

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : CRM-A-1800-MA of 2017

Date of Decision : January 30, 2018

State of Haryana Applicant

Vs.

Kuldeep Singh Respondent

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

HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

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

* * *

DEEPAK SIBAL, J. :

The instant application filed under Section 378 (3) of the Code of Criminal Procedure, 1973 (for short – Cr.P.C.) has been preferred by the State of Haryana seeking therein grant of leave to appeal against the judgment dated 09.01.2017 passed by Sessions Judge, Sirsa (for short – the trial court), acquitting the respondent of the charges framed against him under Sections 323/324/341/307/34 of the Indian Penal Code, 1860 (for short – IPC).

Briefly stated, the case of the prosecution is that on 16.02.2015, during the birthday celebrations of the injured – Mohit, the respondent along with Coach Kharia, Piyush @ Sem and Kalu came to the

Monika
2018.02.06 16:20
I attest to the accuracy and
integrity of this document

celebrations and started drinking alcohol. Thereafter, Coach Kharia and respondent-Kuldeep caught hold of Mohit and on the exhortation of Sem, Kalu gave him a *kapa* blow on the back side of Mohit's head. When the complainant-Manoj tried to rescue Mohit, he was also given beatings by the respondent, Coach Kharia etc. As a result of afore-referred quarrel, Mohit received injuries, which initially led to the lodging of an FIR under Sections 323/324/341/34 IPC and after the doctor declared two of Mohit's injuries to be dangerous to life, Section 307 IPC was added.

The trial court, after sifting the evidence which had come on record, being of the opinion that the prosecution had not proved its case beyond reasonable doubt, extended benefit of doubt and acquitted Kuldeep Singh-accused, which is under challenge in the present proceedings.

Learned counsel for the applicant submitted that the trial court erred in acquitting the respondent of the charges levelled against him as there was overwhelming evidence on the record to prove his guilt. While admitting that against the acquittal of Coach Kharia, who had been attributed a similar role as the respondent, no application had been filed by the State seeking leave to appeal, it was submitted that the injuries caused to Mohit by the respondent-Kuldeep Singh had been duly proved by the prosecution.

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

consideration.

The alleged eye-witnesses of the occurrence produced by the prosecution i.e. PW-4 Mohit Kumar and PW-5 Yogesh Kumar, while appearing before the trial court, did not support the prosecution's case. Rather, they categorically deposed that respondent-Kuldeep Singh neither caught hold of the injured nor did he cause any injury to him, thus, creating a huge dent in the prosecution's case.

The medical evidence, which came on record, also does not support the case of the prosecution. According to the medico-legal report, the injured had suffered two injuries, whereas the injured-Manoj while appearing as PW-6 stated that he had received only one injury. PW-14 Dr. Rahul Mighani stated before the trial court that Ruli Ram, who had brought the injured to the hospital, found Manoj in an injured condition at Hisar bypass, thus, contradicting the stand taken by PW-6 Manoj. There is also delay of seven days in lodging of FIR which remains unexplained.

Further, as per the evidence which had come on record, prior to the occurrence, the first informant-Manoj was not acquainted with the respondent. Therefore, it was for him to explain as to how he named the respondent in his statement which formed the basis of the FIR. His supplementary statement also makes the prosecution's case doubtful, whereby he exonerated one of the assailants namely Piyush @ Sem to whom initially *lalkara* had been attributed. The complainant's version that

Manoj regained consciousness only on 17.02.2015 is contradicted by the medical evidence as it is nowhere found therein that after receiving the alleged injuries, Manoj was ever unconscious.

Ruli Ram, who brought Manoj to hospital, was a crucial witness but was never joined in the investigation. He was also not cited as prosecution witness. No Test Identification Parade (TIP) was also conducted by the Investigating Officer. No blood stained earth or any other corroborative evidence was also collected by the Investigating Officer from the alleged place of occurrence. No recovery was also effected from the respondent.

It may be noted that Coach Kharia, who has been attributed a similar role as the respondent, was also acquitted by the trial court. Admittedly, against his acquittal, no application seeking leave to appeal has been preferred by the State.

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

(T. P. S. MANN)
JUDGE

(DEEPAK SIBAL)
JUDGE

January 30, 2018
monika