

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

**CRM-A-1788-MA of 2016 (O&M)
DATE OF DECISION :- January 13, 2017**

State of Haryana

...Appellant

Versus

Balbir and others

...Respondents

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASHI

Present:- Mr. Kapil Aggarwal, Additional Advocate General, Punjab
for the appellant.

M.JEYAPPAUL, J.

CRM No. 31239 of 2016

Heard.

There is a delay of 156 days in filing the appeal. For the reasons set out in the application, delay is condoned and the application is allowed.

CRM-A-1788-MA of 2016

1. Accused Balinder, Annu, Balbir, Om Parkash, Sazid and Surender were sent up to face the trial for the commission of offences punishable under Sections 323, 324, 452, 506, 302, 148, 149 & 120B of the Indian Penal Code and Sections 25 of the Arms Act. Accused Om Parkash died during the pendency of trial. Therefore, the charges qua him abated. Accused Balbir, Sazid and Surender were acquitted of the charges. Therefore, the State has filed the present application invoking the provision under Section 378(3) Cr.P.C. praying for grant of leave to file appeal.

2. It is the case of the prosecution that on 30.04.2014 at about 6.00 A.M. when deceased Ramesh was sitting on a cot in the corridor of his house, accused Balinder @ Gathu who was armed with a knife attacked Ramesh in his stomach and accused Annu who was also armed with a knife dealt a blow on the leg of Ramesh. PW1 Surat Singh, PW2 Surender and PW5 Bimla witnessed the occurrence. Based on the facts narrated by PW2 Surender, PW1 Surat Singh suffered supplementary statement that accused Balbir, Sazid and Surender also were involved in the occurrence.

3. The medico legal report Ex.P3/A discloses that deceased Ramesh suffered a stab wound in his abdomen, an incised wound on the left axillary part and another incised wound on the left knee. PW3 Dr. Yogesh Goel has stated that no injury on the deceased was caused by blunt weapon. He has further stated that Ramesh was admitted to hospital with the previous history of assault at his nose. PW1 Surat Singh, PW2 Surender and PW5 Bimla had deposed that accused Sazid delivered a helmet blow on the nose of Ramesh. PW6 Dr. Tarun Dagar and PW10 Dr. Vincent Merry conducted post mortem on the dead body of Ramesh and issued a report Ex. P7.

4. The Court is not concerned with the conviction and sentence passed by the trial Court on accused Balinder and Annu. The challenge has been made by the State against acquittal of the accused Balbir, Sazid and Surender.

5. We heard the submissions made by learned counsel appearing for the State of Haryana. He vehemently submitted referring to the evidence of PW1 Surat Singh, PW2 Surender and PW5 Bimla that there is material evidence to establish that accused Blabir, Sazid and Surender also participated in the occurrence. Accused Sazid and Surender, who were armed with a helmet

and Danda respectively also caused injuries to the deceased. Therefore, the trial Court has miserably failed to appreciate the ocular testimony available on record.

6. We went through the case file in the light of the above submission made by the learned counsel appearing for the State of Haryana.

7. PW1 Surat Singh was the complainant in this case. He suffered a statement which was registered as First Information Report that on 30.04.2014 at about 6.00 A.M. accused Balinder who was armed with a knife, attacked Ramesh in his stomach and accused Annu who was also armed with a knife delivered a knife blow on the leg of Ramesh. It is to be noted that PW1, who was an eyewitness to the occurrence never whispered anything about the role of accused Balbir, Sazid and Surender in his First Information Report. He comes out with the role of these accused in his supplementary statement suffered on 2.5.2014 on the basis of the facts narrated to him by PW2 Surender. It is not as if PW1 came out with a statement that some unknown persons were also involved in the occurrence. He had specified only two accused, namely, Balinder and Annu as the persons who attacked Ramesh. The supplementary statement suffered by the first informant just based on the facts narrated by PW2 Surender loses its credibility. Lack of attribution to accused Balbir, Sazid and Surender in the First information Report creates a doubt in the case of the prosecution as regards their role subsequently cooked up by the witnesses. It is the case of the prosecution that the complainant party had a grudge against the accused party. Therefore, there was every possibility for false implication of these accused.

8. Accused Balbir was not attributed with any injury on the deceased as it was projected that he was empty handed. The evidence of PW1, PW2 and

PW5 discloses that Sazid attacked the deceased with the helmet on the nose and Surender attacked the deceased with danda. The evidence of PW3 Dr. Yogesh Goel, who medico legally examined the deceased, completely disproves the evidence of PW1, PW2 and PW5. PW3 has categorically stated that the deceased had suffered nose injury in the previous occurrence. Further, it is found that there were no bruises or laceration found on the dead body of Ramesh. Therefore, in our considered view, accused Balbir, Sazid and Surender had been implicated as an after thought by the complainant party. No legal evidence is available on record to bring home the charges to the above accused. The trial Court has rightly acquitted accused Balbir, Sazid and Surender. We do not find any merit in the present application seeking leave to file appeal. Therefore, the prayer seeking leave to appeal is declined and the application is dismissed.

(M. JEYAPPAUL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

January 13, 2017
p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No