

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

CRM-A-1282-MA-2015

Date of decision : 18.11.2019

Krishan Lal Tinu

.... APPLICANT

Versus

Harish Kumar @ Tinku and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SHARMA

Present: Mr. Sandeep Siwatch, Advocate,
for the applicant.

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RAJIV SHARMA, J.

1. This application under Section 378 (4) Cr.P.C. has been filed seeking grant of leave to appeal against the judgment of acquittal of respondents No.1 to 5, dated 29.04.2015, rendered by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, in Sessions Case No. 4-A/SC/2013.

2. The case of the prosecution, in a nutshell, is that on 31.03.2007 at about 7.30 AM, one Rameshwar told the complainant that his younger brother Rakesh Kumar alias Mintu was lying in injured condition. He was unconscious. The complainant along with his friend Kundan Lal reached the spot. He got the injured admitted in Civil Hospital, Yamuna Nagar. ASI Mahaveer Singh came to the hospital to record the statement of the injured.

However, injured Rakesh Kumar alias Mintu was declared unfit to make statement by the doctor. The complainant was not aware about the names of the persons who had caused injuries to his brother. The doctor got conducted X-ray and CT scan of the injured. Fracture was detected in scalp and right hand of brother of the complainant. FIR bearing No. 122 dated 18.04.2007 was registered on the basis of statement made by complainant Krishan Lal. Initially, the FIR was registered for commission of offences punishable under Sections 323, 325, 506, 34 IPC. Later on, Section 307 IPC was also added on 24.04.2007. Injured Rakesh Kumar was discharged on 30.04.2007. Since the accused were not arrested and the police did not take any action against them, therefore, the complainant filed complaint in the court.

3. The prosecution examined eleven witnesses in support of its case. The respondents were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were falsely implicated. They also examined Dr. Vandana as DW.1.

4. The respondents were acquitted of the charges framed against them on 29.04.2015.

5. We have heard learned counsel for the applicant and gone through the judgment and record very carefully.

6. PW.1 Paramjeet Singh deposed that on 30.03.2007 at 9.00 PM, he along with his friend Pawan Kumar son of Subash Chand, resident of Ram Nagar, Jagadhri workshop, was standing near the chowk of colony after taking meals. In the meantime, they saw Rakesh Kumar alias Mintu visiting their colony to meet his brother Padam Kumar. He found that

the house of his brother was locked. He waited for 10-15 minutes. Then he went to take Pan Parag. At about 10.30 PM on the same day, he returned back to meet his brother. Accused Pammi, Sharda, Harish, Sonu, Kalu and two others also came on the spot. An altercation took place with Rakesh Kumar alias Mintu. Rakesh Kumar alias Mintu went towards Sasuli Road. Accused Harish was carrying handle of hand pump. Accused Sonu was carrying a bat. Kalu was carrying an iron rod. Two other boys were carrying iron rods in their hands. They went on two motor cycles to cause injuries to Rakesh alias Mintu. They were frightened and went to their house. After 20-25 days, he came to know that on that day, the accused had caused injuries to Rakesh alias Mintu. He was got admitted in Jindal Hospital, Jagadhri. He along with his friend Pawan Kumar went to Jindal Hospital, Jagadhri, to see Rakesh alias Mintu. They disclosed the incident dated 30.03.2007 to Krishan Lal, brother of Rakesh alias Mintu. Thereafter, Krishan Lal took them to Police Station Frakpur. They met Mahaveer Singh ASI and disclosed the incident to him. In his cross-examination, he admitted that he knew Rakesh and Krishan for the last 17-18 years. They were on visiting terms. He went to Jindal Hospital to see Rakesh alias Mintu in Jindal Hospital after 15-20 days of 30.03.2007. He admitted that he was aware of the emergency number of the police. He did not know Om Parkash, who was also witness in this case.

7. PW.2 Kundan Lal deposed that a telephone message of Krishan Lal came to him on 31.03.2007 at about 7.30 AM that his brother Mintu was lying outside the cremation ground in injured condition. He and Krishan Kumar went to the spot. They found Mintu lying on the spot in injured

condition.

8. PW.3 Om Parkash testified that on 30.03.2007, he had gone to his relative Narender Kumar, who was residing in Railway Colony, Jagadhri Workshop. When he reached on Sasuli road, near shuttering shop, he saw accused Tinku carrying handle of a hand pump. Accused Sonu was carrying a cricket bat. Three other boys were carrying iron rods. Accused Sonu gave cricket bat blow on the head of Rakesh alias Mintu. Accused Tinku gave blow of handle of hand pump on the head of Mintu. Mintu collapsed. Accused Sonu again gave cricket bat blow on the head of Mintu. All the accused caused injuries to Mintu. He raised alarm. In his cross-examination, he deposed that he did not disclose the factum of incident to any of his friends and family members from 30.03.2007 to 01.06.2007, since he was frightened. He did not know the house number of Narender Kumar.

9. PW.4 Dr. Anoop Garg led his evidence by filing affidavit Ex.PW.4/A. He gave his opinion Ex.PW.4/G that the possibility of injuries No.1, 2 and 3 being dangerous to life in absence of medical aid could not be ruled out. In his cross-examination, he deposed that injuries on the person of Rakesh were caused by blunt weapon and these could be due to road side accident. The patient was semi conscious, when he was brought before him for examination. The patient did not disclose the manner in which he suffered the injuries. According to affidavit Ex.PW.4/A, he noticed the following injuries on the person of Rakesh Kumar :-

- (i) 10 cm x 1 cm x ½ cm lacerated wound on left side of parietal region of scalp.
- (ii) 6 cm x 1 cm x ½ cm lacerated wound on posterior to injury No.1.

- (iii) There are multiple lacerated wounds on occipital region of scalp of 10 cm x 12 cm area.
- (iv) 6 cm x 1 ½ cm abrasion on back of right wrist was present.
- (v) 15 cm x 10 cm contused swelling on left shoulder was present.

The X-ray report No. 792 dated 31.03.2007 reads as under :-

- (i) Skull : AP and lateral – occipito – parietal fracture seen.
- (ii) Left shoulder : No injury was detected there.
- (iii) Right hand : Fracture seen in first and fourth metacarpal of right hand and proximal phalanx of right thumb seen.

10. PW.5 Dr. Pardeep Tehlan led his evidence by filing affidavit Ex.PW.5/A. According to him, the patient was having left occipito - parietal linear fracture, bifrontal contusion with some subarachnoid blood in it. Small 4th ventricular blood. He conducted CT scan of the patient on 13.04.2007. He noticed that the patient was having left occipito-parietal fracture and right frontal interstitial edema.

11. PW.6 Dr. Yogesh Jindal led his evidence by filing affidavit Ex.PW.6/A. He had given intimation to the police on 01.04.2007 regarding admission of patient Rakesh Kumar as a case of assault vide Ex.PW.6/B. On the same day, the police moved an application regarding the fitness of the patient. He gave his opinion vide Ex.PW.6/C. The police moved another application on 03.04.2007 regarding fitness of the patient. He gave his opinion vide Ex.PW.6/D. He also gave his opinions vide Ex.PW.6/E, Ex.PW.6/F and Ex.PW.6/G on 06.04.2007, 10.04.2007 and 17.04.2007, respectively. In his cross-examination, he deposed that the history of assault was narrated by the attendant at the time of admission. However, the names

of the assailants were not disclosed by the attendant. The patient had started recovering gradually. At the time of admission, the patient was responding. The patient during his treatment never disclosed him the manner in which he had suffered injuries.

12. PW.7 Rameshwar deposed that he was going to Yamuna Nagar from his village Suddal on 31.03.2007. When he reached near the cremation ground and Sharma Shuttering on Sassoli road, he noticed that Mintu, his class fellow, was lying on the side of the road. He informed the family members of Mintu.

13. PW.8 Krishan Lal alias Tinu testified that at about 7.30 AM on 31.03.2007, Rameshwar came to his house and told him that his brother Rakesh alias Mintu was lying in a serious injured condition in front of the shutter of Sharma Shuttering Store. He informed his friend Kundan. The injured was taken to Civil Hospital, Yamuna Nagar. ASI Mahaveer visited the hospital. The doctor advised to get the X-ray and CT scan of Rakesh Kumar. There was fracture of scalp. Rakesh Kumar was referred to PGI for further treatment. They took him to Jindal Hospital, Jagadhri. ASI Mahaveer recorded statement of his brother on 31.05.2007. In his cross-examination, he admitted that he had not disclosed in the complaint that his brother remained unconscious for one month.

14. PW.11 HC Dal Singh deposed that he was posted as Constable at Police Station Farakpur. He along with ASI Mahaveer Singh were on patrolling duty. Complainant Krishan Lal met ASI Mahaveer Singh. He got his statement recorded vide Ex.PW.8/A. FIR was registered. Rough site plan was prepared by ASI Mahaveer Singh.

15. Statement of the injured could not be recorded, since he died during the trial.

16. Statements of PW.1 Paramjeet Singh and PW.3 Om Parkash do not inspire confidence. They had witnessed the occurrence dated 30.03.2007, but had neither informed the police nor the family members of Rakesh Kumar alias Mintu. In his cross-examination, PW.1 Paramjeet Singh admitted that Rakesh and Krishan were known to him for the last 17-18 years. They were on visiting terms with each other. He went to see Rakesh in Jindal Hospital on 20.04.2007 and till 20.04.2007, he never informed the police that he had witnessed the incident. In case, he knew injured Rakesh and his brother Krishan, he should have informed them that he had seen the incident on 30.03.2007. The explanation given by PW.3 Om Parkash for not informing his friends or family members from 30.03.2007 to 01.06.2007 was that he was frightened. According to him, when Krishan Lal came to him on 01.06.2007 and inquired from him about the incident, then he disclosed that he had seen the occurrence. The conduct of PW.1 Paramjeet Singh and PW.3 Om Parkash is unusual. If they had seen the incident, they should have informed the police or family members of the injured.

17. PW.6 Dr. Yogesh Jindal, in his cross-examination, admitted that at the time of admission, the patient was responding. The history of assault was narrated by the attendant, but he had not named the assailants. In this case, the FIR was registered after considerable delay. The FIR was registered on the basis of statement of PW.8 Kundan Lal alias Tinu. The FIR should be lodged promptly. In case, there is inordinate delay, the same has to be explained. In the present case, delay has not been explained. PW.8

Kundan Lal alias Tinu, in his cross-examination, admitted that the police had visited the hospital for three or four times between 31.03.2007 to 17.04.2007. Though PW.3 Om Parkash has deposed that he saw the incident, but he had not intervened to save injured Rakesh Kumar alias Mintu.

18. The prosecution has failed to prove its case against the respondents. There is no reason to interfere with the well reasoned judgment of the trial court.

19. Accordingly, application for grant of leave to appeal against the judgment of acquittal of the respondents is dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(RAJIV SHARMA)
JUDGE

November 18, 2019
ndj

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No