

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-201-MA of 2014

.....

Date of decision:22.1.2018

State of Haryana

...Applicant

v.

Balwan and others

...Respondents

....

**Coram: Hon'ble Mr. Justice A.B. Chaudhari
Hon'ble Mr. Justice Inderjit Singh**

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Present: Mr. Kuldeep Tiwari, Additional Advocate General, Haryana for
the applicant-State.

Mr. Jitender Dhanda, Advocate for the respondents.

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Inderjit Singh, J.

This criminal miscellaneous application has been filed under Section 378(3) of the Code of Criminal Procedure ('Cr.P.C.' for short) seeking leave to file an appeal against the judgment dated 22.4.2013 passed by Additional Sessions Judge, Hisar, vide which respondents-accused were acquitted of the charges framed against them.

The above respondents-accused were made to face trial in FIR No.380 dated 16.5.2006 registered at Police Station, Sadar, Hisar, District Hisar for the commission of offences punishable under Sections 323, 324, 326, 148 and 149 IPC.

The brief facts of the prosecution case as noted down by learned Additional Sessions Judge, Hisar in the judgment dated 22.4.2013 are as under:-

“Brief facts of the prosecution case are that Dinesh Kumar got recorded his statement to the police to the effect that they purchased water for two hours from Beer Chamar which was used by force by Rajesh etc. Due to which there was grudge in between them. On 15.05.2006, at about 11:00 a.m. he alongwith his brother Sumer, his cousin Jagbir and Surender was returning from their fields to their house. When they reached near the fields of Rajesh, Rajesh armed with Gandasi, Virender @ Pappu armed with Jelly, Shamsher son of Bharat Singh armed with Jelly, Manvir armed with Jathi, Sandeep armed with Gandasi, Balwan armed with Jelly and Meenu came there and asked them as to why they took their water. Rajesh gave a Gandasa blow on the head of Sumer, Sandeep gave a Gandasa blow on the left hand of Sumer. When Dinesh, Surender and Jagbir tried to rescue Sumer, then Meenu and Manvir gave Lathi blows to Dinesh, which hit on his elbow and arm. They also caused injuries to Jagbir and Surender. Thereafter they came to their house in the village. Thereafter, they were medico legally examined from General Hospital, Hisar. Sumer was admitted in Sapra Hospital, Hisar. During investigation of the case accused Balwan, Virender and Shamsher Singh were arrested on 16.08.2006, accused Meenu @ Satish was arrested on 08.06.2006. Accused Sandeep, Manvir and Rajesh were arrested on 07.06.2006. The statements of witnesses were recorded. After completion of formalities of investigation, challan was presented in the Court.”

The charges were framed against the accused for commission of

offences punishable under Sections 148, 323, 324 and 326 read with Section 149 IPC, to which the accused pleaded not guilty and claimed trial.

The prosecution to prove its case examined as many as eleven witnesses i.e. PW-1 Dinesh, PW-2 Jagbir, PW-3 Surender, PW-4 Sumer, PW-5 Jai Singh, ASI, PW-6 Umed Singh HC, PW-7 Dr. Tarun Sapra, PW-8 Dr. B.S. Khatri, PW-9 Jagdish Chander SI, PW-10 Chhotu Ram SI and PW-11 Jaipal Singh.

The statements of accused were recorded under Section 313 Cr.P.C., wherein they were confronted with the evidence of the prosecution but they denied the correctness of the evidence and pleaded themselves as innocent. In defence the accused examined DW-1 Dr. Devender Sandhu, DW-2 Dr. R. Kumar, DW-3 Dr. B.S. Khatri, DW-4 Maya Ram EASI, DW-5 Ashok Kumar Clerk and DW-6 Gaje Singh.

The learned Additional Sessions Judge, Hisar, after hearing the learned Public Prosecutor assisted by learned counsel for the complainant and learned counsel for the accused acquitted the accused of the charges framed against them. Aggrieved from this judgment dated 22.4.2013, the present application seeking leave to file appeal against acquittal has been filed by the State.

Notice of motion was issued in this application.

Mr. Kuldeep Tiwari, learned Additional Advocate General, Haryana has put in appearance on behalf of the applicant-State and Mr. Jitender Dhanda, learned Advocate has appeared for respondents No.1 to 7 and contested this application.

We have heard learned Additional Advocate General, Haryana appearing for the applicant-State and learned counsel for the respondents and have gone through the record.

First of all, the findings given by the learned Additional Sessions Judge, Hisar, in judgment are correct as per evidence and law. The evidence has been appreciated in right perspective. Nothing has been pointed out as to how the findings can be held as perverse or against the evidence and law. Nothing has been pointed out as to which material evidence has been misread by the Court below and as to which material evidence has not been considered by the Court below.

A perusal of the record shows that the accused had suffered serious injuries in the occurrence but those injuries have not been explained by the prosecution. There is no explanation as to how the accused suffered the injuries which means the version given by the prosecution is not correct. The witnesses are concealing material facts and have not given any explanation as to how the accused received the injuries which have been duly proved on the person of Virender and he has suffered injuries on the head which is vital part of the body. Then PW-3 has proved the MLR of Rajesh but these injuries have not been explained at all which means that the genesis of the occurrence have been concealed which creates a reasonable doubt in the prosecution version.

Therefore, from the above, we find that the findings given by the learned Additional Sessions Judge, Hisar are correct which do not require any interference from this Court and the same are upheld. The

accused have been rightly acquitted by the Court below.

In view of the above discussion, we do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous application filed under Section 378(3) Cr.P.C. seeking leave to appeal, the same is dismissed.

(A.B. Chaudhari)
Judge

(Inderjit Singh)
Judge

January 22, 2018.

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No