

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

**CRM-A-1090-MA-2017 (O&M)
Date of decision: 17.10.2019**

Satyabir Singh

....Applicant

Versus

Gyan Parkash and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Neeraj Yadav, Advocate
for the applicant.

ARVIND SINGH SANGWAN, J.

CRM-31859-2019

For the reasons stated in the application, same is allowed. The order dated 24.09.2019 is hereby recalled and the main case is restored to its original number.

CRM stands disposed of.

CRM-A-1090-MA-2017

Prayer in this application, filed under Section 378 (4) Cr.P.C. for grant of leave to file appeal, is for setting aside the judgment of acquittal dated 06.03.2017 passed by the trial Court, vide which the respondent-accused was acquitted in Criminal Complaint No.COMI-1285-13, instituted

on 13.11.2010, titled as Satyabir Singh Vs. Gyan Parkash.

Brief facts of the case are that applicant Satyabir Singh filed a complaint against Gyan Parkash, Sube Singh, Braham Parkash, Samay Parkash and Ved Parkash, with the allegations that on 10.07.2010, his wife Sharda Devi was contesting the elections of Sarpanch and was standing in the queue to cast her vote, when the aforesaid accused persons attacked them for pushing the people standing in the queue. Gyan Parkash gave a stick blow on his jaw and lathi blow on his head. Deshraj inflicted injuries on his finger and the accused persons also stolen his mobile phone, money and gold chain. The matter was reported to the police but no action was taken.

The applicant, in the preliminary evidence, examined seven witnesses and the trial Court summoned only Gyan Parkash to face the trial. Thereafter, in pre-charge evidence, the applicant again summoned 07 more witnesses and the charges were framed against the respondent under Section 323 of the Indian Penal Code (for short 'IPC').

Statement of the accused-respondent under Section 313 Cr.P.C. was recorded, wherein he denied all the incriminating evidence led against him and pleaded innocence.

The complainant, in order to prove his case, examined EHC Virender Kumar as PW1, who brought the summoned record of DDR No.26 dated 10.07.2010 and proved its certified copy as Ex.PW5/A. PW2 Dr. Swati Singh, Dental Surgeon proved MLR of Satyabir Singh and on the basis of X-ray report, stated that she could not form any opinion regarding the nature of

injury. She further stated that such injury could be suffered due to fall on hard surface. PW3 Dr. Manpreet Tanwar also proved MLR of Satyabir Singh and in cross-examination, he stated that there was no bleeding qua injury No.1 and there was no visible injury corresponding injuries No.3, 5 & 6. He further stated that causing of such injury, due to fall on hard surface, cannot be ruled out. PW4 Sharda Devi and PW5 Sneh Lata also gave the same version as stated in the complaint. PW6 injured-complainant Satyabir Singh stated that after the accused persons gave him beatings, he got a DDR registered but no action was taken and when the police called him for re-medical examination, he did not get it conducted. Similar statement was made by PW7 Deshraj.

Thereafter, the trial Court, vide impugned judgment dated 06.03.2017, acquitted the respondent. The operative part of the judgment reads as under: -

“The present case is under section 323 IPC and the prosecution has examined total seven witnesses including eye witnesses, complainant and expert witness to prove it case against accused. However, after going through the entire evidences produced by prosecution on record and after considering the rival contentions of both the parties, the Court is of the considered view that prosecution has failed to bring home guilt to the accused Gyan Parkash for reasons that first of all the complaint Ex.PW6/A and Ex.PW7/A over which the complainant has relied by submitting that on the basis of occurrence complaint was given to Returning officer. However, the said complaint is in original. If the complaint was filed to Returning Officer then how the complainant has original complaint in his possession.

No Returning Officer or any official from election department has been called to prove the said complaint. No receiving has been mentioned on the said application. Moreover, no time has been mentioned. Therefore, the complaint relied upon by complainant does not inspire the confidence of this Court. PW4, PW5 and PW7 have been alleged to be eye witnesses. However, on perusal of their testimonies it has been found that PW4 has categorically deposed in her cross-examination that she cannot tell if Sube Singh etc. would not have lodged an FIR against her husband, they would not have filed the present complaint against them. This witness has pleaded ignorance regarding this fact but PW5 has categorically deposed that it is correct that if Sube Singh would not have lodged an FIR against Satyabir Singh, the present complaint would not have been filed against them. Meaning thereby the testimonies of PW4 and PW5 have proved that the present complaint has been filed just to counter blast the FIR case. Though the complainant Satyabir Singh (PW6) has testified that accused Gyan Parkash, Sube Singh, Braham Parkash, Samay Parkash, Ved Parkash and Deepak inflicted injuries to him and in support of his contention he has examined medical experts PW2 Dr. Swati Singla and PW3 Dr. Manpreet Tanwar. However, in respect of this, it is required to be mentioned that PW2 Dr. Swati Singla has been examined to prove the x-ray report of Satyabir Singh whereas the accused Gyan Parkash was not summoned to face trial under section 325 IPC. However, even then if the testimony of Dr. Swati Singla is considered, even then on persual of the same, it has been found that she has categorically deposed in her cross-examination that she has not seen any x-ray film in the court today. The possibility that the injury was suffered by patient Satyabir Singh would have suffered by falling on hard surface cannot be ruled out. The

exact duration of injuries suffered by patient Satyabir cannot be given. In case a person suffers a fracture in his tooth in that case patient would be in immense pain and he would require prompt medical attention to get rid of the pain. In the present case it has been alleged by complainant that occurrence took place at about 8:30 am and in that occurrence his tooth got fractured. However, admittedly the complainant got his tooth examined on 14.07.2010 i.e. after four days. Here the question arises if the tooth of complainant got fractured what was he doing for four days why he did not got his tooth medically examined. No explanation has been given by complainant to the satisfaction of this Court. The medical expert Dr. Swati Singla, the prosecution witness has herself admitted that in case of tooth fracture the patient need prompt medical attention to get rid of the pain. Therefore, the non-examination of the tooth of complainant and the delay of four days attracts, the cloud of suspicion and doubt regarding injuries suffered by complainant. Besides this one more medical expert Dr. Manpreet Tanwar has been examined by complainant who has proved MLR Ex.PW3/B. It has been categorically deposed in her cross-examination that there was no visible injury. Self stated the patient was complaining of pain as mentioned in MLR but it cannot be ruled out that patient could have been pretending to be in pain. Possibility that the injuries mentioned in MLR Ex.PW3/B were suffered due to fall on hard surface cannot be ruled out. Meaning thereby there are chances of self inflicted injuries by complainant to make false evidence to counter blast FIR case registered by accused.

Moreover, on the basis of same occurrence FIR no.128/2010 under section 147/323/325/506 read with section 149 was registered against the complainant and his family. The complaint by accused was filed promptly at 11:00 pm. However,

admittedly in the present case the complaint has been filed by complainant Satyabir at about 8:30 pm on 10.07.2010 i.e. approximately twelve hours later. The fact as to why the complaint has been filed so late has not been explained by complainant to the satisfaction of this Court. Moreover, the complainant was medico legally examined at 1:30 pm again a delay of five hours which again has not been explained by complainant. In respect of medical examination, it has been submitted on behalf of complainant that he went to hospital, he waited there and his medical examination took place late. In respect of this, it is necessary to mention here that if accused went to hospital for medical examination at 11:00 pm and they were medico-legally examined promptly why the complainant was not examined promptly. On this, it can be argued that the accused went to hospital with police that is why they were promptly examined. On this again the question arises why the complainant did not go to police immediately. Again no explanation.

At this stage, it is also required to be mentioned here that according to complainant not only Gyan Parkash, Sube Singh, Samay Parkash, Braham Parkash, Ved Parkash and Deepak inflicted injuries to them. But only Gyan Parkash has been summoned to face trial under section 323 IPC. The allegations of complainant against Sube Singh, Samay Parkash, Braham Parkash, Ved Parkash and Deepak were found false. Moreover, the allegation of complainant is that the injuries were inflicted to him, to Sharda Devi, to Sneh Lata and to Deshraj. PW7 has also testified before the court that 15 to 20 injuries were caused to him. Injuries were caused to Sharda and Sneh Lata also. However, only Satyabir Singh was medically examined. The question arises if 15 to 20 injuries were caused to Desh Raj then

why not he was medically examined. Why other injured Sharda Devi and Sneh Lata etc. were not examined? Why not complaint has been filed by other injured? Again no explanation has been given by complainant to the satisfaction of this Court.

Now on perusal of documents tendered by accused, it has been found that Ex.D1 to Ex.D3 are certified copies of FIR, charge-sheet etc. of case titled as State Vs. Hari Singh FIR no.128/22.07.2010. The case titled as State Vs. Hari Singh is a counter case and is a matter of record. Hence these documents are not of that relevance. Now on perusal of Ex.D4 and Ex.D5 and Ex.D6, it has been found that accused Gyan Parkash has contended that he had his duty in election poling booth. He has attended a election duty as Presiding Officer of Panchayat Samiti, Khol at Ahir Collage, Rewari on 09-10.07.2010. Meaning thereby the accused has taken the plea of alibi and in support of his plea has filed documents Ex.D4 and Ex.D5 to prove the fact that on 09.07.2010 and 10.07.2010 he was on duty. However, in respect of this, it is necessary to mention here that only photocopies of the relevant documents have been filed. Neither original nor certified copies have been filed. Nor any official has been summoned from the election department to prove the said documents. Therefore, the court is of the considered view that accused has failed to prove his plea of alibi by leading cogent evidence. However, it is the prosecution who has to prove its case against accused beyond all reasonable doubts. If accused has failed to prove any plea taken by him, that cannot be considered for conviction of accused, if the prosecution has otherwise failed to prove its case against accused.

Therefore, in light of the above discussion the Court is of the considered view that prosecution has failed to prove its case

against accused beyond all reasonable doubts. The prosecution has failed to prove that accused Gyan Parkash and caused injuries to complainant and threatened him to kill. It is a settled principle of criminal jurisprudence that the prosecution is required to prove its case against accused beyond the shadow of all reasonable doubts. On failure of prosecution, accused should be acquitted. Therefore, for the reasons recorded above accused Gyan Parkash is entitled to acquittal and is accordingly acquitted in this case. His bail bonds, surety bonds are discharged. Personal as well as surety bonds filed on behalf of accused u/s 437 A Cr.P.C assuring that in case of any appeal against this judgment he will appear before the court. Personal and surety bonds accepted and attested...”

Learned counsel for the applicant has argued that from the statement of applicant and the MLR, which is proved by the Doctor/Dental Surgeon, the offence under Section 323 IPC is made out and therefore, discharge of the respondent is illegal and prayed for acceptance of the present application.

After hearing learned counsel for the applicant and going through the case file, I find no merit in the present application seeking leave to file appeal, as the trial Court has recorded well reasoned finding, while passing the order of discharge.

It is worth noticing that when the complaint was filed and preliminary evidence was led, the complainant levelled allegations against as many as 05 persons, however, only respondent Gyan Parkash was summoned by the trial Court to face the trial under Section 323 IPC.

Admittedly, the applicant-complainant has not challenged the order qua discharge of four other accused, against whom the same allegations were made and the preliminary evidence was disbelieved by the trial Court.

The trial Court has recorded a finding that with regard to the same incident, FIR No.128 dated 22.07.2010 under Sections 147, 323, 325, 506 IPC read with Section 149 IPC was registered against the complainant party, therefore, the prosecution has failed to prove that Gyan Parkash has caused injuries to the complainant or threatened to kill him.

In view of the above, finding no infirmity in the well reasoned judgment passed by the trial Court, present application for grant of leave to file appeal is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

17.10.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No