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

CRM-A-530-MA of 2017 (O&M)
Date of decision: September 12, 2018

Tehal Singh and another

.....Applicants

Versus

State of Punjab and another

....Respondents

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

Present: Ms. Ishma Randhawa, Advocate for
Mr. P.B.S. Goraya, Advocate for the applicants.

A.B. CHAUDHARI, J

CRM No.8398 of 2017

Heard learned counsel for the applicants on the question of condonation of delay of 26 days in filing the application seeking leave to appeal against acquittal.

Application is allowed for the reasons stated therein. Delay of 26 days in filing the application seeking leave to appeal against acquittal, is condoned.

CRM-A-530-MA of 2017

This is the application seeking leave to appeal against acquittal of respondent No.2, preferred by the applicants, against judgment and order dated 06.10.2016, passed by the learned Additional Sessions Judge, Gurdaspur, in Sessions Case No.125, by which the learned trial Court acquitted the original accused/respondent No.2-Dastinderpal Singh,

though, convicted the other three accused persons.

2. In support of the appeal, learned counsel for the applicants vehemently argued that PW1 as well as other witnesses in clear term stated the role of the acquitted accused-Dastinderpal Singh that he was armed with *datar* and had raised *lalkara* to teach lesson to Dilbagh Singh, the deceased. She then submitted that accused-respondent No.2 thus, shared common intention with the other accused persons who have been convicted, and therefore, accused-respondent No.2 should also have been convicted by the trial Court. There is perversity on the part of the trial Court in not convicting Dastinderpal Singh when there was evidence to this effect before the Court.

3. With the assistance of the learned counsel for the applicants, we have carefully perused the judgment recorded by the learned trial Court. We have also seen the discussion about the evidence of the witnesses qua Dastinderpal Singh, the acquitted accused. Learned trial Court has, in the following paragraphs, given the reasons, which are quoted herein instead of repeating the same:-

“39. As far as the involvement of accused Dastinderpal Singh is concerned, first of all it is observed that PW3 although stated to have got recorded in his police statement Exhibit DA that Dastinderpal Singh armed with dattar had come from the side of the gate of palace while raising lalkaras, however, on been confronted with his statement Exhibit DA, this fact was not mentioned, therefore, as PW3 is concerned, he has made improvement in his statement suffered in the Court with regard to this fact. As far

as PW1 is concerned, it is observed that PW1 in his statement Exhibit PA got mentioned that when the accused Sukhdev Singh and deceased while exchanging hot words have gone towards the gate of palace, at that time accused Dastinderpal Singh armed with dattar had come and raised lalkara to the deceased. It is worthwhile to discuss that the accused Dastinderpal Singh was not even arrested. The recovery of alleged dattar was also not effected from him. Rather, the accused Dastinderpal Singh was exonerated during the enquiry, the fact evident from the file. In this regard, it is observed that PW1 admitted that accused Dastinderpal Singh has not come with the barat and he did not give any blow to anybody. PW1 admitted that an enquiry was conducted by the police, but he stated to be not knowing if Dastinderpal Singh was declared innocent by the police. When PW1 himself admitted that the accused Dastinderpal Singh has not come in barat, then how could he appeared at the time of the occurrence with dattar as stated by PW1. Since the accused Dastinderpal Singh is the son of accused Sukhdev Singh, therefore, his name seems to have been dragged into simply on this account.”

4. The above reasons to our mind are legal, correct and proper and no perversity can be seen therein. The fact that there was contradiction in the evidence of PW1 that Dastinderpal Singh armed with *dattar* had come and raised *lalkara* to anybody clearly threw out the prosecution case about the involvement of Dastinderpal Singh. As stated by the trial Court, in the impugned judgment, he appears to have been dragged. At the same time, it cannot be ignored that the trial Court convicted other three accused persons who had assaulted the deceased, for

the offence of murder. The reasons narrated by the trial Court in the aforesaid paragraphs, to our mind, cannot be said to be perverse. The view taken by the trial Court is a possible view. Looking to the parameters in the matter of appeal against acquittal, we do not think, it would be legal and proper to interfere with the order of acquittal. In the result, we make the following order:-

ORDER

- (i) **CRM-A-530-MA of 2017** seeking leave to appeal against acquittal stands dismissed.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

September 12, 2018

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No