

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.9525 of 2016 and
CRM-A-553-MA-2016
DATE OF DECISION: May 20,2016

Bhajan Singh

...Applicant

Versus

State of Punjab and others

...Respondents

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

Present: Mr.Naresh Kumar Manchanda, Advocate for the
applicant.

RAMENDRA JAIN, J.

CRM No.9525 of 2016

Sufficient cause has been shown to condone the
delay in filing the accompanying application for leave to
appeal.

Accordingly, the application is allowed. The delay
of 13 days in applying for leave to appeal is condoned.

CRM-A-553-MA-2016

The instant application under Section 378(4) CrPC
has been filed by applicant Bhajan Singh, seeking leave to
file the accompanying appeal against acquittal of the
respondent Nos.2 to 8 vide impugned judgment dated
28.9.2015 passed by the learned Additional Sessions Judge,
Ferozepur.

According to the applicant, they were two unmarried brothers. Paramjit Kaur-wife of respondent No.2 was having illicit relations with him. Resultantly, two years back, she was given beatings by her husband and thus she was residing in her parental home at village Achhiwara. Paramjit Kaur used to call him in the night to meet her at the outer side of the electric motor. After enjoying there, they used to go back to their respective homes. On 27.4.2012, Paramjit Kaur called the applicant to meet at the same place but he declined to meet her. Juvenile Nirmal Singh was aware of the above fact, who, forced him on mobile to meet her. Consequently, around 10/11.00 p.m., the applicant along with said Nirmal Singh reached there and talked on mobile with Paramjit Kaur. While they were proceeding towards the said motor, the applicant heard some noise. In the torch light, he saw that respondent No.2 armed with Kirpan and respondent No.7 with kappa along with 4/5 persons armed with dangs, kappa and kirpan coming there. Respondent No.2 raised lalkara to teach a lesson to the applicant for flirting. Respondent No.7 gave a kappa blow on his head. Whereupon, Paramjit Kaur raised alarm to not to beat the applicant. However, still respondent No.2 gave a kirpan blow on his head. Resultantly, the applicant fell down. Respondent Nos.2 and 7 again gave

kirpan and kappa blows. In order to protect from pounced blows, the applicant raised his arm and received injuries on his wrist joint. The unidentified persons had also given kirpan and kappa blows on his right and left arms and left ear. The respondents also chased Paramjit Kaur. However, she skipped to her house. The applicant was thrown there. After some moment, the applicant came on the road and found that Nirmal Singh had fled away from the spot on his motor-cycle. The respondents had also skipped with their respective weapons. This incident had taken place on the information leaked by Nirmal Singh to respondent No.2 and others. The applicant was taken to the Civil Hospital, Ferozepur for treatment.

On the basis of above information, FIR was registered. Investigating Agency swung into action. Statements of witnesses were recorded. The respondents were arrested. They were put on trial under various Sections of the Indian Penal Code.

During the pendency of proceedings, Nirmal Singh was declared juvenile, therefore, separate proceedings were conducted against him before the Juvenile Justice Board. Respondent Nos.2 to 8 were charge sheeted under Sections 307,326,324,323,148,149 IPC.

On appraisal of evidence, the trial Court did not find itself convinced with the prosecution evidence and, thus, acquitted respondent Nos.2 to 8 vide impugned judgment dated 28.9.2015.

Learned counsel for the applicant argued that the impugned judgment is based on surmises and conjectures. The injuries suffered by the applicant were duly corroborated by the medical evidence. The presence and participation of the private respondents in the commission of crime was clearly established, therefore, the trial Court ought to have convicted them.

After giving our thoughtful consideration to the submissions of learned counsel for the applicant, we find the present application completely merit-less for the reasons to follow.

- (i) Admittedly, the applicant was having illicit relations with Paramjit Kaur wife of respondent No.2-Makhan Singh. On the fateful day i.e. 27.4.2014, while they were proceeding for enjoyment as usual, the applicant was subjected to beatings by respondent Nos.2 and 7 and some unidentified persons. The cause of assault by respondent Nos.2 to 8 was illicit relations.

However, the above version of the applicant about cause of assault lacks credence, because he could not prove his alleged illicit relations with respondent No.8-Paramjit Kaur wife of respondent No.2 Makhan Singh, nor, she came with the above version that she was having such relations with the applicant. Even her husband Makhan Singh never made any complaint against the applicant for having such relation with his wife. Thus, the prosecution story suffers from positive evidence and the reason for the assault was not proved.

- (ii) No test identification parade was conducted to find out as to who were the unidentified assailants. Consequently, it can safely be inferred that the unidentified persons were roped falsely in the case.
- (iii) The medical evidence does not corroborate the injuries allegedly received by the applicant. The applicant testified that all the accused had given five injuries each on his person. Contrary to it, as per testimony of PW4 Dr.Rajinder Manchanda, there were total eight injuries on the person of applicant. If the alleged injuries of the applicant are multiplied, then they would become more than

three times. Hence, the ocular version is entirely contradictory to the medical evidence. More so, there is unexplained delay of four days in lodging the FIR.

The evidence appreciated by the trial Court is based on thorough and deep examination of the witnesses and thus, is not liable to be disturbed.

In view of the aforesaid discussion, we find no merit in the present application and, therefore, the same is hereby dismissed. Leave to appeal is declined.

T.P.S.MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

May 20,2016
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