

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

CRM-A-435-2021

Date of reserve:23.01.2023

Date of Pronouncement: 01.02.2023

State of Haryana

...Appellant.

Versus

Rinku

...Respondent.

**CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

.....

Argued by: Mr. Arun Beniwal, DAG, Haryana
for the appellant.

Sukhvinder Kaur, J.

The appellant-State of Haryana has preferred the instant application under Section 378(3) Cr.P.C. seeking leave to appeal against judgment dated 08.04.2021, passed by learned Additional Sessions Judge, Faridabad, vide which respondent-accused Rinku has been acquitted.

The facts, as per record, are that the present case was registered on the basis of complaint moved by complainant Kapoor Chaudhary before the police alleging that he was a student of 12th standard. Some days back, Gullu, son of Laxman and Arun son of Ashok, were arrested by CIA Staff as a loaded country made pistol was recovered from accused Gullu and stolen mobiles were recovered from the possession of accused Arun. But both of them were having doubt upon the complainant for the same and were nursing grudge. On 06.05.2017, at about 9.30 P.M. when complainant was going to his home, then Rinku son of Bittu, Gullu son of Laxman and Arun son of Ashok were standing on the way, whereas Nakul son of Mukesh was standing at some distance towards the house of the complainant. Nakul

stopped the complainant on the way and called Rinku, Arun and Gullu and said that they would make the complainant a secret informer of the police and thereafter, all the aforesaid four persons started beating the complainant. Rinku and Arun caught hold the complainant while Gullu and Nakul gave dumbly blows. Subsequently, complainant was got admitted at Government Hospital Ballabgarh by his uncle, from where he was referred to BK Hospital, but his uncle got him admitted at Sarvodaya Hospital and thereafter to Carewell Hospital, Sector 29.

On the basis of aforesaid complaint, formal FIR was registered. Investigation was conducted. Statements of witnesses under Section 161 Cr.P.C. were also recorded. Police visited the spot and prepared site plan. Accused Rinku was arrested. Juvenile Nakul was sent to Observation Home, Faridabad. Arun was placed in column No.2 of the challan and Gullu is yet to be arrested. All other necessary formalities of investigation were completed and then challan under Section 173 Cr.P.C. was prepared and was presented in Court for trial so as to prosecute accused Rinku.

On finding prima facie case against accused Rinku, he was charge sheeted under Sections 323, 341 and 307 IPC read with Section 34 IPC to which he pleaded not guilty and claimed trial.

After concluding the trial, the trial Court acquitted accused Rinku.

Aggrieved by the said decision, the State of Haryana has preferred the present application for seeking leave to file an appeal against acquittal of accused Rinku.

We have heard Mr. Arun Beniwal, Deputy Advocate General, Haryana and have also perused the record.

Learned counsel for the appellant has vehemently contended that the trial Court has erred in coming to the conclusion that there was delay in lodging of the FIR, as the first version of the complainant came after delay of 09 days of the incident. The occurrence took place on 06.05.2017 at about 9.30 P.M. and the very next morning the injured was got admitted in the hospital due to the complication of the internal injuries suffered by the complainant and in this regard Ruka dated 07.05.2017 was sent to the police station by the Medical Officer of the Hospital. Thereafter, as per the statement of the complainant police came to the hospital and recorded his statement in the hospital and this fact was proved on record by producing the Rapat Rojnamcha recorded by the police on 15.05.2017. So it was the investigating agency which took time in registering the FIR and there was no delay on the part of the complainant. He has further contended that the trial Court has also not considered the fact that minor contradictions can be there due to the time lapse between the occurrence and the statement on oath and moreover no major contradictions are there. The name of the accused has been specifically mentioned in the FIR and specific role has been attributed to him. The motive behind the occurrence has also been mentioned in the FIR. He has argued that the trial Court has erred in not considering the fact that the prosecution has duly proved on record that there was common intention of all the accused, and in furtherance of their common intention they all caused injuries to injured, which leads to the irresistible conclusion, that the accused had also actively participated in the commission of the crime. The injuries sustained by the injured have also been duly proved on record by examining the concerned doctors and exhibiting the medical record and the statement of the injured is also there.

He has contended that as per settled principles of criminal law, conviction can be recorded on the testimony of the injured witness and rule of prudence only requires scrutiny of evidence. He has contended that as cogent and convincing evidence has been adduced on record by the prosecution to prove the guilt of the respondent, so he has been wrongly acquitted by the learned trial Court and has prayed that the appellant may be granted leave to appeal against the judgment of acquittal qua the respondent.

Coming to the merits of the present case, having heard learned counsel for the appellant at length and having perused the judgment as well as the other relevant record, we are of the considered opinion that the prosecution was unable to prove its case against the accused beyond the reasonable doubt.

As per the prosecution version, the alleged occurrence took place on 06.05.2017 at about 9.30 P.M. and then a written complaint Ex.P2 was moved by injured-Kapoor Chaudhary on 15.05.2017 before the police. As per the version given in Ex.P2, which was the first version given by the complainant, it has been specifically mentioned therein that on 06.05.2017 at about 9.30 P.M. when he was going to his house from his plot, then Rinku, son of Bittu, Gullu, son of Laxman and Arun, son of Ashok were standing on the crossing of the village. Nakul, son of Mukesh was standing towards his house ahead of crossing. Nakul stopped him in the passage and called Rinku, Arun and Gullu and then said that they would teach a lesson to Kapoor Chaudhary for being a secret informer and then started beating him. Gullu and Nakul, who were having dumbles caused injuries with Dumbles, while Rinku and Arun caught hold of him. Due to receiving of these injuries, his condition became deteriorated. But when complainant/

injured Kapoor Chaudhary appeared in the witness box as PW-2, he deposed that accused Rinku and Arun gave him fists blows, which obviously is an improvement in the testimony of PW-2, as the factum of infliction of fists blows by accused Rinku and Arun had not been mentioned by the complainant in the complaint Ex.P2, which he had moved after 9 days of the alleged incident i.e. on 15.05.2017.

Trial Court has also rightly observed, that even as per the version of the complainant/ injured-Kapoor Chaudhary, accused Gullu and Arun were having grudge against him, as they were having the suspicion that they were got implicated by him in the police case. But no motive has been attributed to accused Rinku by the prosecution and it has not been explained that why accused Rinku had inflicted the alleged injuries, without having any motive against the complainant.

This fact is also to be noted that the complainant has attributed the same role to accused Rinku and Arun, but during the investigation accused Arun was found innocent by the police.

It has also adversely effected the case of the prosecution, as stand of complainant was falsified from the investigation conducted by the police. Rather the motive for the possible false implication of the accused has been proved by the defence. There was the categoric defence of accused Rinku that there was party- faction in the village and he has been falsely implicated due to it. This factum of party-faction in the village has also been admitted by the complainant during his cross-examination. He has also admitted that his uncle Satish had contested the election. So possibility of false implication of the accused due to party-faction cannot be ruled out.

Admittedly, Ex.P9 shows that place of occurrence is

surrounded by the other residential houses. As per the prosecution case the accused gave beatings to the complainant for half an hour. So it is not believable that if the occurrence took place in the residential area of the village for half an hour, even the no villager came present at the spot. Thus non joining and non examining of any independent witness by the prosecution is also fatal to the prosecution case.

It has also been held by the Apex Court in case *State of Rajasthan Vs. Madan @ Madaniya, 2019 CrL.LR, (S.C.), 09*, that the appellate Court would only interfere where there exists perversity of facts and laws. But as discussed above, in the instant case, the prosecution has failed to connect accused Rinku with the commission of offences for which he had been charge sheeted. There is no cogent and convincing evidence on record to connect the accused with the crime in the present case. The uncorroborating sole statement of the complainant is not sufficient to prove the case of prosecution against the accused beyond reasonable doubt, especially when as observed above, the testimony of PW-2 complainant does not inspire confidence and he tried to put forth improved version. As such, the accused has been rightly acquitted by the trial Court.

In view of the above, no case is made out for grant of leave to appeal against acquittal of Rinku. The application without having any merits stands dismissed and the leave to appeal is declined.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

01.02.2023

Komal

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