

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A No.1402-MA of 2018 (O&M)
Date of Decision.09.10.2018

State of Haryana

...Appellant

Vs

Lalit

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Ankur Mittal, Addl.A.G., Haryana with
Mr. Manoj Dhankhar, AAG, Haryana
for the appellant.

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AMIT RAWAL J.

The present appeal has been filed against the acquittal of the accused under Section 378(3) Cr.P.C, accompanied by an application for condonation of delay of 123 days, against the judgment dated 08.08.2017 whereby the accused-Lalit has been convicted under Section 323 IPC only and acquitted of the charges framed under Section 307 IPC and 25 (1)(1B)(a) of the Arms Act.

As per the story of the prosecution, on 24.07.2016, complainant-Deepak, while having been implicated as accused in the murder of Pardeep Kumar wherein he was enlarged on bail, had boarded a Tempo to return to his house situated in Village Aata. After alighting from the Tempo, when the complainant reached in front of Panchayat Ghar, accused-Lalit son of Chand Ram and Bobby @ Kallu son of Mahipal armed with pistols, came there and shot fires at him with an intention to kill. The accused-Lalit fired shots and the pellets hit left cheek and neck of the complainant and that of the Bobby hit under his left shoulder. On raising alarm, Ram Avtar Singh,

Ex. Sarpanch and Satbir Singh s/o Budan came there and on seeing them, the assailants fled away.

Mr. Ankur Mittal, Addl. A.G., Haryana with Mr. Manoj Dhankhar, AAG, Haryana appearing for the appellant submitted that the trial Court had not taken into consideration statement of PW-5 Ram Avtar Singh and PW-4 Satbir. Even MLR of the complainant Ex.P5 and statement of PW3 Dr. GPS Chandrayan have been ignored. As per the medico-legal report, it was found that there were three injuries on the person of complainant i.e. abrasion over neck, lacerated wound over left neck and lacerated wound over left side of back of upper chest. On the basis of disclosure statement, recovery of country made pistol beneath bushes on the bank of canal was also effected from accused-Lalit, therefore, conviction of the accused under Section 323 CPC only is not sustainable. Examination-in-chief and cross-examination have been read out to this Court in order to make out a case of conviction.

We are afraid aforementioned arguments of Mr. Mittal are not sustainable, as the entire genesis of the trial Court while convicting the accused under Section 323 IPC instead of Section 307 IPC and 25 Arms Act, had been on the statement of Dr. GPS Chandrayan, who nowhere stated that abrasion on the neck of complainant was or could be result of shot by firearm. Even blackening/tattooing/singeing on the neck of the complainant was conspicuously missing, if at all the injury was caused by a firearm shot, thus, recovery of weapon on the basis of disclosure statement of accused-Lalit was inconsequential. Prosecution has failed to get the

ballistic report as to whether fire had been shot from the weapon recovered.

On perusal of the affidavit of Dr. GPS Chandrayan, he did not utter a word that patient had received injury on account of firearm shot as the information of alleged physical assault was brought to his notice by the person accompanying the injured, thus, conviction of the accused for commission of offence under Section 323 IPC instead of 307 IPC and 25 Arms Act cannot be faulted with.

The appeal is dismissed.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

October 09, 2018

Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No