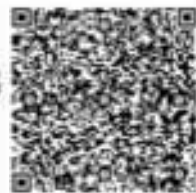


2024:PHHC:135852-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1370-MA-2018 (O & M)

Date of decision: 16.10.2024

Suleman

..... Applicant

V/s

State of Haryana and others

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Saleem Ahmed, Advocate, for the applicant.

Mr. Ravish Bansal, Addl.A.G., Haryana.

Ms. Arti Kaur, Advocate, for respondents No.2 to 4.

JASJIT SINGH BEDI, J.

CRM-24072-2018

For the reasons stated in the application, same is allowed. The delay of 70 days in filing the present application for leave to appeal is condoned.

CRM-A-1370-MA-2018

The present application under Section 378(3) of Cr.P.C. has been filed for grant of leave to appeal against the judgment of acquittal dated

2. The present FIR came to be registered on 29.05.2015. The accused came to be acquitted vide judgment dated 21.12.2017. The present application for leave to appeal was filed on 30.04.2018. The matter has come up for final hearing now after more than 09 years of the registration of the FIR.

3. The brief facts of the case are that on 29.5.2015 complainant Suleman son of Manohar, appeared in Police Station Chhainsa, Faridabad and submitted application (Ex PI). He stated that Satish son of Shiv Charan, Sunder son of Lakha, Mukesh son of Kishore alias Kalva, Mukesh son of Sant Lal, Udaiveer son of D.P. Anand, son of Kishan, Bachhu son of Shayam, Hargovind son of Shyam, Surender alias Fandi son of Subsukh and some other persons armed with sword, kasi, lathi, danda and petrol attacked his house. Satish was carrying a petrol container. He poured petrol on the motorcycle splendor bearing regd. no. HR-29S-0352, which was parked outside his house. He set it on fire and resultantly all the documents of the vehicle alongwith the vehicle was burnt. Thereafter, Mukesh son of Kishore poured petrol on the four doors of the house and set them on fire. All the accused persons entered into the house and Bachhu son of Shayam alongwith other accused caused a grievous head injury on his person. He and his family members requested them with folded hands to spare them. Sunder son of Lakha, Mukesh son of Sant Lal attacked with lathi on both the arms of his sister Samina and caused injuries. They also robbed gold earrings as well as silver anklets weighing 400 gms from the person of his sister.

Hargovind son of Shayam robbed jewelery worn by his niece Arfina includ-

ing silver rings of 750 gms, gold earing of 5 gms and two set of silver anklets weighing 500 gms. All the accused put on fire the inverter and battery as well as sewing machine in the house and disconnected the supply of water and gas. They also robbed ₹ 65000/- kept in the bag. An amount of ₹ 60,000/- was withdrawn by him on 23.5.2015 from OBC Bank. A request was made for the protection of life, liberty and property. On these allegations, the FIR was registered.

4. After registration of the case, investigations in the matter were carried out by ASI Anand Pal (PW-15). He made endorsement (Ex P18) on application (Ex P1). He reached the place of occurrence. He got clicked photographs Ex P6 to Ex P12. The ashes were collected and taken into possession vide memo Ex P2. He prepared rough site plan Ex P19 of the place of occurrence.

5. During investigation, accused Anand was arrested on 21.7.2015. On the same day during interrogation, he suffered disclosure statement (Ex P13). In pursuance thereof he got recovered one iron rod from the roof of his tubewell situated in his fields. The same was taken into possession vide memo ExP15. Rough sketch (Ex P14) of iron rod was prepared. Rough site plan Ex P21 of the place of recovery was also prepared. Accused Anand demarcated the place of occurrence vide memo Ex P16.

6. On 26.5.2015, ASI Anand Pal during investigation of case FIR No.74 of 2015, under sections 147, 148,149,153-B, 452, 427,435, 436, 295, 395, 307, 323, 506 IPC and 25/54/59 of Arms Act, Police Station Chhainsa,

took into possession motorcycle bearing regd. no. HR-29S-0352 vide memo Ex P22.

7. Accused Surender alias Fandi was arrested on 10.8.2015. During interrogation, nothing was recovered from his possession.

8. On 16.9.2015, after completion of the investigation, final report under Section 173 Cr.P.C was submitted before the Court of the Area Magistrate, Faridabad against accused Surender and Anand.

9. On 27.2.2016, during investigation ASI Sajjan Kumar arrested accused Mukesh. During interrogation, he suffered disclosure statement Ex P23. In pursuance thereof he got recovered a jerry can (plastic container) from near the mosque, out of the heap of garbage, which was taken into possession vide memo Ex P24. Rough site plan Ex.P25 of the place of recovery was prepared by PW17 ASI Sajjan Kumar. Accused demarcated the place of occurrence vide memo Ex P26..

10. The supplementary challan was filed against accused Mukesh on 16.4.2016 before the court of the Illaqa Magistrate.

11. Accused Satish son of Shiv Charan, Sunder son of Lakha, Mukesh son of Kishore @ Kaluwa, Udaivir son of Deepi, Bachhu son of Shyam and Hargovind son of Shyam were not arrested and the investigating officer had undertaken to file a supplementary challan against them, on their arrest.

12. On Committal, charges were framed against the accused under Sections 148, 323, 452, 506, 392, 436 and 435 read with Section 149 IPC.

They pleaded not guilty and claimed Trial.

13. In order to prove its case, the prosecution examined seventeen witnesses and the details are as under:-

Sr. No.	Names of witnesses	Brief deposition made by the witnesses
PW-1	Suleman son of Manohar	He is the complainant. He moved application Ex P1 to SHO P.S. Chhainsa. He identified his signature on the application which is foundation of prosecution case.
PW-2	Mohd. Shah son of Manohar	He is an eye witness to the occurrence which allegedly took place on 25.5.2015. He identified accused Anand . He identified his thumb impression on recovery memo Ex P2 vide which ashes were taken into possession. However, this witness was deferred on 3.9.2016 and he was not produced again for his cross-examination.
PW-3	ASI Ved Parkash no.118, Mohrer Head Constable	He tendered in evidence affidavit ExPW3/A. On 30.5.2015 ASI Anand Pal deposited with him case property. The case property was sent by him to FSL Madhuban through constable Parveen 3272.
PW-4	Constable Mahender Singh no.1173	On 10.8.2015 accused Surender alias Fandi was arrested in his presence by Investigating Officer PW-15 ASI Anand Pal.
PW-5	ASI Anoj Kumar, draftsman	He has prepared scaled site plan Ex P3 on 10.9.2015 on the directions of PW-15 ASI Anand Pal.
PW-6	Smt. Ruksana, wife of Shri Suleman	She is an eye witness to the incident. She identified accused Surender alias Fandiand Anand in the court.
PW-7	Constable Parveen 3272 Crime Branch, Sector 30, Faridabad	He tendered in evidence his affidavit ExPW7/A. On 14.9.2015 he deposited the case property in FSL Madhuban, Karnal.

PW-8	Dr. Maan Singh, MO Government Hospital, Ballabgarh	He tendered and proved in evidence through his affidavit Ex PW8/A medi- colegal reports Ex P4 and Ex P5 relating to PW-6 Ruksana and PW-1 Suleman.
PW-9	Constable Dharmender no.289, Photographer	On 30.5.2015 he has taken the photo- graphs of the house of PW-1 Suleman. He proved photographs Ex P6 to Ex P12.
PW-10	Inspector Preet Pal SHO P.S.Sector 55, Faridabad.	On 16.9.2015 on completion of investiga- tion, he prepared report under section 173 Cr.P.C in the present case.
PW-11	HC Jai Parkash no.328, Farid- abad, Incharge, VRC, CP Office Faridabad.	On 29.5.2015 he handed over special re- port to Area Magistrate and other senior police officers without any delay.
PW-12	Rajju son of Itwari,	He is the witness of occurrence. He sup- ported the case of prosecution.
PW-13	HC Dharam Pal no.1417 PP Chandpur	He remained associated with IO on 21.7.2017, in the investigation of present case. In his presence, accused Anand was arrested. In his presence, disclosure state- ment Ex P13 was recorded. He proved re- covery memo Ex P14 vide which iron rod was taken into possession. He proved sketch Ex P14 and recovery memo Ex P15, demarcation memo Ex P16.
PW-14	Ishak son of Sh. Abdul Hamid	He is the witness of the occurrence took place on 25.5.2015. He supported the case of the prosecution and identified accused Surender alias Fandi, Anand and Mukesh.
PW-15	ASI Anand Pal no.11	He is the investigating officer of the case. He proved application Ex P1, FIR Ex P17, endorsement made on application Ex P18, photographs Ex P6 to Ex P12, rough site plan Ex P19 of the place of occur- rence, recovery memo Ex P20 vide which photographs were taken into possession by him, disclosure statement Ex P13 of accused Anand, memo Ex P15 vide which iron rod was taken into possession, rough

		sketch Ex P14 of iron rod, rough site plan Ex P21 of the place of recovery. He proved iron rod Ex OA, memo Ex P22 vide which motorcycle bearing regd. no. HR-29S-0352 was taken into possession.
PW-16	Constable Mahavir Singh no.235	On 27.2.2016 he remained associated in investigation of this case. Accused Mukesh son of Kishore was arrested in his presence. He proved disclosure statement Ex P23 of accused Mukesh. He identified his signature on it. He proved memo Ex P24 vide which plastic jarican can was got recovered by accused near mosque.
PW-17	ASI Sajjan Kumar no.2020	He has conducted part investigation in the present case. He arrested accused Mukesh on 27.2.2017. He proved disclosure statement Ex P23 of accused Mukesh, memo Ex P24 vide which plastic can was taken into possession. He proved rough site plan Ex P25 and memo Ex P26 vide which accused demarcated the place of occurrence.

14. The prosecution relied upon the following documents:

Sr. No.	Brief description of document
Ex.P1	Complaint moved by PW-1 Suleman son of Manohar, before SHO P.S.Chhainsa on 29.5.2015
Ex.P2	Recovery memo vide which ashes from the place of occurrence were taken by PW-15 Anand Pal, in presence of PW-1 Suleman, complainant and PW-2 Mohd. Shah.
Ex.P3	Scaled site plan of the place of occurrence prepared by PW-5 Anoj Kumar.
Ex.P4	MLR no. MS/2015/3292 dated 25.5.2015 vide which complainant PW-1 Suleman was medico-legally examined by doctor at G.H.Ballabgarh
Ex.P5	MLR no. MS/2015/3287 dated 25.5.2015 vide which PW-6 Ruksana wife of Suleman was medico-legally examined at G.H.Ballabgarh
Ex.P6 TO Ex.12	Photographs of the place of occurrence.
Ex.P13	Disclosure statement suffered by accused Anand on

	21.7.2015 in presence of PW-13 HC Dharam Pal
Ex.P14	Sketch of iron rod
Ex.P15	Recovery memo dated 21.7.2015 vide which iron rod was got recovered by PW-15 Anand Pal from the possession of accused Anand in pursuance to disclosure statement in presence of PW-13 HC Dharam Pal.
Ex.P16	Demarcation memo dated 21.7.2015 vide which accused Anand demarcated the place of occurrence i.e. house of complainant PW-1 Suleman
Ex.P17	FIR bearing no.83 registered in this case on the basis of complaint moved by PW-1 Suleman
Ex.P18	Endorsement on application of complainant Ex P1
Ex.P19	Rough site plan prepared by PW-15 ASI Anand Pal during investigation
Ex.P20	Recovery memo dated 3.6.2015 vide which photographs were taken into possession by PW-15 ASI Anand Pal in presence of PW-9 Constable Dharmender no.289
Ex.P21	Rough site plan of the place from where accused Anand got recovered iron rod from the roof of his house
Ex.P22	Photocopy of recovery memo vide which burnt motor cycle bearing regd. no.HR10EJEH 70857 was taken into possession by police in case FIR no.74 dated 26.5.2015 under section 147,148,149,153B,452,427,435, 436, 295, 395, 307, 323,506 IPC and 25 of Arms Act, registered at Police Station Chahinsa, Faridabad.
Ex.P23	Disclosure statement of accused Mukesh dated 27.2.2016 suffered in presence of PW-16 Constable Mahavir
Ex.P24	Recovery memo dated 27.2.2016 vide which plastic jarican was got recovered by accused Mukesh in presence of PW-16 Constable Mahavir
Ex.P25	Rough site plan prepared by PW-17 IO Sajjan Kumar of the place from where accused Mukesh got recovered plastic jerry can.
Ex.P26	Demarcation memo dated 27.2.2016 vide which accused Mukesh got identified the place i.e. house of PW-1 Suleman which was attested by PW-16 Constable Mahabir
Ex.PX	FSL report dated 19.11.2015 prepared by Bharat Bhushan, Sr. Scientific Officer

15. The accused were examined under section 313 of the Code of Criminal Procedure. The entire incriminating evidence of the prosecution available against the accused on record was put to them. They denied the prosecution case and pleaded false implication.

16. The defence relied upon the following documents:-

Sr. No.	Brief description of document
Ex.DA	Photocopy of statement of Suleman recorded on 26.5.2015 in FIR no.74 dated 26.5.2015 under sections 147,148, 149,153B,452,427, 435, 436,295 , 395, 307,323,506 IPC and 25 of Arms Act, registered at Police Station Chahinsa, Faridabad.
Ex.DB	Photocopy of mutation in respect of land of Panchayat deh of Village Attali
ExDC	Photocopy of jamabandi in respect of land of Panchayat deh of Village Attali.
Ex.DD	Statement under Section 161 Cr.P.C. dated 30.5.2015 of PW6 Smt. Ruksana.
Ex.DE	Statement under Section 161 Cr.P.C. dated 30.5.2015 of PW12 Rajju.
Ex.DF	Statement of Rajju son of Itbari, in FIR no.83 dated 29.5.2015, under sections 147,148,149, 323, 436, 435, 452, 392, 506 IPC, P.S.Chhainsa, Faridabad
Ex.DG	Statement of Ishak Lambardar of Village Attali in FIR no.83 dated 29.5.2015, under sections 147,148,149, 323, 436, 435, 452, 392, 506 IPC, P.S.Chhainsa, Faridabad.

17. Based on the evidence led, the respondent-accused came to be acquitted vide judgment dated 21.12.2017.

18. The aforementioned judgment is under challenge before this Court.

19. The learned counsel for the applicant contends that the impugned judgment dated 21.12.2017 has been passed without considering

the law and facts in its proper perspective. The prosecution evidence was consistent and pointed towards the guilt of the accused. All the eye-witnesses had supported the case of the complainant. The motive on the part of the accused stood established beyond reasonable doubt. He, therefore, prays that leave to appeal be granted.

20. The learned counsel for the State-respondent No.1 while supporting the case of the applicant/complainant contends that the impugned judgment was not based on proper appreciation of the evidence on record and, therefore, the judgment of acquittal was liable to be set aside.

21. The learned counsel for the acquitted accused/respondents No.2 to 4, on the other hand, contends that no fault could be found with the impugned judgment and the accused had rightly been acquitted of the charges framed against him. She, therefore, prays that the present application seeking leave to appeal was liable to be dismissed.

22. We have heard the learned counsel for the parties and examined the record.

23. PW-1 Suleman deposed that on 25.5.2015 at about 5:30 p.m. he was present at his home. He was preparing himself for offering Namaj. At that time, 400-500 persons armed with deadly weapons like iron rod, lathi, farsa, sword, carrying petrol in a plastic jerry can reached the spot. They were shouting to put the house of Muslims on fire. One group comprised of Satish son of Shiv Charan, Mukesh son of Kalwa, Anand son of Kishan, Bachhu son of Shyam, Hargovind son of Shyam, Fandi alias Surender son of Sabsukh, Sunder son of Lakha, Mukesh son of Sant Ram, Udaivir son of

Deepi alongwith some other persons, who had their faces covered with cloth. Satish son of Shiv Charan set ablaze his motorcycle. Mukesh son of Kishore broke the doors of his house. They damaged his house hold articles and put the same on fire. Mukesh son of Sant Lal gave beatings with lathies to his sister Samina. Mukesh son of Sant Lal had snatched away earrings of his sister and also tried to put his children on fire by sprinkling petrol. The incident took place between the Hindu and Muslim community. Mukesh son of Sant Lal and Hargovind had looted his currency notes amounting to ₹65000/-. He had withdrawn ₹ 60,000/- from his OBC Bank, situated at Village Chandawali on 24.5.2015. He moved application Ex P1 for taking legal action against the accused persons. In his cross examination, he stated that the incident took place on 25.5.2015. He submitted complaint Ex P1 on 29.5.2015. He could not submit the complaint because he was in an injured condition. He remained hospitalized for a period of one day. He had come from hospital on 26.5.2015. He also stated that FIR no.74 dated 26.5.2015 was also registered at Police Station Chhainsa and in the said case, he made his statement Ex DA dated 26.5.2015. (He was confronted with his statement Ex DA made in case FIR no.74 and contents of complaint Ex P1 and on many counts contradicted with his statement made in the court.) He further stated that about 25-30 persons entered his house and there was group of 300-400 persons standing outside. He also stated that the dispute was over construction of a Mosque, on the land of the Panchayat. A case in respect of the said land was pending before AC Ist Grade. The con-

lage prior to the alleged incident dated 25.5.2015. He stated that he did not know that some Hindus had also received injuries in the said incident. Then, he clarified that the properties of Hindus were not damaged. He also admitted that compensation was paid by the Government in respect of the damaged properties. He sustained only one injury on his head. Bachhu had inflicted the said injury on his head. He also admitted that he had not handed over the pass book to the police in respect of the withdrawal of the amount of ₹ 60,000/-.

24. PW-6 Ruksana wife of Suleman, stated that on 25.5.2015 at about 6:15 p.m. she was engaged in cleaning her house. She heard the noise outside her house. Thereafter, her house was attacked. Satish set ablaze their bike by sprinkling kerosene. Udaiveer and Jaiveer were carrying some vessel containing petrol. Mukesh and Sunder alias Lakha gave beatings to her sister in law Sameena. Accused Anand and Surender took out jewellery and cash from their house. Dimple inflicted injury on her person with farsa. Bachu and Hargovind gave beatings to her husband. She identified the accused Surender and Anand in the court. In her cross examination, she admitted that she was a pardanashin lady. She also admitted the presence of the police at the time of the occurrence. Her statement Ex DD was recorded on 26.5.2015 (But Ex DD is dated 30.5.2015). She admitted that neither she explained in her statement Ex DD nor before the court as to who had caused injuries upon her person. Her husband remained admitted in the hospital for 4-5 days. She was confronted with her previous statement Ex DD in order to contradict her

with the statement made in the court. She admitted that the assailants stopped them from raising construction of a Mosque. She also admitted that a sum of ₹ 75,000/- had been received by her as compensation.

25. PW-12 Rajju son of Itwari, deposed that on 25.5.2015, at about 5:30 p.m. he was present near the Mosque in order to offer Namaj. Some people raised noises against Muslims. Thereafter, there was pelting of stones by villagers. They damaged their articles and house of Suleman was set ablaze. Satish son of Shiv Charan was holding a petrol jerry can. Mukesh son of Sant Lal, Mukesh son of Kishore, Surender alias Fandi son of Sarv-sukh, Bachhu son of Shyam, Sunder son of Lakha and various other persons were present there. About 20 houses of the Muslims were set ablaze. He identified the accused Surender alias Fandi. Rishi Shyam, Mukesh, Gaurav, Kalu, Krishan, Udiabir, Mangla, Naresh as present in the court. He named the accused Suender in his statement Ex DE (The name of accused Surender was not found recorded in his statement Ex DE). He stated that the police was present at the time of the occurrence. The report was prepared on the same night by the police. He deposed that FIR no.74 dated 25/26.5.2015 was registered on his statement. He also admitted that factum of the present incident was not mentioned in the said FIR. He stated that there were 200-300 persons inside the house of Suleman. Suleman sustained 5-7 injuries on his person. His wife also sustained 5-6 danda blows. He also stated that he made his statement on 25.5.2015 . Thereafter, he did not make any statement (but the statement Ex.DE is dated 26.5.2015). He admitted about the receipt of compensation. He also admitted that Suleman had been cited as a witness in

FIR no.74. He admitted that the land over which the construction of the Mosque was going on was earlier meant for a graveyard. The case was pending before A.C.Ist Grade, Ballabgarh.

26. PW-14 Ishak son of Abdul Hammid deposed that on 25.5.2015 at about 6:00 p.m. he was present at his house situated at Village Attali and preparing himself for offering Namaj. From the roof he noticed that Anand, Satish and Mukesh were entering into the house of Suleman. They were armed with iron rods, petrol and cylinder and set the house of Suleman on fire. They were accompanied by 8-10 more persons. He did not remember the name of those persons. He could not identify them by face. These people also set the Mosque on fire. They also extended beatings to ladies, children and damaged, looted the house hold articles. He identified the accused Surender and Mukesh in the court. In his cross examination, he admitted that his statement was recorded by the police on 30.5.2017. He could not make his statement earlier because there was tension in the Village. He was confronted with his previous statement Ex DG, where factum regarding inflicting injuries on the person of ladies and children was not found recorded. He could not tell in which house articles were burnt. Then he stated that he had not seen anybody inflicting injuries on ladies and children as he was on the roof of his house. His house was at a distance of 30-40 feet from the house of Suleman. He further stated that the accused also entered into his house and in respect of the said occurrence he got lodged FIR no.85 dated 29.5.2015. First FIR No.74 dated 25.5.2015 about the incident was registered at police station. He admitted that in FIR no.74 dated 25.5.2015, he did

not disclose that accused persons entered into the house of Suleman. He admitted the receipt of compensation in respect of damage to the properties of the Muslim Community. He also admitted that the Government made the declaration regarding payment of compensation amount in respect of the damages occurred on account of communal disturbance. He showed his ignorance regarding pendency of a case over the construction of a Mosque in the panchayat land in the court of A.C.Ist Grade, Ballabgarh.

27. In the light of the statements of these witnesses of the prosecution coupled with the facts of the case, it is clear that the complainant named in his complaint Ex P1 accused Sunder, Satish, Mukesh, Udiaveer, Anand, Bachhu, Hargovind, Surender alias Fandi. However, out of these persons only three accused, namely, Surender alias Fandi, Anand and Mukesh faced trial. The complainant PW-1 Suleman and other witnesses also named some other persons involving them in the commission of the offences. The complainant in his complaint, Ex P1 and on oath and other witnesses of the prosecution did not specify the names of the accused persons in clear, categoric and specific terms.

28. Further, there is no dispute about the fact that there was some dispute between the two communities in Village Attali over the construction of a Mosque on the Panchayat land. The police was deployed much prior to 25.5.2015 in the Village. FIR no.74 of 2015, under sections 147, 148,149,153-B, 452, 427, 435, 436, 295, 395, 307, 323, 506 IPC and 25/54/59 of the Arms Act, Police Station Chhainsa was recorded on the statement of PW-12 Rajju. Statement of PW-12 Rajju and PW-1 Suleman

were recorded in the said FIR on 25/26.5.2015. The complainant's statement Ex DA was recorded under Section 161 Cr.P.C in the above stated case FIR no.74. The complainant did not describe the present occurrence in his earlier statement Ex DA. The complainant had the opportunity to narrate the present incident on 26.5.2015 but he chose to remain silent. This creates a doubt in the prosecution case.

29. The prosecution has propounded the theory that as the complainant was hospitalized, therefore, he could not make a statement. However, this theory fails when apparently, the statement of the complainant Ex DA was recorded on 26.5.2015. Further a close examination of the complaint Ex P1 would show that initially it was written on 28.5.2015. Thereafter, digit 8 was changed to 9. Accordingly, complaint was made on 29.5.2015. The said cutting also creates a doubt in the prosecution version.

30. Further, the complainant was medico-legally examined by PW-8 Dr. Maan Singh on 26.5.2015 at about 1:05 a.m. If he had sustained injuries on the same day then he ought to have got himself examined at the earliest. To the contrary, he admitted in his handwriting that he did not want to get himself medico-legally examined in respect of his injuries regarding which his medico-legal report was prepared on 26.5.2015. Ruksana, his wife was got medico-legally examined on 25.5.2015 at about 11:30 p.m. She also refused to get herself medico-legally examined in respect of her injuries examined vide MLR dated 25.5.2015. It does not stand to reason that the injured of the same family would visit the hospital at different intervals of

time and that too after a gap of a couple of hours. Thus, apparently, the FIR was registered at a belated stage after confabulation.

31. The prosecution also failed to prove on the record that a sum of Rs.60,000/- was drawn by the complainant before the occurrence from OBC Bank. In this regard, no documentary proof was placed on the record. It has come in the evidence that after the occurrence, the Government issued a publication regarding payment of compensation amount in respect of the damages suffered by the members of the Muslim Community. It appears that the registration of the FIR after a gap of five days of the occurrence was only for the purpose of getting compensation from the Government under the policy.

32. The complainant PW-1 Suleman in his cross examination stated that he sustained injuries at the hands of Bachhu. PW6 Ruksana failed to explain any injury upon her person in clear, categoric and précise terms. As per statement of PW-8 Dr. Maan Singh, injury mentioned in the MLR Ex P5 could be result of pelting of stones. He also admitted that injury on the person of Suleman vide MLR Ex P4 was just a complaint of pain. It has already come on the record that both the injured, namely, Suleman and Ruksana got themselves medico-legally examined at different intervals of time without giving any plausible reason. In view of the matter, it is clear that medical evidence also does not substantiate the case of the star witnesses of the prosecution.

33. As per the prosecution case, PW-15 ASI Anand Pal, recovered the ashes from the scene of occurrence vide memo Ex P2 in presence of

PW-1 Suleman. The ashes recovered vide memo Ex P2 were sent to the Madhuban Laboratory for chemical analysis. A perusal of FSL report Ex PX dated 19.11.2015 shows that no kerosene, petrol, diesel and their residue were detected from the ashes sent to the Laboratory. Thus, the prosecution failed to prove on the record that ashes recovered from the scene of occurrence were containing residue of any kerosene, petrol, diesel or any other inflammable substance which further demolishes the prosecution case of burning by petrol.

34. The recovery of an iron *seria* from Anand appears to be doubtful. The jerry can allegedly containing petrol recovered from accused Mukesh was never sent for forensic analysis. Therefore, the recovery of articles also does not further the prosecution case.

35. The prosecution in its case specifically mentioned that motorcycle bearing regd. No. HR E29S-0352 was set ablaze. However, no documentary evidence has been placed on the record in order to prove that on the particular date this vehicle was registered in the name of the complainant or in the name of any of his family members.

36. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon'ble Supreme Court in ***Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427*** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of

acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

37. In view of the aforementioned discussion and keeping in view the law laid down in ***Kallu @ Masih & Ors. Case (supra)***, we find no reason to interfere with the well reasoned judgment dated 21.12.2017 passed by the Additional Sessions Judge, Faridabad, whereby accused-respondents No.2 to 4, namely, Anand, Surender alias Fandi and Mukesh have been acquitted. Therefore, the application for seeking grant of leave to appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

October 16, 2024
sukhpreet

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