

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

CRM-A No. 1604 of 2019 (O&M)

Date of Decision: 15.11.2019

Dharmbir

..... Appellant

Versus

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE GIRISH AGNIHOTRI**

Present: Ms. Alisha Soni, Advocate for the applicant-appellant.

JASWANT SINGH, J.

1. Present application has been filed under section 378 (4) of the Code of Criminal Procedure, 1973 (in short “the Code”) for grant of Leave to Appeal against the judgment dated 03.05.2019 passed by learned Sessions Judge, Rohtak, whereby respondent Nos. 2 & 3 (Ankit and Bijender, respectively) / accused have been acquitted for the commission of offence under ***Section 307 of Indian Penal Code in short (IPC), while convicting and sentencing them only for offence under Sections 325, 506 and 34 IPC.***

2. Tersely put the facts of the prosecution case are that the Head Constable Dilbag, while was available in PGIMS, Rohtak on 31.08.2017, received the information from Police Station Meham to the effect that ***Dharambir*** resident of village Madina was admitted in PGIMS, Rohtak on account of receiving of injuries by him in an altercation. On receiving this information, Head Constable Dilbag immediately rushed to ***Dharambir***, who made a complaint to him in the manner that he was having a dispute over a house with ***Bijender son of Surat Singh (respondent No. 3/accused)***. In this regard, proceedings under Sections 107/151 Cr.P.C. were pending against

both of them. On 30.08.2017 at about 10.30 P.M., while he was on his way

from Bus Stand, Madina to his home, he saw that ***Bijender and his son Ankit*** were armed with *lathis* and thereby they started causing injuries to him. ***Dharambir/injured*** reported the matter for initiating the action against him and on the basis of this report, Bijender and Ankit were arrested on 26.09.2017. On 25.10.2017, the Investigating Officer sought the opinion of the Medical Expert with regard to the nature of injuries on the person of ***Dharambir*** and the injury was declared as '*dangerous to life*'. As a result of receiving this information of the Medical Expert, the offence under ***Section 307*** was added. Further investigation was carried out by ASI Ramphal. After the investigation, police filed the report under Section 173 Cr.P.C. against Ankit and Bijender under ***Sections 323, 506, 307 read with Section 34 of the IPC*** in the Court of SDJM, Meham, who after completing the commitment proceedings, committed the case to the Court of Sessions.

Finding a *prime facie* case, both the accused/respondents were charge-sheeted for the commission of offences under ***Sections 325, 307, 506 of IPC*** to which they pleaded not guilty and claimed trial.

To prove its case against the respondents/accused, the prosecution has examined the following twelve (12) witnesses:-

“ **Dharambir (Complainant)** as PW-1, **Sonu** as PW-2, **Multan Singh**, OTA MRO Branch, PGIMS, Rohtak as PW-3, **Dr. Anubhav** as PW-4, **ASI Sumit Kumar** as PW-5, **EASI Anand** as PW-6, **HC Dilbagh** as PW-7, **Dr. Dinesh** as PW-8, **ASI Ramesh Singh** as PW-9, **Constable Raj Singh** as PW-10, **Dr. Antrish** as PW-11 and **Constable Naresh** as PW-12. ”

On completion of prosecution evidence, the statements under Section 313 Cr.P.C. were recorded by the Sessions Court in which all the

against the respondents/accused were put to them and they pleaded their innocence and false implication. Chance of defence was given to the accused and Virender Kumar and Jai Parkash were examined as DW-1 and DW-2, respectively.

On the basis of weak evidence produced by the prosecution against the present respondents/accused, they have been acquitted of the charges for the commission of offences under **Section 307 of IPC**.

3. We have heard the learned counsel for the applicant/appelolant and have also gone through the paper-book very carefully with her assistance.

Complainant has assailed the part of the observation of the Lower Court before us to the extent whereby Lower Court has opined that prosecution has failed to prove that injuries on the person of *complainant (Dharambir)* were '*dangerous to life*'. The Lower Court in the impugned judgment has examined the medical evidence and thereby has come to the right conclusion that prosecution has failed to prove that injuries on the person of *complainant/Dharambir* were '*dangerous to life*'. As per statement of *Dharambir/complainant (PW-1)* that *respondent/accused-Ankit* caused *lathi* blows on his head and *respondent/accused-Bijender* gave a *lathi* blow on his face. On receiving the blow of *lathi*, his jaw was broken and he fell down on the ground. As such, the injury which was opined as '*dangerous to life*', as per the Medical Expert is only on the face of *complainant-Dharambir*. In this manner, we can say that there was neither intention nor was knowledge of the defence party to cause such kind of injuries which can bring the case of the prosecution within the four corners of commission of offence under Section 307 of IPC.

We are of the view that act committed by the accused to bring the case within the ambit of **Section 307 IPC**, must be an act capable of causing death in the natural and ordinary course of things and if the act complained of, is not of that description, the accused cannot be convicted under **Section 307 of IPC**. As such, the Trial Court has rightly observed in the impugned judgment that prosecution has failed to prove its case for the commission of offence under **Section 307 of IPC** and has rightly acquitted the defence party by giving them benefit of doubt for this offence.

4. In view of the above discussion, this Court is of the opinion that the trial Court, while appreciating the entire evidence in its proper perspective, has rightly held that the prosecution has failed to prove its case against the accused-respondents beyond any reasonable doubt. Thus, no case for any kind of interference in the impugned judgment is made out. The view of the trial Court is hereby affirmed and is maintained.

The instant **application** is without any merit and, therefore, **dismissed**. Leave to Appeal is declined.

It is also made clear that any observation given by us will not be treated as our opinion on the whole case of the prosecution especially in case any appeal or revision is preferred by any of the party vide which the Trial Court has convicted the respondents/accused for commission of offences under **Sections 325 & 506 read with Section 34 of the IPC**.

(JASWANT SINGH)
JUDGE

November 15, 2019

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(GIRISH AGNIHOTRI)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No