

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

**CRM-19531-2017 in/and
CRM-A-1372-MA-2017
Date of Decision: 09.08.2017**

State of Haryana

....Petitioner(s)

Versus

Raju and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ashok Muthreja, D.A.G., Haryana.

M.M.S. BEDI, J. (ORAL)

CRM-19531-2017

The instant application under Section 5 of Limitation Act is for condonation of delay of 196 days in filing the appeal.

For the reasons mentioned in the application, delay of 196 days in filing the appeal is condoned.

The misc. application is allowed.

CRM-A-1372-MA-2017

This is an appeal against the order of acquittal passed by the learned Additional Sessions Judge, Sirsa dated 11.08.2016 acquitting the respondents of the charge under Sections 307, 323, 506 read with Section 34 IPC.

As per story of the prosecution, the injuries had been caused by the respondents on the person of Subhash, who happens to be the nephew and real brother of the injured. The injured allegedly

received injuries at the hands of the respondents by a blunt weapon causing fracture on the parietal region. As per the MLR Ex.PA, there was no external injury found on the head, corresponding to injuries No.1 and 2 recorded in the MLR. The Court below has given the benefit of doubt to the respondents *inter alia* on the ground that the injured Subhash having received injuries in the alleged occurrence is highly doubtful. The relevant portion of the judgment reads as follows:-

“31. Therefore, it has become highly doubtful that injuries on the person of Subhash, as shown in C.T.Scan report dated 29.08.2013 as well as x-ray reports dated 29.08.2013 and 23.12.2013 and declared dangerous to life, were received by the injured in the alleged occurrence dated 27.08.2013, more particularly, when there was no mark of external visible injury on his person as per MLR dated 27.08.2013 (Ex.PA) proved by PW1 Dr.Sudeep Goyal. He was just complaining of pain but PW1 Dr.Sudeep Goyal, during his cross-examination has stated that complaint of pain in head/ parietal area, may be due to other reasons besides injuries.

32. Further, all the material witnesses examined by the prosecution are contradictory and discrepant on the material points. PW2 Om Parkash complainant on the one hand, has stated that Subhash was unconscious and they were apprehending that he has died and therefore, they immediately, rushed to the hospital. He stated that they started from village at 10.00 p.m. and reached at CHC Dabwali at 10.30 p.m. However, in next part of cross-examination, he has stated that he had not gone with Subhash on 27.08.2013 when he was first taken to CHC Dabwali and he does

not know who took Subhash to the hospital on 27.08.2013 and he came to know through Mange Ram when he came back that Subhash had received injury on his head. Whereas, injured Subhash has stated that his brother Om Parkash and nephew Mange Ram came at the spot and took him to CHC, Dabwali. He also stated that police met him on 29.08.2013 and recorded his statement at 12.00/1.00 p.m. whereas, PW8 ASI Rai Sahab has stated that he recorded the statement of Om Parkash at about 10.30 a.m. on 30.08.2013. During his cross examined by learned defence counsel, injured Subhash did not give any clear answer. He has stated in his cross-examination that police met him for the first time on 27.08.2013 but again said on 28.08.2013. He stated that he does not remember at what time police met him on 28.08.2013 but stated that police met him on 28.08.2013 in Govt. Hospital, Sirsa. He further stated that he does not know whether on 28.08.2013 the police had recorded the statement of Om Parkash and Mange Ram, or not. He further stated that when he reached at CHC Dabwali on 27.08.2013, he did not tell anything to the doctor because doctor was not available in CHC Dabwali. He further stated that he was not medico legally examined at CHC Dabwali on 27.08.2013. Further stated that on 27.08.2013 he did not go to any other doctor as from CHC Dabwali, he had come back to his house and stayed there. PW5 Mange Ram who took Subhash at CHC Dabwali, also supported the case of prosecution in his examination-in-chief. However, during his cross-examination, he has stated that doctor at CHC Dabwali had asked about the incident from Subhash but as he was unconscious, he could not tell anything. He stated that Subhash became unconscious on the way from their village. He further stated that on 27.08.2013 in the night Subhash remained present at home and on 28.08.2013 he was not taken to any

hospital and he remained throughout the day at his house. However, as per evidence of PW1 Dr.Sudeep Goyal, injured Subhash was conscious at the time of his medical examination and he refused to give his blood sample. Injured Subhash has stated that he did not consume alcohol at the time of occurrence and he never consumed alcohol in his whole life whereas PW2 Om Parkash has stated that Subhash consumes alcohol occasionally. PW1 Dr.Sudeep Goyal, also has testified that at the time of medical examination of injured Subhash, alcoholic smell was coming out from his mouth and he(Subhash) refused to give his blood sample. Further, PW5 Mange Ram, during his cross-examination, has stated that the police had met him on 30.08.2013 but as per evidence of Investigating Officer, PW5 Mange Ram met him on 29.08.2013 and told about the incident but he refused to give his statement and he (I.O.) recorded the statement of Om Parkash and Mange Ram on 30.08.2013. Keeping in view the above discussion, evidence of complainant/eye witness and injured, is not reliable and trustworthy to hold the accused guilty in this case.

33. Furthermore, the delay in giving the information given to the police regarding the occurrence, has not been explained satisfactorily. The alleged occurrence is of dated 27.08.2013 whereas the matter was reported to the police on 29.08.2013. PW8 ASI Rai Sahab (IO) has stated that he received information regarding the present case for the first time on 29.08.2013. Neither he received any ruqa on 27.08.2013 nor any eye witness of the case met him on 28.08.2013. He stated that Mange Ram met him on 29.08.2013 and when he asked to give a statement about the occurrence, Mange Ram refused to give his statement. As such, in the present case the delay in giving the information to the police, has not been explained and the same is fatal to the prosecution case.”

With the assistance of learned State counsel, we have reappreciated the medical evidence and taken into consideration various circumstances which have been considered by the trial Court and we are of the opinion that no error of law has been committed by the trial Court while granting the benefit of doubt to the respondents and acquitting them.

No ground is made out to interfere in the above mentioned reasonable approach of the Court below in appreciation of evidence. The leave to appeal is declined and the application is dismissed.

(M.M.S. BEDI)
JUDGE

August 09, 2017
ps-I

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No