

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

**CRM-A-1112-MA of 2018
Date of decision: 5th July, 2023**

Anil

...Applicant

Versus

Sandeep and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Kartik, Advocate for the applicant.

AVNEESH JHINGAN, J (Oral):

1. This is an application for grant of leave to appeal against the judgment acquitting Sandeep and Lovely (respondents herein) in Complaint Case No. RBT/45/2014 under Sections 147, 148, 323, 325, 326 and 307 IPC.

2. The complainant-Anil filed a complaint alleging that on 28.6.2014, accused Sandeep who was fully drunk offered him a drink in presence of Bunti and on his refusal, an altercation took place. Sandeep gave slaps and fists blows to the complainant. Later while the complainant and Bunti were going home, Sandeep along with brother Lovely pelted stones resultantlly, the complainant received injuries on his jaw and right eye. Bunti along with 2-3 persons took the complainant to Kishan Singh Hospital from where he was referred to Om Sperio Hospital, Palwal. He was admitted in ICU and operated several times to fix the fracture of jaw. The respondents were summoned to face trial under Section 323 read with Section 34 IPC. The trial court acquitted the respondents concluding that guilt of the accused was not proved beyond reasonable doubt.

3. The respondents were acquitted considering that there were material variations in the allegations made in the complaint and in deposition of complainant. Further it was considered that neither Bunti,

who was accompanying the complainant at the time of incident nor Suresh who took the complainant to the hospital were examined. The complainant failed to produce any documentary or medical evidence to support the injuries sustained and to substantiate the treatment taken by him. It is undisputed fact that Suresh, Bunti and the doctor were only examined before passing of summoning order and not thereafter. The allegations put forth were found to be doubtful as during cross-examination the complainant admitted that he was driving two wheeler after consuming liquor.

4. Learned counsel for the applicant submits that the court below erred in acquitting the respondents and not considering the testimonies of Suresh, Bunti and the doctor recorded prior to the summoning of accused.

5. Heard learned counsel for the applicant and perused the record.

6. A Division Bench of this Court in **State of Punjab v. Hansa Singh, 2001 (1) RCR (Criminal) 775**, while dealt with appeal against acquittal and held:

“We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble Supreme Court in Ashok Kumar v. State of Rajasthan, 1991(1) SCC 166, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.”

7. The contention of learned counsel for the applicant lacks merit. At the stage of summoning, the court has to prima facie satisfy itself that a case is made out for summoning the accused. It cannot be lost sight of that the accused at that stage got no opportunity to cross-examine the witnesses. Non-examination of the material witnesses during the trial

has rightly been taken to be fatal for the case.

8. There is no factual or legal error, much less perversity, in the impugned judgment. The view taken by the trial court is plausible one. No case is made out for interference in the judgment of acquittal.

9. The application for grant of leave to appeal is dismissed.

[AVNEESH JHINGAN]
JUDGE

5th July, 2023
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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No