

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 09.09.2015

CRA-D No.747-DB of 2013

Dharambir

...Appellant

Versus

Jaibir & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Dr. Praveen Hans, Advocate, for the appellant.
Mr. Ajit Sihag, Advocate, for respondent Nos.1 to 4.
Mr. Vivek Saini, AAG, Haryana, for respondent No.5.

HEMANT GUPTA, J.

The present appeal is directed against an order passed by the learned trial Court on 30.03.2013, whereby Jaibir, Mangal, Baljeet & Nafe Singh i.e. respondent Nos.1 to 4 have been acquitted of the charges under Sections 323, 506, 307, 34 IPC.

The prosecution was launched on the statement of Daya Nand son of Dhoop Singh made to ASI Sadhu Ram on 13.07.2009. In his statement (Ex.PA), Daya Nand stated that yesterday i.e. 12.07.2009 at about 2.00 PM, he alongwith his brother was present in their fields and his uncle Dharambir was ploughing his field with tractor. In respect of the said land, a civil suit is pending against Nafe Singh. He stated that the said land is in the possession of his uncle. In the meanwhile, on hearing noise '*Bachao Bachao*', they saw that his uncle Dharambir was running towards them and was being chased by Jaibir armed with

Gandasi and Mangal armed with Jelly. Baljeet, Surender and Nafe Singh, all armed with their respective weapons, also reached there. He also gave the description of the different injuries suffered by his uncle Dharambir. On the basis of such statement, an FIR was lodged. After the arrest of the accused and on completion of necessary formalities, they were made to stand trial.

To prove its case, the prosecution has examined as many as 10 witnesses, which include PW-7 Daya Nand – author of FIR and PW-8 Dharambir. All the incriminating circumstances were put to the accused/respondent Nos.1 to 4 while recording their statements under Section 313 Cr.P.C., but they pleaded false implication. However, they examined DW-1 Dr. Yashpal Singh, DW-2 Kulwant and DW-3 Dr. Tarun Sapra in their defence.

After examining the entire evidence led by the parties, the learned trial Court returned a finding that the case of the prosecution suffers from many infirmities and the prosecution has failed to prove its allegations against the accused beyond all reasonable doubt. The learned trial Court noticed that the prosecution has not disclosed khewat, khatoni, khasra/rectangle or killa no. of the land where the altercation took place. The learned trial Court also noticed that though in scaled site plan Ex.PJ, the place of alleged occurrence has been shown as part of rectangle No.171, but no revenue record has been produced to show as to who was recorded as owner or in possession of the said rectangle. PW-7 Daya Nand, while appearing in the witness-box, has admitted that on the date of occurrence, civil suit between his uncle and Nafe Singh was pending in Hansi Court, but he does not know whether his uncle had filed civil suit on 18.07.2009 and that it was not pending on the date of occurrence. Similarly, in his cross-examination, PW-8 Dharambir has admitted that a civil suit was pending at the time of occurrence, but he denied having filed civil suit in the Civil Court, Hansi

on 18.07.2009. He stated that a suit was pending against Bhalo, Nafe Singh, Vedo, Bali and Kusum Lata, which was dismissed on 04.11.2010. Considering such evidence, the trial Court returned a finding that it cannot be held that the accused party was the aggressor party. The trial Court returned a finding that the accused are not liable to be held guilty and convicted, as it is not established that the accused party was the aggressor party. Thus, benefit of doubt was given to them.

The learned trial Court also considered the defence evidence and found that the accused party also received simple as well as grievous injuries from the hands of the complainant party, but the prosecution has not explained the injuries on the person of the accused. Thus, non-explanation of injuries on the person of the accused creates doubt on the genuineness of the allegations of the prosecution. In view of the said findings, the trial Court while granting benefit of doubt acquitted all the accused of the charges framed against them.

In the present appeal against acquittal, Dharambir – appellant tried to prove his possession and that of his father to show that the accused party was the aggressor. It is argued that no evidence has been led by the accused with regard to the possession upon the land, whereas evidence led by the prosecution proves the possession of the appellant. One of the grounds taken by the appellant is that the revenue record i.e. jamabandi for the years 2001-02 and 2006-07, shows the possession of Mewa Singh, father of the appellant, but the Revenue Authorities in collusion with the accused refused to correct the record after the death of his father.

Having heard learned counsel for the parties at length, we do not find any merit in the present appeal. The evidence led by the prosecution is in respect

of causing injuries to the appellant and others. However, no evidence has been led as to how the accused suffered injuries on the said date. In the absence of any explanation of the injuries inflicted on the person of the accused, the finding recorded by the trial Court cannot be said to be vitiated in any manner.

Still further, the prosecution has not produced any revenue record to prove the possession of Dharambir. In the absence of any evidence of possession of the appellant and also that who was in possession of the land in dispute or the owner or the person in possession of the place of occurrence, the findings recorded by the learned trial Court cannot be said to be arbitrary, unjust and irrational, which may warrant any interference by this Court in an appeal against acquittal.

The findings recorded by the learned trial Court are possible findings, which have been arrived at after considering the entire evidence led by the parties. There is no perversity in the findings recorded.

It may be stated that both the complainant party and the accused party are residents of same village, therefore, it would be fair and reasonable that the parties bury the hatchet and live in peace in their village.

Consequently, we do not find any merit in the present appeal. The same is dismissed.

(HEMANT GUPTA)
JUDGE

09.09.2015
Vimal

(RAJ RAHUL GARG)
JUDGE