

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No.A-1248-MA of 2017

Date of Decision : August 24, 2017

Bakshish Singh

....Applicant

VERSUS

Satbir Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present : Mr. G.S. Sirphikhi, Advocate
for the applicant.

T.P.S. MANN, J.

The complainant, namely, Bakshish Singh has filed the present application under Section 378(4) of the Code of Criminal Procedure seeking grant of special leave to appeal against the judgment dated 25.1.2017 passed by the Judicial Magistrate 1st Class, Batala whereby the accused, namely, Satbir Singh and Jasbir Singh @ Jassi, respondents No.1 and 2 herein, stood acquitted of the charges under Sections 323/324/326/452/380/354/427/34 IPC.

According to the complainant, on 6.6.2010 at about 8:30 p.m., he, alongwith his sister Kulwant Kaur wife of Puran Singh and Maninder Kaur wife of Arjinder Singh, was present in his house when both the accused came in front of his house and started using filthy language

qua him. However, he did not react. After some time, both the accused, while armed with datar and dang, respectively forcibly entered his house by breaking open the door and launching an attack upon him with their respective weapons. Satbir Singh accused gave a datar blow to him but he saved himself by raising his right arm and as a result, the blow hit on his right arm. He fell down and on seeing this, Kulwant Kaur came forward to save him. Jasbir Singh accused caught hold of her from her hair and tore her clothes, besides slapping her. She also fell down on the ground. Both the accused gave kick blows to them. Jasbir Singh accused gave danda blow on the back of the complainant. Both the accused entered his house and picked up gold ornaments from the trunk lying in the room there which included gold chain of one tola and gold ring of half tola. When the complainant and Kulwant Kaur raised hue and cry, his son Sukhwinder Singh, who was standing at some distance, came running to the spot and saw the complainant and Kulwant Kaur lying on the ground. On seeing him, both the accused fled away from the spot while carrying their respective weapons.

After recording the preliminary evidence, the Judicial Magistrate 1st Class, Batala summoned the accused to face trial for the aforementioned offences. After securing the presence of the accused and recording pre-charge evidence, learned trial Court charged the accused of the aforementioned offences, to which they pleaded not guilty and claimed trial.

Having heard learned counsel for the applicant and on going through the impugned judgment, this Court finds that in order to prove the

charges against the accused respondents, the complainant had examined himself as CW3, his sister Kulwant Kaur as CW2 and his son Sukhwinder Singh as CW1. However, in their testimonies, learned trial Court has pointed out various contradictions, which has been referred to in para 16 of the impugned judgment. All those contradictions are material in nature and cannot be ignored by terming them as minor or trivial. Even Ashok Kumar, Laddi, Sagan and Babli, who had accompanied the injured to the hospital were not examined in the case. They were independent witnesses and could have corroborated the version of the prosecution as was brought on record by way of the testimonies of CW1, CW2 and CW3, who are closely related to each other. CW2 Kulwant Kaur did not allege that the commission of offence of assault upon her was made by the accused with an intention to outrage her modesty. As regards the offence under Section 326 IPC, it may be noticed that the Radiologist, who had conducted the X-ray examination was not examined by the prosecution. Even the X-ray films were also not produced on record. Merely because CW5 Dr. Mohinder Singh, who had given his reports Ex.C2 and Ex.C4 after going through the X-ray films are not sufficient to sustain the charge for the offence under Section 326 IPC. Injury No.1 on the person of Bakshish Singh was on non-vital part of his body and there is nothing on record to prove that there was a fracture due to that injury. Rather, it was a superficial bone cut and it cannot be concluded that it amounted to an injury as described under Section 320 IPC, which can be termed as grievous.

In support of the commission of offence under Section 380

IPC, no document has been produced on record by the prosecution that

such gold ornaments were owned by the complainant or lying in the trunk of his room. Though according to complainant Bakshish Singh, the said gold ornaments were purchased from a jeweller from village Balpurian, who had died and he was not in possession of the bill of those gold ornaments yet no evidence has been placed on record proving that any such shop of jeweler exist at village Balpurian, who could have sold the gold ornaments to the complainant. Even CW2 Kulwant Kaur and CW3 Bakshish Singh stated that they had not seen the accused carrying away the gold ornaments.

The accused were charged for committing the offence punishable under Section 427 IPC as well. However, there is no material available on record to show that the accused persons damaged his property worth Rs.50/- or more. Merely because the door of the house had been broken is not sufficient to make out commission of offence under Section 420 IPC.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal. The application is without any merit and, therefore, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

August 24, 2017
satish

(MAHABIR SINGH SINDHU)
JUDGE

Whether reasoned/speaking : YES / NO

Whether reportable : YES / NO