

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

CRM-A-455-2019 (O&M)
Date of decision : 14.01.2020

Karam Singh

...Applicant/appellant

Versus

Rajinder and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Bansal, Advocate for the applicant/appellant.

ANIL KSHETARPAL, J. (ORAL)

CRM-750-2020

Application is allowed.

Appeal is restored to its original number. With the consent of learned counsel for the applicant-appellant, the main appeal itself is taken on Board for final disposal.

CRM-A-455-2019 (O&M)

Leave to appeal has been sought under Section 378 Cr.P.C. against the judgment of acquittal passed by the learned trial Court acquitting the accused in a complaint under Sections 323, 324, 325, 506 read with Section 34 of the Indian Penal Code.

On appreciation of evidence, learned Judicial Magistrate has recorded following findings:-

“12. Therefore, from the careful perusal of the aforesaid entire evidence oral as well as documentary led on behalf of the complainant as well as on behalf of the accused, it is amply clear that complainant Karam Singh along with his

father Dhani Ram and brother Karan Singh caused the injuries to Suraj Bhan and his wife and all the three accused have been convicted and sentenced vide judgment dated 27.07.2010 Ex.D2. Admittedly the injured persons Suraj Bhan etc. were immediately taken to the hospital and got medico legally examined at about 8:55AM. Whereas, MLR of the Karam Singh bears the time of 12:00 o'clock in the night on 23.03.2009 and doctor in the MLR has categorically mentioned that the injuries caused to Karam Singh were caused within 12 hours. The complainant has alleged that they have sufficiently explained the delay for medico legally examination of Karam Singh because they were kept sitting in the police station by the incharge from morning to 6:00PM and thereafter they went to hospital and doctor on duty refused to conduct their treatment on the pretext that doctor who has gone outside would conduct their medical examination and thereafter the medical of Karam Singh was got conducted. But, this court is of considered opinion that the version of the complainant as to causing the injuries to the person of Karam Singh complainant by the accused persons has not proved beyond reasonable doubt because the facts and circumstances of the present case raises meny reasonable doubts in the mind of the court as there are lots of material contradictions in the oral testimonies of Dhani Ram (CW6) and Karam Singh, Complainant (CW7). It is amply clear that the village of the complainant is only at a distance of 6K.M. from Indri. Whereas, the complainant etc reached within 10-15 minutes on the motorcycle as deposed that Dhani Ram (CW6) but thereafter they were sent to police station where they were asked to stay up to 6:00PM. When they visited first time in the hospital in the morning no treatment was given to Karam Singh nor any medical was conducted and Dhani

Ram (CW6) has categorically deposed that Karam Singh complainant was unconscious when he was taken to Indri Hospital and he remained unconscious up to 6:00PM. Whereas, on the other hand Karam Singh complainant himself has categorically deposed that they reached in the Indri hospital at about 9:00AM where he met to doctor who had not examined him medically. He has shown all his injuries to the doctor, but they were asked to go to police station and up to 6:00PM he has not taken any medicine or dressing etc. nor he tries to take any medicine or dressing from the private doctor. It is a material contradiction in the oral testimony of these witnesses as to the explanation of delay caused in their MLR. Further, Dhani Ram (CW6) has categorically deposed that at the time of fighting Raghubir and Bhani came on the site of occurrence and Karam Singh complainant has also categorically deposed that on the site of occurrence Balli Ram, Raghubir, Satpal, Sultan, Dheer Singh, Rinku etc. were gathered but none of these independent eye witnesses has been examined on behalf of the complainant. Furthermore, complainant Karam Singh (CW7) has categorically deposed that his brother Karan Singh reached on the site of occurrence after 45 minutes, whereas, he along with complainant and his father Dhani Ram has been convicted vide judgment dated 27.07.2010 Ex.D2 finding him accused under Sections 323, 324, 307 of IPC etc. Therefore, this court is of considered opinion that the oral testimonies of Dhani Ram (CW6) and complainant Karam Singh (CW7) is not trustworthy and fails to inspire the confidence of the court for the aforesaid contradictions and as no independent witness has been examined in the present case. Therefore, the complainant has miserably failed to prove his case beyond reasonable doubt.”

On careful perusal thereof, it is apparent that Judicial

Magistrate, on appreciation of evidence, has found the evidence of Dhani Ram and the complainant-Karam Singh, not trustworthy. The Court has found that their evidence fails to inspire confidence for convicting the accused. The Court further noticed that no independent witness has been examined to prove the case against the accused.

It is well established that before an accused is convicted, it is the duty of the prosecution to bring home the guilt of the accused beyond the shadow of reasonable doubt. Judicial Magistrate has held that the prosecution, in the present case, has failed.

It has also come in evidence that the complainant and others have been convicted in a cross criminal case vide judgment dated 27.07.2010.

Learned Judicial Magistrate has taken a reasonable and probable view which is not established to be suffering from substantive error or perversity.

Hence, leave to appeal is declined.

All the pending miscellaneous applications, if any, are disposed of in view of the abovesaid judgment.

14.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No