

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1107-MA of 2016 (O&M)

DATE OF DECISION: APRIL 24, 2017

GAJENDER

...APPLICANT

VERSUS

OMPAL AND ANOTHER

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASHI.**

PRESENT: MR. MUKESH YADAV, ADVOCATE FOR THE APPLICANT.

M. JEYAPPAUL, J.

CRM-18809-2016

1. There is a delay of 612 days in filing the appeal. The applicant sought special leave to file an appeal on 1.7.2014. The delay of 612 days had occurred due to the objections raised by the Registry and the consequent steps taken by the applicant to remove the objections. As the above delay is found to be *bona fide* and unintentional, the application is allowed and the delay is condoned.

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2. Complainant Gajender has filed the present application invoking the provisions under Section 378(4) Cr.P.C. seeking special leave to file an appeal against the acquittal of respondent No.1 Ompal who was charged under Section 436 IPC.

3. The case of the prosecution is that on 6.1.2014 at about 1.00 a.m., complainant Gajender came to know that there was a fire in his house.

On arrival to the spot, the complainant and his family members came to know that accused Ompal had done the mischief. It was alleged that the accused had committed mischief due to an old rivalry, for, the complainant got registered a complaint earlier against the accused on 27.12.2013.

4. On the side of the prosecution, 6 witnesses were examined. PW1 Daya Nand @ Daya Ram was a resident of the same village where the complainant resided. He had deposed that he came to the scene of crime on learning about the fire incident. The complainant and others also gathered at the house of the complainant. Fire brigade service was also requisitioned.

5. PW2 Rajender Kumar Verma was the Draftsman who prepared scaled site plan on the demarcation of ASI Balwant Singh.

6. PW3 Head Constable Mahabir Singh had registered a formal first information report Ex.PW3/B on the basis of the complaint given by PW5 Gajender.

7. PW4 ASI Balwant Singh who was the investigating officer in this case reached the house of PW5 Gajender and called the fire brigade and got the fire under control. He recorded the statements of the witnesses. Thereafter, SI/SHO Baljeet Singh prepared final report under Section 173 Cr.P.C. and filed it before a competent Court.

8. PW5 Gajender was the complainant who deposed that he reached his old house which was set on fire on 6/7.1.2014 and on an enquiry, came to know that accused Ompal had played mischief by setting on fire on his house due to a previous enmity.

9. PW6 Raju has deposed that he received an information about

the fire in the old house of PW5 Gajender. Many persons gathered at the spot including the complainant. He has also deposed that while he was coming to his house after attending marriage party, he saw accused Ompal causing mischief by fire to the old house of PW5 Gajender by pouring kerosene oil. When he tried to stop accused Ompal, the latter threatened him with dire consequences. He made a telephonic call to Gajender regarding the fire incident.

10. Accused Ompal in his statement under Section 313 Cr.P.C. has pleaded that a false case was foisted on him.

11. Learned counsel appearing for the applicant vehemently submitted that the evidence of PW6 Raju who was examined as an eye witness to the fire incident has been completely ignored by the trial Court. It is his submission that the evidence of PW6 Raju establishes the charge framed against the accused under Section 436 IPC. Referring to the evidence of PW5 Gajender, the complainant in this case, he further submitted that previous motive for the mischief by fire committed by accused was also established. Therefore, it is his submission that the applicant may be granted special leave to prefer an appeal.

12. We carefully went through the entire evidence on record.

13. PW6 Raju was the star witness in this case. The prosecution has projected him as an eye witness to the occurrence. Even the complainant was not present at the time when his old house was set on fire. Only on receipt of an information, he had descended on the scene of crime. If the evidence of PW6 Raju does not prove the case of the alleged mischief

by fire committed by accused, the case of the prosecution will crash to the ground.

14. We thoroughly perused the entire records in the background of the submissions made by learned counsel appearing for the applicant.

15. In the statement under Section 161 Cr.P.C. suffered by PW6 Raju, he had categorically stated that on descending to the scene of crime after hearing about the incident when he was at his house, he gathered an information that it was only Ompal who committed mischief by setting his house on fire. But unfortunately, PW6 Raju has come out with a self-contradictory version before the trial court. He has stated that he was at his house at the time when the occurrence took place. On hearing about the fire incident at the old house of PW5 Gajender, he rushed to the place where PW5 Gajender arrived on hearing the incident. In the next breath, he deposed quite against the stand he had taken in his statement under Section 161 Cr.P.C. before the investigating official that when he was coming to his house after attending a marriage party, he saw Ompal setting fire to the old house of PW5 Gajender and when he objected to such a nefarious act, the accused threatened him with dire consequences. Such a cock-and-bull story reeled out by PW6 quite against his original stand during the course of investigation will have to be totally rejected by the Court of Law.

16. A witness is not supposed to project a new theory for the first time before the Court. Such a projection would definitely throw a doubt on the veracity of such a witness. The stand originally taken by PW6 Raju and a self-contradictory new version projected during the course of trial create a

dent in the credibility of his testimony. Therefore, in our considered view, the trial Court has rightly rejected the evidence of PW6 Raju who was the star witness in this case to record acquittal.

17. We do not find any merit in the application seeking special leave to prefer an appeal. Leave sought for is declined and the application is accordingly dismissed.

(M. JEYAPPAUL)
JUDGE

April 24, 2017
Gulati

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether Reportable : No

Whether Speaking/Reasoned : Yes