

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-A No.1039-MA of 2016
Date of decision: 7th September, 2017

Davinder

... Applicant/Appellant

Versus

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sachin Mittal, Advocate for the applicant/appellant.

FATEH DEEP SINGH, J.

In this appeal under Section 378(4) of the Code of Criminal Procedure, appellant Davinder who initially was the complainant had filed a criminal complaint leading to registration of case FIR No.54 dated 26.02.2010 under Sections 323/341/427/506/34 IPC pertaining to Police Station K. Daula, Gurgaon. The brief allegations in that case were to the effect that on 25.02.2010 when he was returning to his home from Manesar in car bearing registration No.HR-26-AX-0345 around 8.00/8.20 p.m. in the area of village Badha, two young persons came on a motor-bike and overtook his car and after stopping, threatened him to hand over the keys of the car and in the process one of the boys broke open the windscreen with an iron rod and thereafter, locking the car and giving injuries to the complainant, ran away and who were subsequently identified as Sonu and Monu and were prosecuted in this case before the learned Judicial Magistrate 1st Class, Gurgaon who through judgment

dated 04.02.2014 convicted them under Sections 323/506/34 IPC and sentenced them to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.1000/- each and in default of payment of fine to further undergo simple imprisonment for one month under Section 323 IPC whereas under Section 506 IPC both the accused were sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- each and in default to further undergo simple imprisonment for one month.

The same was challenged before the Court of learned Sessions Judge, Gurgaon and through impugned judgment dated 06.04.2016 learned Additional Sessions Judge, Gurgaon accepted the appeal of the convict/appellants holding that the prosecution has failed to prove the case leading to setting aside of the judgment of conviction and acceptance of the appeal and thereby acquitting the accused of the charges so levelled against them. The same is subject matter of present appeal before this Court.

Upon hearing learned counsel for the appellant Mr. Sachin Mittal, Advocate and perusal of the records, it is the own stand of the complainant victim at the time of trial that the accused were not known to him and thus, a moot question over the very identity of the assailants has come forth. The Court has observed doubts over how the identity of the accused had subsequently come about which remained totally uncorroborated and unsubstantiated, and has denounced the manner of the evidence by which the prosecution has sought to claim that the

accused had loudly called out names of each other together with the fact that it is there in the investigations that initially there was one person and which story stood discarded and two persons have been brought about as the culprits together with the fact that upon examination of the place of occurrence by the investigating officer, the very presence of the vehicles at the spot was not made out and even the car in which the complainant claims he was travelling and was locked and left behind by the culprits as alleged, was not found; has led the Court doubting the very veracity and truthfulness of these accusations. From the evidence what has come about before this Court from the records of the Courts below, it is quite difficult to differ with the findings of the impugned judgment. The impugned judgment is well reasoned, duly substantiated and is legitimately correct appreciation of evidence and the law. Learned counsel for the appellant could not impress this Court in any manner. Thus, in the totality of the same, impugned findings need to be upheld and therefore, no case for grant of special leave to appeal to the appellant/complainant is made out. The appeal thus, stands dismissed in limine. Records be sent back forthwith.

(FATEH DEEP SINGH)
JUDGE

September 7, 2017
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No