

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

CRM No.A-1053-MA of 2014 (O&M)

Date of decision: October 29, 2018

Harbhajan Singh

...Applicant

Versus

Nirmal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Athwal, Advocate
for the applicant.

Mr.Shehbaz Thind, Advocate
for respondent No.1.

None for respondents No.2 to 4.

INDERJIT SINGH, J.

Applicant-Harbhajan Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Nirmal Singh and other respondents, challenging the impugned judgment dated 02.05.2014 passed by learned Addl. Sessions Judge, Hoshiarpur, vide which appeal filed by accused-respondents against the judgment of conviction and order of sentence dated 07.11.2011 passed by learned Judicial Magistrate Ist Class, Hoshiarpur, was allowed and they were acquitted of the charges framed against them.

It is mainly stated in the application that accompanying appeal

is being filed which is likely to succeed on the grounds taken therein. It is

further stated that if the leave is not granted, then the applicant will suffer irreparable loss, which cannot be compensated later on. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Harbhajan Singh filed a complaint against accused Nirmal Singh, Satpal, Chaman, Amandeep Singh and Gurdeep Kaur under Sections 323, 324, 326, 148 and 149 IPC. The brief averments of the complaint as noted down by learned JMJC, Hoshiarpur, are as under:-

“2. Brief facts of the case of the complainant are that on 03.04.2004 at about 6:30 p.m., he was going to his haveli and in the way he was way laid by all the accused. Nirmal Singh accused was armed with kirpan, whereas Satpal and Chaman Singh accused were also armed with kirpan and standing on the way. Accused Amandeep Singh @ Pinki and Gurdeep Kaur were standing on the way. When the complainant reached near the accused, Nirmal Singh accused assaulted and gave kirpan blow on the head of the complainant. The complainant raised his right arm and warded off the blow and as such blow of kirpan given by accused Nirmal Singh fell on the right hand of complainant causing injuries on the fingers. Then, accused Satpal gave kirpan blow on the back of the complainant and Chaman Singh accused gave kirpan blow which hit on the back of the complainant. Accused Amandeep Singh and his mother Gurdeep Kaur, accused were exhorting their co-accused. In the meantime, Gurbax Singh and Nasib Singh witnesses were attracted to the spot and on their intervention complaint was rescued. Thereafter, all the accused fled away from the spot with their respective weapons. There was a dispute between the accused Nirmal Singh and his father Ajit Singh came for hearing before village panchayat and the complainant being member panchayat asked Nirmal Singh that he had no right to sell the land and at that time, Nirmal Singh threatened the complainant and on that account, all the accused caused injuries to the complainant. Initially efforts were made for compromise. But the complainant after getting himself examined from Civil Hospital, made statement before the police, on the basis of which FIR No.59 dated 07.04.2004 under Sections 324, 323, 148 and 149 IPC was registered and subsequently offence under Section 326 of IPC was added. After registration of the case, the case was investigated by the police and accused had been found guilty. However, due to political pressure, the police decided to file

cancellation report of above said FIR. Hence, this complaint.”

On the basis of pre-charge evidence, the accused were charge-sheeted under Sections 326, 324, 323 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

At the close of complainant evidence, accused were examined under Section 313 Cr.P.C. They were confronted with the evidence of the complainant and they denied all the incriminating evidence against them and pleaded their innocence. They further pleaded that they did not cause any injury to Harbhajan Singh as alleged. FIR was registered by the police and during the enquiry/investigation, both the parties were called and statements were recorded. After thorough enquiry conducted by the police, the version of the complainant party was found to be false and FIR was ordered to be cancelled by the police. They further pleaded that on the day of occurrence, complainant party consisting of Pardeep Singh armed with kirpan, Tarsem Singh armed with gandasi, Kuldeep Singh and Iqbal Singh armed with dangs caused injuries to Nirmal Singh and Gurdeep Kaur.

Learned JMIC, Hoshiarpur, after appreciating the evidence, convicted the accused-respondents under Sections 326, 324, 323 read with Section 34 IPC and sentenced them to undergo rigorous imprisonment for a maximum period of three years along with fine under each Section. An appeal was filed by accused-respondents and learned Addl. Sessions Judge, Hoshiarpur, accepted the appeal vide impugned judgment dated 02.05.2014 and acquitted the accused of the charges framed against them.

Aggrieved from the judgment dated 02.05.2014 passed by learned Addl. Sessions Judge, Hoshiarpur, present application seeking to

leave to appeal has been filed.

Notice of the application was issued. Learned counsel for respondent No.1 appeared and contested the application. However, none appeared on behalf of respondents No.2 to 4 despite service.

Lower Court record was also requisitioned.

I have heard learned counsel for the parties and have gone through the record, especially the judgments passed by the Courts below.

Learned lower Appellate Court held that occurrence took place at 6.30 p.m. and as per MLR, the complainant reached the hospital at 11.50 p.m. There is delay of more than five hours, which looks unnatural on the part of the complainant. The Court also held that it was not the case of the complainant that he has got first aid from any other doctor. The doctor in the statement deposed that injuries were freshly bleeding and it is stated that after gap of such a time, the injury cannot be freshly bleeding and blood might have been clotted within such a period, which is also clear from the cross-examination of the doctor.

Learned lower Appellate Court further held that same doctor has examined Nirmal Singh accused on the same day, who had incised wound. The doctor examined accused Gurdeep Kaur. The doctor also admitted that Harbhajan Singh, complainant, Gurdeep Kaur and Nirmal Singh have received injuries in the same occurrence and at the same time.

From the evidence on record, I find that it is clear that accused Nirmal Singh and Gurdeep Kaur have also received injuries on their person but these injuries have not been explained by the complainant party as to how they received injuries. Furthermore, it also looks that occurrence has

not taken place as stated by the complainant. The complainant has not

stated regarding injuries upon the accused, which means that the genesis of the occurrence has been concealed and the occurrence has not taken place as it is deposed. The occurrence is of 03.04.2004 and complaint has been filed on 09.09.2005. The FIR got registered by the complainant has been got cancelled being false one. Harbhajan Singh is Member Panchayat and wife of Nirmal Singh is also Member Panchayat. Learned Addl. Sessions Judge also discussed the evidence of Gurbax Singh, other private witness. The Court held that when the injured was lying alone in the Haveli, then he should have removed the injured to the hospital but he had not made any effort to remove him to the hospital nor he intimated family members of the injured, so that they could come and take care of injured. It is also in his cross-examination that he did not disclose this fact to his own family members. An ordinary person does not react in this way, in such type of situation. Learned lower Appellate Court has also discussed the evidence in minute details.

From the evidence on record, especially, the findings given by learned Addl. Sessions Judge, Hoshiarpur, I find that complainant has failed to prove his case beyond reasonable doubt. Injuries on the person of accused have not been explained and genesis of the occurrence has been concealed.

From perusal of the reasonings given by learned Addl. Sessions Judge, Hoshiarpur, I find that the findings given by learned lower Appellate Court while acquitting the accused-respondent are correct, as per law and evidence. The evidence has been re-appreciated in right perspective. Nothing has been pointed out as to which material evidence has been

misread and which material evidence has not been considered by the Court

below. In no way, the findings given by learned Addl. Sessions Judge, Hoshiarpur, can be held as perverse or against the law.

In view of the above discussion, I find that the impugned judgment dated 02.05.2014 passed by learned Addl. Sessions Judge, Hoshiarpur, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out to grant permission for leave to appeal and therefore, the present application stands dismissed.

October 29, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No