

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

1)

CRM-A-2374-MA-2017
Decided on : 27.11.2019

Roshan Lal and another

... Applicant(s)

Versus

State of Haryana and others

... Respondent(s)

2)

CRM-A-543-MA-2018 (O&M)

State of Haryana

... Applicant(s)

Versus

Baljeet and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Argued by: Ms. Shaveta Sanghi, Advocate
for the applicants (in CRM-A-2374-MA-2017).

Mr. S.S. Pannu, DAG, Haryana
for the appellant (in CRM-A-543-MA-2018).

Mr. Neeraj Yadav, Advocate
for respondents No.2 to 5.

MANJARI NEHRU KAUL, J.

This order will dispose of two cases i.e. CRM-A-2374-MA-2017 and CRM-A-543-MA-2018, as the appeals have arisen out of the same judgment. For the sake of convenience, the facts are being extracted from CRM-A-2374-MA-2017.

This present application has been filed under Section 378 (4) Cr.P.C., seeking grant of special leave to appeal against the order of acquittal

dated 31st August, 2017, passed by the Ld. Additional Sessions Judge, Rewari (hereinafter referred to as 'the Ld. Trial Court'), vide which the respondent(s)-accused have been ordered to be released on probation under Section (1) of the Probation of Offenders Act, 1958, in case FIR No. 99, dated 09.12.2015, under Sections 323, 325, 307, 506, 34 IPC, registered at Police Station Jatusana.

The case of the applicant-complainants is that on 08th December, 2015, police party headed by ASI Satbir reached the General Hospital, Rewari on receipt of information regarding the admission of PW-4/Roshan Lal and PW-5/Omwati in an injured condition. Statement (Ex.PE) of injured PW-4/Roshan Lal was recorded by ASI Satbir, wherein, he stated that while he was working in his fields, his neighbour i.e. Umed-respondent No.5, came in his Alto Car at a very high speed and hit against his wife PW-5/Omwati with an intention to kill her. On rushing to the spot, he found that family members of respondent No.5 - Umed namely Baljeet, Anil and Ram Kala (respondents No.2, 3 & 4, respectively) too had rushed to the spot. Thereafter, respondent No.2 – Baljeet inflicted a blow with binda of axe hitting PW-4/Roshan Lal on his left hand. Respondents No.3 & 4 gave leg and fist blows to PW-4/Roshan Lal and his wife PW-5/Omwati. On a hue and cry raised by them, one Satish was attracted to the spot, who rescued them from the respondents-accused. Respondent No.5 – Umed while leaving the spot threatened to kill them. On the basis of the statement Ex.PE of the complainant PW-4/Roshan Lal, FIR No. 99, dated 09.12.2015, under Sections 323, 325, 307, 506, 34 IPC, was registered.

On completion of investigation, challan was presented. The accused-respondents were charge-sheeted for the offences under Sections 307, 323, 325, 506 of IPC read with 34 of IPC. The accused-respondents pleaded

not guilty and claimed trial.

In support of its case, the prosecution examined as many as 12 witnesses including applicant-complainant Roshan Lal and injured Omwati, who stepped into witnesses as PW-4 & PW-5, respectively, as well as Dr. Sandeep, Medical Officer as PW-12.

The accused-respondents when examined under Section 313 Cr.P.C. denied all the incriminating circumstances appearing in evidence against them. The accused-respondents claimed false implication and pleaded innocence. The accused-respondents in defense examined as many as 04 witnesses including DW-2/Dr. Alok Jha, Medical Officer, who proved the injury suffered by respondent-accused No.4/Ram Kala in the said occurrence.

Ld. Trial Court on the basis of the evidence led, acquitted the accused-respondents under Sections 307, 506 IPC, as the essential ingredients of *mens-rea* and knowledge to attract the mischief of the aforementioned sections were missing, coupled with the fact that there was no medical opinion that the injuries sustained by PW-5/Omwati were dangerous to life. Ld. Trial Court also took into account the material improvements which had been made by both the injured-complainants while deposing on oath in the Court, as their versions were at complete variance with each other, which created a dent in the case of the prosecution, inasmuch as, genesis of occurrence had been evidently suppressed. Ld. Trial Court, however, convicted respondent No.5 – Umed under Section 325 IPC and respondents No.2 to 4 i.e. Baljeet, Anil and Ram Kala, respectively, under Section 323 IPC, as it stood proved that it was subsequent to the car hitting, an altercation took place between the complainant party i.e. Roshan Lal and Omwati on one side and the accused-persons on the other side, which led to not only Roshan Lal sustaining injuries, but also

accused-respondent No.4/Ram Kala, sustaining a lacerated bone deep wound on frontal region.

On perusal of the impugned judgment, we feel that the same is a well reasoned one and does not warrant any interference. As far as the injuries sustained by PW-5/Omwati is concerned, admittedly, the same was on non-vital part and was a fracture of the femur bone. Hence, the Ld. Court below rightly convicted the accused-respondents under Sections 325 & 323 IPC. The next submission of the learned counsel for the applicants that the trial Court erred in releasing the accused-respondents No.2 to 5 on probation under Section 4(1) of the Protection of Offenders Act, 1958, is bereft of any merit. Admittedly, the accused-respondents are not previous convicts and it is very apparent that the occurrence took place only after PW-5/Omwati had been hit by the car being driven by accused-respondent No.5/Umed. Injuries received by both the injured PW-4/Roshan Lal and PW-5/Omwati were on non-vital parts. Hence, in the facts and circumstances of the case, the Ld. Trial Court ordering the release of the accused-respondents on probation cannot be faulted with. The Ld. Trial Court appears to be justified. We do not, therefore, consider it to be a fit case for grant of special leave to appeal under Section 378(4) Cr.P.C. Consequently, both the applications stand dismissed.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

November 27, 2019

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No