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

**CRM-A-459-MA of 2018 (O&M)
Date of decision: July 02, 2018**

Hardev Singh

.....Applicant

Versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. P.S. Dhaliwal, Advocate for the applicant.

A.B. CHAUDHARI, J

CRM No.7007 of 2018

Heard learned counsel for the applicant on the question of application for condonation of delay of 327 days in filing the application seeking leave to appeal against acquittal of two accused persons, namely Jagsir Singh and Amritpal Singh and for enhancement of sentence awarded to Anokh Singh son of Balaur Singh.

We have perused the reasons furnished in Para-2 of the present application, which read thus:-

“2. That the impugned judgment was passed on 09.12.2016 vide which the private respondents have been acquitted and the appellant has suffered a great shock due to the impugned judgment. Thereafter the appellant was advised to file the appeal before the Hon'ble High Court however the appellant could not approach this Hon'ble Court as he is busy in the service of his son Chamkaur Singh who is in Coma.

Thereafter the appellant was contacted the undersigned counsel and he visited this Hon'ble Court on 06.01.2017 and came to know that the appeal is time barred. The delay in filing the appeal is neither intentional nor willful but has occurred due to the reason mentioned above.”

We are satisfied that the reasons mentioned in Para-2 of the application are good and sufficient to condone the delay in filing the application seeking leave to appeal against acquittal.

Hence, the delay of 327 days in filing the application seeking leave to appeal against acquittal, is condoned.

Application stands disposed of.

CRM-A-459-MA of 2018

In the present application, the applicant has put to challenge the judgment and order dated 09.12.2016 passed by the learned Sessions Judge, Barnala, in Sessions case No.28 dated 31.05.2014, by which the accused-Jagsir Singh and accused-Amritpal Singh were acquitted of the charge levelled against them and for enhancement of sentence over and above 10 years awarded to accused-Anokh Singh.

The case of the prosecution was that Hardev Singh, the complainant stated that on 12.03.2014, he along with his nephew Bikkar Singh were going from Mehal Kalan to village Chhinniwal on their tractor and at that time, his son Chamkaur Singh (victim) who was employed as Inspector, Food and Supply, Mehal Kalan, was also travelling in his Mahindra Jeep in front of the tractor of the complainant. When they reached near the house of Gurmail Singh son of Lal Singh, at about 6:30

P.M., a truck No.PB-10P-9915 which was being driven at a very high speed, hit the jeep of Chamkaur Singh with intention to kill him. The jeep over turned and fell in the fields on the left side of the road and the said truck also fell in the fields. The accused Anokh Singh came out of the driver seat carrying a stick in his hand and he was also accompanied by two unknown persons, who also alighted from the truck and the accused persons went to the jeep of Chamkaur Singh and accused Anokh Singh started giving blows of stick on the head of Chamkaur Singh and other accused also exhorted him not to leave Chamkaur Singh. Thereafter, Chamkaur Singh was got admitted in the Malwa Hospital, Mehal Kalan and from where, he was referred to Ludhiana. The investigation was made and finally, the challan was presented by the police for offence under Section 307 of Indian Penal Code, 1860 (for short 'IPC') read with Section 34 IPC. The trial Court, then recorded the conviction as stated above and acquitted two accused persons. Hence, this appeal.

In support of the appeal, learned counsel for the applicant vehemently argued that the trial Court erroneously acquitted accused-Jagsir Singh and Amritpal Singh, when they were identified by the witnesses, in the Court. He submitted that because of the injuries caused to Chamkaur Singh with *danda* on his head, he has become disabled and is unable to speak and is in semi-conscious stage. He further submitted that as a result of deadly attack on Chamkaur Singh, the trial Court could not have acquitted accused-Jagsir Singh and Amritpal Singh, when other witnesses had identified them in the Court. Apart from that, there was

extrajudicial confession by accused-Anokh Singh, in which the names of all the other accused persons were taken by him. He, therefore, submitted that there was enough evidence to convict accused-Jagsir Singh and Amritpal Singh as well. In so far as the sentence awarded to accused-Anokh Singh is concerned, he submitted that the sentence of 10 years awarded by the trial Court is too less looking to the fact that the injuries suffered by Chamkaur Singh because of the assault were such that Chamkaur Singh gone in coma and unable to speak. He submitted that the applicant may be granted liberty to apply for compensation by putting challenge to the impugned judgment in other proceedings.

We have heard learned counsel for the applicant. We have carefully perused the entire evidence. It is true that because of the injuries suffered by Chamkaur Singh by means of *danda* on his head caused by accused-Anokh Singh neurologically the victim has become disabled. That is the finding recorded by the trial Court in the impugned judgment, which we have seen.

Learned counsel for the applicant submitted that accused-Jagsir Singh and Amritpal Singh were also identified by PW1 to whom extrajudicial confession was made by Anokh Singh who involved accused-Jagsir Singh and Amritpal Singh. We are unable to agree with the submission made by the learned counsel for the applicant that the extrajudicial confession made by Anokh Singh in respect of the co-accused-Jagsir Singh and Amritpal Singh could be utilized against them. The same could, at the most, be utilized for convicting accused-Anokh

Singh. Similar is the case with other witness PW3. That apart what we find is that both these witnesses have not identified accused-Jagsir Singh and Amritpal Singh as according to them, they were having muffled faces at the relevant time. The accused-Jagsir Singh and Amritpal Singh were not at all named in the FIR not their description was made in the FIR. The trial Court, therefore, found it risky to convict unidentified accused persons and in our opinion rightly as there was no satisfactory evidence on record to conclude that accused-Jagsir Singh and Amritpal Singh had participated in the crime. On the contrary, the story of the prosecution, from the beginning, is about two other persons were having muffled faces. In that view of the matter, we find no merit in the submissions that accused-Jagsir Singh and Amritpal Singh should have been convicted by the trial Court. The trial Court has given benefit of doubt to those two accused persons with which we do not find any fault. Hence, we confirm the acquittal of accused-Jagsir Singh and Amritpal Singh recorded by the learned trial Court.

The next question is about the plea for enhancement of sentence of accused-Anokh Singh. The learned trial Court awarded the sentence of rigorous imprisonment of 10 years to Anokh Singh, but has not awarded any compensation perhaps because the applicant did not seek any compensation. Ofcourse, as held in the case of **Ankush Shivaji Gaikwad versus State of Maharashtra** (2013) 6 SCC 770, there is duty on the part of the Courts to award compensation. That apart, in so far as the aspect of enhancement of sentence is concerned, we do find that it was

most unfortunate that injuries caused on the head of the victim resulted into his disablement because of neurological complications. But then the trial Court has not awarded less sentence but has awarded sentence of rigorous imprisonment of 10 years to accused-Anokh Singh. We do not think that the discretion exercised by the trial Court in awarding sentence of rigorous imprisonment of 10 years to accused-Anokh Singh should be interfered with as the sentence is adequate. It cannot be said that the order regarding award of sentence of 10 years could be said to be perverse. We, therefore, do not accept the plea for enhancement of sentence.

In so far as the plea for awarding of compensation is concerned, we leave it to the applicant to make such claim as is permissible in law.

Hence, the application seeking leave to appeal against acquittal and for enhancement of sentence of Anokh Singh, is dismissed.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

July 02, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No