

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1138-MA-2015 (O&M)

Date of decision : 14.01.2019

Ramesh Chander

.....Applicant

Versus

Vijay Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr.Vipin Mahajan, Advocate for the applicant

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (Oral)

This order will dispose of an application filed under Section 378(4) Cr.P.C. for grant of leave to appeal.

Heard.

Prosecution case is that regarding the present occurrence, an FIR No.66 dated 18.11.1997 under Sections 452, 427, 325, 380, 148, 149 IPC was registered at Police Station City, Gurdaspur. However, police presented cancellation report, in which, the complainant filed protest petition. Cancellation report was accepted but the protest petition was taken as a criminal complaint.

It is alleged by the complainant Ramesh Chander that he is working as a Manager in Gurdaspur-Amritsar Kshetriya Gramin Bank. Complainant had installed a gate on his house which his family was using.

On 18.11.1997 at about 12 noon, accused Ram Chand armed with sword,

Vinay Kumar armed with *Barchha*, Raj Kumar armed with iron rod, Varinder Kumar armed with *Takua*, Rajneesh Kumar armed with hammer, along with 15-16 persons, forcibly entered the house of the complainant and demolished back side wall of the door of the house of the complainant which was installed 50 years ago. They also cut the telephone wires. They gave severe beatings to Krishna Devi, mother of the complainant and broke her tooth. Accused also detained her in bathroom. Occurrence was witnessed by Niranjana Singh, Joginder Singh and Joginderpal. While leaving, the accused broke the Godrej Almirah and took away Rs.8500/- cash and Gold Jewellery including 2 bangles, one necklace weighing 22 grams and one lady ring finger. Accused Ram Chand died before pre-charge evidence, whereas accused Varinder Kumar died later on. Proceedings against both of them were dropped.

A perusal of the trial Court file shows that the trial Court after discussing the evidence doubted the presence of Niranjana Singh, Joginder Singh and Joginderpal at the spot. Presence of Joginderpal was doubted on the ground that according to him he took Krishan Devi to hospital, whereas his presence is not recorded in the hospital record. He also could not tell as to who other neighbours accompanied him. Presence of Niranjana Singh was doubted on the ground that according to him he was going to canal office. But he could not tell the reason for going to canal office. Joginder Singh PW claimed that he is chance witness and was found to be unreliable. Krishna Devi injured was not examined in this case either in preliminary evidence or at the pre-charge evidence. It is stated that she was old and could not come. However, there was no bar on examining her on commission. Now, left is bald statement of the complainant, who is stated

to be working in a Bank. Occurrence took place at 12 noon. Trial Court also observed that offence under Section 452 IPC is doubtful since it is proved that litigation between the complainant and accused regarding their being co-sharer is going on and there is nothing on record that complainant was in exclusive possession of the said house. Allegations of theft appears to be exaggeration. Trial Court has taken one of the two possible views. Earlier also, police, after investigation, found the complaint to be false. There is no ground to interfere in the judgment of the trial Court. Hence, leave to appeal is declined.

Application is accordingly dismissed.

14.01.2019*gk***(Kuldip Singh)****Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

No