

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-834-MA of 2016

DATE OF DECISION: MARCH 7, 2017

RIJWAN

...APPLICANT

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASHI.

PRESENT: MR. R.S. BUDHWAR, ADVOCATE FOR THE APPLICANT.

M. JEYAPPAUL, J.

1. Complainant Rizwan who was examined as PW4 before the trial Court has filed the present application under Section 378(4) Cr.P.C. seeking leave to file an appeal against the acquittal recorded qua respondents No.2 to 7.

2. Respondents No.2 to 7 faced trial for the offence under Sections 148, 323, 307 read with Section 149 IPC. Respondent No.3 Kuldeep also has faced trial for the offence under Sections 25 and 27 of Arms Act.

3. It is the case of the prosecution that on 26.7.2015 at about 9.30 p.m., when PW4 Rizwan and PW5 Shokeen were returning to their house after inspecting their godown, respondents No.2 to 7 came in a Scorpio vehicle bearing No.1010. Accused Kuldeep was armed with country made pistol while the other accused were armed with dandas. Accused Kuldeep opened fire from his country made pistol towards PW4 Rizwan who saved

himself by taking shelter behind a wall. PW5 Shokeen, who is none other than the brother of PW4, raised an alarm whereupon the public was attracted to the spot. All the other accused gave beatings to PW4 and PW5 with dandas and caused injuries to them. Thereafter, all the accused fled away from the scene of crime.

4. PW6 Dr. Parminder Pal Singh medico-legally examined PW5 Shokeen on 27.7.2015 and found the following injuries on his person:-

- “1. Complaint of pain over the back. No visible injury seen. Ortho opinion was advised. Injury was kept under observation and x-ray examination was advised.*
- 2. Complaint of pain in the whole abdomen. No visible injury seen. Surgeon opinion was sought. Patient was kept under observation and x-ray was advised.*
- 3. Complaint of pain in the chest. No visible injury was seen. Ortho opinion was sought. Patient was kept under observation and x-ray examination was advised.*
- 4. Complaint of pain in the right leg. No visible injury was seen. Ortho opinion was sought. Patient was kept under observation and x-ray examination was advised.*
- 5. Complaint of pain in the left shoulder. No visible injury was seen. Ortho opinion was sought. Patient was kept under observation and x-ray examination was advised.”*

5. On the same day, he also examined PW4 Rizwan and found the following injuries on his person:-

“1. Complaint of pain in the lumbosacral region in spine. No visible injury was seen. Ortho opinion was sought. Patient was kept under observation and x-ray examination was advised.

2. Complaint of pain in all over the skull. No visible injury was seen. Surgeon opinion was sought. Patient was kept under observation and x-ray examination was advised.

3. Complaint of pain in the whole abdomen. No visible injury was seen. Surgeon opinion was sought. Patient was kept under observation and x-ray examination was advised.

4. Complaint of pain in the chest. No visible injury was seen. Ortho opinion was sought. Patient was kept under observation and x-ray examination was advised.

5. Complaint of pain in the right shoulder. No visible injury was seen. Ortho opinion was sought. Patient was kept under observation and x-ray examination was advised.”

6. Learned counsel appearing for the applicant vehemently submitted that the trial Court did not properly evaluate the evidence of injured witnesses in the background of the medical evidence available on record. Therefore, it is his submission that leave to prefer an appeal be granted.

7. The evidence of PW6 Dr. Parminder Pal Singh discloses that PW4 and PW5 had complained of pain only. No visible injury was found on their person. If at all, the accused party had come to the scene of crime

armed with dandas, they would have at least caused some lacerated injuries on the person of PW4 and PW5. In fact, PW6 Dr. Parminder Pal Singh had not given any treatment to them as no injury was found on their person. They were also not admitted in the hospital for treatment. Considering the disclosure of PW4 and PW5 that they experienced pain in their body, PW6 in order to rule out any internal injury sustained by them recommended for examination by an Ortho Surgeon. But it is found that they had not subjected themselves for examination by an Ortho Surgeon.

8. In case PW4 and PW5 had sustained some visible injuries, their testimony relating to the injuries sustained by them may not require any corroboration. But the nature of testimony adduced by PW4 and PW5 that they experienced only pain in their body on account of the attack launched by the accused with dandas, in our considered view, some corroboration from the neighbours is very much required.

9. It is the version of the PW4 and PW5 that people gathered over there on hearing wailing noise of PW5. But unfortunately, no independent witness was examined to support the hollow version of PW4 and PW5. We are of the considered view that the testimony of PW4 and PW5 was not even corroborated by the testimony of any independent witness.

10. Coming to the case of the prosecution that Kuldeep opened fire from his country made pistol, it is found that no bullet was retrieved from the spot. Nor was any bullet mark noted on the adjoining wall by the investigating Agency. Firstly, Kuldeep would not have left PW4 and PW5 without causing them bullet injuries if at all he had been armed with country

made pistol to attack them. It is totally unbelievable that accused Kuldeep opened fire from his country made pistol, but no empty could be recovered, nor was any bullet mark found on the adjoining wall. PW4 and PW5 have come out with a totally unbelievable and artificial version.

11. In our considered view, the trial Court has rightly evaluated the evidence on record and come to a correct conclusion that the charges were not established beyond reasonable doubt by the prosecution.

12. Therefore, the application seeking leave to prefer an appeal which does not deserve acceptance stands dismissed.

(M. JEYAPPAUL)
JUDGE

March 7, 2017
Gulati

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether Speaking/Reasoned : Yes

Whether Reportable : No