

2024:PHHC:124310-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-2167-MA-2017 (O & M)
Date of decision: 19.09.2024

Haji Sakir Ali
..... Appellant(s)
V/s
State of Haryana and another ...Respondent(s)

CORAM: HON’BLE MR. JUSTICE SUDHIR SINGH
HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sarfraj Hussain, Advocate, for the applicant.
Ms. Shubhra Singh, Addl.A.G., Haryana.
Ms. Arti Kaur, Advocate, for respondent No.2.

JASJIT SINGH BEDI, J.

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 18.08.2017 passed by the Additional Sessions Judge, Faridabad.

2. The present FIR came to be registered on 29.05.2015. The accused came to be acquitted vide judgment dated 18.08.2017. The present appeal was filed on 26.09.2017. The matter has come up for final hearing now after more than 09 years of the registration of the FIR.

3. The facts of the prosecution case are that on 29.05.2015, the complainant Haji Sakir Ali son of Saddiq Ali, resident of Attali, Tehsil Ballabgarh, District Faridabad, appeared in the Police Station and submitted application (Ex P1) for taking action against the accused Surrender and some others. As per the allegations contained in the application Ex P1, he (complainant) alongwith his four brothers, namely, Sabbir Ali, Jahid Ali, Najmuddin Ali and Nizam Ali and other family members used to live in his house situated in Village Attali. In village Attali, the Muslim community after obtaining permission from SDM Ballabgarh, had started the work of construction of a Mosque. As the Mosque was under construction, therefore, members of the Muslim community used to offer their prayer (namaj) in front of the house of Ishak Lamberdar. On 25.05.2015, he and his brother Sabir Ali reached the house of Ishak Nambardar for offering prayers. It was 6:00 p.m. From the roof of Ishak Nambardar they noticed that Debu son of Tej Singh, Surrender alias Fandi (applicant) son of Sabsukh, Radha Ballabh son of Kripa Ram, Jogender son of Bijender, Om Parkash son of Bhajan Lal, Satish son of Shiv Shiv Charan, Mahender son of Lallu, Hemi Saini and some others, residents of Attali, in furtherance of their common intention opened an attack at his house. All the above named persons were armed with bricks, stones, kassis, swords and petrol. The accused forcibly entered his house through the roof of Dr. Abhimanyu and Garib Khan whose roofs were adjacent to his house. They damaged house hold articles. Debu son of Tej Singh, Surrender alias Fandi, Satish son of Shiv Charan looted 2,58,000/- and some gold ornaments weighing about 43 tolas. They also

looted 5 kg silver. Two alto cars bearing regd. no. HR 29 AC 6714 and HR 29 AG 6465 and one Xylo of Fakruddin parked in his house were also set ablaze. They also damaged two washing machines, two refrigerators, four double beds, two sofa sets, six fans, door of kitchen, bathroom etc. They also damaged and set ablaze three LED, one TV set, two inverters. The flames also caused damage to the roof of his house as a consequence of which cracks developed. When they tried to approach the house, the accused persons pelted stones upon them. Debu son of Tej Singh gave a blow with stone on his mouth. His lips and tooth got injured. Surender alias Fandi son of Sabsukh inflicted injuries on his person with a saria. Radha Ballam son of Kirpa Ram and Jogender son of Bijender inflicted injuries on the person of Sabir Ali with saria and lathies. His brother sustained injuries on his head and forehead. They also received multiple injuries on their persons. At the time of occurrence, Mahender son of Lallu, Hemi Saini, Om Parkash, sons of Bhajan Lal threatened him. They directed him not to carry out construction work of the Mosque, otherwise, they all would be burnt alive. Action was sought for protecting their lives, liberty and property. On these allegations, the present FIR was registered.

4. The investigation was carried out and ashes of the burnt vehicles were taken into possession. The site plan, etc. was prepared.

5. Accused Debu son of Tej Singh, Radha Ballabh son of Kripa Ram, Jogender son of Bijender, Om Parkash, son of Bhajan Lal, Satish son of Shiv Shiv Charan, Mahender son of Lallu, Hemi Saini were not arrested

by the police during the course of investigation. The investigating agency

undertook to file a supplementary charge sheet as and when these accused were arrested. On 08.10.2015, after completion of the investigation, final report under Section 173 Cr.P.C was submitted before the Court of the Area Magistrate, Faridabad and the charges were framed under Sections 147, 148, 149, 436, 427, 395, 397 read with Sections 149 and 506 IPC against the accused.

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

Sr. No.	Names of witnesses	Brief deposition made by the witnesses
PW-1	Sakir Ali son of Saddiq Ali	He is complainant of this case. He testified the contents of complaint/application Ex. P1. He identified his signature on recovery memo Ex. P2 vide which ashes of burnt vehicles were taken into possession by police. He identified accused present in the court.
PW-2	ASI Ved Parkash no. 118	He tendered in his evidence affidavit Ex. PW2/A. On 4.6.2015 case property ie xylo vehicle in burnt condition, two maruti cars in burnt condition and ashes were handedover to him by ASI Vikram Singh. He sent the same to FSL Madhuban through PW-6 Constable Parveen vide RC no. 238 dated 28.9.2015.
PW-3	ASI Anoj Kumar, draftsman	He prepared site plan Ex P3 on 27.8.2015 on the direction of the investigating officer.
PW-4	Dr. Maan Singh, MO, Government Hospital, Ballabgarh	He tendered his affidavit Ex. PW4/A. He medico-legally examined complainant Sakir on 25.05.2015 and proved report Ex.P5
PW-5	Fakhruddin son of Fida. Hussain	He is owner of vehicle Xylo bearing regd no. HR-51 AS-0411. He supported the statement of PW-1 Sakir, complainant
PW-6	Constable Parveen Kumar 3272	He tendered his affidavit Ex PW6/A in evidence. He deposited the case property in FSL Madhuban on 28.9.2015 vide RC

		no.238 dated 28.9.2015. After depositing the case property he handedover receipt thereof to PW-2 ASI Ved Parkash.
PW-7	Shabir Ali son of Saddiq Ali	He is an eye witness to the incident. He supported the prosecution case. He identified accused Surrender in the court.
PW-8	Inspector Preet Pal, SHO	On 30.9.2015 on completion of investigation of the case, final report under section 173 Cr.P.C. was prepared by him. He identified his signature on it.
PW-9	Constable Umar Mohd. no. 989, Police Station Chhainsa	On 10.8.2015 he was associated in investigation with PW-10 SI Satbir Singh. Accused Surrender alias Fandi suffered disclosure statement Ex P6 regarding this occurrence. Accused Surrender alias Fandi got demarcated the place of occurrence in his presence vide memo Ex P7. He identified accused in the court.
PW-10	SI Satbir Singh, SHO, P.S.Hassan Pur	On 10.8.2015 accused Surrender alias Fandi was arrested by him who was confined in lock up in case FIR no.84 of 2015. He proved disclosure statement of accused Ex P6. He proved recovery memo Ex P7.
PW-11	ASI Vikram Singh no. 855	He conducted part investigation of this case. On 29.5.2015 he was posted as ASI in Police Station Chhainsa. He received complaint Ex.P1 given by PW-1 Haji Shakir Ali. He registered formal FIR Ex.P8, prepared rough site plan Ex.P9. He proved recovery memo Ex.P2 vide which three vehicles in burnt condition bearing no.HR-51-AS-0411 make xylo, car Alto bearing no.HR-29-AC-6714 and maruti car bearing regd. no.HR-29AG-6465 were taken into possession.

7. The prosecution relied upon the following documents:

Sr. No.	Brief description of document
Ex.P1	Complaint dated 29.5.2015 moved by complainant Haji Shakir Ali to SHO PS Chhainsa, Faridabad.
Ex.P2	Recovery memo dated 31.5.2015 prepared by PW-11 Vikram Singh in presence of complainant Haji Shakir Ali, vide which ashes of burnt articles were taken into possession.
Ex.P3	Site plan dated 15.8.2015 prepared by PW-3 Anoj Kumar after visiting the place of occurrence.

Ex.P4	Medico-legal report dated 25.5.2017 of injured Haji Shakir Ali prepared by PW-4 Dr. Man Singh
Ex.P5	Recovery memo dated 29.5.2015 prepared by Sohan Pal ASI in presence of complainant Fakruddin and one Amit. vide which ashes of burnt articles were taken into possession.
Ex.P6	Disclosure statement suffered by accused Surrender on 10.8.2015 in presence of PW-9 Umar Mohd 989
Ex.P7	Demarcation memo prepared by PW-11 ASI Vikram Singh in presence of PW-9 Constable Umar Mohd.
Ex.P8	First Information report dated 29.5.2015
Ex.P9	Rough site plan dated 29.5.2015 prepared by PW-11 ASI Vikram Singh during investigation.
Ex.PX	FSL report dated 19.11.2015 prepared by Bharat Bhushan, Sr. Scientific Officer, Chemistry, Forensic Science Laboratory Haryana, Madhuban

8. The accused was 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 him. He denied the prosecution case in totality and pleaded false implication.

9. The defence relied upon the following documents:-

Sr. No.	Brief description of document
Ex.DA	Photocopy of statement of Haji Shakir Ali recorded on 26.5.2015 in FIR no.74 dated 26.5.2014
Ex.DB	Photocopy of jamabandi for the year 2005-2006 in respect of land of Panchayat deh of Village Attali.
Ex.D2	Statement of Fakruddin son of Fidda Hussain in FIR no. 80 dated 29.5.2015, under sections 147,148,149, 452, 436, 423, 395 and 506 IPC.
Ex.D3	Statement of Sabir Ali son of Sadiq Ali recorded on 31.5.2015 in FIR no, 80 dated 29.5.2015

10. Based on the evidence led, the respondent-accused came to be acquitted vide judgment dated 18.08.2017.

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

12. The learned counsel for the applicant contends that the impugned judgment dated 18.08.2017 has been passed without considering the law and facts in its proper perspective. The prosecution evidence was consistent and pointed pointing 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.

13. 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.

14. The learned counsel for the acquitted accused/respondent No.2, 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.

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

16. PW-1 Sakir Ali/complainant has admitted in his cross-examination that the incident took place on 25.05.2015 and the FIR was lodged on 29.05.2015. He remained hospitalized for a period of one day. The complaint Ex P1 was written by him in the Police Station. He admitted that

regarding the same occurrence a case was registered vide FIR no.74 dated 26.05.2014. He admitted that his statement under section 161 Cr.P.C. Ex DA was recorded in another case in which the name of Surender alias Fandi did not find mention. He also admitted that his statement Ex DA did not contain the factum of sustaining injuries on his person and on the person of his brother. He further stated that Debu pelted stones upon him which resulted into an injury on his mouth. Surender alias Fandi inflicted injuries with saria on his person. However, he admitted in his statement Ex P1 that it has not been mentioned that he sustained invisible injuries on his person. He admitted that at the time of the occurrence the police was present in the village. He also admitted that the administration had deployed the police in order to maintain peace. He could not tell whether any order of injunction had been passed by any AC IInd Grade in respect of the construction of the Mosque. He also admitted that the land over which the Mosque was constructed was recorded in the name of the panchayat as per jamabandi Ex. DB. He admitted about the receipt of compensation of ₹ 1,54,000/- .

17. A perusal of the complaint Ex P1 goes to show that earlier it was written on 28.05.2015. Then digit 28 was cut and another date 29.05.2015 was written on it. There is no dispute about the fact that the alleged incident took place on 25.05.2015 and the FIR was registered on 29.05.2015 at about 6:00 p.m. The prosecution has not explained as to under what circumstances the FIR was registered at a belated stage. It is pertinent to mention that the statement of complainant Sakir Ali Ex DA was recorded on 26.5.2015 in another case vide FIR no.74 about the damage of the

property of the village. In this view of the matter, the complaint Ex P1 and registration of the FIR at a belated stage creates a doubt about the entire prosecution version.

18. The statements of PW-1 Sakir Ali, PW-5 Fakhruddin and PW-7 Shabir Ali are at variance with their earlier statements Ex DA, Ex D2 and Ex D3 respectively. The statements of these witnesses made in the court clearly show that they made certain improvements in their respective statements. That apart, according to the prosecution PW-1 Sakir Ali, PW-5 Fakhruddin and PW-7 Shabir Ali were together at the time of the occurrence but their statements are not consistent with each other. Apparently, there was a dispute in the village over the construction of the Mosque. Accused Surender was opposing the construction of the Mosque on the panchayat land. In such a situation, the possibility that accused Surender was named by the complainant after lapse of a few time to falsely implicate him cannot be ruled out.

19. There is no dispute about the fact that for a few days prior to the alleged occurrence the police was camping in the village PWI Sakir Ali. PW-5 Fakhruddin and PW-7 Sabbir Ali admitted the presence of the police in the village at the time of occurrence. When everything took place in the presence of the police then it does not stand to reason as to why none of these witnesses made any complaint to the police on the day of the occurrence itself. This fact also demolishes the prosecution case.

20. Further, no weapon was recovered from the possession of the accused. No jewellery or house hold articles were recovered from the possession of the accused.

21. PW-1 never stated in his statement Ex DA that he sustained injuries on his person. However, in the court he stated that he had sustained injuries on his person. A perusal of the MLR shows that at the time of his medico-legal examination, the complainant never disclosed that he had sustained injuries in the village on account of a dispute over the construction of the Mosque. PW-7 Shabir Ali also disclosed about his invisible injuries on his person. No medico-legal examination report of PW-7 has been proved on the record in order to establish that he also sustained injuries on his head.

22. ASI PW11 Vikram Singh in presence of PW-1 Sakir ali took the ashes of the three vehicles into police possession for the purpose of examining them in order to detect inflammable substances like petrol, diesel and kerosene. As per statement of PW-2, the recovered materials were sent to FSL Madhuban. A perusal of the FSL report Ex PX shows that kerosene, petrol, diesel and their residues could not be detected. This fact also creates a doubt in the prosecution case.

23. As to how an application for leave to 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.”

24. 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 18.08.2017 passed by the Additional Sessions Judge, Faridabad, whereby accused-respondent No.2 Surrender alias Fandi has been acquitted. Therefore, the application for seeking grant of leave to appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

September 19, 2024
sukhpreet

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