IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No. A-85-MA of 2015
Date of Decision : May 26, 2016

Surinder Singh

.....Applicant

VERSUS

State of Punjab and others

.....Respondents

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

Present : Mr. P.L. Singla, Advocate
for the applicant.

Dr. Deipa Singh, Additional Advocate General, Punjab
for respondent No.1-State.

Mr. M.S. Rana, Advocate
for respondents No. 2 and 3.

Respondents No.4 and 5 in person.

T.P.S. MANN, J.

Complainant-Surinder Singh has filed the present application under Section 372 read with Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment dated 30.8.2014 passed by the Judicial Magistrate 1st Class, Phagwara whereby the accused/respondents No. 2 to 5 stood acquitted of the charges under Sections 452/323/34 IPC.

The case of the prosecution, in nutshell, is that the house

SATISH KUMAR
2016.05.31 10:31
I attest to the accuracy and
authenticity of this document
Chandigarh

of accused Avtar Singh and his wife Sukhwinder Kaur, adjoined that of the complainant. The common wall in-between the two houses did not have sufficient height and, thus, people sitting in one house would be visible to those sitting in the other house. The complainant wanted to raise the height of the wall but Avtar Singh and Sukhwinder Kaur did not allow him to do so. The dispute went to the village Panchayat where the parties were directed to raise the height of the wall with common funds. However, both, Avtar Singh and Sukhwinder Kaur, refused to contribute their share. Accordingly, the complainant decided to raise the wall in his own house but adjoining the common wall. On 2.3.2009 at about 9.30 a.m. when the complainant was constructing the wall in his own property, all the accused illegally and forcibly entered his house. At that time, Avtar Singh, Sukhwinder Singh and Pardeep Singh were armed with dangs, while Sukhwinder Kaur was empty handed. They stopped the complainant from constructing the wall. The complainant tried to make the accused understand that he was constructing the wall in his own property but that had no effect on the accused. Sukhwinder Kaur raised a lalkara to teach a lesson to the complainant for raising the wall, besides, threatening to kill him. Avtar Singh gave dang blow to the complainant, which struck on the right side of his head. Avtar Singh gave another blow to the complainant but the latter raised his hands in order to save himself. In the process, the blow

SATISH KUMAR
2016.05.31 10:31
I attest to the accuracy and
authenticity of this document
Chandigarh

landed on his left hand. Sukhwinder Singh gave two dang blows on the left leg of the complainant just below the knee. Sukhwinder Singh gave another dang blow on the lower left leg. Sukhwinder Kaur gave two blows with the bricks, which hit the complainant on his left leg and right knee. Pardeep Singh gave three dang blows on the back of the complainant. The alarm raised by the complainant attracted his mother Jagir Kaur, Manohar Singh and Joginder Singh. All the accused, thereafter, ran away from the place of occurrence with their respective weapons.

After recording the preliminary evidence, the accused were summoned for the aforementioned offences. In pre-charge evidence, the complainant examined himself as CW3, besides Dr. Anita Dadra as CW1, HC Angrej Singh as CW2 and Jagir Kaur as CW4. Thereafter, the accused were charged, to which they pleaded not guilty and claimed trial. In post-charge evidence, the accused cross-examined CW1 Dr. Anita Dadra, CW3 complainant Surinder Singh and CW4 Jagir Kaur.

When examined under Section 313 Cr.P.C., the accused pleaded that they were innocent and falsely involved in the complaint as Sukhwinder Kaur had lodged FIR No.59 dated 24.3.2009 against the complainant and his father Karnail Singh. In defence, they examined ASI Paramjit Singh as DW1.

SATISH KUMAR
2016.05.31 10:31
I attest to the accuracy and
authenticity of this document
Chandigarh

The trial of the case ended with the acquittal of the accused/respondents.

Having heard learned counsel for the parties and on going through the impugned judgment of acquittal, this Court finds that though the alleged occurrence had taken place on 2.3.2009 yet the complaint was filed on 15.5.2009, i.e. almost after two months from the date of occurrence. No explanation, whatsoever, is coming forth to explain the delay in filing of the complaint. Further, according to the complainant, he had received two injuries with bricks but during cross-examination, he stated that no injury was caused with the brick-bat. He, once again, reiterated that two injuries were caused to him by brick-bat but went on to state that the brick-bat was never given to the Panchayat or produced in the Court.

It is also the case of the complainant that he remained admitted in the hospital for seven days and his statement was recorded after four days. His X-ray was also conducted but report in that regard has not been placed on the judicial file. Similarly, CW4 Jagir Kaur testified that though the complainant went to the Police Station with the same clothes which he was wearing at the time of occurrence and stained with blood but the same were not taken into possession. She tried to explain it away by stating that the clothes

SATISH KUMAR
2016.05.31 10:31
I attest to the accuracy and
authenticity of this document
Chandigarh

could not be given to the police as she had washed them. The prosecution case is, thus, highly doubtful and untrustworthy.

It may also be mentioned here that cross-case, arising out of the same occurrence, was initiated against the complaint party on the basis of FIR got registered at the instance of accused Sukhwinder Kaur. As a counter-blast to the same, the complainant had filed the criminal complaint against the accused persons.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal passed by the trial Court.

The application is without any merit and, therefore, dismissed. Special leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

May 26, 2016
satish

SATISH KUMAR
2016.05.31 10:31
I attest to the accuracy and
authenticity of this document
Chandigarh