

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

CRM No.A-896-MA of 2016 (O&M)

Date of decision: January 31, 2019

Nathi Ram

...Applicant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vinod Bhardwaj, Advocate
for the applicant.

Mr.Tanuj Sharma, AAG, Haryana
for the respondent-State.

Mr.V.P.Sangwan, Advocate for
Mr.Sandeep Goyat, Advocate
for respondents No.2 to 18.

INDERJIT SINGH, J.

Applicant-Nathi Ram has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against State of Haryana and other respondents, challenging the judgment dated 30.03.2016 passed by learned Judicial Magistrate Ist Class, Hansi, whereby accused-respondents were acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to appeal be granted.

As per the record, complainant Nathi Ram filed a complaint

against accused Rakesh, Mipi @ Sandeep, Hari @ Tari, Jhunda @ Jhunga, Jagdish, Naresh, Rajender, Rajpal, Deva, Bandhu @ Bantu, Foji, Jaibir, Sikandar @ Sinder, Relu, Satyawar, Paala, Kumar @ Ram Kumar and Raja under Sections 148, 149, 323, 324, 452 and 326 IPC. The brief averments of the complaint as noted down in the judgment passed by learned JMJC, Hansi, are as under:-

“2. The brief facts of the complaint are that complainant is a peace loving citizen whereas the accused persons are dangerous persons. On 6.11.2011 at about 12.00 noon, the brother of the complainant was present in the house of Mahabir and was talking with Ranbir son of Tek Ram, Mahabir son of Prithvi, Bijo @ Tijo wife of Mahabir, Fateh Singh son of Kundan and in the meanwhile Rakesh son of Paale Ram, Mipi @ Sandeep, Hari @ Tari son of Rajpal, Jhunda @ Jhunga son of Diwara, Jagdish son of Ran Singh, Naresh son of Sadhu, Rajender son of Tek Ram, Rajpal son of Tek Ram, Deva son of Telu, Bandhu @ Bantu son of Rajpal, Foji son of Ram Kumar, Jaibir son of Ran Singh, Sikandar @ Sinder son of Sadhu, Relu son of Raja, Satyawar son of Pala Ram, Pala son of Jeeta, Kumar @ Ram Kumar son of Shree Chand in collusion with each other came there alongwith their respective weapons and attacked upon the complainant. Rakesh and Rajender who were armed with gandasi caused injuries on the fingers and above the right eye of complainant respectively. Mipi @ Sandeep and Hari @ Tari gave lathi blows on the knee and head of complainant. Raja son of Tek Ram hit brick on his and Ranbir chest. Rajpal hit brick on stomach of Ranbir. Accused Jagdish hit brick below on the knee of Mahabir. Accused Foji hit brick on the right knee of Mahabir. Accused Bantu hit rod on the thumb of right hand. They all hide themselves inside the house due to fear and thereafter, accused persons went to their houses. The complainant alongwith others rushed to CHC Narnaund for treatment from where they were referred to G.H Hisar. The matter was reported to the police and a FIR bearing no. 439 dt. 15.11.2011 u/s 148, 149, 323, 324, 326 IPC was registered against the accused persons but the police in collusion with accused persons has not arrested the accused persons and cancelled the FIR. Hence the present complaint.”

On the basis of preliminary evidence, the accused were

summoned under Sections 148, 149, 323, 324 and 452 IPC. In pre-charge

evidence, complainant examined himself PW-1, PW-2 Mahabir, PW-3 Tijo, PW-4 Ranbir, PW-5 Dr.Navdeep Jain, PW-6 Head Constable Rakesh, PW-7 Chandbir and PW-8 Dr.M.K.Garg.

Accused Hari @ Tari expired during the trial and proceedings qua him were abated.

Finding prima facie case, all the accused except Hari @ Tari were charge-sheeted under above-said Sections, to which they pleaded not guilty and claimed trial. In after-charge evidence, no witness was cross-examined by defence counsel and evidence was closed.

At the close of complainant evidence, the accused were examined under Section 313 Cr.P.C. They were confronted with the evidence of the complainant and they denied all the incriminating evidence against them and pleaded their false implication. No witness was examined in defence.

Learned JMIC, Hansi, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 30.03.2016.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

Notice of the application was issued. Learned State counsel appeared. Learned counsel for respondents No.2 to 18 also appeared and contested the application.

Lower Court record was also requisitioned.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that in the present case, there are 18 accused. The occurrence took place on 06.11.2015 and the complaint was

filed on 01.02.2012. As per complainant's case, earlier the matter was reported to the police and an FIR was registered but later on it was cancelled by the police after investigation. Further, in the present case, PW-5 Dr.Navdeep Jain has been examined but xerox copy of MLR of Mahabir, Tijo and Nathi Ram have been placed on record. No certified copies etc. of the MLRs have been placed on the case file. Therefore, the MLRs cannot be looked into and are not proved as per law. Secondly, in the cross-examination, the doctor stated that possibility of all the injuries to have been caused with friendly hands, cannot be ruled out.

The perusal of the record shows that in chief-examination also, the doctor has not described the injuries. Neither in chief-examination nor in the affidavit, the doctor has described any injury. The injuries have been described in the MLRs but attested or certified copies of the MLRs have not been placed on record, therefore, injuries are also not proved as per law before the trial Court. Further, it looks unnatural that if 18 persons armed with weapons attack the complainant, they will cause such type of injuries. Serious injuries might have been caused by the accused.

Learned trial Court has also discussed the statements of the witnesses. In the cross-examination, Mahabir admitted that there is a long standing enmity between the parties and because of this enmity they filed the present complaint for taking the revenge. He also submitted that he did not know about the injury of Nathi Ram. PW-3 Tijo wife of Mahabir, in her cross-examination, admitted that they filed the present complaint in revenge and she does not know who caused injuries to whom. She further herself admitted that she is illiterate and she is deposing whatever has been read

that the present complaint has been filed by them for taking the revenge and no such occurrence has taken place. He also stated that because of the previous enmity, for taking revenge they filed the present complaint.

The perusal of the findings given by learned JMIC, Hansi, shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the trial Court. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned trial Court. The findings have been given by correctly appreciating the evidence in right perspective and accused-respondents have been rightly acquitted.

In view of the above discussion, I find that the impugned judgment dated 30.03.2016 passed by learned JMIC, Hansi, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

January 31, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No