

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

CRM No.A-46-MA of 2015 (O&M)

Date of decision: July 31, 2018

Prem Singh

...Applicant

Versus

State of Punjab and others

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

Mr.Pawan Sharda, Sr.DAG, Punjab
for the respondent-State.

Ms.Bhavana Datta and Mr.Vijay K. Chaudhry, Advocates
for respondents No.2 to 5.

INDERJIT SINGH, J.

Applicant-Prem Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against State of Punjab and other respondents, challenging the impugned judgment dated 18.09.2014 passed by learned Judicial Magistrate Ist Class, Batala, vide which the accused-respondents were acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Prem Singh filed a complaint

against accused Pawan Kumar, Neelam, Kashmiri Lal and Lakhjit Rai under Sections 326, 324, 323, 452 and 34 IPC. The brief averments of the complaint as noted by down in the judgment passed by learned JMJC, Batala, are as under:-

“Complainant has filed the present complaint against the accused persons with the version that on 13.11.2003 at about 9/10 A.M., complainant alongwith his wife and son were present in their house, when all the accused in connivance with each other entered the house of the complainant. Accused No.1 and 3 were armed with darters and entered in his house. They started throwing the household articles and beds. When the complainant and his family members objected it, accused Pawan Kumar asked that his house belongs to Thakurdware, whereas complainant are living in the said house from the time of their fore-fathers. Complainant and his wife requested them not to do so. At this, accused Lakhjit Rai raised a Lalkara to teach a lesson to the complainant for not vacating the house and he gave slap on the face of the complainant, as a result of which, his turban was put off from his head. When his wife came forward to rescue him, accused Pawan Kumar gave Darter blow to his wife namely; Narinderjit Kaur, which hit on her left leg. Kashmiri Lal also gave Darter blow to Narinderjit Kaur, which hit on her arm. Then Neelam gave brick bat blow to her which landed on her right cheek. Complainant further averred that he and his son raised alarm “Mar Ditta, Mar Ditta” and then accused fled away along-with their respective weapons and while leaving the spot, accused threatened them with dire consequences. The injured was removed to Civil Hospital, Dhianpur, where she was medically examined. Then matter was reported to the local police, but no action was taken. Hence, this complaint.”

Finding prima facie case, accused were charge-sheeted under Sections 452, 324, 323 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In after charge evidence, complainant examined CW-1 Rajbeer Singh, CW-2 Narinderjit Kaur, CW-4 Dr.Devinder Singh and examined himself as CW-3.

After close of complainant evidence, the accused were

examined under Section 313 Cr.P.C. and they were confronted with the evidence. They denied the incriminating evidence against them and pleaded their innocence and false implication.

Learned JMIC, Batala, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 18.09.2014.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondents No.2 to 5 appeared and contested the application.

Lower Court record was also requisitioned.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

The perusal of the findings given by learned Court below shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and 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 law and what illegality has been committed by learned Court below.

The perusal of the record shows that occurrence is stated to be of 13.11.2003 at 9.00-10.00 a.m. but the complaint was filed on 15.12.2013 i.e. after sufficient long delay. There is no explanation regarding such a long delay. It is in the complaint that police was also informed but no

application was given to the police nor any record has been summoned to show that police was informed about the occurrence. Furthermore, as per evidence, the occurrence took place in a temple/Thakurdwara and as per witnesses examined by the complainant, anybody can come to Thakurdwara to pay homage. Therefore, it is in the evidence that general public usually comes in the temple/Thakurdwara to pay homage. The Court below held that no offence under Section 452 IPC is made out, specially in view of the statement of Narinderjit Kaur, who stated that her house is situated behind the Thakurdwara and occurrence took place in the area of temple.

As regarding the injuries, I find that the occurrence took place in the morning at 9.00-10.00 a.m. and MLR has been got conducted at 5.30 p.m. i.e. after a gap of about 8 hours. If the injuries with sharp edged weapon under Section 324 IPC have been received by the complainant party i.e. by Narinderjit Kaur, then it looks unnatural that they will not approach the doctor immediately. Even, as per MLR, no first aid has been provided to the injured, which makes the version of the complainant doubtful. Furthermore, the doctor in his cross-examination has stated that these injuries can be caused with friendly hands.

Learned Magistrate after appreciating the evidence held that Prem Singh complainant was present in the house but no injury has been given to him nor he tried to rescue his wife Narinderjit Kaur. It also looks unnatural that accused would leave Prem Singh and would not cause any injury to him and rather, caused injury to a lady and Prem Singh would not make any attempt to rescue his wife.

In view of the above discussion, I find that reasonable doubt

exists in this case and accused-respondents have been rightly acquitted.

From the perusal of the judgment passed by the Court below, I find that the findings have been given by correctly appreciating the evidence in right perspective. In no way, the judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 18.09.2014 passed by learned JMIC, Batala, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

July 31, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No