

222

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

CRM-A-2452-MA of 2017

Date of decision: February 23, 2018

Fakruddin

.....Applicant

Versus

State of Haryana and another

.....Respondents

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

Present: Mr. Sarfraj Hussain, Advocate for the applicant.

A.B. CHAUDHARI, J

The complainant-applicant-Fakruddin has preferred the present application seeking leave to appeal against the judgment of acquittal dated 16.08.2017 passed by the learned Additional Sessions Judge, Faridabad in Sessions Case No.6.

In support of the application, learned counsel for the applicant vehemently argued that the victim or the applicant should not suffer for the fault of the investigating machinery in not properly investigating the offences in question. In other words, according to him, there was sworn testimony of wife-Meena and the mother of the applicant who had clearly identified the accused person-respondent No.2 committing the crime. The witnesses were injured. According to him, the testimony of two witnesses, namely Meena and his mother was liable to be believed and the accused was liable to be convicted. The judgment impugned is perverse and is as such, liable to be set aside and respondent No.2 is liable to be convicted.

We have gone through the impugned judgment and order of acquittal recorded by the learned trial Court. At the outset, we find that over the construction of mosque in the village, there was a long pending dispute between the parties. In so far as the evidence of PW2-complainant and PW4-Meena is concerned, the submissions made by the learned counsel for the applicant are not correct. The reason is that they claim that they were injured, but no injuries were found anywhere nor they were examined in the Hospital. PW3-Fakruddin also led contradictory evidence when he was confronted in his evidence. In this connection, it will be appropriate to quote the following Paragraph-22 from the impugned judgment of the trial Court:-

“22. In order to prove the prosecution story, PW-3 Fakruddin deposed that on 25.5.2013 at about 6:00 p.m. some persons including accused Surender alias Fandi entered into his house and set ablaze his house hold articles. He was carrying on jarican containing petrol. He also set ablaze two motorcycles and one Zylo car parked at the house of Hasi Sakir. He has also deposed that some gold and silver ornaments including cash of ₹2,90,000/- was looted from his house. In his cross examination, he admitted about the registration of one another case about the same incident. He has made his statement before police. In that statement he levelled the allegations against accused Surender. In his cross examination, he was confronted with his statement Ex.D1 recorded under section 161 Cr. P.C. in case FIR no.88 dated 2.6.2015, under section 147, 148, 149, 452, 436, 395 IPC about the series of incident dated 25.5.2015 where certain facts have not been found recorded. He admitted about the dispute over the construction of grave yard. He also admitted that police was camping in the

village w.e.f. 22.5.2015 near the Mosque and his house was at a distance of 200-300 feet from the said Mosque. He admitted that complaint was submitted by him on 29.7.2015. it was written by his brother Rahisuddin. His mother and wife sustained invisible injuries. They were not admitted in the hospital. He admitted about the receipt of compensation amount of ₹1,10,000/- from the government and he also admitted that buffalo and ornaments were never got recovered. To corroborate his statement, prosecution examined another witness PW-4 namely Meena. This witness in her examination in chief stated that five accused including Lakha, Sunder, Fandi, Arvind and Sabsukh entered into their house. He was holding jarican containing petrol. They extended them beatings.....”

We find from the above discussion made by the trial Court that there was inconsistency in the evidence of the witnesses and the evidence was uncorroborated by medical evidence also. Apart from that, in so far as the recovery etc. is concerned, the same was found by the trial Court to be completely absent, resulting into want of corroborative evidence. That has been discussed in Paragraph-23 of the impugned judgment, which we quote hereunder:-

“23. in the light of statement of these two witnesses coupled with the facts of the case, it is clear that in this case from the possession of the accused no weapon was recovered. One jarican was stated to be recovered vide memo Ex.P2. But, PW-5 investigating officer, admitted in his cross-examination that said jarican was never sent to Laboratory for test and for detecting the contents of petrol. Learned Public Prosecutor fairly conceded this fact at bar that at no point of time jarican was sent to Laboratory. Police has not recovered during the course of investigation gold, silver

articles, buffalo and cash amount from the possession of the accused Surrender alias Fandi. There is also no documentary evidence on the record regarding the ownership of the burnt motorcycle and Zylo car. Admittedly, in this case FIR was registered after four days of the occurrence. Number of cases were registered in respect of the dispute over the construction of Mosque and for setting ablaze certain properties. The statement of complainant PW-3 and his wife PW-4 recorded in case FIR no.88 dated 2.6.2015 found discrepant and at variation on many material counts. Learned Public Prosecutor also placed on the record copy of FIR no.84 registered on 29.5.2015 about series of incident in the Village Attali in respect of the dispute over the Mosque and setting ablaze the properties. A perusal of this FIR goes to show that accused Fandi alias Surrender was not named in the said FIR, at initial stage and subsequent FIRs are the off-shots of the said FIR.”

Perusal of the impugned judgment of the trial Court clearly shows that the trial Court has listed the reasons in Paragraph-30 of the impugned judgment in entirety. The reasons are based on evidence on record and the circumstances, which were required to be proved. The prosecution, however, failed to prove those circumstances. We quote Paragraph-30 of the impugned judgment of the trial Court as under:-

“30. After marshalling the facts of the prosecution case and appreciating the evidence available on the record, this court is of the considered opinion that:-

- prosecution has not proved the recovery of any weapon from the possession of the accused.*
- Prosecution has also not proved any injury on the person of complainant and his wife and mother.*

- *No documentary evidence has been produced in order to establish the ownership of burnt vehicles.*
- *FIR was registered after lapse of four days from the date of occurrence.*
- *No recovery of looted articles or cash was effected from the possession of the accused.*
- *Jarican Ex. P10 allegedly recovered from the possession of the accused was never sent to laboratory for detecting the petrol contents.*
- *No buffalo was recovered from the possession of the accused*
- *the statement of PW-3 and PW-4 found discrepant on some material point and confronted with their statements recorded under section 161 Cr. P.C. in another case registered vide FIR no.88 dated 2.6.2015.*
- *no gas cylinder was recovered from the house of the complainant. Even the investigating officer in his site plan Ex. P8 has not shown location of the stones.*
- *Anoj Kumar, draftsman, admitted that his site plan Ex P1 does not contained location from where the witnesses witnessed the occurrence.*
- *The place of occurrence was already within the knowledge of police. The disclosure statement was never recorded in presence of any independent witness. Therefore, the demarcation of the place of occurrence carry no material value in the eyes of law*
- *It is admitted case of the prosecution that police was camping in the village w.e.f. 22.5.2015 in connection with construction near the Mosque of the village. If the police was present on the*

same day, it remains unproved that why FIR was registered at belated stage.”

In the result, we find that the view taken by the trial Court is probable, possible and it would not be possible for this Court to substitute the view taken by the trial Court in appeal against acquittal. In the result, we make the following order:-

ORDER

- (i) CRM-A-2452-MA of 2017 seeking leave to appeal against judgment of acquittal dated 16.08.2017 stands dismissed.

(A.B. CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

February 23, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No