

221 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-188-2020

Date of Decision: 19.01.2024

Jagdeep Singh

...Applicant-Appellant

Versus

Baldev Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jaspartap Singh Salana, Advocate
for Mr. Jaspal Dappar, Advocate
for the applicant-appellant

Mr. P.S. Sullar, Advocate
with Mr. Tajeshwar Singh Sullar, Advocate
for the respondents no. 1 to 4

Mr. Sandeep Kumar, DAG, Punjab

Harpreet Singh Brar, J. (Oral)CRM-2338-2020

This is an application under Section 5 of the Limitation Act, 1961 seeking condonation of delay of 60 days in filing the accompanying application under Section 378(4) of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.').

For the reasons mentioned in the application, the same is allowed and the delay of 60 days in filing the accompanying application is condoned.

CRM-A-188-2020

1. The present application under Section 378(4) of the Cr.P.C. is preferred against the judgment dated 12.09.2019 passed by learned Additional Sessions Judge, S.A.S. Nagar(Mohali) vide which the judgment of conviction dated 07.12.2015 passed by learned Judicial Magistrate Ist Class, Dera Bassi in

Complaint No. 37 dated 07.04.2010 filed under Sections 325, 323, 452, 34 of the Indian Penal Code (hereinafter 'IPC') has been set aside.

2. Briefly, the facts are that the applicant refused to sell his land at the instance of respondent no.1 to a property dealer, causing him to hold a grudge against him. On 24.01.2010, at about 5 PM, the respondents-accused, armed with *laathis*, entered the house of the applicant-complainant. Respondent no. 1- Baldev Singh gave a *lalkaara* to teach a lesson to the family of the applicant and gave a *laathi* blow to on the left side of the head of the applicant while respondent no.2- Dharamvir Singh gave a *laathi* blow on applicant's right shoulder. The applicant raised hue and cry following which his wife and son came forward to rescue him. However, respondent no. 1 gave *laathi* blow on the right arm of the applicant's wife while respondent no. 3-Madan Pal gave a *laathi* blow on the left side of the applicant's son's head. The applicant-complainant party were also given slaps and fist blows causing the applicant's wife's teeth from the upper jaw to break. The applicant party raised hue and cry due to which Kuldeep Singh and his son Lakhvir Singh along with his daughter came to the spot and rescued them while the accused fled away with their respective weapons.

3. On the basis of material available on record, the learned trial Court convicted the respondents-accused under Section 325, 323 read with 34 of the IPC vide judgment dated 07.12.2015. Aggrieved by the same, the respondents-accused preferred an appeal before the learned lower Appellate Court, which was allowed and the respondents-accused were acquitted vide judgment dated 12.09.2019.

4. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that while the complaint states that the alleged incident took place on 24.01.2010, the applicant, in his cross-examination, has stated the same to be on 01.01.2010. He has also

State that the police came to the place of occurrence on 01.01.2010, the day he

moved the complaint before the Police Station. He further stated that his wife was discharged from Government Medical College and Hospital, Sector 32, Chandigarh on 03.01.2010 while his son and he were discharged on the date of the incident which he mentions as 01.01.2010.

5. Furthermore, CW6- Dr. Dinesh was examined to prove the nature of injuries sustained by applicant's wife-Sarabjit Kaur, however, he categorically stated that the X-ray was not done under his supervision rather the scans were taken on 24/25.01.2010 and were produced before him on 26.03.2010 for the purpose of making a report. Therefore, nature of injury on the person of Sarabjit Kaur remains unproven to justify conviction of respondents under Section 325 of the IPC. Moreover, the statements of the applicant and his son are not corroborated by an independent witness. While CW-1 Lakhmir Singh was examined as an independent eye-witness, however, his statement cannot be seen as unbiased as he is the applicant's nephew. Further, he was not named in the complaint to be present at the place of occurrence. In his cross-examination, he has stated that he reached the spot 4/5 minutes later and found the applicant and his wife unconscious which contradicts the statement given by applicant's son-Taranpreet Singh where he has stated that his parents were never unconscious.

6. 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. (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

of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

7. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant has failed to point out any perversity or illegality in findings recorded by the learned lower Appellate Court which warrants interference by this Court. As such, there is no merit in the present present application and leave to appeal is denied.

(HARPREET SINGH BRAR)
JUDGE

19.01.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No