

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

CRM No.A-1867-MA of 2014 (O&M)

Date of decision: March 15, 2017

Sarwan Kumar

...Applicant

Versus

Santosh Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.S.Jaswal, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Sarwan Kumar has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Jogi Ram and other respondents, challenging the judgment dated 14.10.2014 passed by learned Judicial Magistrate Ist Class, Garhshankar, whereby the accused-respondents 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 learned JMIC, Garhshankar has not properly appreciated the evidence produced on record and overlooked the same. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Sarwan Kumar filed a complaint against accused Santosh Kumar, Ram Kumar and Chetan Kumar

averments of the complaint as noted down in the judgment passed by learned JMIC, Garhshankar, are as under:-

“2. In brief, the facts of this complaint are that complainant is permanent resident of village Mehdood, Tehsil Garhshankar, District Hoshiarpur. Election for the post of President of The Co-operative Societies of village Mehdood was to be held on 01.07.2009. The Co-operative Societies of village Mehdood consist of Khanni, Harjiana, Baddowal, Lasara and Jaijon. The voters gathered there. There had been anguish between the members and some members scuffled due to party fiction. Some of them suffered injuries and were admitted in Civil Hospital, Garhshankar. The complainant and his wife Raksha Devi were also present there 2 being voters. Accused No. 1 caught hold Raksha Devi by neck and told her that she would be taught a lesson for deposing against them in criminal case pending against the accused and some other persons and for signing a resolution passed by the Gram Panchayat against his sister, for unauthorised possession of Shamlat Land. Raksha Devi was rescued by the respectables. When complainant and his wife were coming to their house, then on the way accused attacked them. Accused slapped Raksha Devi caught her hairs. Complainant tried to rescue her. On this, accused started inflicting injuries to the complainant with sticks in their hands. Accused Santosh gave first blow of stick, which hit on the left eye of complainant. Thereafter, accused Ram Kumar gave blows of sticks on the left thumb of complainant. Accused Chetan gave blow of stick, which hit on the left arm of complainant. Accused No. 1 and 2 also gave fist blows on chest of the complainant. Complainant and his wife raised hue and cry, which attracted Vas Dev s/o Rakha Ram who reached at the spot and saved complainant and his wife from the clutches of accused. Accused fled away from the place of occurrence while giving threats to kill the complainant. Complainant was admitted in Civil Hospital, Garhshankar, where he was medico legally examined. On receiving X-ray report, fracture was found on left hand. The matter was reported to the police but the police did not take any action. Hence, the present complaint.”

Learned JMIC, Garhshankar, after appreciating the evidence, dismissed the complaint and acquitted the accused-respondents vide impugned judgment dated 14.10.2014.

Aggrieved from the above-said judgment, present appeal along

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

The perusal of the findings given by learned Magistrate shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below.

The perusal of the record shows that occurrence took place on 01.07.2009 and the complaint was filed on 25.09.2009 i.e. after almost more than 3 months and there is no satisfactory explanation for this delay. Further, I find that as per the allegations, Raksha Devi was caught hold by accused No.1 Santosh Kumar from the neck etc. but Raksha Devi was not examined for the purpose of charge. As per the allegations, accused Santosh Kumar gave blows with stick, which hit on the left eye of the complainant but this injury is not found as per the doctor. Furthermore, it is in the complaint that accused Ram Kumar gave blows of sticks on the left thumb of the complainant but no X-ray report or X-ray film was produced to prove this injury as grievous. As Dr.Vipan Sharma had died, he could not be examined at the time of framing of charge or thereafter. Only copy of the MLR has been proved by another Dr.Jagmohan Singh, Senior Medical Officer, by bringing the record but as the doctor, who conducted MLR has died, therefore, the accused could not cross-examine said doctor and prejudice is caused to the accused. Otherwise also, even if the injuries as shown as taken as it is i.e. (i) swelling on left thumb movements painful, complaint of pain chest interior aspect, even then, the complaint of pain without having external injury cannot be held as injury. The third injury is

simple reddish abrasion.

Learned Court below also discussed the discrepancies in the statements. The Court also held that there is no record that police was informed about the matter. It is further held that there is no X-ray report/film to prove the fracture. The best witness Raksha Devi has not been examined. The trial Court also discussed regarding the delay. Learned Magistrate held that the statement of the complainant is not corroborated by medical evidence.

From the perusal of the judgment passed by the Court below, I find that the findings have been given by correctly appreciating the evidence in right perspective. In no way, the judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 14.10.2014 passed by learned JMIC, Garhshankar, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

March 15, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No