

**In Filing the Appeal. Vs. Raj Kumar and Others**

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**Court :** Punjab and Haryana

**Decided On :** Feb-07-2014

**Appellant :** In Filing the Appeal.

**Respondent :** Raj Kumar and Others

**Judgement :**

CRM-A-917-MA-2013 [1].IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CRM-A-917-MA-2013 (O&M) Decided on 07.02.2014 Kanwar Singh ....Appellant VERSUS Raj Kumar and others ....Respondents CORAM: HON'BLE Mr.JUSTICE RAJIVE BHALLA HON'BLE Mr.JUSTICE JASPAL SINGH Present: Mr.S.K.Yadav, Advocate, for the appellant.

\*\*\*\*\* RAJIVE BHALLA, J.

CRM-45831-2013 Prayer in this application is to condone delay of 510 days in filing the appeal.

Counsel for the applicant/appellant submits that in view of a Full Bench judgment in CRM-A-547-MA-2011 titled as Tata Steel LTD.versus M/s Atma Tube Products Ltd.

., the appeal against acquittal filed before the Additional Sessions Judge, was withdrawn with liberty to file an appeal before the Honble Supreme Court, thereby leading to delay in filing the present appeal.

We have heard counsel for the applicant/appellant, considered the submission and as we are satisfied that sufficient cause has been shown, allow the application and condone delay of CRM-A-917-MA-2013 [2].510 days in filing the appeal.

CRM-A-917-MA-2013 The appellant challenges judgment dated 08.05.2012, passed by the Judicial Magistrate 1st Class, Mahendergarh, acquitting the respondents of offences under Sections 323, 452, 506, 363, 511, 147 and 148 of the IPC.

The appellant filed a private complaint before the Judicial Magistrate 1st Class, Mahendergarh, alleging that on 07.11.2006 at about 09:30 PM, the respondents forcibly entered his house, hurled abuses and beat his son Mahabir.

The appellant and his cousin Shri Chand were asleep in the sitting room.

On hearing the noise, they ran into the house where respondents gave slaps, fist blows and kicked them.

Respondent No.1-Raj Kumar was carrying an iron rod.

Respondent No.2-Satpal was armed with a knife and Manjit was carrying a sword and threatened the appellant with their weapons.

The respondents forcibly picked up Inderjit (son of Mahabir) aged two years and carried him into their vehicle.

The respondents threatened the appellant with dire consequences and that they would kill the child if the complainant did not withdraw the civil suit pending at Jaipur.

The respondents also threatened the complainant that his entire family would be eliminated.

A large number of villagers gathered at the spot, surrounded the vehicle and rescued the minor-Inderjit but the CRM-A-917-MA-2013 [3].respondents managed to escape and while doing so threatened the appellant and his family with dire consequences.

The appellant also averred that his father Parbhati Lal owned property worth crores of rupees in Jaipur.

Parbhati Lal fell ill in September, 2006 and was taken to Jaipur for treatment.

The appellant left Parbhati Lal with respondents No.1 to 4 and returned to his village.

The respondents fraudulently prepared a forged 'will' allegedly executed by Parbhati Lal.

The complainant filed another case under Section 420 of the IPC in Jaipur wherein the police was directed under Section 156(3) of the Cr.P.C.to lodge an FIR and as a result of which FIR No.199/2006 was registered against the respondents under Section 420 of the IPC.

On 08.11.2007, the appellant filed an application at Police Station Mahendergarh but the police did not take any action.

The appellant recorded preliminary evidence by examining himself as CW-1, Shri Chand as CW-2 and Mahabir as CW-3.

The respondents were summoned, vide order dated 21.02.2009 under Sections 323, 452, 506, 363, 511, 147 and 148 of the IPC.

In pre-charge evidence, the appellant/complainant examined Shri Chand as CW-1, Mahabir as CW-2, himself as CW- 3 and tendered into evidence postal receipts as Ex.

C-1 to C-3, application addressed to the SHO, Police Station Mahandergarh, as CRM-A-917-MA-2013 [4].Mark-A, application addressed to the Director General of Police, Haryana as Mark-B, newspaper clipping dated 08.12.2006, as Mark-C, copy of FIR No.708/06 as Mark-E, and thereafter closed his evidence.

The trial Court framed charges against the respondents under Sections 323, 452,506, 363, 511, 147 and 148 of the IPC read with Section 149 of the IPC, to which they pleaded not guilty and claimed trial.

The incriminating circumstances were put to the respondents who denied their culpability and pleaded false implication.

In defence, the respondents produced documents Ex.D1 to D7.

After appraising the evidence on record and considering arguments, the trial Court acquitted the respondents by holding that material discrepancies and contradictions in the depositions of the prosecution witnesses regarding the weapons allegedly carried by the respondents, the failure of the prosecution witnesses to identify the make and number of the car and the absence of any independent witness from the crowd who allegedly rescued the minor from the respondents car, are sufficient to cast a doubt on the veracity on the complainant's version and, therefore, directed acquittal of the respondents.

The trial Court also held that the complaints made to the police and the Director General of Police reveal that names are different from those referred to in the CRM-A-917-MA-2013 [5].complaint.

The trial Court also took into consideration the delay in approaching the Court.

Counsel for the appellant submits that findings recorded by the trial Court are perverse and arbitrary as depositions of the appellant and his witnesses remain unrebutted.

The findings on record clearly prove that the respondents arrived at the appellants house, abused and attacked the appellant and his son and made an attempt to abduct the complainants minor grandson who was saved by the villagers who had gathered at the place of occurrence.

It is further submitted that minor discrepancies relating to the weapons or inability to identify the make of the car etc. are insufficient to cast any doubt upon the depositions of witnesses.

The depositions of the complainant's witnesses are clear and cogent as to material particulars of the occurrence.

We have heard counsel for the appellant, perused the impugned judgment and express our inability to hold that the trial Court has committed any error of jurisdiction, misread the evidence on record, recorded conclusions that are perverse or arbitrary or that in the facts and circumstances of the case, any other conclusion other than conclusions recorded by the trial Court were possible.

The case as set up by the appellant, is that the respondents arrived at his house, hurled CRM-A-917-MA-2013 [6].abuses and thereafter beat his son.

The appellant and Shri Chand rushed out and saw the entire occurrence.

The appellant and his family members were threatened by the respondents.

The grandson of the appellant was abducted and taken into a car but was rescued by the villagers who had gathered at the spot.

The trial Court has while acquitting the respondents noticed that Shri Chand made a mistake in identifying one of the respondents namely Manjit whereas other witnesses did not identify the respondents as the persons who committed the offence.

The trial Court has also held that names given in the complaints made to the DGP, Haryana Mark-B, are four in number whereas in the complaint six persons have been arrayed as accused.

The witnesses produced by the appellant were unable to disclose the number or the make of the car and made contradictory statements regarding the weapons carried by the respondents.

The appellant did not produce any of the persons who allegedly gathered at the place of occurrence and rescued the appellants grandson from the respondents.

It would be appropriate to point out that both civil and criminal litigations pertaining to a property owned by the appellants father, are pending between the parties at Jaipur.

The parties are also closely related.

We are satisfied that the trial Court has after a considered appraisal of the evidence on record, rightly recorded a judgment of acquittal.

As a consequence, the leave to CRM-A-917-MA-2013 [7].appeal is declined and the same is dismissed.

[ RAJIVE BHALLA ].JUDGE0702.2014 [ JASPAL SINGH ].shamsher JUDGE Singh Shemsher 2014.02.26 14:11 I attest to the accuracy and integrity of this document Chandigarh

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