

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1230-MA-2014
Date of Decision:-28.5.2018

Avtar Singh ... Applicant

Versus

Gurmej Singh and others ... Respondents

CORAM: **Hon'ble Mr. Justice T.P.S. Mann**
Hon'ble Mr. Justice Gurvinder Singh Gill

Present:- Mr. Aakash Singla, Advocate for the applicant.

Gurvinder Singh Gill, J.

1. The applicant-complainant Avtar Singh prays for grant of leave to file appeal so as to challenge judgment dated 17.4.2014 passed by the Court of learned Judicial Magistrate 1st Class, Smana, whereby the respondents-accused have been acquitted of the charges framed against them for offences under Sections 323, 326 read with Section 34 of Indian Penal Code, 1860.
2. The applicant-complainant Avtar Singh had filed a complaint in the Court of Judicial Magistrate 1st Class, Samana, alleging therein that on 25.7.2009, when he was working alone in his agricultural land, then all the three accused came there and asked him as to why he had cut grass from the 'watt' (boundary raised with soil for demarcating fields) and abused him and upon the

complainant objecting to the same, they gave fist and kick blows to him, as a result of which he fell on the ground. It is further the case of the complainant that Gurmej Singh instigated the other accused to give fist and kick blows, upon which accused Bagga @ Dilbag caught hold of the complainant and accused Navtej Singh gave a blow with '*Kahi*' (agricultural implement having broad iron blade and long handle used for lifting soil) hitting him on his left foot.

3. The complainant lodged FIR with the police i.e. FIR No. 75 dated 26.7.2009 under Section 323, 324 read with Section 34 of Indian Penal Code, 1860, but upon investigation, the police filed a cancellation report constraining the complainant to file the complaint. Consequent upon summoning of accused and framing of charges against the accused for offences under Section 323, 326 read with Section 34 of Indian Penal Code, 1860, the complainant himself stepped into witness-box as PW-1 and also examined PW-2 ASI Satgur Singh, who had conducted investigation in the FIR registered at the instance of the complainant and PW-3 Dr. Parveen Puri, who proved MLR in respect of the injuries sustained on foot by the complainant.
4. When examined under Section 313 Cr.P.C., the accused pleaded false implication. The accused in their defence examined DW-1 Dr. Kamal Kant, who proved MLR in respect of the injuries sustained by Gurmej Singh and DW-2 Head Constable Raghubir Singh, who proved the cancellation report filed in the FIR lodged at the instance of the complainant.
5. The learned Trial Court, upon considering the evidence on record, held that the complainant had been unable to establish the charges framed against the accused, while observing that false implication of the accused cannot be

ruled out and consequently acquitted the accused of all the charges framed against them.

6. The learned counsel for the applicant, while pressing upon his application seeking leave to file appeal, has submitted that the trial Court overlooked the fact that the complainant had in fact sustained a grievous injury, whereas the injury allegedly found on the person of accused Gurmej Singh was, at best, a simple injury. It has also been submitted that the accused, with their influence, had been able to manoeuvre the investigation and had got a cancellation report filed despite the fact that there was ample evidence to establish their guilt.
7. We have considered the aforesaid submissions and have also perused record of the case.
8. A perusal of MLR (Ex.CW-3/A) in respect of the injuries sustained by complainant Avtar Singh reveals that he had sustained one incised wound on his foot and had been advised x-ray examination. However, no x-ray report has been proved on record so as to establish that the said injury was a 'grievous' injury. It may here be mentioned that though one witness namely i.e. Nirmal Singh, Radiographer had been examined before framing of the charges but the said witness was never produced after framing of the charge-sheet, so as to enable the accused to effectively cross-examine the witness. It will also not be out of place to mention here that PW-3 Dr. Parveen Puri, while in the witness-box, has stated that possibility of self-infliction of said injury cannot be ruled out.
9. As against the aforesaid injury on foot of the complainant Avtar Singh, a perusal of the MLR (Ex.DW-1/2) in respect of injury sustained by accused

Gurmej Singh, shows that he had received a lacerated wound measuring 3 X 0.5 cms. over left occipital region and from which blood was oozing out. The said injury on accused being on a vital part and regarding which there is no explanation in the complaint, leaves much to be explained on part of the complainant. More particularly, when the complainant, as per his version, was alone and unarmed at the time of alleged attack by three accused and yet was able to cause injury on head of one of the accused.

10. The complainant having suppressed genesis of the occurrence and the police upon investigation, having chosen to cancel the FIR in respect of this very occurrence, the findings of the learned Trial Court to the effect that the possibility of false implication of the accused cannot be ruled out, do not warrant any interference.
11. There is no infirmity in the impugned judgment. No case is made out for granting leave to the applicant to prefer an appeal against the impugned judgment of acquittal. Consequently, the application being devoid of merits, is dismissed. Leave to appeal is declined.

(T.P.S. Mann)
Judge

(Gurvinder Singh Gill)
Judge

28.5.2018
pankaj

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No