

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

CRM-A-746-MA of 2017 (O&M)
Decided on:-July 05, 2017.

Smt. Gian Kaur.

.....Applicant.

Versus

Union Territory, Chandigarh and others

.....Respondents.

***CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE HARI PAL VERMA.***

Present:- Mr. Harminder Singh, Advocate
for the applicant-appellant.

HARI PAL VERMA, J.

The applicant-complainant has filed the present application under Section 378(3) Cr.PC seeking leave to appeal against the judgment dated 09.02.2017 passed by learned Additional Sessions Judge, Chandigarh whereby the respondents No.2 to 4, namely, Deepak Kumar, Avdesh Kumar and Davinder Kumar were acquitted of the charges framed against them.

Briefly stated, prosecution case is that on 11.09.2016, complainant Rohit Verma had got recorded his statement to the effect that he along with his family was residing at top floor of House No.1104, Sector 37-B, Chandigarh. On that day, he had gone to Sector-19 to meet his friend Inderpreet and while, he was waiting for him near his house in the park, a Sikh person was already roaming there. Meanwhile, one Hindu boy came there and started giving beatings to the old man with a Danda. The old man

after being hit, fell on the ground and the said Hindu boy, kept beating him while saying that this old man had hit his son with a brick and that he will not leave him. The said Hindu boy further stated that this man has harassed the entire locality. The boy kept on beating him continuously as a result of which blood started oozing out of his (old man) mouth and other parts of the body. There were two more boys with the said Hindu boy, who were standing there and were saying that the said bad person be killed so that he may not repeat the said act. Thereafter, all of them ran away from the spot. The complainant went after the boy and asked him as to why he was beating the old man, whereupon he told that the said old man hit them also with bricks and stone and they would kill him and fled from the spot.

On the basis of aforesaid statement, the FIR No.118 dated 11.09.2016 under Section 302 read with Section 34 IPC was registered at Police Station Sector-19, Chandigarh. The investigation was carried out and statements of witnesses were recorded. On completion of investigation, Challan was presented against the accused. Since the offence under Section 302 IPC is exclusively triable by the Court of Session, learned Magistrate committed the case for trial vide order dated 03.01.2017 to the Court of Session.

The accused were charge sheeted under Section 302 read with section 34 of IPC, to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined complainant Rohit Verma as PW1 and Investigating Officer SI Shingara Singh as PW2. Since complainant Rohit Verma, who was the sole witness of occurrence, did not support the case of the prosecution regarding identity of

the accused persons, the Public Prosecutor made a statement that no useful purpose would be served by examining the remaining witnesses and hence closed the evidence of prosecution.

Complainant Rohit Verma as PW1 had deposed that he did not know what had happened and thus, had not supported the case of the prosecution. He had failed to identify the accused to be the assailants. He was declared hostile on the request of the Additional Public Prosecutor. The complainant being sole eye witness had denied the factum of recovery of weapon of offence having been effected in his presence from the accused rendering the prosecution version doubtful. Accordingly, the trial Court acquitted the accused vide impugned judgment dated 09.02.2017.

Having heard learned counsel for the applicant and going through the impugned judgment, this Court finds that complainant Rohit Verma, who is the sole eye witness while appearing in the witness box as PW1 of the occurrence has not supported the prosecution version and has turned hostile. He has denied the factum of recovery of weapon used in the crime having been effected in his presence from the accused. In this manner, the prosecution version has been falsified and rendered doubtful. Even the testimony of investigating officer SI Shingara Singh as PW2 does not inspire any confidence as he has not been able to prove the accused to be assailants, who had caused fatal injuries to the deceased. His version qua the accused having been identified by the complainant stands doubtful and falsified.

Though the alleged weapons of offence i.e. wooden stick and wooden plank have been produced in the Court, but the same do not connect them with the crime, as the same were neither blood-stained nor were sent to

the CFSL examination so as to connect them with the accused.

Since the crucial witness i.e. Rohit Verma, who is the complainant in the case, has not supported the very case of the prosecution and there being no direct or indirect evidence available on the file to connect the accused with the crime, this Court finds that there is no illegality in the impugned judgment passed by learned trial Court acquitting the accused.

Learned counsel for the applicant has failed to show any misreading of evidence by the Court below and has not pointed out any legal lacuna in the judgment under challenge which may warrant interference by this Court. When no evidence to connect the accused with the alleged crime is available on record, no case is made out for any interference in the impugned judgment of acquittal passed by the trial Court.

Accordingly, the present application, being devoid of any merit, is dismissed. Leave to appeal is declined.

July 05, 2017
Yag Dutt

(T.P.S. MANN)
JUDGE

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No