

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-79-MA-2016

Date of decision: 28.04.2016

Kuldeep Singh

..... Applicant

Versus

Palwinder Singh 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. Manoj Kumar, Advocate
for the applicant.

RAMENDRA JAIN, J.

On the private complaint filed by the applicant, the respondents were charge-sheeted and tried under Sections 307, 341, 323, 506 read with Section 34 of the Indian Penal Code (IPC), on the allegations that even after demarcation of land by the Gram Panchayat and providing the passage adjoining to the drain and his land to the respondents, they encroached upon his land and kept on using the same as their passage. On his raising objection, around 2.30 P.M. on 02.06.2006, when the applicant was working in his fields, the respondents by hatching a criminal conspiracy with each other and with an intention to kill him, forcibly trespassed into his fields. Respondents

No. 2 and 3, namely, Karamjit Singh and Baljinder Singh @ Sonu were armed with dangs. Respondent No. 2 was also having a rope in his hands. The respondents made the applicant captive by not allowing him to move anywhere even in his own fields. After raising lalkara by respondent No. 2, all the respondents started beating the applicant. Respondents No. 1 and 3, caught-hold of the applicant from his arms and respondent No. 2 put the rope around his neck with an intention to kill him. Hue and cry of the applicant attracted Bhupinder Singh and Randhir Singh on the spot, who rescued the applicant from the clutches of the respondents. The applicant was shifted to Civil Hospital, Sahnewal and was medico-legally examined according to which five injuries were found on his person which he had received at the hands of the respondents.

2. On appraisal of applicant's evidence and hearing learned counsel for both the sides, the learned trial Court did not find itself convinced with the same and, thus, acquitted the respondents vide impugned judgment dated 25.08.2015.

3. Being aggrieved, the applicant has filed the present 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 trial Court has failed to appreciate the evidence led by the applicant that respondents No. 1 and 3 had caught-hold of him from his arms and respondent No. 2 had put a rope around his neck with an intention to kill

him. He was also beaten up by them. The testimony of the applicant was duly corroborated by independent witnesses. The Court below erred in ignoring the fact that the applicant had received five injuries on his person, out of which injury No. 4 was circular reddish contusion around the neck, which was sufficient to draw an inference that the respondents had every intention to commit his murder.

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) Undisputedly, the applicant had filed his complaint before the trial Court after 5½ months of the occurrence without any explanation that what refrained him for not filing the same promptly.
- (ii) In his testimony as PW-3, Randhir Singh, who tried to support and corroborate the applicant's version admitted his enmity with the respondents as on the complaint of respondent No. 1, he was convicted by the Court. Hence, he can safely be termed as interested witness.

From the testimony of PW-3 Randhir Singh, it is not clearly established on record that whether he had witnessed the occurrence or had reached at the spot thereafter, because the applicant in his cross-examination had testified that he had mentioned in his complaint that on seeing the witnesses coming

from village, the respondents ran away from the spot.

PW-3 Randhir Singh was not examined in the preliminary evidence and, thus, he could not have been examined during trial before the trial Court, after commitment of the case in after-charge evidence. Hence, his deposition in terms of the provisions of Section 202 Cr.P.C. is of no avail. If testimony of PW-3 is not taken into consideration, then the deposition of applicant remains uncorroborated.

(iii) Admittedly, upon the application Ex. P-4 of the applicant, the police had conducted the proceedings under Sections 107 and 151 IPC against him as well as against the respondents.

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

7. In view of discussion above, the instant application, being completely devoid of any merit is dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

April 28, 2016
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