

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

CRM-A-780-MA-2015(O&M)

Date of decision:08.11.2017

Deenu ...Applicant/appellant
Versus
Yasin and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sarfraj Hussain, Advocate for the applicant/appellant.

ARVIND SINGH SANGWAN, J. (ORAL)

Challenge in this appeal is to the judgment dated 09.01.2015 vide which the respondents-accused have been acquitted under Section 148, 323, 506 and 149 of IPC.

The brief facts of the case are that the appellant/complainant filed the complaint with the allegations that on 07.09.2011 at around 11.00 AM he alongwith his brothers namely, Nuru and Fajjar along with his wife Jamila were working in the fields when the accused persons came and attacked the complainant and his family members and caused injuries. It is further submitted in the complaint that they got their statements recorded with the police vide DDR No.27, dated 13.09.2011 and in the intervening period, the police challaned both the parties under Sections 107 / 151 Cr.P.C.

After the preliminary evidence was led, the trial Court summoned the respondents-accused vide order dated 06.08.2012, to face the trial.

In pre-charge evidence, the appellant-complainant himself stepped into the witness box as CW-1, examined Nuru as CW-2, Jamila wife

of Deenu as CW-3 and Fajjar s/o Kapura as CW-4 and closed the evidence by tendering the documents Mark-A copy of DDR No.27, Mark-B to Mark-E, MLRs of the injured persons.

Thereafter, the trial Court vide impugned order dated 09.01.2015 discharged the respondents-accused.

The trial Court has recorded the following findings:

“ 7. DDR No.27 dated 13.9.2011 is available on file. It contained the entire narration of the complainant version. However, the police has recorded that they had received a ruqa of the admission of the complainant party in the Hospital on 7.9.2011, but when the police arrived in the Hospital to record their statements, they despite being declared fit to make a statement by the doctor, refused to do so. They categorically stated that they would get their statements recorded after consulting their family members. A simultaneous examination of the MLRs Mark-B to Mark-E of the injured show that the injuries sustained by the complainant party are simple in nature. None of the injuries sustained by any of the injured is serious. The complainant's witnesses have again and again deposed in their testimony that they remained hospitalized for 3-4 days. There is no evidence available on record in this regard and moreover the nature of injuries sustained by them did not require their admission in the Hospital for 3-4 days. It is also to be noted that the complainant party has admitted that a FIR under Sections 323 and 325 of IPC had been got registered against them by the accused party. It implies that there was previous hostility and animosity between the parties. The complainant and his witnesses have alleged that the accused party arrived with the lathis, farsas and Chantia. Strangely none of the complainant party received any injury from a Farsa or Chantia. The accused allegedly acted with restraint and hit the complainant party with only the blunt side of their weapons. The story furnished by the complainant

defies logic and does not appeal to reason. All the witnesses examined by the complainant are his relatives. No independent witness from the village has been examined to prove his assertion. The complainant has admitted that the police had taken action against the accused Deenu Versus Yasin & others 4 under Section 107/151 Cr.P.C. Even the police proceedings have not been produced before the Court to show the reasons for the action of the police.

8. *The incident allegedly took place on 7.9.2011. The MLR was also conducted on 7.9.2011. The injuries sustained by the complainant were not serious and they had been declared fit to make the statement by the doctor. No reasons for refusing to make a statement or getting a FIR registered against the accused on that day have been brought on record. The complainant met the police party on 13.9.2011 i.e. after a gap of six days. The inordinate delay of six days has not been explained by the complainant in any manner. Even if it is presumed that the complainant was prevented by some extraneous circumstances from informing the police on time, there is nothing on record to explain the delay of six months in filing the present complaint. The complaint was filed on 3.3.2012.*

9. *Learned counsel for the complainant has argued that at the stage of framing of charge only prima facie case is to be seen. It is correct that at the stage of framing of charge only a prima facie case is to be seen but at the same time the Court cannot be unmindful of prominent facts and circumstances which render the case of the complainant extremely doubtful. Merely because the complainant has appeared and stated on oath and there is a MLR on record, it cannot be presumed that prima facie case punishable under Sections 323 and 506 IPC is made out. The accused were armed with deadly weapons as per the complainant version. If they had intended to kill the complainant or his family members they could have easily done so, but they did not.*

Therefore, no offence punishable under Section 506 IPC is made out against the accused.

10. Section 245 Cr.P.C. lays down the principles for framing of charge in a complaint case. It states that “ if, upon conducting all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

11. In the instant case admittedly action against the accused has already been taken by the police under Sections 107/151 of Cr.P.C. The evidence on record when read with all the facts and circumstances mentioned above does not make out an offence graver than for which the police has already taken action against the accused. The accused cannot be made to suffer twice for the commission of the same offence. No ground to frame charges against the accused are made out. The complaint stands dismissed. The accused are discharged. Their bail bonds and surety bonds also stand discharged. File be consigned to the record room after due compliance. ”

Learned counsel for the appellant has argued that it has come in the statement of the witnesses of the complainant/appellant that the respondents-accused, in conspiracy with each other carrying lathis, dandas and other weapons had caused injuries to them. It is also submitted that as per the MLRs i.e. Mark B to Mark -E, it is proved that the injured witnesses sustained injuries at the hand of the respondent-accused persons. It is thus prayed that the impugned order to be set aside and the respondent-accused persons be charged in accordance with law.

After hearing learned counsel for the appellant, I find no merit in the present appeal. It is the case of the complainant that the incident took place on 07.09.2011, however, when the police reached in the hospital for

recording the statements of the complainant, despite having been declared fit to make a statement by the doctor, the appellant and other witnesses refused to record their statements and stated that they will get their statements recorded after consulting their family members. It is only after a period of six days i.e on 13.09.2011, DDR No. 27 was got registered by the appellant-complainant which raise a suspicion about the improvements which have been made by the complainant in the intervening period for involving the respondent accused. The complainant has also not proved on record any medical evidence except MLRs which are being Mark-B to Mark-E and in the absence of statement the doctor before the Court, who has conducted the MLRs of the complainant and the witnesses, the important right of the accused persons to cross-examine the doctor is taken away as in defence, they have a right to prove the manner in which such injuries have been received is not corroborating ocular version. Hence, no reliance can be placed on these MLRs which have not been exhibited and are placed on record as Mark B to Mark E. The prosecution has further failed to give any plausible explanation for not reporting the matter to the police for a period of six days and it makes the prosecution version highly doubtful especially when it is own case of prosecution that on the date of occurrence both parties were challaned under Section 107/151 Cr.P.C.

Hon'ble the Supreme Court in *Allarakh K.Mansuri vs. State of Gujarat 2002(1)RCR(Criminal) 748*, has held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

In the facts and circumstances, the reasons recorded by the learned trial Court in acquitting the accused are just and proper and there is

no merit in the criminal miscellaneous application seeking leave to appeal in terms of Section 378(4) of the Code Criminal Procedure, 1973. Accordingly, the criminal misc. application seeking leave to appeal is dismissed.

Since petition has been dismissed on merit, application seeking condonation of delay of 49 days in filing the appeal is also dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

08.11.2017
Hemlata

Whether speaking/reasoned	Yes / No
Whether reportable	Yes / No