

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. D- 157-DB of 2015 (O&M)

Date of decision : 12.03.2015

Malkiat Singh

.....Appellant

Versus

State of Punjab and others

....Respondents

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Ranjit Sharma, Advocate
for the appellant.

LISA GILL, J.

Present appeal has been preferred by complainant Malkiat Singh challenging judgment dated 01.09.2014 passed by learned Additional Sessions Judge (Adhoc), Fast Track Court, Amritsar whereby respondent No. 2 Harjinder Singh and respondent No. 3 – Narinder Singh have been acquitted of charges under Sections 457, 380, 436, 148, 149 IPC.

FIR No. 81 dated 15.12.2011 was registered on the statement of appellant Malkiat Singh before SI Sawinder Singh averring that he was running a tailor shop in Tarsikka market for the last 20 years. His brother Amarjit Singh was also running general merchant shop and readymade garments shop. Eviction proceedings were pending at the instance of one Didar Singh. It is claimed that accused Harjinder Singh and Narinder Singh during the pendency of

litigation purchased the shops and claimed themselves to be the owners. They started pressing for vacation of premises. Respondent - Narinder Singh on 14.12.2011 at about 6.00 p.m. came to the appellant's shop and asked him to vacate the same failing which they would set it on fire. He went away after threatening the appellant-complainant. Complainant and his brother Amarjit Singh as usual proceeded to their residence at about 7.30 p.m. after closing their shops. On the next day i.e. 15.12.2011 at about 7.40 a.m., they were informed telephonically by Harjit Singh alias Golu that their shops were lying open, articles lying scattered and burnt. Complainant alongwith his brother Amarjit Singh, nephew Mangaljit Singh and other residents of village proceeded to their shop and noticed the shutter of the general merchant shop broken open. No articles were lying inside both the shops. Articles lying outside were already burnt. Allegedly seven machines, unstitched clothes, counter, fans, inverter, battery as well as cash amounting to ₹ 36,000/- were found missing. Loss worth ₹ 12 lakhs was allegedly caused to them by respondents - Harjinder Singh, Narinder singh alongwith their sons and unidentified persons with a motive to get the shops vacated.

On completion of investigation, challan/report was submitted under Section 173 Cr.P.C. Charges were framed against the above mentioned accused persons to which they pleaded innocence and claimed trial. Prosecution examined four witnesses to prove its case. Accused respondents pleaded innocence and false implication at the time of recording of their statement under Section 313 Cr.P.C.

Learned trial Court on examining the facts and circumstances of the case as well as the evidence on record acquitted respondents No. 2 and 3 of the charges against them as it was found that the prosecution had miserably failed to prove its case. Hence aggrieved, present appeal has been filed by the complainant.

Learned counsel for the appellant contends that the oral evidence of the appellant- complainant and his brother Amarjit Singh clearly brings out the facts, which point to the complicity of accused persons in the commission of crime. There was no reason for discrediting the evidence of the said witnesses. Improvements noticed by the trial Court in their testimonies are not material and do not effect the credibility of the witnesses. The appellant and his brother have clearly stated that they saw the accused persons loading the articles from their shop onto tractor trolley. They fled from the spot on seeing the appellant and his brother. The accused carried out the threat, which they had levelled on 14.12.2011. In these circumstances, acquittal of the accused persons is stated to be unjustified.

We have heard learned counsel for the appellant but find no merit in the present appeal against acquittal.

It is a matter of record that the appellant at the time of recording of FIR on 15.12.2011 does not make a mention of seeing any of the accused persons at the spot. There is no mention of the accused setting any articles on fire or loading any articles on to the tractor trolley in their presence. It is stated that the shutter of the shop was broken and no article was lying in both the shops. Articles

strewn outside were stated to be burnt. Undoubtedly a specific improvement has been made by the complainant as well as his brother Amarjit Singh while deposing before the trial Court inasmuch as the presence of the accused Harjinder Singh and Narinder Singh alongwith their sons and unidentified persons with tractor trolley at their shop on 15.12.2011 is mentioned. They are alleged to be loading articles of their shop onto the trolley. It is on their raising alarm that the accused fled. This version comes to the fore for the first time before Court. It has rightly been held that these improvements are material and go to the root of the matter. Furthermore, the photographs produced on record reveal that no damage has been caused to the shops in question. Trial Court rightly concluded that in case the respondent accused had intended to put articles on fire, there was no question of their having brought out the articles first and thereafter setting them on fire. Version put forth is not free from doubt.

Furthermore, material and relevant witness Harjit Singh alias Golu has not been examined for reasons best known to the prosecution. It is Harjit Singh alias Golu, who gave information about the shops being burnt to the appellant. His version is, thus, not available on record. Best evidence has been withheld for which there is no explanation. It necessarily casts a doubt on the prosecution version.

It is yet again admitted that there is no evidence on record to prove that respondents No. 2 and 3 had purchased the shops in question from their previous owner. Case regarding eviction

of the appellant-complainant and his brother from the shops in question was pending between them and Didar Singh though the complainant and his brother are claiming allotment of shops by the Gram Panchayat.

In the circumstances as narrated above, it has rightly been held that the prosecution has miserably failed to prove that the accused respondents are guilty of the commission of offence of lurking house trespass for committing theft and mischief by fire. They have rightly been acquitted of all the charges against them.

Consequently, the instant appeal being devoid of any merit is dismissed and the impugned judgment dated 01.09.2014 passed by learned Additional Sessions Judge (Adhoc), Fast Track Court, Amritsar is upheld.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

March 12, 2015
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