

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-D No. 684-DB of 2015(O&M)

Date of Decision: June 30 , 2015.

Raj Kumar

..... APPELLANT (s)

Versus

State of Haryana and others

..... RESPONDENT (s)

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

Present: Ms. Tanu Bedi, Advocate
for the appellant.

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

LISA GILL, J.

Instant appeal has been preferred by complainant Raj Kumar son of Balbir impugning the acquittal of respondent No.2 – Rajpal son of Chhellu Ram, respondent No.3 – Rajpal son of Nanar and respondent No.4 – Sant Lal son of Chellu of the charges under Sections 148/307/325/324/323 read with Section 149 IPC by the learned Additional Sessions Judge, Hisar vide judgment dated 06.01.2015.

FIR No.242 dated 21.05.2009, under Sections 148/149/323/324/325/326/307 IPC was registered against eleven (11) persons at Police Station

Barwala on the statement of complainant Raj Kumar son of Balbir. Raj Kumar complainant in his statement recorded on 18.05.2009 revealed that he was an agriculturist. He was smoking a hookah inside his house on 16.05.2009 while his brother was lying on a cot. 10/12 persons armed with different weapons entered his house and started hurling abuses upon him. They attacked him. Rajpal son of Chhellu Ram, respondent No.2 gave a Jelli blow on his head and another blow on his arm. Rajpal son of Nanar, respondent No.3 inflicted another Jelli blow on his head and Sant Lal son of Chellu, respondent No.4 inflicted lathi blows on his head and hand. On hearing his cries, his brother Rajbir arrived, upon which Rohtash son of Chanda Singh inflicted a sword blow on the arm of his brother Rajbir. Dharampal son of Chellu Ram hit on his brother's head with a lathi and Satish son of Badri inflicted a lathi blow on the arm of his brother Rajbir. Sandeep son of Ishwar inflicted a sword blow on his nephew Sunil's legs and Kuldeep son of Ishwar inflicted a lathi blow on Sunil. Complainant's cousin Krishan on hearing their cries arrived at the spot on which Surinder son of Om Parkash and Ishwar son of Bhana Ram inflicted lathi blows on Krishan's hands. Monu son of Rohtash inflicted lathi blows on his cousin Umed. While leaving, the accused threatened them with dire consequences. Motive behind the occurrence was that the complainant owned an ancestral plot in front of their house and the accused wish to forcibly encroach upon this plot.

On completion of investigation, report under Section 173 Cr.P.C. was prepared and presented against the accused. Charges were framed against eleven (11) accused persons for commission of offences punishable under Sections 148/307/325/324/323 read with Section 149 IPC on 25.02.2010.

As many as 23 witnesses were examined by the prosecution to prove its case. Accused while denying the incriminating material/evidence against them, pleaded false implication and innocence. Evidence was led in defence.

Learned trial court while taking into consideration the entire facts and circumstances of the case as well as the evidence on record, concluded that prosecution has failed to bring home its case against the accused persons. It is specifically noted by the trial court that all the material witnesses have not supported the prosecution version while stating that they had received injuries at the hands of a mob. It was found that there is an attempt to suppress the genesis of the occurrence. Version of the prosecution having been found highly doubtful, all the eleven accused persons were acquitted of the charges against them.

Present appeal has been preferred by the complainant not against all the eleven accused persons, who were proceeded against but only against Rajpal son of Chhellu Ram, Rajpal son of Nanar and Sant Lal son of Chellu i.e., the persons alleged to have caused injuries to him.

Learned counsel for the appellant vehemently argues that credibility of the complainant/appellant cannot be presumed to be suspect only because other injured/witnesses have chosen not to support the prosecution version for reasons best known to them. Complainant has given a consistent version right from the very beginning and has stood by the same while deposing before the trial court. Specific injuries were inflicted upon him which are proved by the medical evidence on record. Furthermore, reliance by the trial

court upon the site plan Mark D3 is misplaced as it is not a duly exhibited document. Learned counsel urges that there is no delay in the lodging of FIR. Incident took place on 16.05.2009. Statement of the complainant was recorded on 18.05.2009 in the evening because earlier he had been unfit to have his statement recorded. It is submitted that in view of the situation as above, acquittal of respondents No.2 to 4 is erroneous and is liable to be set aside. She prays that the impugned judgment be set aside qua the said respondents and they be convicted and sentenced in accordance with law.

We have heard learned counsel for the appellant and gone through the file.

It is not disputed that PW2 to PW12 who are all material witnesses have not supported the prosecution version. All injured witnesses other than the complainant have consistently stated that they received injuries at the hands of a mob of 200-250 persons present on 16.05.2009. Surprisingly PW2 Rajbir i.e., the real brother of complainant has also stated that a mob of 200-250 persons were present on the Shamlat land of their village on 16.05.2009. When they heard noise of the mob, he alongwith Raj Kumar and Krishan went there. They received injuries by brick-bats in the mob. He specifically testified before the court that accused persons present in the court never caused any injuries to them. Similarly, PW3 Krishan as well as the other material witnesses have not supported the prosecution version. They were declared hostile and subjected to cross-examination by the prosecution, however, failing to illicit anything favourable to the prosecution.

It is an admitted case that a cross-case was registered against Raj Kumar, Balraj, Alwar, Bani Singh, Moman, Krishan, Rajbir, Umed, Mukesh

and Sham Lal. PW19 Babu Ram Inspector stated that it was a case of free fight.

Learned trial court while taking into consideration the factual matrix, observed as under:-

“11. After perusal of documents and oral evidence brought on record, I have come to the conclusion that all the material witnesses i.e. PW2 to PW12 have not supported the prosecution version by stating that they received injuries at the hands of mob. In the present case, only PW1 Raj Kumar stated that he has received injuries at the hands of the accused. He stated that occurrence took place in his house. In his cross-examination, he stated that he had pointed out the place mentioning in site plan Mark D3 to draftsman when he prepared the same. So it is very much relevant to place discuss document Mark D3. Mark D3 is showing that the occurrence had taken place in the empty plot of 40 x 45 ft. PW1 Raj Kumar says the occurrence took place in his house but mark D3 i.e. site plan of occurrence shows that it was empty plot and neither it is built up nor there is a residential house. It was an empty plot. So the version of PW1 that the occurrence took place in his house is doubtful and it can be assessed that PW1 Raj Kumar is not stating true facts before the court regarding the place of occurrence and true genesis of occurrence has not come on record from the side of prosecution. Occurrence as stated by PW2 to PW12 took place in a different manner and at a different place having no hand of accused persons. So the version of the prosecution is highly doubtful. The testimonies of PW13 to PW23 is a formal in nature, who have participated in the investigation of the case and the doctors medically examined the injured.”

It is pertinent to note that the arguments raised by learned counsel for the appellant are not tenable in the factual matrix as discussed above. There

is indeed a discrepancy as regards the place of occurrence. In the face of even the real brother of complainant not supporting the prosecution version in conjunction with the attending circumstances justify the findings as returned by the learned trial court.

It is a settled position of law that the acquittal of the accused is not be interfered with until and unless there are strong, substantial and compelling grounds. Merely because another view is possible in the facts and circumstances cannot be a ground for interference.

Learned counsel for the appellant is unable to point out any illegality or infirmity in the impugned judgment dated 06.01.2015 passed by the learned Additional Sessions Judge, Hisar.

Consequently, this appeal is dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

June 30 , 2015.

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