

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-A-1047-MA of 2017

Decided On : 16.02.2018

State of Haryana

....

Applicant

vs.

Gurjinder Singh and Ankit

....

Respondents

CORAM : HON'BLE MR. JUSTICE T. P. S. MANN.

HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Kapil Aggarwal, Addl. A.G., Haryana
for the applicant.

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DEEPAK SIBAL, J. :

Through the instant application filed under Section 378 (3) of the Code of Criminal Procedure, 1973 (for short – Cr.P.C.), the applicant seeks grant of leave to appeal against the judgment dated 06.10.2016 passed by the Additional Sessions Judge, Ambala (for short – the trial court), through which respondents have been acquitted of the charges framed against them under Sections 323/307/506/148/149 of the Indian Penal Code, 1860 (for short – IPC).

Briefly stated, the case of the prosecution is that on 03.11.2014 at about 11:00 AM, when the complainant Gavin Punia was sitting in the grounds of S.D.College, Ambala Cantt, respondent no.2-Ankit @ Tiger questioned him as to why he was staring at him. The complainant and one Sukhpreet tried to talk to Ankit but he did not listen and took out a knife. After threatening the complainant and Sukhpreet, Ankit left. However, at

about 01:40 PM, when the complainant and Sukhpreet were sitting near the Auditorium, Ankit along with Gurjinder, Ashu, Prince, Jojo and Shehri attacked them. Gurjinder, who had a sword with him, sought to inflict an injury on the head of Sukhpreet but in the attempt to save himself he suffered injury on his hand. Shehri, Jojo, Prince and Ashu also inflicted injuries on both the complainant and Sukhpreet. Ashu and Monu witnessed the above occurrence. A formal FIR was registered.

After registration of the FIR and completion of investigation, a report under Section 173 Cr.P.C. was filed before the competent court, on the basis of which the respondents were charge-sheeted and on them pleading not guilty, put on trial.

The trial court, after sifting the evidence which had come on record, acquitted the accused-respondents of the charges levelled against them as the trial court was of the opinion that the prosecution had miserably failed to prove its case qua them. Such acquittal of the accused-respondents is the subject matter of challenge in the present proceedings.

Learned counsel for the applicant, while reiterating the submissions made on behalf of the prosecution before the trial court, submitted that the trial court erred in acquitting the accused-respondents of the charges levelled against them as there was overwhelming evidence on record to prove their guilt and therefore, there was no reason in fact or in law with the trial court to acquit them.

The submissions made by learned counsel for the applicant have been considered but the same do not warrant a favourable

consideration.

According to the prosecution's case, the occurrence took place on 03.11.2014 at about 01:40 PM. However, the complaint which formed the basis of the FIR was got recorded only on 04.11.2014 at 05:30 PM. The above delay in the lodging of the FIR remains unexplained.

The alleged eye-witnesses namely Ajay and Monu were also not examined by the prosecution.

The complainant, while appearing before the trial court, testified that on 03.11.2014, Sukhpreet remained in the hospital for 10-15 minutes and he for about one hour and while he was in the hospital, some press reporters and one police official came to the hospital, who recorded his statement. However, the record reveals that the complaint was got recorded by the police not on 03.11.2014 but in the evening of 04.11.2014. He further admitted that he did not inquire from the police about the statement given by him on 03.11.2014. The complainant further went on to depose that on 03.11.2014, he informed his family members on the telephone about the incident but did not disclose the names of the alleged assailants. No reasons are forthcoming as to why he did not do so.

It is further clear from the complainant's deposition that at the time he lodged his complaint, there was no person by the name of Gurjit Singh accompanying him. However, signatures of one Gurjit Singh are found on the complaint. Interestingly, the complainant also stated that in the occurrence, Gurjinder did not receive any injury, whereas injuries on

the person of Gurjinder were proved through the testimony of Dr. Gagandeep Singh who appeared as a defence witness.

Injured Sukhpreet also contradicted the complainant by stating that Ashu, Ankit and Prince did not cause any injury to him and that in the altercation that lasted for ten minutes, the accused caused injuries to the complainant. He further contradicted the complainant by stating that no one came to the complainant's rescue whereas the complainant had stated that several persons including two eye-witnesses namely Ajay and Monu had come to the spot, who rescued him. He further denied to have caused any injuries to the accused whereas it was proved before the trial court that the accused also did suffer injuries. Sukhpreet also stated to the police that Ankit was armed with a sword but no such sword was ever recovered. He further stated that when both he and the complainant were admitted to the Civil Hospital, Ambala Cantt, a police official, press reporters and other persons came there but interestingly, neither he nor the complainant made any complaint to anybody as in the first instance, complaint was made by Gavin Punia to the police on 04.11.2014 at 05:30 PM.

The delay in lodging of FIR; the above contradictions in the statements of the injured; the injuries of accused Gurjinder Singh having been proved and non-production of the alleged eye-witnesses have not been explained by the prosecution. It is further not clear as to whether the accused or the complainant side were the aggressors.

In view of the above, the present application is devoid of any merit and, therefore, dismissed.

Monika
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I attest to the accuracy and
integrity of this document
Chandigarh

Leave to appeal is declined.

(T. P. S. MANN)
JUDGE

(DEEPAK SIBAL)
JUDGE

February 16, 2018
monika

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*