

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

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CRM-A-1144-MA-2017

Date of Decision: 14.03.2023

SURINDER KUMAR

-Appellant

Versus

NARINDER KUMAR AND ORS.

-Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. Amandeep Singh, Advocate
for the appellant.

KULDEEP TIWARI, J.

1. The instant application, seeking grant of leave to appeal, is directed against the order of acquittal dated 15.03.2017, rendered by learned Judicial Magistrate Ist Class, Ludhiana, whereby, the respondent Nos.1 and 2 have been acquitted from the charges framed against them, in a private complaint instituted by the appellant/complainant (hereinafter referred to as the 'appellant'), under Sections 326, 294, 506 and 34 of Indian Penal Code (hereinafter referred to as "IPC").

2. It would be apt to record here that the complaint (supra) was instituted by the appellant against the respondent Nos.1 and 2, besides, one Abhay Kumar, who was subsequently declared as "juvenile", vide order dated 06.06.2014, passed by the Judicial Magistrate Ist Class, Ludhiana.

3. Now, the appellant has challenged the order of acquittal, on the averments that the learned trial Court has not appreciated, in its right

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perspective, the cogent evidence as led by him, and, has also gravely erred in giving the benefit of doubt to the respondent Nos.1 and 2, by drawing wrong inferences. It is also averred that the learned trial Court has adopted a reckless approach in examining the well corroborative evidence of the appellant, duly supported by medical evidence, which is sufficient to substantiate the allegations against the respondents concerned.

4. Before commencing to adjudicate upon the validity of the impugned order of acquittal, passing whereof, led the appellant to approach this Court seeking grant of leave to appeal, it would be apt to, at the outset, catch a glimpse of the factors underlying the origination of the complaint (supra).

5. With regard to the same incident, an FIR No.54 dated 08.05.2009, under Sections 326, 324, 148 and 149 of IPC, was already registered at P.S. Division No.8, District Ludhiana, on the statement of respondent No.2 herein, namely, Vijay Kumar, against the present appellant, one Paramjit Kumar @ Pammi, and, one Jagdish Kumar @ Kaka. Concealing all these material facts, and, after a delay of about six months, the appellant had filed the complaint (supra) on 05.11.2009, qua the very same incident, as occurred on 25.04.2009. The relevant extract of the complaint (supra), inasmuch as the allegations are concerned, is extracted hereunder:-

“On 25.04.2009, at about 09:30 p.m., complainant was coming on his motorcycle after meeting his friend Samrat Sharma at his house situated at Krishna

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Chowk, New Kundapuri, Ludhiana, when complainant reached Near Pani Kothian, there Narinder Kumar son of Sh. Prithi Lal accused no.1 was also coming on his motorcycle. Accused no.1 Narinder Kumar waylaid the complainant and started abusing him and said that you (complainant) are looking me with evil eye (Aukha-Aukha Dekhde) who was also having in drunkard condition at that time. Narinder Kumar threw his head (Takkar Mari) on the head of complainant, complainant turned his head the same hit on the left side of the head of complainant. Then said Narinder Kumar left the spot while abusing the complainant. The complainant came to his house, after about 10-15 minutes, Narinder Kumar accused no.1, Vijay Kumar accused no.2, who were having Kirpans in their hands and Abhay Kumar who was having a Danda in his hand, came before the house of complainant and started saying the complainant by his name that come outside, we will teach you a lesson. When complainant came outside from his house, said Narinder Kumar accused no.1 gave a Kirpan blow on the head of the complainant, complainant raised his left hand and the blow hit on the little finger of his left hand. When Vijay Kumar and his son Abhay Kumar accused no.2 and 3 respectively were starting to give blows meantime mother and brother Pammi of the complainant came for the rescue of the complainant. All the three persons ran away from the spot with their respective weapons, after giving threats of life.”

7. In preliminary evidence, the appellant had examined total three witnesses, i.e. Dr. Raman Kumar as CW-1, Satya Devi (mother of appellant) as CW-2, and, the appellant himself stepped in witness box as

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CW-3. Based thereupon, the learned trial Court had summoned the respondent Nos.1 and 2, along with one Abhay Kumar, to face trial for commission of offences punishable under Sections 326, 294 and 506 of IPC. However, Abhay Kumar was declared as “juvenile”, vide order dated 06.06.2014, passed by the learned Judicial Magistrate Ist Class, Ludhiana.

7. In pre-charge evidence, the appellant had again examined total three witnesses, i.e. he himself stepped in witness box as CW-1, Satya Devi (mother of appellant) as CW-2, and, Dr. Raman Kumar as CW-3. Finding a prima facie case, the respondent Nos.1 and 2 were charge-sheeted for commission of offences punishable under Sections 326 and 506 of IPC, read with Section 34 of IPC, vide order dated 05.12.2015, to which they pleaded not guilty and claimed trial. Thereafter, the complainant made a separate statement that his pre-charge evidence be read as his after charge evidence. The respondent Nos.1 and 2, in their statements recorded under Section 313 Cr.P.C., pleaded innocence and false implication in the present case, while denying all the allegations, as leveled against them. They specifically pleaded therein that the present complaint has been instituted as a counter blast to the FIR (supra), just to compel them for a compromise. After completion of trial, and, upon appreciation of the entire evidence available on record, the learned trial Court found the evidence, so led by the appellant, to be untrustworthy and insufficient to base conviction of the respondents concerned, and accordingly, recorded the order of acquittal.

8. It would also be apposite to record that after completion of

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investigation in the FIR (supra), the present appellant along with his co-accused were convicted, and, sentenced by the court of learned Judicial Magistrate Ist Class, Ludhiana, vide order dated 15.03.2017.

9. In the above discussed backdrop of the present case, we have examined the impugned order of acquittal, as well as, the entire lower Court record. However, we do not find any material irregularity or perversity in the impugned order of acquittal, and, also do not find any evidence available on record, cogent enough to reverse the order of acquittal to that of conviction, for the hereinafter elaborately assigned reasons:-

- (a) The first and foremost reason is the inordinate and unexplained delay of about 6 months in filing of the complaint (supra), as the alleged incident took place on 25.04.2009, whereas, the complaint (supra) was filed on 05.11.2009.
- (b) The complaint (supra) was actuated with malice and was launched as a counter blast to the FIR (supra), with the intention to coerce the respondents concerned to enter in a compromise. The factum of the complaint (supra) being a counter blast gathers support from nowhere else, but, from the specific admission of the appellant himself, who in his cross-examination, has admitted that, during his visits to his counsel to defend him in the FIR (supra), it was his counsel who compelled him to file a complaint to save his skin.

Therefore, it can be safely concluded that the story put forth by the appellant suffers from gross vice of premeditation and concoction.

- (c) Indubitably, Satya Devi, who was examined as CW-2, supported the case of the appellant in sum and substance in her examination-in-chief, however, she could not bear the warmth of cross-examination. In her cross-examination, she exonerated the respondents concerned by making categorical submissions that neither she knows the respondents nor she has any knowledge about the complaint (supra), or, about any quarrel, as mentioned therein. She further categorically stated that she had never seen the respondents at any point of time. According to her cross-examination, the motive behind quarrel was a property dispute. Therefore, such an inconsistent testimony, replete with contradictions, cannot be taken into consideration for any useful purpose.
- (d) Dr. Raman Kumar was examined as CW-3 to prove on record the injuries, allegedly suffered by the appellant, at the hands of the respondents concerned. Perusal of his examination-in-chief depicts that he found the following injury on the body of appellant:-

“1. Incised wound near total amputation of left little finger at middle Phalanx middle part

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level. The distal part attached to proximal part with skin paddle on ulnar side only. No distal movements (distal to level of injury) of left little finger. Vasularity of distal part sluggish advised x-ray left hand-AP/oblique.”

However, when he was put to cross-examination, there is a specific admission on his part that he has already given opinion to A.S.I., Gurcharan Singh, Incharge, P.S. Division No.8, that the above stated injury, on the body of appellant, can either be self-inflicted, or, can be caused by friendly hand. The relevant extract of his cross-examination is reproduced hereunder:-

“It is correct that in this case legal opinion was sought from me on the application of Gurcharan Singh ASI, Incharge, P.S. Division No.8, during inquiry, regarding the alleged injury of patient Surinder Kumar and therein I have given the opinion, the possibility of self suffered or friendly hand involvement in abovesaid injury of injured Surinder Kumar cannot be ruled out. I have seen my opinion, which is Ex.CW3/A.”

Therefore, the testimony of Dr. Raman Kumar carries relevance only insofar as it establishes existence of injury on the body of appellant, however,

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the above extracted admission on his part, lends no help to the case of the appellant to establish that the injury (supra) was, in fact, inflicted by the respondents concerned.

- (e) Lastly, the appellant while stepping in the witness box, has simply reiterated the contents of the complaint (supra). In his cross-examination, he made admission qua registration of FIR No.54 dated 08.05.2009, against him and his co-accused, as a consequence of a quarrel/fight between him, Paramjit, Jagdish and some unknown persons with the respondents, wherein, the respondents had suffered injuries. Even the motives assigned by him, behind the occurrence of 25.04.2009, are contrasting. In FIR (supra), the appellant took the defence that the respondents, namely, Vijay Kumar and Narinder Kumar had come along with their companions to take forcible possession of the house, whereas, in the complaint (supra), it is the stand of the appellant that the respondent No.2, Vijay Kumar, had come to his house to attack upon him. Therefore, such a contrary ocular version of the appellant, in the absence of any cogent corroborative evidence, especially without any credible medical evidence, lacks credence to convert the well founded and well reasoned order of acquittal

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to that of conviction. The appellant is required to prove his case beyond any reasonable doubt. The onus cannot be discharged by merely establishing a fact by preponderance of probabilities.

10. Upon a cumulative reading and appreciation of the evidence on record, this Court comes to a conclusion that there are considerable discrepancies in the statements of the appellant, and, his mother, besides, inordinate and unexplained delay in filing the complaint (supra). Moreover, the reasoning given in the trial Court's judgment does not suffer from any gross perversity or absurdity of mis-appreciation and non-appreciation of the evidence on record. It is trite law that order of acquittal should not be disturbed unless there are substantial or compelling circumstances.

11. Therefore, this Court does not find any ground to interfere with the order of acquittal. In sequel, the **application for leave to appeal** is hereby **declined**, being bereft of merits, and, the **impugned judgment of acquittal**, rendered by the learned Judicial Magistrate Ist Class, Ludhiana, is hereby **upheld**.

12. The case property, if any, be dealt with in accordance with law. The record be forthwith sent down.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

14.03.2023
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No