

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.10379 of 2014
and
Criminal Misc. No.A-499-MA of 2014

.....

Date of decision:22.1.2018

State of Haryana

...Applicant

v.

Dinesh 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.

None for the respondents.

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Inderjit Singh, J.

Cr. Misc. No.10379 of 2014:

For the reasons mentioned in the criminal miscellaneous application, the delay of 235 days in filing this application for leave to appeal is condoned.

The criminal miscellaneous application is allowed.

Cr. Misc. No.A-499-MA of 2014:

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, 307, 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 on 16.05.2006, Rajesh Kumar got recorded his statement to the police to the effect that they had taken the turn of water of Bir Harijan for one hour 49 minutes but Ajmer was annoyed due to the same. On 15.05.2006, at about 11:00 a.m., Rajesh was working in the fields along with his brother Virender. In the meantime, Ajmer armed with Pharsa, Kalu armed with Lathi, Bali alias Dinesh armed with Barchhi and Jagbir armed with Lathi came there. Ajmer exhorted to teach them a lesson for taking water from Bir. Thereafter, Ajmer gave a Pharsa blow and Kalu gave a Barchhi blow on the head of Virender. When Rajesh tried to rescue, Jagbir gave Lathi blows on his hands and waist. On raising alarm brother of Rajesh namely Shamsheer came to the spot and rescued them from the clutches of the accused. Shamsheer got them admitted in the hospital. Rajesh could not give the statement on the previous date

because he was unfit to make the statement. Virender was admitted in Metro Hospital, Hisar due to serious injuries. During investigation of the case accused Dinesh, Jagbir, Surender, Dara Singh and Ajmer were arrested on 27.05.2006 and accused Sumer was arrested on 14.08.2006. 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 and 307 IPC, to which the accused pleaded not guilty and claimed trial.

The prosecution to prove its case examined as many as twelve witnesses i.e. PW-1 Dr. Devender Sandhu, PW-2 ASI Vijay Singh, PW-3 Dr. B.S. Khatri, PW-4 Dr. R.K. Kumar, PW-5 Jaipal Singh, PW-6 Rajesh, PW-7 Virender, PW-8 Rai Singh, PW-9 Anoop Singh ASI, PW-10 Jaipal Singh ASI, PW-11 Dr. Sanjay Verma and PW-12 Jagdish Chander SI.

The statements of accused were recorded under Section 313 Cr.P.C., wherein they denied the prosecution allegations in entirety and pleaded their innocence.

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, but no one has appeared on behalf of the respondents.

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

From the record, we find that as per the facts of the case Ajmer-accused was armed with Pharsa which is a sharp edged weapon, Kalu armed with Lathi, Bali alias Dinesh armed with Barchhi and Jagbir armed with Lathi came there. As per the facts Ajmer exhorted to teach them a lesson for taking water from Bir. Ajmer gave a Pharsa blow and Kalu gave a Barchhi blow on the head of Virender. When Rajesh tried to rescue, Jagbir gave Lathi blows on his hands and waist. As per the evidence on record specially the statement of PW-1 Dr. Devender Sandhu, seven injuries were found on the person of Virender and all these injuries were stated to be inflicted with blunt weapon which means that the oral statements of the PWs are not supported by medical evidence. There is no injury stated to be inflicted with sharp edged weapon. Similarly, PW-3 Dr. B.S. Khatri had medico-legally examined Rajesh and all the injuries are stated to be with blunt weapon. Secondly, the learned Additional Sessions Judge has found that the injuries on the person of the accused have not been explained. It is a case of version and cross-version but the injuries on the person of the accused have not been explained which means the genesis of the occurrence have been concealed. The cross case in respect of the same occurrence has also been registered for the offences under Sections 148, 323, 324, 326 and 149 IPC

in which Balwan, Satish, Mahavir, Virender, Shamsher Singh, Sandeep and Rajesh have been cited as accused in the cross-case. During the cross-examination, PW-1 Dr. Devender Sandhu has testified that on 15.5.2006, he also medico-legally examined Sumer and found the injuries including the incised wound and two injuries were inflicted on him by sharp edged weapon and the remaining by blunt weapon. Similarly, the injuries on the person of Jagbir, Dinesh have been proved. Non-explaining of injuries on the person of the accused creates a reasonable doubt in the prosecution version which means the prosecution version cannot be believed. The occurrence had not taken place as stated by the prosecution and the genesis of the occurrence has been concealed. The findings given by the learned Additional Sessions Judge, Hisar in the judgment dated 22.4.2013, in no way, can be held as perverse or against the evidence or 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. Nothing has been pointed out as to how the findings are perverse or against the evidence or law.

A perusal of the findings shows that the same have been given by appreciating the evidence in right perspective. The findings are correct as per evidence and law and 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

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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