

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

CRM-A-1100-MA-2018

Date of decision: 28th August, 2018

Mahipal

... Applicant

Versus

Sandeep & others

... Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present: Mr. A.P.S. Deol, Senior Advocate with
Mr. Himmat Singh Deol, Advocate for the applicant.

FATEH DEEP SINGH, J.

In case bearing FIR No.209 dated 10.06.2015 under Sections 302, 427, 506, 325, 323, 147 and 148 IPC pertaining to Police Station Murthal, District Sonapat, the Court of learned Additional Sessions Judge, through impugned judgment dated 30.04.2018 acquitted accused Parveen alias Hazari and Anita, whereas accused Sandeep alias Kala, Dayawati and Satbir Singh were found guilty and were convicted under Section 304 Part-I read with Section 34 IPC and Section 323 read with Section 34 IPC, and sentenced as follows:

Sandeep @ Kala

u/s 304 IPC To undergo rigorous imprisonment for 08 years and to pay a fine of Rs.50,000/-. In default of payment of fine, to further undergo simple imprisonment for six months.

u/s 323 IPC To undergo simple imprisonment for three months.

Sarbir Singh

u/s 304 IPC To undergo rigorous imprisonment for 05 years and to pay a fine of Rs.50,000/-. In default of payment of fine, to further undergo simple imprisonment for six months.

u/s 323 IPC To undergo simple imprisonment for three months.

Dayawati

u/s 304 IPC To undergo rigorous imprisonment for 03 years and to pay a fine of Rs.20,000/-. In default of payment of fine, to further undergo simple imprisonment for three months.

u/s 323 IPC To undergo simple imprisonment for three months.

All the sentences were ordered to run concurrently.

The present application has been filed under Section 378(3) Cr.P.C. seeking grant of leave to file appeal against acquittal of Sandeep alias Kala, Dayawati and Satbir Singh, who are respondents No.1 to 3, respectively of the charge under Section 302 IPC and of Parveen alias Hazari and Anita, who are respondents No.4 and 5, respectively of all the charges against them.

Heard Mr. A.P.S. Deol, Senior Advocate assisted by Mr.Himmat Singh Deol, Advocate for the applicant and perused the records.

The brief facts that are necessitated, are that on 10.06.2015 Police Station Murthal received an intimation from Police Control Room, Sonapat that Ramesh, Inder, Geeta and Bimla were

admitted in General Hospital, Sonapat with history of sustaining injuries in a quarrel in village Pipali Khera. Acting on this intimation, ASI Jitender, alongwith other police officials, reached the hospital and moved an application to know if the injured were fit to make statement. On the opinion of the doctor, statement of Ramesh was recorded and MLRs of the injured taken into police possession including that of Ramesh complainant as Ex.PA. As per these allegations, complainant Ramesh had two sons, namely Nitin and Nitesh. The elder, Nitin was married with Anita daughter of Satbir and there arose a matrimonial dispute between the couple, Nitin and Anita. To resolve this dispute, the family members of Anita were supposed to come to her in-laws house and to hold a panchayat.

On the day of occurrence, i.e. 10.06.2015, Indu, Bimla, Urmila and Geeta alongwith 2/3 villagers accompanied by Anita went to village Pipali Khera in a car bearing registration No.DL-13-CA-2371 driven by one Balwan. At the house of Satbir around 11:00 a.m., it is alleged that Anita gave a lalkara exhorting others that since her in-laws had come, they be taught a lesson. As per the averments, Satbir, his son Sandeep alias Kala and wife of Satbir along with 2/3 other persons attacked the complainant side with sticks and jailis. On raising of noise, villagers came to their rescue and the accused fled away with their weapons.

On this statement of the complainant, the present FIR was got registered. During the course of events, Bimla wife of Inder Singh died during treatment. Upon completion of investigation,

accused were put to trial and the prosecution at the trial, examined PW-1 Ramesh Kumar; PW-2 Inder; PW-3 Inderpal draftsman; PW-4 Dr.Ambuj Jain; PW-5 Dr.Prateek Girotra; PW-6 Dr. Vandana; PW-7 HC Hari Singh; PW-8 Geeta; PW-9 Dr. Gaurav Malik; PW-10 ASI Mukesh Kumar; PW-11 ASI Jitender Singh; PW-12 Constable Amit Kumar; PW-13 Inspector Ajay Kumar; PW-14 Constable Dharambir and PW-15 Constable Bhupender.

When the accused were called upon to explain the incriminating evidence so proved at the trial, they denied the allegations taking the plea of false implication and in their defence, examined DW-1 Dr. Nidhi Munjal. It is subsequently, upon arguments, the impugned findings were recorded.

Going through the submissions of the learned counsel for the applicant, it is the own stand of the complainant made by statement Ex.PA whereby Anita has only exhorted her co-accused and there is no specific role assigned to her in giving injuries. Furthermore, name of Parveen alias Hazari does not find mention in the statement of the complainant Ex.PA. The mere argument that is sought to be raised by Mr.Deol that names of these persons find mention in the statements under Section 161 Cr.P.C. made by PW Geeta and PW Inder proved as Ex.DC and Ex.DA, does not come to the aid of the applicant in the light of the fact that the occurrence having taken place on 10.06.2015 when the offence under Section 302 IPC has come about belatedly after a great delay and even no role is attributed to them in the commission of offence. It is well

proved on the record by way of post-mortem report Ex.PW4/B that there was only one injury on the right side of chest of the deceased whereas other injuries are on non-vital parts of the body, and thus, the very question of intention of the accused to cause death becomes highly improbable and implausible. It is a case where parties have come for a panchayat and it is at the spur of moment, all of a sudden, the occurrence has taken place, which further illustrates and establishes that there is no premeditation of mind, together with the fact that deceased Bimla Devi had died on 15.06.2015 after almost five days of the occurrence while under treatment and the cause of death opined by the doctor is because of complications arising out of the injuries and not directly attributable to the injuries so caused to the deceased by the accused.

Looking from another angle, PW-5 Dr.Prateek Girotra and PW-6 Dr.Vandana, who have medico-legally examined injured Sumer, Ramesh, Inder Singh and Bimla, have clearly illustrated in the MLRs Ex.PW-5/B, Ex.PW-6/B, Ex.PW-6/C, Ex.PW-6/D, Ex.PW-6/E, whereby the injuries are defused swelling, bleeding, multiple bruises/abrasions, all on the non-vital parts of the body, and therefore, bear out as to the intention of the assailants, as the seats of injuries are sufficient enough to throw light as to what was at the back of mind of the accused party. More so, they are not proved to be armed with deadly weapons. Had there been any premeditation of minds, certainly they would have come armed with deadly weapons and caused numerous injuries on vital parts of the body, which is not

so in the present case and only lathies and dandas have been used in the scuffle. Even otherwise, DW-1 Dr. Nidhi Munjal as a defence witness having medico-legally examined Anita, had found seven injuries on her person, all by blunt means, and which explanation of the injuries is not forthcoming from the side of the prosecution. These injuries are on various parts of the body. Learned counsel for the applicant, to the query of the Court, admits that only danda and lathies were recovered and no jailli has been recovered from any of the accused; rather makes the story of the prosecution amenable to suspicion and reflects that an exaggerated version has come about for a motivated cause.

Both, Parveen @ Hazari and Anita being ladies, were empty handed and no specific injury has been attributed to them at the very inception of the allegations, and being a pure matrimonial dispute, certainly, it is the endeavour of the complainant to rope in maximum number of persons from the other side, besides the fact that the material eye-witnesses claimed by the prosecution consisting of Balwan Singh, Virender alias Pappu, Bijender alias Binder and Sumer Singh have never been examined at the trial to lend corroboration to the allegations of the prosecution as they were disinterested and impartial witnesses and their testimonies would have been of much significance and weight. There are general accusations that the accused have caused injuries to them and since, as has been held by the learned Court below, there is no specific attribution to these two respondents, who are ladies, for causing any

specific injury, certainly makes the allegations to be highly unfounded and unreliable. The learned Court below has rightly drawn the conclusion whereby the participants in the occurrence have been convicted and those who were not proved to be guilty of commission of any offence, have been acquitted. We do not find any substance in the arguments put forth by learned counsel for the applicant. The impugned findings do not suffer from any illegality or infirmity and need to be upheld. The application for grant of leave to appeal, being without any merit, stands dismissed. Leave to appeal is accordingly declined.

(T.P.S. MANN)
JUDGE

(FATEH DEEP SINGH)
JUDGE

August 28, 2018
rps

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