

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-2045-MA of 2015 (O&M)
Date of Decision: 27.5.2019

Baldev Singh

.....Applicant

Vs.

Jagroop Singh and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: - Mr. D.S.Pheruman, Advocate
for the applicant.

HARNARESH SINGH GILL, J.

The applicant-complainant has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment dated 10.1.2014 passed by the learned Judicial Magistrate, Ist Class, Amritsar.

Vide impugned judgment, the trial Court has acquitted the respondents of the charges under Sections 326, 325, 324, 323, 148, 149 of the Indian Penal Code, 1860 ('IPC' for short).

Respondents-accused stood summoned for the aforesaid offences, in a complaint case filed by applicant Baldev Singh, alleging that on 13.11.2006, when he went to village Pandher Kalan to meet his relative Kuljit Singh, who was having 4 kanals 2 marlas of land and dispute regarding the said land was pending between Sain Dass and Raghbir Singh on one hand and Mehain Singh on the other. On having come to know that Kuljit Singh and Sain Dass had gone to the land in dispute, the complainant

also reached there where Kuljit Singh, Sain Dass, Puran and Kali were present. At about 8.30 A.M. accused Kulwant Kaur and her husband Jagroop Singh armed with kirpan, Raju armed with *datar*, Dhira armed with *dang*, Manna armed with ghotna, Kaka armed with *dang*, Laloo armed with iron rod, Chiman Singh @ Jhima armed with iron rod, Anoop Singh armed with *dang* along with some unidentified persons forming an unlawful assembly with criminal intimidation reached there. Upon raising lalkara by respondent No. 2 accused Kulwant Kaur, all the accused along with their respective weapons, forcibly entered the land and attacked Kuljit Singh. When the applicant-complainant tried to rescue him, Jagroop Singh gave a *kirpan* blow on his right ear near the eye. Accused Raju also gave *datar* blow on the right side of the head of the complainant. On raising alarm by Kuljit Singh and Kabul Singh, all the accused persons fled away from the spot along with their weapons after raising lalkaras. The complainant and the other injured were taken to Civil Hospital, Majitha where they were examined by the Medical Officer. Since no action was taken against the respondents by the police, the complaint in question was filed by the applicant-complainant.

After the preliminary evidence, finding a prima facie case, the trial Court had summoned the accused for the aforesaid offences. On the basis of the pre-charge evidence, charges were framed against the accused under Sections 326, 325, 324, 323, 148, 149 IPC. Thereafter, only complainant CW-1 Baldev Singh and CW-3 Lakhwinder Singh were recalled for further cross-examination and thereafter the complainant closed his evidence.

Statements of the respondents-accused under Section 313

Cr.P.C. were recorded in which they pleaded innocence and alleged false implication. In defence, they had examined DW-1 Gurdial Singh, DW-2 Inderpal Singh and DW-3 Sardool Singh.

As noticed above, vide judgment dated 10.1.2014, the learned trial Court acquitted the respondents of the charges framed against them.

We have heard learned counsel for the applicant but do not find any merit in the present application seeking leave to appeal.

The learned trial Court, while passing the impugned judgment of acquittal has taken into consideration that the case set up by the complainant is doubtful as the complainant had failed to prove the case against the accused beyond reasonable doubt. While recording such finding, the factors which weighed in the mind of the Court were that there were contradictions in the statement made by the complainant vis-a-vis the complaint filed by him. It was stated by the complainant in the complaint that he became unconscious after the *datar* blow was given on the right side of his head by one of the respondents, namely, Raju and the accused persons treated him as dead. It was further stated that the accused persons attacked Lakhwinder Singh @ Mukhwinder Singh and tied the complainant and witness Kali with a rope. However, the theory regarding tying with the rope cannot be believed as in the earlier portion of the complaint, the applicant-complainant stated that the respondents-accused had taken him as dead after he became unconscious. If it was so, there was no need for the accused persons to tie the complainant with the rope while he was unconscious. The trial Court further observed that if the complainant became unconscious, how the complainant could have witnessed the infliction of alleged injuries on the person of witnesses Lakhwinder Singh

@ Mukhwinder Singh and Kali.

The trial Court has further taken into consideration that the applicant-complainant stated in his complaint that witnesses Kuljit Singh and Kabul Singh had raised alarm, upon which all the accused fled away from the place of occurrence but the name of Kabul Singh was omitted by the applicant-complainant in his deposition. The trial Court has further found flaw in the case of the complainant that in the cross-examination the applicant-complainant had stated that on 13.11.2006 at about 8.30 P.M., he along with Kali, Kuldip, Puran Singh and Kabul Singh were planting trees in the disputed land whereas in the complaint, the complainant had stated that he along with Kuljit Singh, Sain Dass and Puran were present in the land in dispute. Thus, the version of the complainant was rightly taken to be false by the trial Court.

So far as Dr. Amarbir Singh is concerned, he stepped into the witness box as CW-5 and tendered the medico legal reports and x-ray reports of the injured but the learned trial Court has rightly observed that the medico legal reports as well as x-ray reports tendered by the said witness cannot be read into evidence being only the photostat copies as the original record was not got produced by the complainant at the time of recording of his testimony. Moreover, no external injury was depicted on the person of witness Kali as revealed from his MLR Ex. C5. Further, DW-2 Gurdial Singh, the real brother of Sain Dass, stated that no such incident, as stated in the complaint, took place at the disputed land on 13.11.2006. He further stated that Sain Dass wanted to take forcible possession of the disputed land and had got filed the false complaint through his brother-in-law i.e. Baldev Singh applicant-complainant. The trial Court has further relied upon the

deposition made by DW-2 Inderpal Singh, whose land is adjoining the disputed land along with the testimony of DW-3 Sardool Singh, whose house is situated at the distance of 35-40 karams from the disputed land.

It is well settled principle of law that the prosecution has to prove its case beyond the shadow of reasonable doubt and if there is any doubt, the benefit must go to the respondent-accused. To our mind, the evidence has to be weighed and not counted.

The trial Court has drawn a right conclusion that it is a sound and well established rule of law that the Court is concerned with the quality and not the quantity of the evidence necessary for proving the facts of the case. To our mind, the trial Court has scrutinized the evidence carefully and in terms of the felicitous metaphor, separated the grain from the chaff by applying the principle of law that the prosecution has to prove its case beyond all reasonable doubts.

Learned counsel appearing for the applicant could not point out any material illegality or perversity in the impugned judgment of acquittal. Nothing has been shown as to the misreading and misinterpretation of the evidence by the learned trial Court, while passing the impugned judgment.

Consequently, the application seeking leave to appeal is dismissed. Leave to appeal is declined.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

May 27, 2019
Gurpreet

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No