

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 28.08.2015

CRA No.88-DB of 2013

Ashwani Kumar @ Vicky

...Appellant

Versus

State of Haryana & others

...Respondents

Present: Mr. Deepinder Singh, Advocate, for the appellant.

Mr. Rajesh Gaur, Addl. AG, Haryana, for respondent No.1.

Mr. G.S.Kaura, Advocate, for respondent Nos.2 to 11.

CRA No.2666-SB of 2011

Parash Sharma & others

...Appellants

Versus

State of Haryana & another

...Respondents

Present: Mr. G.S.Kaura, Advocate, for the appellants.

Mr. Rajesh Gaur, Addl. AG, Haryana, for respondent No.1.

Mr. Deepinder Singh, Advocate, for respondent No.2.

**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?

HEMANT GUPTA, J.

This order shall dispose of aforementioned two appeals i.e.
CRA No.88-DB of 2013 and CRA No.2666-SB of 2011 directed against the
judgment of conviction and order of conviction dated 26.09.2011 &
28.09.2011 respectively rendered by the learned Sessions Judge,

Kurukshetra. CRA No.88-DB of 2013 is preferred by Ashwani Kumar @ Vicky – complainant aggrieved against the acquittal of respondent Nos.2 to 11 for the offences punishable under Section 307/149 IPC, whereas CRA No.2666-SB of 2011 is preferred by Parash Sharma & others against their conviction and sentence for the offences under Sections 325/ 323/ 148 read with Section 149 IPC.

At the very outset, Mr. Deepinder Singh, learned counsel for the appellant in CRA No.88-DB of 2013, states that he does not want to press the appeal.

The prosecution case was set in motion on the statement of Ashwani Kumar son of Asha Ram - injured, made to ASI Som Nath, P.S. Pehowa on 12.10.2007. In his statement (Ex.P1), Ashwani Kumar stated that his grand-mother namely Chanan Devi wife of Singara Mal had purchased a plot at Village Asmanpur on Dhand Road about 1½ years ago and that sale deed of the said plot was also executed in favour of his grand-mother Chanan Devi. The boundary wall and gate of the said plot has already been constructed by them. He further stated that on 09.10.2007 at about 12.30 PM, when he alongwith his cousin Lovmahesh son of Mahesh Kumar and Ram Parshad son of Chetan Ram were standing there and that Rattan, Mason, was doing construction work. In the meantime, Kewal Krishan son of Kharaiti Lal and his son known as Laddi alongwith Parash, Dev Raj Kapoor, Pawan Kumar, Pardeep Kumar and Vivek Bahal @ Jaggi, armed with iron rods, baseball sticks and iron pipes, reached there and threatened that they will be taught a lesson for raising construction in the plot. He further stated that soon thereafter one Tavera bearing registration No.HR-65-2682 arrived there. Kewal Krishan gave a lalkara and asked

weapons. On hearing this, 5-6 persons armed with baseball sticks, iron pipes and iron rods alighted from the vehicle. Thereafter, all the abovesaid persons attacked them. He further stated that Laddi, who was armed with iron pipe, gave a blow on his left leg; Parash gave an iron rod blow on his back and left leg, whereas Pradeep gave a baseball stick blow on his left arm and back. As a result of such blows, he got fracture in his left arm and left leg. He further stated that Vivek Bahal @ Jangi and Pradeep Kumar gave separate baseball stick blows on the head and back respectively of Lovmahesh, who was caught hold by Kewal Krishan and Dev Raj. As a result of such blows, Lovmahesh received severe injuries on his head and near his ear. Kewal Krishan and Parash also gave injuries on the leg and arm of Ram Parshad with baseball sticks. He stated that the boys, who were alighted from the abovesaid vehicle, also inflicted injuries to them on the back and legs with their respective weapons. On raising noise, Sat Pal son of Mangal Dass, Prabhu Dayal son of Mohan Lal as well as some public men came there and on seeking them, all the said persons fled away from the spot alongwith their respective weapons. He stated that amongst the said persons, one person namely Suresh, who was wearing white shirt and chadra, struck with a kikar tree as a result of which he received injuries on his head. He further stated that due to the injuries received, he became unconscious and when he regain consciousness, he found himself admitted in GMCH, 32, Chandigarh.

On the basis of such statement, *ruqa* was sent to the Police Station for registration of an FIR. On receipt of *ruqa*, FIR was lodged on the same day. It was on 24.01.2008, ASI Som Nath arrested accused Kewal Krishan, Vivek Bahal and Pardeep. Accused Vikram and Joginder were arrested on 27.02.2008, whereas accused Neeraj was arrested on 11.03.2008.

After recording statements of the prosecution witnesses and on completion of necessary formalities, report under Section 173 Cr.P.C. was filed against Parash Sharma, Hari Pal, Dev Raj, Kewal Krishan, Vivek Bahal, Pardeep Kumar, Vikram Singh, Jagwinder Singh and Neeraj Malik.

Thereafter, on an application for summoning, Karan @ Laddi and Pawan Kumar were ordered to be summoned to face trial. However, accused Karan @ Laddi could not be arrested and he was declared proclaimed offender on 29.04.2009.

It may be noticed that a cross-case was also registered against Ashwani Kumar @ Vicky on the statement of Arjun Singh son of Kabaj Singh, uncle of Suresh (deceased). On the basis of such statement, the accused therein stands convicted and sentenced for the offence punishable under Section 302 IPC. The said judgment is subject matter of appeal in CRA No.1067-DB of 2011, which has been taken up for decision separately.

To prove its case, the prosecution has examined as many as 12 witnesses. PW-2 Ashwani Kumar – author of FIR, while appearing in the witness-box, supported the prosecution case in its entirety. He deposed that after the occurrence, his brother Jitender, who came to the spot on receipt of telephonic call from Prabhu Dayal, removed all the three injured to Mission Hospital, Pehowa. Thereafter, all of them were referred to GMCH, Sector 32, Chandigarh for treatment. He deposed that Lovmahesh was referred to PGI, Chandigarh for further treatment. In his cross-examination, he admitted that a civil litigation was going on in Pehowa Court regarding the plot in question and his grand-mother was a party to the said litigation. He stated that the plot was purchased from Robin Kapoor son of Kamal Kapoor. He stated that khasra girdwari regarding the said plot was prepared in the name of his grand-mother about 15 days prior to the occurrence. He denied the

suggestion that they committed the murder of Suresh with the intention to kill him and thereafter fled away from the spot and procured bogus MLRs and medical record just to make up a cross-version.

PW-3 Ram Parshad - injured also supported the prosecution story. He also gave the graphic detail of the occurrence. In his cross-examination, he stated that he knew about the purchase of plot by Ashwani and his grand-mother. He stated that at that time, Rattan Lal, Mason, and two other labourers were working and that they ran away from the spot at the time of occurrence. He denied the suggestion that he alongwith Lovmahesh and Ashwani @ Vicky, Ram Parshad, Asha Ram, Kuldeep, Mahesh and others committed murder of Suresh Kumar while making an attempt to take forcible possession of the plot owned and possessed by Kewal Krishan and Dev Raj on the Dhand road at Village Asmanpur.

PW-9 is Dr. Inderjit Singh, Medical Officer, PHC, Jagmalera, District Sirsa, who medico-legally examined Ram Parshad, Ashwani Kumar and Lovmahesh on 09.10.2007 at about 3.45 PM. He tendered his affidavit Ex.P22 in his evidence. Apart from disclosing the injuries found by him on the persons of Ashwani Kumar, Ram Parshad and Lovmahesh, he deposed that he supplied the MLRs to the Police Officer on 12.10.2007 and 16.10.2007 pursuant to request made on 10.10.2007. In his cross-examination, he stated that he sent ruqas Exs.P-23, P-24 and Ex.P25 regarding the arrival of Lovmahesh, Ashwani Kumar and Ram Parshad respectively with the history of assault. He proved the MLRs of Ashwani Kumar, Ram Parshad and Lovmahesh as Exs.P-26, P-27 and P-28.

PW-4 SI Som Nath is the Investigating Officer. While stepping into witness-box, he deposed with regard to the investigations carried out by

admission of Ashwani, Lovmahesh and Ram Parshad in Medical College, Sector 32, Chandigarh in injured condition. Since on that day, it was too late, he alongwith other police officials had gone to GMCH, Sector 32, Chandigarh on 10.10.2007. He moved applications Exs.P3, P4 & P5 about the fitness of Ashwani, Lovmahesh and Ram Parshad to make statement. However, the Doctor vide his report Mark-E declared Ashwani not fit to give the statement; vide report Mark-F mentioned that Lovmahesh has been referred to PGI, Chandigarh and vide report Mark-G mentioned that patient Ram Parshad had been discharged. Thereafter, he reached PGI, Chandigarh and moved an application Ex.P6 about the fitness of injured Lovmahesh to give statement, but the doctor vide his report Mark-H declared patient unfit to make statement. He deposed that on 12.10.2007, he again went to GMCH, Sector 32, Chandigarh and moved application Ex.P7 to the doctor about the fitness of Ashwani to make statement. Pursuant to such application, Dr. Inderjit Singh vide his opinion Ex.P7/1 declared the patient fit to make statement. He further deposed that after recording the statement of Ashwani Ex.P2, he made endorsement Ex.P2/1 over the same and sent the same to the Police Station for registration of the case through HC Mahinder Singh. Thereafter, he went to PGI, Chandigarh and also moved an application Ex.P8 about the fitness of injured Lovmahesh to make the statement. Pursuant to the opinion of the doctor vide Mark-J to the effect that the patient is fit to make statement, he recorded the statement of Lovmahesh. In his cross-examination, he stated that he received the wireless message at about 11.00/12.00 PM on 09.10.2007, which was conveyed to him by MHC Virender Singh. He further stated that by the time he had received the wireless message, case FIR No.375 on the statement of Arjun

PW-8 Jai Singh DSP (Retd.), the then SHO/Inspector, P.S.Pehowa was examined to prove the investigations carried out by him. He stated that on receipt of telephonic message that one murder has taken place, he reached at the spot i.e. Dhand road. He found one Tavera Car bearing No.HR65-2682 was parked outside the plot, where the occurrence has taken place. The same was taken into possession. He deposed that on 07.11.2007, he arrested Hari Pal and Parash Sharma and at the time of arrest Hari Pal produced one iron pipe, whereas Parash Sharma produced one baseball stick. The same were taken into possession vide recovery memos Exs.P18 and P19 respectively.

After conclusion of prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C. They were put all the incriminating circumstances appearing against them in the prosecution evidence. They denied the prosecution case and pleaded false implication. In their defence, apart from tendering documentary evidence, they examined DW-1 Parbhu Dayal and DW-2 Satpal.

After going through the evidence on record, the learned trial Court found that the prosecution has succeeded in proving the charge under Sections 325/ 323/ 148 read with Section 149 IPC against the appellants and accordingly convicted and sentenced them, as mentioned above.

We have heard learned counsel for the parties at length and gone through the record carefully. PW-2 Ashwani Kumar, author of the FIR, has admitted that there was a civil litigation pending in Pehowa regarding the plot in question and his grand-mother was party to the said litigation. The khasra girdawari reflecting possession of his grand-mother was entered 15 days prior to the occurrence. On the other hand, PW-3 Ram

he knew about the purchase of plot by Ashwani and his grand-mother and that at the time of occurrence, Rattan Lal – Mason and two other labourers were working and that they ran away from the spot. Both the witnesses have denied the suggestion that an attempt was made to take forcible possession of the plot owned and possessed by Kewal Krishan and Dev Raj. From the evidence led on record, it transpires that the trial Court has rightly returned a finding that both the sides were aggressors. The complainant party reached the place of occurrence to raise construction, whereas the accused party reached the place of occurrence to stop such construction and attacked the complainant party. Thus, it is a case of free fight and in case of free fight each of the participants are liable for conviction for the offences attributed to each one of them.

Since specific role has been attributed to the appellants by PW-2 Ashwani Kumar and PW-3 Ram Parshad supported by the medical evidence, we find that the judgment of conviction and order of sentence is based upon correct appreciation of evidence. It could not be pointed out that any evidence is misread or not taken into consideration. The trial Court has rightly found that the motive behind commitment of the offence was to assert and obtain possession of the property, where the occurrence took place. The injuries suffered by the complainant side are supported by the medical evidence such as suffering of two fractures i.e. one on left arm and another on left leg near ankle by Ashwani Kumar; suffering of two simple injuries i.e. on left lower leg and left forearm near elbow joint by Ram Parshad and suffering one grievous injury i.e. on left temporal fracture bone in between eye and ear above the cheek by Lovmahesh. Thus, we find that the trial Court has considered the entire evidence in its correct perspective.

The view taken by the trial Court does not suffer from any illegality or irregularity warranting interference by this Court.

In view of the above, we find that the judgment of conviction and order of sentence rendered by the trial Court is based on the correct appreciation of evidence. Consequently, CRA No.88-DB of 2013 is dismissed as not pressed, whereas CRA No.2666-SB of 2011 is dismissed finding no merit.

(HEMANT GUPTA)
JUDGE

28.08.2015
Vimal

(RAJ RAHUL GARG)
JUDGE