

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

Criminal Misc.No. A-2108-MA of 2016

Date of Decision : March 22, 2017

Dharamvir

....Applicant

Versus

State of Haryana and others

....Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE H.S. MADAAN**

Present : Mr. Dilpreet Singh, Advocate for
Mr. Gautam Dutt, Advocate
for the applicant.

T.P.S. MANN, J.

Complainant-Dharamvir has filed the present application under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal against the judgment dated 24.10.2016 passed by learned Additional Sessions Judge, Palwal.

Vide impugned judgment, learned trial Court acquitted the accused/respondents of the charges under Sections 148 and 323, 325, 452, 506, 307 IPC read with Section 149 IPC.

According to the prosecution, the accused/respondents had caused injuries to complainant-Dharamvir, his son Viresh @ Yad Ram and one Sudesh at about 5.30 p.m. on 12.12.2011. Regarding the occurrence in question, FIR No.487 dated 17.12.2011 under Sections 148, 149, 323, 324, 325, 506 IPC was registered in the first instance of the accused party against the complainant and others. Accordingly, on the basis of statement made by

complainant Dharamvir, a cross case under Sections 148, 149, 323, 452, 506 IPC was initiated against the accused party vide DDR No.16. After receipt of X-ray report of Viresh @ Yad Ram, Sections 325 and 307 IPC were attracted and, accordingly, accused/respondents No.2 to 4 were arrested whereas accused respondents No.5 and 6 were found innocent. On completion of investigation, final report under Section 173 Cr.P.C. was submitted by the police against the accused/respondents No.2 to 4. This was followed by commitment of the case to the Court of Sessions where they were charged for the aforementioned offences, to which they pleaded not guilty. After the petitioner was examined as PW1, the prosecution moved an application under Section 319 Cr.P.C. for summoning, accused/respondents No. 5 and 6, besides six other but that application came to be dismissed by the learned trial Court on 21.11.2013. The said order was challenged by the complainant by filing a revision petition which was allowed qua respondents No.5 and 6 and they were summoned as additional accused to face the trial. All the five accused were, thereafter, charged for committing the offences punishable under Sections 148 and 323, 325, 452, 506, 307 read with Section 149 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined twelve witnesses. When examined under Section 313 Cr.P.C., the accused respondents denied the evidence of the prosecution and pleaded their false implication. In their defence, the accused examined six witnesses.

After hearing learned counsel for the parties and on going through the evidence available on the record, the learned trial Court after holding that both the sides had sustained injuries and none of them was coming forward to explain the injuries on other side and suppressing the genesis of the occurrence by not explaining true manner of the incident, thus, it was difficult to find out as to which party was the aggressor and which party acted to dispel the aggression. Accordingly, the trial Court concluded that the prosecution has not been able to bring home the guilt of the accused respondents beyond shadow of all reasonable doubt, acquitted them of the charges framed against them.

After hearing learned counsel for the applicant and on going through the impugned judgment, this Court finds that three persons, namely, complainant-Dharamvir, his son Viresh @ Yad Ram and one Sudesh had received injuries in the occurrence. However, there is no evidence on the file about the injuries sustained by three persons on the side of the accused. Both the parties appeared to have used deadly weapons. However, no attempt was made by the investigating agency to fix the place of occurrence as blood stained earth was not taken into possession from the spot. Further, none of the three injured accused, namely PW1 Dharamvir, PW3 Viresh @ Yad Ram and PW12 Sudesh has given any explanation as to why the matter was not reported to the police immediately. Rather, it was the accused party which had reported the matter to the police in the first instance and subsequently present cross-case was initiated against the accused

party. It may also be mentioned here that though according to PW3 Viresh @ Yad Ram, Jagdish had inflicted a Sariya blow on his right hand, whereas in his statement PW1 Dharamvir did not state about Jagdish accused causing injury to anyone. Further, PW3 Viresh @ Yad Ram stated that Purshotam accused assaulted on his head towards left side whereas, according to PW12 Sudesh, Puran accused had inflicted danda/hockey blow on his shoulder. PW1 Dharamvir did not state as to what weapon was carried by Purshotam. Still further, according to PW1 Dharamvir, he, alongwith the two injured and others, was sitting in the house of ex-Sarpanch whereas the accused party, while armed with lathies, dandas and Sariyas reached their and launched an attack upon him and two others but PW3 Viresh @ Yad Ram did not state as to who else was sitting in the house when the accused had entered and attacked upon him.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal passed by the learned trial Court.

The application is without any merit and, therefore, dismissed. Leave to appeal is declined.

March 22, 2017

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(T.P.S. MANN)
JUDGE

(H.S. MADAAN)
JUDGE

Whether reasoned/speaking : YES / NO

Whether reportable : YES / NO