender) were booked and tried under Sections 307, 323, 395, 397, 427, 450, 148 and 149 of the Indian Penal Code (IPC), on the allegations that around 11.00 P.M. on 13.04.2014 ,

they entered the office of the applicant-Rajan Gupta with deadly weapons

and caused injuries to him and his companions namely Bhanu Partap Singh, Harpreet Sharma and Sumeer Singh with their respective weapons. They also broke and smashed many goods of the applicant's office. On raising alarm, the private respondents fled away from the spot, but while leaving, respondent No. 2-Rohit Syal snatched away gold chain of the applicant, whereas, respondent No. 6-Amarjit Singh @ Ambi took away ₹ 27,000/- from the drawer of the office table.

2. On appraisal of evidence, the trial Court did not find itself convinced with the prosecution story and thus, acquitted the private respondents vide impugned judgment dated 26.10.2015.

3. Being aggrieved, the applicant has filed the instant application under Section 378(4) Cr.P.C. seeking leave to file the accompanying appeal.

4. Learned counsel for the applicant contended that the impugned judgment is based on surmises and conjectures. The medical evidence led by the prosecution in the shape of deposition of PW-12 Dr. Seema Sharma, has fully corroborated the prosecution story and thus, the Court below has erred in acquitting the private respondents.

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

- (i) The alleged occurrence took place at 11.00 P.M. on 13.04.2014, whereas medico-legal examination of Bhanu Patap Singh was conducted around 03.55 P.M. on 14.04.2014 i.e. after unexplained delay of 17 hours, though as per FIR it was he, who had shifted the applicant immediately to the hospital after the

occurrence. Had Bhanu Partap Singh suffered any injury, in that eventuality, he would have also got medico-legally examined himself without any delay with the applicant at 12.25 A.M. on 14.04.2014 itself. More so, four injuries in total were found on the person of Bhanu Partap Singh, out of which one was superficial abrasion on elbow and the other three were simple complain of pain. Thus, the aforesaid injuries can safely be termed as self-suffered. Beside it, two head injuries were found on the person of the applicant which are attributed to respondents to 2 and 8. These injuries were kept under observation and CT Scan of the same was got conducted after 16 days on 29.04.2014. Aforesaid CT Scan report is surrounded by suspicious circumstances, because after medical examination of the applicant, he was immediately taken away by his relatives from Civil Hospital against writing Ex. D-4 for CT Scan test from outside the hospital, but no such CT Scan report ever saw the light of the day, either during the investigation or trial.

- (ii) Similarly, X-ray examination of the head injury of applicant-Rajan Gupta was recommended and done in Civil Hopsital, Pathankot within one or two days of the occurrence, but no such X-ray report was brought on record for the reasons best known to the prosecution, which requires to draw an adverse inference that the

things did not happen in the manner as narrated by it. Even otherwise, PW-12 Dr. Seema Sharma, could not give any specific opinion about the weapon allegedly used in causing injuries to the applicant. More so, the prosecution has miserably failed to prove that any injury suffered by the applicant was dangerous to life. Hence, the ingredients of Section 307 IPC were not proved.

- (iii) The present case is a cross-version. Private respondents had also received injuries, but the applicant and his companions concealed this fact, while lodging the FIR. PW-3 Dr. Sunil Chand has admitted that while medico-legally examining the applicant, respondent No. 4-Jaswinder Singh @ Golu, respondent No. 6-Amarjit Singh @ Ambi and Kuldip Singh (Proclaimed Offender) were also medico-legally examined. There was one incised wound on the head of respondent No. 4 measuring 2 cm x ½ cm on the right parieto occipital region of skull; similarly, respondent No. 6 had also suffered same size of injury on occipital of skull. Two incised wounds were found on the skull of Kuldip Singh (Proclaimed Offender) vide MLRs Ex. D-1 to Ex. D-3, respectively. There is no explanation from the side of the prosecution about aforesaid serious head injuries received by the respondent side. The above concealment by the prosecution assumes significance, more particularly, when the place of occurrence remained

doubtful. According to the private respondents, the occurrence took place in Ganga Dhaba, whereas the applicant has come out with a story that the same took place in his office.

- (iv) According to the complainant, the glasses of the door and center table of the office of the applicant were broken by the respondent side. Blood had also oozed out from the injuries of the applicant. However, no blood stains were lifted from the spot by the Investigating Officer. Even pieces of broken glass were also not taken into possession which has rendered the prosecution case doubtful, because of suppression of very genesis of the occurrence.
- (v) There are major omissions and contradictions in the statements of the prosecution witnesses. Statement of PW-7 Bhanu Partap Singh was recorded by the police around 3.30 P.M. on the very next day of the occurrence much earlier to the statement of the applicant which was recorded at 5.30 P.M. However, there is no explanation that why the FIR was not registered on the statement of Bhanu Partap Singh itself, which fact shows that the true version was narrated by him, but the same was suppressed and a concocted version was introduced in the statement of the applicant.
- (vi) No cross-case was registered against the complainant party even after coming to know that they have also

caused injuries to the private respondents. If the prosecution story is analyzed from this angle, the only irresistible conclusion which can be arrived at is that the prosecution story is false.

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

7. The instant application, being completely devoid of any merit is dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

May 17, 2016

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