

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

**CRM-A No.1801-MA of 2016 (O&M)
Date of decision: 15.09.2017**

Chatwinder SinghApplicant/Appellant
Versus
State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ranjan Lakhanapl, Advocate
for the applicant/appellant.

ARVIND SINGH SANGWAN J. (Oral)

Heard.

Leave to appeal granted.

Registry is directed to number the same as main appeal.

This is an appeal filed against the judgment dated 26.02.2015 vide which the trial Court has acquitted the respondents/accused in complaint No.259 of 28.08.2008 registered under Sections 341, 323, 506, 148 and 149 of the Indian Penal Code, 1860 (in short 'IPC').

The present appeal has been filed along with an application under Section 5 of the Limitation Act praying for condoning the delay of 515 days.

Brief facts of the case are that the appellant/complainant filed a criminal complaint on the allegation that initially one FIR No.610 dated 04.12.2000 under Sections 341, 323, 506, 148 and 149 IPC was registered at Police Station Civil Lines, Patiala against the accused persons, however, the police on enquiry submitted a cancellation report in the Court which was accepted vide order dated 29.11.2003 passed by the then Chief Judicial Magistrate, Patiala.

Thereafter, the appellant/complainant filed a petition before this Court for setting-aside the order dated 29.11.2003 and vide order dated 10.05.2006 this Court set-aside the said order with a direction to the trial Court to decide the matter afresh after allowing the complainant to file a protest petition.

As per the allegation in the complaint, on 04.12.2000 the complainant along with his cousin had gone to House No.6, Malwa Colony, Patiala where 04 boys were playing loud music and were eating, drinking and dancing. At about 11:30 PM, the accused persons came, armed with sticks and assaulted the complainant as per the details given in the complaint.

The complainant approached the Deputy Commissioner on 20.05.2001 after about 06 months and submitted a representation that the police is not taking any action and, thereafter, he submitted the complaint to various authorities and the police instead of arresting the accused persons has submitted the cancellation report. Thereafter, the complaint was filed.

In pre-charge evidence, the complainant examined himself as PW1, an eyewitness namely Harvinder Singh as PW2 and Dr. Darshanjit Singh Walia as PW3. Thereafter, the trial Court vide its order dated 29.11.2014 closed the pre-charge evidence.

The accused persons were summoned, charge-sheeted and they prayed for cross-examination of the witnesses in pre-charge evidence. After production of the aforesaid 03 witnesses in the after charge evidence. Again, the evidence was closed by the Court vide its order dated 15.01.2015. Thereafter, the statement of accused under

Section 313 of the Code of Criminal Procedure (in short 'Cr.P.C.') was got recorded.

The respondents/accused in their defence evidence examined one Mukhtiar Singh as DW1 who deposed that on 03.12.2000 he was present in his house and heard loud music at about 11:00 PM and he noticed that the music was being played at the house Parminder Kaur and some people were present and had organized a party on the first floor of her house. The people of the locality tried to pacify them but they did not pay any heed and, thereafter, the accused – Iqbal Singh and Gurbans Singh Punia reached there who are also resident of the neighbouring locality. They tried to pacify the boys and in the meantime, the police arrived. On seeing the police party, few boys ran away by jumping from the first floor whereas the appellant/complainant – Chatwinder Singh who was drunk while jumping from the porch, on the floor hit against the gate and fell down and got hurt. The police arrested him and an FIR No.609 dated 03.12.2000 was registered in Police Station Civil Lines, Patiala which was produced on record as DW1/A. Thereafter, the trial Court after hearing counsel for the parties, acquitted the respondents/accused vide impugned judgment dated 26.02.2015. Hence, the present appeal has been filed.

It is submitted on behalf of the appellant that from the statement of PW1, complainant and PW2, eyewitness, the occurrence is proved and from the statement of PW3 – Dr. Darshanjit Singh Walia, the injuries sustained by the appellant/complainant is also proved. It is further submitted that FIR No.610 dated 04.12.2000 which was got

registered by the complainant against the accused persons was wrongly cancelled by the Police despite the fact that the appellant has suffered injuries at the hand of the accused persons.

After hearing counsel for the appellant and perusing the paperbook, I do not find any force in the contentions raised by the counsel for the appellant. Firstly, in the after charge evidence of the complainant, the eyewitness, Harvinder Singh Brar – PW2 did not turn up to face the cross-examination and as such, in view of the settled principle of law that the statement of an eyewitness who has not been cross-examined cannot be read into evidence, therefore, this evidence has no evidentiary value on the face of it. Secondly, it has also come on record that, in fact, the accused namely Iqbal Singh has also registered an FIR No.609 dated 04.12.2000 under Sections 294, 509, 506 read with Section 34 IPC against the complainant and the said FIR was registered as the appellant along with some other persons were found creating nuisance in a drunkard condition and, therefore, the version given by the appellant is contrary to the version given by the accused persons in FIR No.609 that the appellant while running from the spot had fallen down from the porch on a hard surface, hit the iron gate and sustained injuries. It is also a matter of record that the appellant – Chatwinder Singh and Parmatma Bhai Patel were arrested at the spot in FIR No.609 dated 04.12.2000 and at that time, the police did not find any weapon like stick, etc. from the spot to show that they were ever beaten up by the accused persons. Thirdly, the complainant has failed to explain the delay in lodging the FIR and filing the protest petition and he has not disclosed about causing of the injuries to the police officials

when he was caught by the police officials in pursuance to FIR No.609 on the same day at the spot. The version given by the complainant as PW1 is not corroborated by any other independent evidence and Dr. Darshanjit Singh Walia – PW3 has also deposed that the complainant was brought in the police custody for his medical examination.

The trial Court, with reference to the cross-examination of PW1 – Chatwinder Singh has held that there is a motive behind false implication of the accused persons as he has not denied that the accused – Gurbans Singh Punia on the complaint of one Mangat Rai has registered an earlier FIR No.401 dated 27.11.1999 under Section 61 of the Punjab Excise Act at Police Station Sadar, Patiala. The appellant further admitted that he is accused in FIR No.344 dated 27.09.2004 registered under Sections 308, 382, 379, 341, 427 and 325 IPC at Police Station Sadar Patiala along with Balwinder Singh registered on the complaint of aforesaid Mangat Rai and he was declared as proclaimed offender on 15.02.2003.

For the foregoing reasons, I do not find any merit in the judgment dated 26.02.2015 passed by the trial Court, acquitting the respondents/accused and accordingly, the appeal is dismissed.

Since the appeal is dismissed, the application for condonation of delay of 516 days is also dismissed as no proper explanation is given.

15.09.2017
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(ARVIND SINGH SANGWAN)
JUDGE

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