

CRM-A-387-MA-2017 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-A-387-MA-2017 (O&M)
Date of decision: 09.08.2023

Vikas Kumar

... Appellant

Vs.

State of Haryana and others

... Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Surinder Kumar Daaria, Advocate
for the appellant.

Mr. Pawan Girdhar, Addl. A.G., Haryana.

Mr. Manoj Tanwar, Advocate
for respondents No. 2 to 4.

RITU BAHRI, J.

CRM-7250-2017

1 Prayer in the application is for condonation of delay of 14 days in filing the present appeal. Heard. In view of the reasons mentioned in the application, same is allowed.

2 Delay of 14 days in filing the present appeal is condoned.

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3 The instant appeal has been filed by the appellant-complainant Vikas against the judgment dated 08.11.2016 passed by learned Additional Sessions Judge, Gurgaon in Session case No. 104 of 13.12.2013 titled as State Vs. Rakesh and others, arising out of FIR No. 932 dated 11.09.2013, registered under Sections 147, 148, 149 323 and 506 of IPC at Police Station Sohana, Gurgaon, whereby the respondents No.2 to 4 had been held guilty for commission of offences punishable under Sections 323 and 325 read with Section 34 of IPC but were acquitted of charges under Sections 147, 148, 307 and 149 of IPC.

4 Brief facts of the case relevant for the purpose of disposal of this appeal are that on 08.09.2013, on receipt of an information, a police party headed by EASI Satbir had reached at General Hospital, Sohana and recorded statement of the injured Vikas, who disclosed that on the same day at about 11:30 am, he was coming back to his house on his motorbike when accused Rakesh who was standing outside his house intercepted him by standing in front of his motorcycle and without saying anything, he threw a water pipe which he was holding in his hands on the head of the complainant. Then his wife Santosh came outside and struck a blow with a stone on her head. His brother Kishori came out and while snatching the key of his motorcycle, he struck a blow with phawda which he was carrying in his hands on his head. The complainant rushed towards his house and

sometime thereafter when he along with his brother Pawan was going towards the police station to report the matter to the police, he was again interrupted on the way by Sandeep and Bharti daughter of accused Rakesh. Bharti struck a blow with lathi on the head of Pawan, accused Sandeep struck blows with lathi on his head and then all of them started pelting stones. The complainant and his brother were rescued by one Mahavir, who had reached there while hearing their rescue alarms but in the meanwhile Bhavi Chand also struck a blow with kulhari on his head. The injured were taken to the hospital. On the basis of his statement, initially a case under Sections 147, 148, 149, 323 and 506 of IPC was registered. Investigation proceedings were initiated. The head injury sustained by the injured Pawan was subsequently opined to be dangerous to life by the treating doctor and therefore, offence under Section 307 of IPC was added. The accused Sandeep was arrested on 21.09.2013. He was interrogated and suffered disclosure statement admitting his involvement in the crime and got recovered one weapon of offence. The accused Rakesh and Kishori were also arrested subsequently. They too suffered disclosure statements and recovered other weapons of offence. Bhavi Chand and Bharti named in the FIR were found to be innocent and were not challaned and arrested. Their names were kept in column No. 2 of the challan report. After completion of necessary investigation and usual formalities, challan under Section 173 of Cr.P.C. was presented in the Court for trial of the accused-respondents No. 2 to 4.

5 Copies of challan were supplied to the accused-respondents No. 2 to 4 free of costs. The case was committed to the court of Sessions. On finding a prima facie case for commission of offences punishable under Sections 147, 148, 323, 307 and 506 read with Section 149 of IPC, the accused had been chargesheeted accordingly. They pleaded not guilty to the charges and claimed trial.

6 To substantiate its case, the prosecution examined 18 witnesses in all besides relying upon documentary evidence and thereafter, prosecution evidence was closed by learned public prosecutor.

7 After hearing the contentions from both the sides and appraising the evidence, the learned trial court acquitted the accused of the charges framed against them under Sections 147, 148, 149, 307 and 506 of IPC but they were held guilty and convicted under Sections 323 and 325 of IPC. They were sentenced to undergo rigorous imprisonment for a period of 6 months for commission of offence punishable under Section 323 of IPC and rigorous imprisonment for a period of 3 years for commission of offence punishable under Section 325 read with Section 34 of IPC and the period of sentence already undergone by them was ordered to be set off.

8 Feeling dissatisfied from the order of acquittal of the respondents No.2 to 4 under Section 147, 148, 307 and 506 read with Section 149 of IPC, the complainant has preferred this appeal.

9 It was argued by learned counsel for the appellant that the impugned judgment was liable to be set aside to the extent to which the respondents No. 2 to 4 were acquitted of the charges as framed against them. He argued that there was overwhelming evidence on record to prove that the respondents No. 2 to 4 along with their other family members had formed membership of an unlawful assembly and in prosecution of common object of that unlawful assembly, they had assaulted the appellant and his brother Pawan on 08.09.2013, thereby causing simple as well as grievous injuries to them. The injury sustained by PW3 Pawan brother of the appellant on his head was declared to be dangerous to life by PW-14. The intention of the respondents to eliminate the victim was explicit from the nature of the injuries which they had caused on the person of the appellant and his brother and therefore, the learned trial court had committed a grave error in holding that there was no attempt on the part of respondents No.2 to 4 to kill the appellants and his brother. Further, there was overwhelming evidence on record to prove that the respondents No. 2 to 4 had criminally intimidated the appellant and his brother and had committed the offence of rioting. He argued that the learned trial Court did not appreciate the evidence produced on record in a proper manner. With these broad arguments, it was submitted that the impugned judgment was liable to be set aside to the extent to which the respondents had been acquitted of the charges framed under the aforementioned sections.

10 Per contra, it was argued by learned counsel for the respondents No.2 to 4 that no ground has been made out to interfere with the findings given by learned trial court. He submitted that rather it was a case where the respondents No. 2 to 4 deserved to be acquitted of all the charges as framed against him. He stressed that the ingredients for commission of offences punishable under Sections 147, 148 and 149 of IPC had not at all been established and the learned trial court had committed an error even by framing charges under these sections as against the respondents. Hence it was urged that the respondents were rightly acquitted thereunder. He further argued that the ingredients for commission of offence punishable under Sections 307 and 506 of IPC had also not been established. The defence evidence produced on record proved that the appellants and his family had motive to falsely implicate them in this case and no motive on the part of the respondents to assault the appellant had been established by the prosecution. The defence evidence produced on record prove the plea of alibi as taken by the respondent Sandeep. While concluding, it was submitted that the learned trial Court committed no error in acquitting the respondents of the charges under Sections 147, 148, 149 and 307 and 506 of IPC and it was urged that the appeal being devoid of any merits was liable to be dismissed.

11 We have heard learned counsel for both the parties at considerable length and have given due deliberations to the contentions as raised by them and we are of the considered opinion

insofar as the charges under Sections 147 to 149 of IPC are concerned, the learned trial Court had committed no error in acquitting the respondents No. 2 to 4 of the charges under these three Sections due to the reason that the main ingredient for proving commission of offences punishable under these Sections is the assembly of five or more persons so as to designate the same as an unlawful assembly, however, in the instant case, it was only three persons i.e. the respondents No. 2 to 4 who had been challaned as accused and the remaining persons named in the FIR were found to be innocent. Though it is revealed from the record that during trial the complainant had filed an application under Section 319 of Cr.P.C, to arraign them as additional accused but the said application had been dismissed vide order dated 06.10.2014 as passed by learned trial Court and there is nothing on record to suggest that any appeal had been preferred against the said order. Therefore, it is to be assumed that only the respondents No. 1 to 3 were the persons who had participated in the occurrence. That being so, there was no question of an assembly of 5 or more persons being constituted to make any attempt to cause death of the appellant and his brother or to commit any other offence by the respondents No. 2 to 4 as such it is held that the respondent No. 2 to 4 were rightly acquitted of the charges under Sections 147, 148 and 149 of IPC or committing any offence of rioting or other offence by forming an unlawful assembly i.e. with the aid of Section 149 of IPC

and therefore, no ground has been made out to interfere with the findings so recorded by learned trial Court.

12 Now coming to the charge under Section 506 of IPC. On perusal of record, it has been revealed that even at the time of lodging FIR, no allegation whatsoever was levelled by the appellant that either of the respondents had criminally intimidated him or any other member of his family. Then even on perusal of the statements of PW-3 Pawan, PW-5 Vikas i.e. appellant and PW-8 Jagmohan, an eye witness to the occurrence, it is revealed that they did not utter even a single word to the effect that either of the respondents No. 2 to 4 had extended any threat to the members of complainant party or had criminally intimidated them in any manner. In such peculiar circumstances, when there was neither any allegation in the FIR nor even an iota of evidence on record to prove the charge as framed against the respondents No.2 to 4 of criminal intimidation, in our opinion, the learned trial Court had rightly acquitted them of the said charge and therefore, no interference in the order passed by learned trial court to that extent is required.

13 Proceeding further and coming to the charge under Section 307 of IPC. The allegations were that on the morning of 08.09.2013, when the complainant was coming back home from somewhere, he was intercepted by respondent Rakesh, who had thrown water pipe on his head and then he was assaulted by Santosh wife, and Kishori brother of the accused, Rakesh. As per the

allegations, the appellant along with his brother Pawan was assaulted again by accused Sandeep and other family members namely, Bharti and Bhavi Chand when they were going to report the matter to the police.

14 Now it is to be seen as to whether the evidence produced on record by the prosecution was sufficient to prove that the respondents had assaulted the appellant and his brother Pawan on 08.09.2013 and had made an attempt to cause their death and that the appellant and his brother had sustained injuries therein. It is important to mention here at the cost of repetition that the respondents No. 2 to 4 have been held guilty and convicted for commission of offences punishable under Section 323 and 325 of IPC by learned trial court by holding that they had voluntarily caused simple as well as grievous injuries to them and during the course of arguments, it was conceded by learned counsel representing the respondents No.2 to 4 that they had not preferred any appeal against the order of their conviction. Meaning thereby that the respondents No. 2 to 4 did not challenge their conviction on the ground that they had assaulted the appellant and his brother. So far as the question of sustaining injuries by the appellant and PW-3 is concerned, in our opinion, the medical evidence produced on record to this effect in the form of testimonies of PW-4 Dr. Sudhir Chaudhary and PW-18, Dr. Sohrab, who had conducted medico legal examination of the injured Pawan and medico legal reports Ex.PE and Ex.PP as prepared by these witnesses respectively,

coupled with the testimonies of PW-15 Dr. Deepak Kumar, who had treated the injured Pawan Kumar, PW-16 Dr. Rajvir Singh, who had conducted radiological examination of the injured Pawan on 08.09.2013 and of PW-17 Dr. Jasneet who had given emergency treatment to the appellant proves that the appellant was diagnosed with having sustained as many as simple injuries on his person on 08.09.2013 whereas PW-3 Pawan Kumar was opined to have sustained simple as well as grievous injuries. One of injury sustained by him on his head was subsequently declared to be dangerous to life as per the opinion given by PW-15 Dr. Deepak Kumar. PW-15 Dr. Deepak Kumar, a consultant neurosurgeon at Samvit Hospital Gurgaon deposed that the patient Pawan Kumar had been admitted in the hospital with history of assault with some blunt object and was operated upon by him for head injury. He was recalled for cross-examination and proved his report Ex.PL/1, wherein he had given an opinion to the investigating officer that the head injury sustained by PW 3 Pawan was dangerous in the nature. This witness however, stated during cross examination that no reason whatsoever had been given by him while giving opinion Ex.PL/1 for declaring the injury on the person of PW-3 as dangerous to life. PW-3 Pawan Kumar deposed that the respondent accused Sandeep had struck a blow with lathi on his temple, respondents Rakesh and Kishori had struck a blow with lathi on his legs and Bharti and Santosh (not summoned as accused) struck blows with lathi and threw stones upon him. He did not make

any mention that PW-5 Vikas had also been assaulted and sustained any injuries at the hands of the respondents-accused. Then PW-5 also deposed that the respondent accused struck a blow with lathi on the temporal portion of injured Pawan, but PW-8 Jagmohan did not attribute any injury whatsoever to the respondent-accused Sandeep and stated that it was accused Rakesh who had caused injuries on the head of PW-3 Pawan and Vikas, though PW Vikas did not depose about sustaining any such injuries. On an overall appraisal of the statements of PW3 Pawan Kumar, PW-5 Vikas and PW-8 Jagmohan, we are of the considered opinion that though it stood proved from their statements that the appellant and PW-3 Pawan Kumar had sustained injuries but their statements did not prove beyond doubt that the same were caused with the intention to cause death or by causing the same any attempt had been made by the respondents No. to 4 for causing death of the victims.

15 Further, no doubt, PW-3 had sustained an injury on his head as per the medico legal report, however, in view of inconsistent statements of the witnesses, it has not been established beyond doubt that as to which particular respondent-accused had caused that injury. More so, it has also not been established beyond doubt that there was any intention to make an attempt to cause death of the victim Pawan by causing such injury. More so, it is revealed from a perusal of report Ex.PL/1 that it was given by PW-1 in a very casual manner by saying that the injuries sustained by PW-3 Pawan were dangerous to life and

without explaining as to which particular injury out of three injuries by the victim was found to be dangerous to life as per him. His testimony to the effect that he could not explain the reason as to on what basis, he had declared the injuries on the person of PW-3 Pawan to be dangerous, also goes to create a doubt that the injuries so sustained by the victim was dangerous at all or not. In such circumstances, in our opinion also, the prosecution had failed to establish beyond doubt that the respondents made any attempt to cause death of PW-3 Pawan by assaulting him. As such, no fault can be found in the findings as recorded by learned trial Court for holding the respondents guilty for commission of offences punishable under Sections 323 and 325 of IPC instead of Section 307 of IPC.

16 As a result of this discussion, it is held that no illegality, much less perversity has been found in the judgment of learned trial Court warranting interference by this Court. Accordingly, finding no merits in the appeal, same is dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

09.08.2023
pooja saini

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No