

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

Criminal Misc.No. A-209-MA of 2017

Date of Decision : March 22, 2017

Jagdish

....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. S.K. Tripathi, Advocate
for the applicant.

T.P.S. MANN, J.

Complainant-Jagdish has filed the present application under Section 378(3) of the Code of Criminal Procedure for grant of special 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, 324, 325, 506 IPC read with Section 149 IPC.

According to the prosecution, complainant-Jagdish, Chanderpal and Purshotam were caused injuries by the accused respondents on 12.12.2011 at about 3.00/4.00 p.m. The matter was reported to the police by the complainant but as it was found to be a suspicious nature, Head Constable Prem Dutt kept it pending and recorded DDR No.16 in this regard. During the verification, information was received about receipt of injuries by three of the five accused and, accordingly, on the basis of statement made by

Dharamvir, one of them, DDR No.18 dated 16.12.2011 was also recorded. Subsequently, after due verification, FIR No.478 dated 17.12.2011 under Sections 148, 323, 324, 325, 506 and 149 IPC was registered against the accused respondents at Police Station Sadar, Palwal. During the investigation, material was collected by the investigating agency only against accused respondents No.2 to 4 whereas accused respondents No.5 and 6, besides others were not found involved. After commitment of the case, accused respondents No.2 to 4 were charged for committing offences under Sections 323, 324, 325, 506/34 IPC, to which they pleaded not guilty and claimed trial.

After the prosecution examined complainant Jagdish as PW1, prosecution moved an application under Section 319 Cr.P.C. for summoning respondents No. 5 and 6 and others as additional accused. The said application was, however, dismissed by the learned trial Court but in revision, the High Court partly allowed the application by summoning respondents No.5 and 6 as additional accused to face the trial. Thereafter, all the accused respondents were charged for the offences under Sections 148 and 323, 324, 325, 506 IPC read with Section 149 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined fourteen witnesses. When examined under Section 313 Cr.P.C., the accused respondents denied the prosecution case and pleaded their false implication. In their defence, they tendered various documents.

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 the other side and there was a calculated attempt on the part of both the sides to suppress the receipt of injuries by the other side and both the parties not explaining the true manner of the incident by not disclosing the true genesis, came to the conclusion that it was difficult to find out as to which party was the aggressor and which party acted to dispel the aggression. As the prosecution had failed to establish its case beyond all reasonable doubt, the accused/respondents were acquitted of the charges against them.

After hearing learned counsel for the applicant and on going through the impugned judgment of acquittal passed by the trial Court, this Court finds that accused respondents No.2 to 4 were brought to the hospital on 12.12.2011 with the alleged history of assault at around 5.30 p.m. Two injuries were found to have been sustained by Dharamvir, six by Viresh @ Yadram and three by Sudesh. The said three star witnesses of the prosecution, i.e. PW1 Jagdish, PW2 Purshotam and PW12 Chanderpal have admitted in their cross-examination regarding the pendency of the cross case against them. However, they did not depose about causing any injury to the accused. Half hearted attempt was made by PW1 Jagdish to explain the injuries on the accused by saying that they had suffered injuries themselves by pelting of stones and bricks. However, no such explanation has been given by PW2

Purshotam and PW12 Chanderpal. It is admitted case of both the parties that there was enmity between them due to election of the village Sarpanch. Thus, all the injured eye-witnesses and the accused persons appeared to have exaggerated their respective cases in order to implicate as many persons from the sides, besides suppressing genesis/origin of the occurrence. Even there were contradictions *inter se* in the testimonies of PW1 Jagdish PW2 Purshotam and PW12 Chanderpal. According to PW1 Jagdish he alone was standing at the chowk and no person from the village was present, whereas PW12 Chanderpal stated that he reached at the spot and found people gathered there telling him about the accused causing injuries to his brother. PW12 Chanderpal stated that Teeka Ram and Shanker Lal had rescued them from the accused, whereas PW1 Jagdish did not state so. He simply stated that people had intervened and saved them. Said Teeka Ram and Shanker Lal have not been examined by the prosecution. Further, PW1 Jagdish stated that Viresh @ Yadram had aimed lathi blow on his head which he warded off with his left hand. Similarly PW12 Chanderpal deposed that Shiv Kumar had tried to inflict sword blow on his head which he warded off with his left hand. According to PW1 Jagdish, Viresh @ Yadram, Shiv Kumar, Banti @ Mukesh, Monu and Sudesh had reached the spot and attacked him with lathi and swords whereas PW2 Purshotam and PW12 Chandepal testified about the involvement of accused Sonu, Nand Kishore, Chandan, Azadbir and Paras Ram. Still further, PW12 Chanderpal stated that accused had assaulted him for about 30

minutes but on perusal of the MLR it is made out that injury No.1 was a superficial incised wound over left fore-arm, injuries No.2 and 3 were complaints of pain, whereas injury No.4 was deformity of middle left fore-arm. Still further, PW2 Purshotam deposed that he, alongwith his uncle Kailash, was coming to his house at about 10.15 p.m. when Paras Ram, Azadbir and Hari Mohan caused injuries to him with hockey and firing at him. In the MLR Ex.PW5/B, it stood mentioned that the injuries were received at about 5.00/6.00 p.m. No firearm had been recovered by the police and Paras Ram @ Chotte, Azadbir and Hari Mohan were found innocent by the police. The complainant party had named 12 persons as accused and out of them only five faced the trial.

In view of the above, it cannot be said that the learned trial Court was not justified in extending the benefit of doubt to the accused/respondents and acquitting them of the charges against them.

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. MADAN)
JUDGE

Whether reasoned/speaking : YES / NO

Whether reportable : YES / NO