

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-2170-MA-2017
Decided on : - 21.12.2017

State of Haryana

... Applicant

Versus

Sandeep and others

... Respondents

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

Present:- Mr. Kapil Aggarwal, Addl. A.G., Haryana,
for the applicant.

MAHABIR SINGH SINDHU, J.

State of Haryana has filed the present application under Section 378(3) of the Code of Criminal Procedure (for short 'Cr.P.C') for seeking leave to appeal against the impugned judgment dated 09.12.2016, passed by the learned Additional Sessions Judge, Jhajjar, vide which the respondents have been acquitted of the charges under Sections 341, 307 and 506 read with Section 34 IPC.

2. Brief facts of the case are that on 10.09.2014 an information was received from Police Post, PGIMS, Rohtak at Police Station Salhawas that one Pankaj was got admitted in PGIMS, Rohtak on 09.09.2014 on an assault case. Thereupon, HC Jagbir Singh reached the casualty ward of

PGIMS, Rohtak, and after collecting the *ruka*, MLR of Pankaj from Police Station PGIMS, Rohtak and obtaining the opinion of doctor, the statement of injured Pankaj @ Sonu was recorded to the effect that he was working in a private company i.e. Anshul Project Fateh Company, Gurgaon. On 09.09.2014, he returned to his village Jaitpur at about 7.30. PM by a bus and when reached near the house of Ramesh, then Sandeep (respondent No.1) was standing there. When they were talking to each other, Jai Bhagwan (respondent No.2) and Chanderbhan @ Bhan (respondent No.3) also came there and they indulged in conversation with Pankaj and Sandeep. In the meantime, Badan @ Bittu also came there on his motorcycle. Then Sandeep, Chanderbhan @ Bhan and Jai Bhagwan caught hold of Pankaj. Badan @ Bittu took out knife clung in his belt and hit the same in his stomach. Upon which, he raised alarm '*mar diya-mar diya*' and that attracted his cousin Sandeep son of Rajender, who was coming back from his fields. On seeing him, all the four assailants ran away from the place of occurrence and gave a threat that either Pankaj will not remain alive and if he got saved, his family shall be eliminated. Thereafter, the complainant became unconscious and fell down. His cousin Sandeep shifted him to PGIMS, Rohtak.

3. On the basis of above statement, DD entry No.33 dated 10.09.2014 was recorded. On 12.09.2014, after verification of the facts, FIR No.166 under Sections 323, 341 and 506 read with Section 34 IPC was registered against the accused. Accused Chanderbhan @ Bhan and Jai Bhagwan were arrested, but released on bail by learned Area Magistrate. Thereafter, usual investigation was carried out by the police. During investigation on 30.10.2014, the doctor opined that nature of injuries

sustained by the complainant-injured was dangerous to life and Section 307 IPC was added. Thereafter they were re-arrested. Accused Badan @ Bittu @ Lefty was arrested on 01.11.2014 and accused Sandeep was arrested on 09.11.2014.

4. After completion of the investigation, report under Section 173 Cr.P.C. was submitted before the Illaqa Magistrate. Thereafter, the case was committed to the Court of Sessions as offence under Section 307 IPC was exclusively triable by the Court of Session.

5. Learned trial Court, *prima facie*, found that the accused have committed the offences under Sections 341, 307 and 506 IPC read with Section 34 IPC and thus framed the charges, to which, they pleaded not guilty and claimed trial.

6. Prosecution in order to prove its case, examined twelve witnesses.

Complainant-injured Pankaj @ Sonu appeared as PW2 and he stated that he was attacked by the four accused and proved his statement (Ex.PW2/A). He also identified knife (Ex.PW1/D) by which he was attacked by accused Badan @ Bittu on 09.09.2014.

PW4 Dr. Kuldeep, Casualty Medical Officer, PGIMS, Rohtak, stated that he medico-legally examined the complainant-injured Pankaj on 09.09.2014 and proved the *ruqa* (Ex.PW4/A) and MLR (Ex.PW4/B).

PW10 HC Jagbir, is the main investigating officer of this case, who recorded the disclosure statement dated 01.11.2014 (Ex.PW7/A) made by the accused Badan @ Bittu in the presence of ASI Rampal (PW7).

PW12 Dr. Satya Parkash, who treated injured Pankaj at PGIMS, Rohtak, on 09.09.2014, proved the file pertaining to injured Pankaj

as well as the opinion regarding nature of injury (Ex.PW12).

7. Thereafter, the entire incriminating material was put to the accused when they were examined under Section 313 Cr.P.C., but they denied the same and claimed innocence.

8. Learned trial Court after taking into consideration the material available on record and after hearing both the sides, convicted accused Badan @ Bittu, under Sections 341 and 326 IPC, for a period of three months and three years respectively along with fine of ₹5,000/- (Rupees Five Thousand only), but acquitted the present respondents, vide impugned judgment dated 09.12.2016. Hence, the present application for seeking leave to appeal.

9. It is argued by learned State counsel that learned trial Court has acquitted the respondents only on surmises and conjectures and did not take into consideration the entire material available on record and that resulted in miscarriage of justice.

10. Heard learned counsel for the applicant and perused the paper-book.

11. As per case of the prosecution, the occurrence had taken place on 09.09.2014 and the present FIR was registered on 12.09.2014. Complainant-injured PW2 himself exonerated the accused Chanderbhan @ Bhan and Jai Bhagwan (respondents No.2 and 3), but against Sandeep (respondent No.1) also he has not deposed anything.

12. PW12 Dr. Satya Parkash had stated that on 09.09.2014 complainant-injured Pankaj was examined and as per the observation recorded in MLR (Ex.P12/A), a wound of size 2x1cm was present over the abdominal wall 3 cm lateral umbilicus on left side, through which gut could

be seen protruding out and it was a stab injury with extra-vasation of gut. It was also mentioned that stab site was 5 cm lateral on the left umbilical region of size 3 cm and knife was recovered from accused Bittu @ Badan and there was no other injury caused to complainant Pankaj. Therefore, the learned trial Court rightly acquitted the present respondents as their presence was found doubtful in view of testimony of PW2 itself.

13. In view of above, this Court of the opinion that the view taken by the learned trial Court is a possible view and there is no material available on record to interfere with the same and accordingly, the present application is dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

December 21, 2017

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Whether speaking/reasoned	:	Yes
Whether Reportable	:	No