IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-373-MA-2016
Decided on : - 22.11.2017

Kamal

. . . Applicant

Versus

State of Haryana and others

. . . Respondents

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

Present:- Mr. Chanderhas Yadav, Advocate
for the applicant.

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MAHABIR SINGH SINDHU, J.

Present application under Section 378(4) of the Code of Criminal Procedure (for short 'Cr.P.C') has been filed for seeking leave to appeal against the judgment dated 23.12.2015, passed by the learned Additional Sessions Judge, Rohtak, vide which respondents No.2 to 8 have been acquitted of the charges under Sections 148, 452, 323, 324, 302, 506 read with Section 149 IPC and Sections 3(2) and 3(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the SC & ST Act').

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2. Brief facts of the case are that an FIR No.87 dated 18.03.2014 was registered under Sections 148, 323, 324, 452, 302 and 506 read with Section 149 IPC and Section 3 of the SC & ST Act against the private respondents on the basis of statement dated 18.03.2014 (Ex.P10), made by complainant-Daulat Ram, to the effect that on 17.03.2014 he was sitting outside his house where Parmod-respondent No.2, Chharkanda @ Naveen-respondent No.5, Sonu-respondent No.4 and Azad-respondent No.3 armed with stick and *lathi* came there and Sonu gave a *lathi* blow on his left temporal region and he fell down. Thereafter, all the aforesaid persons gave *danda* blows to him including on the head and he got fainted. It is further alleged that his son Shri Bhagwan brought him to the Post Graduate Institute of Medical Sciences, Rohtak. It is also alleged that before causing injuries to him, Vinod, Lali Devi, Subhash, Naveen along with Parmod, Sonu, Chharkanda @ Naveen and Azad had inflicted injuries on the person of his brother Lakhmi Chand. Sonu had caught hold of Lakhmi Chand whereas Azad had stabbed in the abdomen of Lakhmi Chand due to which he fell down and got fainted and he was also got admitted in PGI, Rohtak. It is further alleged that he came to know about his brother Lakhmi Chand after regaining his consciousness. At that time, Pankaj armed with *lathi* was also present. Parmod had called some other person, who had inflicted injury to Lakhmi Chand and also extended threats to kill them.

3. After registration of FIR, usual investigation was conducted by the police and thereafter report under Section 173 Cr.P.C. was submitted. The case was committed to the Court of Sessions by the learned Illaqa Magistrate as the major offences were triable by the Court of Session.

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4. Learned trial Court framed the charges under Sections 148, 452, 323, 324, 302, 506 read with Section 149 IPC and under Sections 3(2) and 3(5) of the SC & ST Act, to which, all the accused-respondents No.2 to 8 pleaded not guilty and claimed trial.

5. Prosecution in order to prove its case, examined twenty three witnesses and brought on record documentary evidence and thereafter entire incriminating material was put to the accused under Section 313 Cr.P.C. but they denied the same and claimed innocence.

6. Learned trial Court after taking into consideration the material available on record and hearing both the sides, acquitted the respondents while passing the impugned judgment dated 23.12.2015 as prosecution has failed to prove its case beyond shadow of reasonable doubt. Hence, the present application for seeking leave to appeal.

7. It is argued by learned counsel for the applicant-complainant that learned trial Court has committed a grave error of law while acquitting respondents No.2 to 8 as there is sufficient material available on record to prove the charges levelled against them and as such the present application deserves to be allowed and leave to appeal be granted.

8. Heard learned counsel for the applicant and perused the record and the paperbook.

9. As per the prosecution story, the incident is narrated in two parts. The first part pertains to the occurrence that took place in the house of Lakhmi Chand and subsequent has taken place in the street in which complainant-Daulat Ram has suffered injuries.

10. Complainant-Daulat Ram while appearing as PW-8 stated that after 3-4 days of the occurrence he came to know that Azad, Vinod, Parmod,

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Sonu etc. killed his brother Lakhmi Chand; but he has not stated that the incident had taken place in his presence. Therefore, so far as inflicting injuries to Lakhmi Chand are concerned, his testimony to that effect is of not much relevance.

11. Further, it is necessary to be mentioned here that eye witnesses, namely, Nafe Singh (PW10), Karambir (PW11), Vikram (PW12), Shri Bhagwan (PW13) and Kamal (PW14), who are alleged to have seen the assailants while inflicting the injuries to deceased Lakhmi Chand, in his house, have not supported the prosecution case and all were declared hostile. These witnesses have specifically stated that statements (Ex.P-12, Ex.P-13, Ex.P-14, Ex.P-15, Ex.P-16 and Ex.P-17) were never made to the police and they refuted all the suggestions regarding these statements. All these PWs have specifically stated before the learned trial Court that the accused present in the Court were not the assailants and even during their cross-examination also nothing fruitful came out to support the prosecution case.

12. Complainant (PW-8) did not mention while appearing in the Court that respondent-Parmod has given any injury to him; rather he stated that Pankaj, Sonu and Vinod have inflicted the injuries. In this case, the occurrence has taken place on 17.03.2014 and the FIR has been lodged on 18.03.2014 at 9.05 P.M and there is no explanation for the delay in lodging the FIR despite the fact that complainant-Daulat Ram was fit to make the statement.

13. PW-23 Dr. Priyanka has stated that the possibility of sustaining the injuries on the body of complainant-Daulat Ram by fall cannot be ruled out.

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14. Since the testimony of PW Daulat Ram is not consistent and full of improvement and contradictions, therefore, the same has not been relied upon by the learned trial Court.

15. In view of above, this Court does not find any merit in the present application and the same is, accordingly, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

November 22, 2017
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Whether speaking/reasoned : Yes
Whether Reportable : No

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