

**CRM-A-1582-MA-2014 (O & M)**

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

**CRM-A-1582-MA-2014 (O & M)**  
**Date of Decision: 09.02.2017**

Latuva

... Applicant

Versus

Subhash and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr. V.S.Rana, Advocate for  
Mr. Sushil Gautam, Advocate,  
for the applicant.

**INDERJIT SINGH, J.**

**CRM-31168-2014**

This is an application seeking condonation of delay of 189 days in filing the application for leave to appeal.

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 189 days in filing the application seeking leave to appeal, is condoned.

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Applicant-Latuva has filed this application under Section 378 (4) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') seeking permission for leave to appeal against respondents-Subhash, Mahabir, Rajesh, Sunil, Satish and Om Dutt challenging the impugned

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judgment dated 20.01.2014 passed by learned Judicial Magistrate Ist Class, Narwana, in criminal complaint No.38/01 of 07.03.2009, titled as 'Latuva vs. Subhash and others', filed under Sections 323, 324, 452 and 506 read with Section 34 of the Indian Penal Code (for short, 'IPC'), vide which the respondents-accused were acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is further stated that the applicant filed the criminal complaint against the aforesaid respondents-accused stating that he was beaten up by the accused-respondents while entering in his own premises, therefore, the respondents committed the offences under the aforesaid sections. It is also stated that the impugned judgment passed by learned Judicial Magistrate Ist Class, Narwana, acquitting the respondents, is contrary to the facts and suffers from illegality and irregularity and thus the same deserves to be set aside. It is, therefore, prayed that leave to appeal may be granted.

I have heard learned counsel for the applicant and gone through the record.

From the record, I find that applicant-complainant, Latuva filed a complaint under Sections 323, 324, 452 and 506 read with Section 34 IPC against the aforesaid respondents-accused. The brief facts of the case, as noted down in the judgment passed by learned Judicial Magistrate Ist Class, Narwana, are as under:

*“The instant complaint has been filed by Latuva*

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*(complainant) against Subhash and others (accused) for the alleged commission of offences punishable under Sections 323, 324, 452 and 506 read with Section 34 of the Indian Penal code with the averments that complainant and accused persons are members of one family and khewat of their land was joint which was situated at village Rajgarh Dhobi. Complainant had got his land partitioned from the court of Tehsildar Narwana and on 25.06.2008, warrant of possession was ordered to be issued. Accused persons, knowingly started quarreling with him and stopped the proceedings of possession. Thereafter, complainant made an application to the Police Station for taking action against the accused person. However, police in collusion with accused persons challaned him and Mahabir son of Dalip under Section 107/151 Cr.P.C. in which both the parties are on bail. On 28.02.2009, at around 5.30 p.m., he was tethering his cattles in Bara, when all the accused in furtherance of their common intention illegally trespassed into his Bara with an intention to kill him. Accused Subhash and Rajesh were armed with gandasi and accused Mahabir, Sunil and Satish were armed with lathies. Accused Om Dutt was empty handed. Accused Om Dutt challenged to teach him a lesson for taking land. Accused Subhash hit him with a gandasi on his left knee joint and accused no.5 hit him with a lathi below his waist and he fell down. Accused Rajesh hit him with a gandasi on his right leg. Thereafter, accused Satish and Mahabir hit him on lower parts of his waist. In the meantime, her wife Ramkali reached the place of occurrence and she has witnessed the entire incident. On*

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*raising alarm by Ram Kali, the accused fled away from the scene of occurrence criminally intimidating to kill him on finding an opportunity. His wife Ram Kali arranged for a vehicle and got him admitted in Civil Hospital, Narwana, where he was medico-legally examined. The matter was reported to the police but the police did not take any action against the accused. Hence, the complaint.”*

Learned Judicial Magistrate Ist Class, Narwana, after appreciating the evidence, acquitted the respondents-accused vide impugned judgment dated 20.01.2014.

Aggrieved from the above said judgment, the present application seeking leave to appeal has been filed.

I have heard learned counsel for the applicant and have gone through the record especially the impugned judgment passed by the learned Judicial Magistrate Ist Class, Narwana.

From the impugned judgment, I find that the learned Magistrate has acquitted the accused after giving sound reasoning on the basis of evidence and law. At the time of arguments, nothing has been pointed out as to how the findings given by learned trial Court are perverse or against the evidence. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the learned Court below. Nothing has been pointed out as to what illegality has been committed by the court below while acquitting the accused.

From the perusal of impugned judgment, I find that as per

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the complainant's version, accused Subhash and Rajesh inflicted *gandasi* blows, but Ram Kali, wife of complainant, alleged to be an eye-witness, did not level any allegation against Subhash. Furthermore, the complainant in his cross-examination stated that his wife reached the spot ten minutes after the occurrence and his wife herself stated that she reached the spot after 15-20 minutes of the occurrence. In view of this, it is clear that CW Ram Kali, alleged eye-witness, has not seen the occurrence and cannot be treated as eye-witness. Furthermore, the doctor in this case has opined that there is no sharp injury on the person of the complainant which means that oral version of the complainant is not supported by the medical evidence.

The trial Court has also found that as per the version of complainant, following injuries have been caused to the complainant:

- (i) one *gandasi* blow at his left leg;
- (ii) another *gandasi* blow at his right leg;
- (iii) one *lathi* blow below his back.

However, his version is found to be inconsistent with the medical opinion wherein seven injuries with blunt weapon have been shown to be present on different portions of his body. Learned Magistrate also discussed that report under Section 202 Cr.P.C. was also called, which is against the applicant-complainant. The Magistrate also discussed that there is also no evidence to prove the offence under Section 506 IPC. There is only statement of complainant as alleged eye-witness Ram Kali has not seen the occurrence and secondly the injuries, as stated by the

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complainant, are not corroborated by the medical evidence.

From the above discussion, I find that findings given by the trial Court are correct, as per evidence and law and, therefore, the same do not require any interference.

Therefore, finding no merit in the present application under Section 378 (4) Cr.P.C., the same is dismissed.

**09.02.2017**

parveen kumar

**(INDERJIT SINGH)  
JUDGE**

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|---------------------------|---|-----|
| Whether speaking/reasoned | : | Yes |
| Whether reportable        | : | No  |