

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

**CRM No.16833 of 2018 in/and  
CRM-A No.925-MA of 2018 (O&M)  
Date of decision : October 29, 2018**

**State of Haryana**

**..... Applicant**

**Versus**

**Gurmeet Singh @ Mita and others**

**..... Respondents**

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

**Present:-** Mr. Vivek Saini, DAG, Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

**KULDIP SINGH J.(ORAL)**

**CRM-16833-2018**

There is delay of 92 days in filing the application for grant of leave to appeal.

For the reasons mentioned in the application, delay of 92 days in filing the application for grant of leave to appeal is condoned, subject to all just exception.

Application stands disposed of.

**Main Case**

The State of Haryana has filed the present application under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment of

acquittal dated 26.09.2017 passed by learned Addl. Sessions Judge, Fatehabad, vide which the accused Balkar Singh S/o Sarwan Singh, Rajender @ Chhinda S/o Balkar Singh, Kuldeep @ Kukku, Sonu S/o Jagtar Singh and Sukhdeep @ Sukha S/o Gurcharan Singh were convicted under Sections 148, 149, 304, 323, 325 and the three of the remaining accused, namely, Gurmeet Singh @ Mita S/o Balwan Singh, Gurcharan Singh S/o Bachan Singh and Sandeep S/o Kitab Singh were acquitted.

We have heard learned State counsel and have also carefully gone through the case file.

In this case, the FIR was registered on the statement of Ex. P-6 Mukhtiar Singh S/o Sher Singh, who stated that his son Sandeep was running a grocery shop in the village. On 16.08.2015, some mobile phones were stolen from his shop and Sandeep suspected some other persons but Kukku @ Kuldeep S/o Gurcharan, accused told Sandeep that his mother Surjeet Kaur was being wrongly suspecting for involvement in the said theft of mobile phones. Due to which, an altercation took place between Sandeep and Mahender on the one side and Chhinda S/o Balkar and Balkar S/o Sarwan on the other side. Around 1.30 p.m., Balkar, Chhinda and Kukku @ Kuldeep along with eight other persons, having rod and *kulhadi* (axe) in their hands started beating to the sons of the complainant, namely, Kashmir, Harpal and Sandeep. On hearing their cries, Mukhtiar Singh along with his son Mahender Singh and his wife Surjeet Kaur rushed to the spot and tried to rescue their sons but Chhinda gave a *kulada* (axe) blow on his head, Kuldeep @ Kukku gave a rod blow on his right knee and all the other

persons also started causing injuries to them. Many villagers came at the spot. On seeing them, all the accused ran away from the spot along with their respective weapons. They were got admitted in the hospital at Tohana but injured Kashmir was referred to PGIMS, Rohtak due to his serious condition. On the basis of statement of Mukhtiar Singh, the case FIR No.407, dated 24.08.2015, under Sections 148, 323, 325 and 341 read with Section 149 IPC was registered at Police Station City Tohana, District Fatehabad, in which Section 325 IPC was added on 02.09.2015. On 16.09.2015, injured Kashmir Singh succumbed to the injuries. Therefore, Section 302 IPC was also added.

On the presentation of the challan and commitment of the case, all the accused were charge-sheeted under Sections 148, 323, 325 and 302 read with Section 149 IPC.

To prove its case, the prosecution examined PW1 ASI Bhadar Singh, PW2 Constable Jai Singh, PW3 ASI Phool Singh, PW4 Mukhtiar Singh, PW5 Sandeep, PW6 Harpal Singh, PW7 Dr. Monika, PW8 EHC Balvinder Singh, PW9 Balwant Singh Draftsman, PW10 EASI Amar Singh, PW11 Dr. Nitin Jain, PW12 Dr. Mukesh Kumar Meel, PW13 Dr. H.S. Saggu, PW14 SI Surendra, PW15 DR. Virender Ahlawat, PW15A ESI Ashok, PW16 HC Pawan, PW17 EHC Sjjan Singh and PW18 ASI Dharampal.

When examined under Section 313 Cr.P.C., all the accused pleaded innocence and false implication in the case and did not lead evidence in defence.

After hearing the prosecution, accused and going through the evidence, the accused-respondents, namely, Gurmeet Singh @ Mita, Gurcharan Singh and Sandeep were acquitted of the charges framed against them. However, the remaining accused were convicted and sentenced under Sections 148, 323, 325 and first part of Section 304 read with Section 149 IPC and sentenced to various imprisonment as aforesaid.

The State of Haryana being aggrieved by the acquittal of the accused-respondents has filed appeal, in which leave to appeal has been sought.

The initial complaint (Ex.P6) made by Mukhtiar Singh shows that all the three persons, namely Gurmeet Singh @ Mita, Gurcharan Singh and Sandeep have not been specifically named in the FIR. Though, in addition to complainant Mukhtiar Singh, his son Mahender Singh, and wife Surjeet Kaur were also present at the spot and they had sufficient time to identify the accused.

In this case, Mukhtiar Singh as well his two sons Sandeep and Harpal Singh, who were injured, were examined as PW4 to PW6 respectively.

A perusal of their examination before the Court shows that PW4 Mukhtiar Singh, complainant in his statement merely stated that Mita @ Gurmeet Singh and Sandeep having *dandas* were present at the spot. He did not state that the said two persons caused any injury to any of the victims. The third person, namely, Gurcharan Singh was not named at all to be present at the spot. In this way, Mukhtiar Singh, complainant did not

attribute any overt act to said three accused-respondents.

Sandeep S/o Mukhtiar Singh, PW5 in his statement stated that Gurcharan Singh, Sandeep and Gurmeet Singh @ Mita along with other accused came to the spot having *kulada* (axe), *lathi* and iron rods. Gurcharan Singh was armed with *lathi*. Gurmeet Singh @ Mita and Sandeep were carrying *dandas*. He also stated that Gurcharan Singh gave *lathi* blow on his head and on his back, which is not stated by the complainant. He did not attribute to specific overt act to Sandeep and Gurmeet Singh @ Mita.

Harpal, another son of complainant Mukhtiar Singh, while appearing as PW6 stated that Gurcharan Singh along with Balkar gave a *lalkara*, which is not stated by the other witnesses. He also stated that Sandeep was also present at the spot. He stated that Gurcharan gave a rod blow on his head, whereas his brother Sandeep, PW5 stated that Gurcharan Singh was carrying a *lathi* and gave *lathi* blow on his head and back as well, whereas complainant Mukhtiar Singh has not attributed any overt act to Gurcharan Singh.

The trial Court after considering the nature of the injuries on the persons of Kashmir, Mukhtiar Singh, Harpal and Sandeep and noting abovenoted discrepancies, came to the conclusion that the case against the said three accused-respondents, namely, Gurcharan Singh, Gurmeet Singh @ Mita and Sandeep is not proved beyond all reasonable doubts.

I am of the view that the trial Court after considering the evidence and the discrepancies, has taken one of the possible views and convicted five out of the eight accused and granted benefit of doubt to three

accused. Considering the evidence discussed above, I am of the view that the trial Court has taken one of the possible views, which is supported by the reasoning. Therefore, there is no ground to set aside the judgment of acquittal dated 26.09.2017 passed by learned Addl. Sessions Judge, Fatehabad.

Thus, there is no ground to grant leave to appeal. Consequently, the present application for grant of leave to appeal is dismissed.

**(A.B. CHAUDHARI)**  
**JUDGE**

**(KULDIP SINGH)**  
**JUDGE**

October 29, 2018/sarita

Whether speaking / reasoned :      Yes    Whether Reportable :    No