

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

221.

**CRM-A No.941-MA of 2015 (O&M)  
Date of Decision:16.11.2023**

Surender

... Applicant/Appellant

Versus

Kuldeep and others

... Respondents

**CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Naveen Kumar, Advocate for  
Mr. Vivek Khatri, Advocate  
for the applicant-appellant.

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**HARPREET SINGH BRAR, J. (ORAL)**

1. The present application has been preferred by the applicant-appellant under Section 378 (4) of the Criminal Procedure Code, 1973 against the judgment dated 24.03.2015 passed by the Sub Divisional Judicial Magistrate, Hansi whereby the complaint filed by the petitioner under Section 148, 149, 323, 448, 506 IPC was dismissed and respondents No.1 to 10/accused were acquitted.

2. In brief, the facts are that on 30.09.2009 at about 4.30 PM, the petitioner-complainant and his father were sitting in their plot when accused persons armed with *lathi*, *jelly*, *gandasi* etc. entered in their plot forcibly. Accused Kuldeep gave a *gandasi* blow on the big toe of left foot of the petitioner whereas Dharambir gave a *jelly* blow on his back. Accused Ranbir gave a *lathi* blow on his back and Sandeep gave a hockey stick blow on his abdomen. Accused Shamsheer gave an iron rod blow on his right shoulder due to which he fell down. Accused persons namely Rajbala, Urmila, Kamla, Sunita and Chandi Ram gave fist and slap blows to his father. They raised hue and cry at which their neighbour Sadhu Ram son of Surajbhan Saini came on the spot and rescued them.

The petitioner was got admitted in the hospital by his brother Manohar Lal where he was medico-legally examined and the police had recorded his statement on 01.10.2009 in the hospital, however, since no action was taken against the accused person, the complaint in question was filed.

3. After appreciating the preliminary evidence led by the complainant, accused were ordered to be summoned to face trial for commission of offence punishable under Sections 148, 149, 323, 448, 506 IPC. Since presence of accused-Shamsher could not be procured despite issuance of warrants of arrest, he was declared a proclaimed person.

4. On finding a *prima facie* case against the accused, they were charged for offences under Sections 148, 149, 323, 448, 506 IPC to which they pleaded not guilty and claimed trial. Statement of the accused persons were recorded under Section 313 Cr.P.C. and all incriminating evidence was put to them to which they pleaded false implication and claimed innocence.

5. After appreciating the documentary and oral evidence adduced by the parties, the trial Court came to the conclusion that the prosecution had miserably failed to prove its case beyond shadow of reasonable doubt and thus, acquitted the respondents-accused from charges framed against them by giving them benefit of doubt.

6. Learned counsel for the petitioner contends that the learned trial Court while acquitting the respondents-accused has failed to appreciate the medical evidence brought on record and the testimony of DW4 Dr. Ved Pal Singh, who proved the injuries inflicted on the person of the petitioner. The petitioner duly corroborated the version of the complaint. It is further contended that the reasoning of the trial Court that the complaint was filed after an inordinate delay of 7 months is misconceived, in view of the fact that it is a case of version and

cross-version and since the police did not record the version of the petitioner, he had no other option left but to file the complaint against the accused persons.

7. Having heard the counsel appearing for the applicant-appellant and after perusing the record of the case with his able assistance, this Court finds no merit in the arguments raised by him.

8. The petitioner set up a case in the complaint that the respondents-accused gave him injuries by giving *lathi, gandasi and jelly* blows but a perusal of the MLR Ex.PW/B indicates that he complained of pain on right side of forehead, multiple lacerations on right forearm; multiple lacerations on 1/3<sup>rd</sup> upper left forearm; multiple lacerations on right scapular region and there was complaint of pain on big toe with no external mark of injury. Furthermore, in the MLR, doctor found multiple lacerations as well as complaint of pain on scapular region and the forearm of the complainant whereas the complainant had nowhere alleged any injury having received by him on his forearm or on his scapular region or on his forehead rather in his cross-examination, he had specifically stated that he never received any injury on his face. Furthermore, no corresponding injury was found on the back, shoulder and abdomen of the petitioner. Therefore, the injuries mentioned in the MLR did not correspond with the ocular version of the petitioner. The alleged eye witness Sadhu Ram did not depose what kind of injury was inflicted by whom of the respondents-accused upon the person of the petitioner. There is an unexplained delay of about seven months in filing the complaint. Thus, the trial Court has rightly acquitted by the respondents-accused from the charges framed against them by giving them the benefit of doubt.

9. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of

the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (See *H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415*). A Division Bench of this Court in the judgment passed in *State of Haryana Vs. Ankit and others* passed in CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched and fortified in favour of the accused after earning acquittal from the trial Court.

10. In view of the facts and circumstances of the case, this Court finds that learned counsel for the petitioner has failed to point out any perversity or illegality in the findings recorded by the learned trial Court, which warrants interference by this Court. As such, there is no merit in the present application and the leave to appeal is declined. Resultantly, the instant application stands dismissed.

(HARPREET SINGH BRAR)  
JUDGE

November 16, 2023  
Pankaj\*

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |