

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-578-DB-2015 (O&M)

Date of decision: 17.08.2015.

Vikrant

..... Appellant

Vs.

State of Haryana and 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?

Argued by: Mr. Ashok Kumar Khubbar, Advocate
for the appellant.

RAJ RAHUL GARG.J.

This is an appeal against acquittal preferred by complainant Vikrant assailing the impugned judgment dated 03.12.2014 rendered by the learned Additional Sessions Judge, Kurukshetra, whereby all the accused were acquitted by extending benefit of doubt to them.

It is the prosecution case that on 19.02.014 at about 8:00 p.m, a telephonic information was received by the police about abduction of Vikrant son of Naib Singh, resident of village Mehra by Mandeep son of Charan Singh, resident of village Kharkali and 7-8 other boys. ASI Padam Singh, reached village Mehra, there he came to know that the abducted person had been taken to village Kharkali. On reaching Kharkali, the police found that Vikrant was lying in an injured condition outside the house of

Mandeep. Police also found one Bullet motorcycle bearing No. HR-07S-5535 lying parked nearby. With the help of Shubham, injured was taken to Government Hospital, Ladwa and from there to PGI, Chandigarh. On receipt of medical memo from PGI on 20.02.2014, police party reached PGI, Chandigarh but the injured were declared unfit to make the statement. Statement of injured Vikrant was recorded on 21.02.2014.

As per appellant-complainant, on 19.02.2014 at about 7:00 pm, he along with Nirmal Singh was standing near the veterinary hospital in village Mehra. Two vehicles, one Bolero bearing No.3535 and the other Mahindra XUV 500 stopped near them. Mandeep, Sunny, Krishan, Sachin Pandit and Gulla along with 3-4 other persons got down from the aforesaid vehicles. Mandeep was holding a country made pistol whereas others were carrying iron rods. Mandeep hit the complainant on his forehead and teeth with the butt of the pistol and the remaining boys started hitting him on his head with bottles. Thereafter, they took him away in their Bolero vehicle. Nirmal Singh had run away out of fear. The motorcycle of complainant was taken away by Gulla and Sachin. On the way to Kharkali, the abductors continued to beat the complainant. They also gave a threat to his life. When the complainant was made to get down from Bolero, he had tried to flee but Mandeep fired a shot from his country made pistol. At that time, Sunny commented that he should be made to die slowly. Sunny gave beatings to the complainant on his feet and left arm with iron rods, as a result of which he suffered fracture. Thereafter, Nirmal Singh and Sanju called Sunny to leave him. On hearing their noise, the abductors had fled away leaving the complainant in a helpless state of mind. Thereafter, Shubham and the police took him to General Hospital, Ladwa. Necessary investigations were

conducted. Site plan of the spot was prepared. Accused were arrested. Accused Hardeep @ Sunny surrendered in the Court on 28.02.2014. During interrogation, he suffered disclosure statement and got recovered the iron pipe after identifying the place of occurrence. Accused Charan Singh, got recovered the iron rods measuring 1 ½ ft. approximately.

Finding a prima facie case against accused-respondents No. 2 to 8, they were charge sheeted for committing offence punishable under Sections 148,364,323,325,285, 506 read with Section 149 of the Indian Penal Code vide order dated 16.07.2014, passed by Shri M.M. Dhonchak, the then learned Additional Sessions Judge, Kurukshetra, to which the accused did not plead guilty but claimed trial.

We have heard learned counsel for the appellant besides appraising the entire material and evidence coming on record.

Prosecution in support of its case examined Vikrant-complainant as PW1; Nirmal Singh, eye witness as PW2; Vijay Kumar ASI as PW3; Ram Pal ASI as PW4; Chaman Lal as PW5; Amir Singh, ESI, witness of disclosure statement as PW6; Lachhman Singh, H.C. as PW7; Narender Kumar, Inspector as PW8; SI Suresh Pal, recovery witness as PW9; Kewal Krishan, Ahlmad, who brought the summoned file as PW10; Dr. Vikas Gupta, who gave first aid to injured as PW11; Jaswant Singh, EASI, the recovery witness as PW12; Padam Singh, ASI, Investigating Officer as PW13; Dr. Deepak Kumar, senior resident, PGIMS, Chandigarh, who gave treatment to the injured as PW14; Inspector Vijay Malik as PW15 and Dr. Kapil, who gave opinion regarding fitness of injured as PW16, whereas Pws ASI Balbir Singh, Kulwinder Singh, Sanjeev @ Sanju and Rajbir Singh were given up by the learned Public Prosecutor as

unnecessary.

Accused, in their defence, examined H.C. Virender Kumar as DW1; H.C. Satvinder Singh as DW2 and Sher Singh Chahal, Manager, Central Co-operative Bank as DW3. In statement under Section 313 Cr.P.C, the simple defence of the accused is that; they have been falsely implicated in this case.

It was argued by learned counsel for the appellant that the impugned judgment is liable to be set aside as learned trial Court has misconceived the facts. The findings of the learned trial Court are erroneous. The injuries suffered by the appellant are well explained. PW11 has specifically stated that; as the blood pressure of the complainant was low and his pulse rate was rising, therefore, he was referred to PGI, Chandigarh, without preparing any medico-legal report. No X-ray was conducted at Ladwa and thus, PW11, was not in a position to comment upon the fracture if any suffered by the complainant.

The above contention of learned counsel for the appellant is not sustainable. Appellant-complainant, himself stated in his complaint to the police that at the time of abducting him, Mandeep hit the complainant on his forehead and teeth with the butt of the pistol and the remaining boys started hitting him on his head with bottles. On the way to Kharkali, he was given beatings as discussed by the learned trial Court in the impugned judgment. Complainant as PW1 deposed that on reaching Kharkali, Mandeep had fired a gun shot with an intention to kill him but the complainant did not receive any injury. After that accused Hardeep @ Sunny stopped Mandeep from firing any further shots from his country made pistol as he wanted that the complainant should die slowly. He also

deposed that all the accused hit the complainant with iron rods and iron pipes whereas accused Charan Singh hit him with an ice breaker 15-16 times. This statement of complainant was not found inconsonance with the prosecution story as given by the complainant in Ex.P1. In Ex.P1, there is mention of fracture of feet and left arm but learned trial Court found that the complainant did not state about the sufferance of fractures when appeared as witness in the Court. Ex. P43, medico-legal case summary of the complainant from Post Graduate Institute of Medical Education and Research, Chandigarh, mentions that the injured Vikrant had been admitted due to gun shots injuries. The learned trial Court also noticed from the statement of Dr. Deepak Kuamr (PW14), that he admitted that Vikrant has received gun shot injuries on both of his legs and was operated upon for the same. The witness also clarified that the right side injury was through and through but it was not so on the left side.

As per FIR Ex.P1, when the shot was allegedly fired by accused Mandeep from his country made pistol on 19.02.2014, the same had not hit him. Under these circumstances, it is surprising as to how complainant received gun shot injuries on both of his legs and was also operated upon for the same. On the other hand Ex.P43, does not show that the complainant had suffered any head injury or injury on his mouth. Complainant had specifically mentioned in Ex.P1 that Mandeep hit the complainant on his forehead and teeth with the butt of the pistol and the remaining accused had hit him on his head with bottles. Had complaint been genuine, Ex.P43 medico-legal case summary would have shown the injuries on the head of the complainant as well on his mouth. As per Dr. Vikas Gupta (PW11), the patient was admitted with a history of assault. He

also did not make a mention in Ex. P25 or when appeared as witness that the appellant-complainant was suffering from any serious injury on his head or that he was bleeding from the said injury. There is no mention in the FIR Ex.P1 that accused Charan Singh had hit the complainant with an ice breaker 15-16 times. Complainant as PW1 deposed so. No puncture wound finds mention in the medical case history of complainant. This is also an improvement made by the complainant when appeared as witness in the Court so as to make more serious allegations against accused. Thus, the medical evidence is altogether different from the ocular evidence which makes the prosecution case highly doubtful. There is in fact, time gap when the appellant-complainant was referred to PGI, Chandigarh from Community Health Centre, Ladwa. After giving first aid to injured Vikrant, he was referred to PGI, Chandigarh, without preparing his medico-legal report. However, due intimation was given to SHO of Police Station, Ladwa. Dr. Vikas Gupta (PW11), assigned the reasons for not preparing the medico-legal report of the injured at Community Health Centre, Ladwa, like this; that the blood pressure of the patient was low and his pulse rate was rising. It is of course understandable if under the aforesaid circumstance, the medico-legal report of the patient was not prepared by the doctor at Community Health Centre, Ladwa. However, as per Ex.P25, the injured was referred to PGI, Chandigarh on 19.02.2014 before 9:15 pm but he was not taken by the police immediately to PGI.

As per Dr. Deepak Kumar (PW14) and medico legal case summary Ex.P43, injured Vikrant was admitted in PGI, Chandigarh on 20.02.2014. The record of PGI was also not available. As such, it is not established on the file that the injured was admitted in PGI immediately

after he was referred from Community Health Centre, Ladwa. As per prosecution story, injured was taken to Community Health Centre, Ladwa by the police. Dr. Vikas Gupta (PW11), also gave due intimation to the police that patient was referred to PGI, Chandigarh. It is not understandable as to how the police had left the patient and did not accompany him to PGI, Chandigarh, as the complainant-injured was taken to PGI, Chandigarh by some independent persons. This is a serious lapse in the prosecution case, giving room to manipulations. This gap in time, however, creates doubt regarding genuineness of the prosecution case particularly when the medical evidence is not in consonance with the oral evidence available on the file.

Besides above, if we read the prosecution story, it does not inspire confidence in the mind of the Court regarding its genuineness.

As per complainant-injured, he was abducted by the accused while he was standing near the veterinary hospital in village Mehra with Nirmal Singh. It is further mentioned in the prosecution case that Nirmal Singh, had run away out of fear. Thereafter, in the end of the episode, presence of Nirmal Singh and Sanju have been shown stating that they called Sunny to leave him and on hearing their noise, the abductors had fled away. The act of abduction is a serious crime. There is no explanation on the file to show as to why Nirmal Singh, in whose presence the appellant-complainant was abducted, did not report the matter to the police or at least not informed the family members of complainant. There is also no explanation as to how Nirmal Singh and Sanju reached the place where the appellant-complainant was made to get down from Bolero and ultimately left out in a helpless state.

As such, right from the very beginning till end, the prosecution story is not consistent. There are gaps in prosecution story and thus not free from doubt.

For the reasons recorded above, we find that interference in this appeal against acquittal is not called for, as the impugned judgment recorded by the learned trial Court is neither perverse nor based on misreading of evidence. As such, maintaining the impugned judgment dated 03.12.2014, this appeal being without any merit, is ordered to be dismissed.

(HEMANT GUPTA)
JUDGE

(RAJ RAHUL GARG)
JUDGE

17.08.2015
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