

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-658-MA of 2012 (O&M)
Date of Decision : 11.08.2015

Smt. Sudesh and othersAppellants

Versus

Nafe Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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: Mr. Parminder Singh, Advocate
for the applicant-appellant.

R.P. Nagrath, J.

CRM No. 45661 of 2012

For the reasons stated in the application, which is supported by affidavit, the same is allowed and delay of 350 days in filing the instant appeal is condoned.

CRM-A-658-MA of 2012

Prayer is made by appellants in terms of Section 378 (4) Cr.P.C. for the Special Leave to Appeal against judgment of acquittal passed by learned Judicial Magistrate.

2. Respondent no. 1 was elected MLA from Jundla constituency of Haryana as Indian National Lok Dal (INLD) candidate. It was stated that after elections the respondents encroached upon *khasra* no. 1623 of village Kherinaru which is *Gair Mumkin Johar* (pond) belonging to village community/*panchayat* and then raised building thereon.

3. Majority of the inhabitants formed a committee called

*Johar Chhura*o Sangharsh Samiti for which *Maha Panchayat* was held on 16.12.2001. Various representations were also sent. On 20.12.2001, an application was filed before the Sub Divisional Magistrate (SDM), Karnal for demarcation of the area of pond. The SDM appointed Som Nath revenue official as Local Commissioner. Som Nath aforesaid visited the spot for demarcation on 28.12.2001. As soon as the demarcation commenced, the accused persons pounced upon the complainant and others and threatened them with dire consequences. It was stated that accused-respondent no. 2 inflicted injury on the head of Mohinder Singh with *saria* (iron rod), accused-respondent no. 3 inflicted a *lathi* blow on the right knee of Rajinder and accused-respondent no. 4 a *lathi* blow on the nose of complainant. Accused-respondent no. 1 is also said to have given fist blows on the face of complainant by which his teeth were loosened.

4. After recording preliminary evidence, learned trial Magistrate found sufficient grounds for proceeding against the accused person for offences under Sections 323 and 506 of Indian Penal Code (IPC).

5. In the pre-charge evidence, the prosecution examined Dr. Pawan Chaudhary as CW-1. The doctor medically examined the three injured. The complainant further examined CW-2 Mohinder Singh, CW-3 Joginder Singh and Sumer Chand CW-4. Out of them Mohinder Singh and Rajinder Singh are also the injured.

6. Learned Magistrate found *prima facie* case against accused persons on the basis of pre-charge evidence and ordered

framing of charge against them under Sections 323 and 506 IPC on 20.08.2010.

7. After framing of the charge, complainant produced Dr. Pawan Kumar Chaudhary as CW-1 and Mohinder Singh as CW-2 for further cross-examination but failed to produce any other witness. Evidence of the complainant was closed by order.

8. The accused-respondents were also examined under Sections 313 Cr.P.C. They examined Ashok Kumar, Registry Clerk as DW-1, DW-2 Prem Singh Kadyan, Notary Public, DW-3 Prem Singh, DW-4 Rajbir and DW-5 ASI Ram Kumar.

9. On analysis of evidence, learned trial Court found charges against the accused to be not proved beyond doubt and acquitted them.

10. I have heard learned counsel for the appellant at considerable length and carefully perused judgment of the trial Court and find that judgment of the trial Court does not suffer from any such error or illegality for enabling the appellant-complainant to seek Special Leave to Appeal. Each and every aspect of the case was duly considered by the trial Court.

11. The incident took place on 28.12.2001 and the complaint was filed before the Area Magistrate on 23.01.2002 i.e. after about one month of the occurrence. It was stated in the complaint that the matter was reported to the police on the date of occurrence but no action was taken. Therefore, the private complaint was filed before the Magistrate. The appellant-complainant did not prove on record the copy of complaint which was made to the police, so that the immediate version set up by

prosecution could come on record, to find veracity to the story.

12. The other aspect is that the incident took place at the time of demarcation of the property by Som Nath revenue official. The aforesaid official was not cited in support of complainant's case.

13. Version of the accused was that they got the plots carved out for the weaker sections of village and that fact was substantially proved on file by documents Ex. DW-1/A to DW-1/G, showing that the plots were allotted to various landless people of the village. The complainant had died during pendency of trial and evidence of eye-witnesses in support of the case comprised of Mohinder Singh and Rajinder, the injured. However, as observed by learned trial Court only CW-2 Mohinder Singh was produced for his further cross-examination after framing of the charge. If that be so, the statement of Rajinder Singh could not be read into evidence. Learned counsel for the appellant-complainant strongly relied upon the statement of CW-4 Sumer Chand (Annexure A-2), stated to be an eye-witness but that statement was made on 18.05.2010 i.e. before framing of the charge. It is not the appellant's version that this witness was also produced for further examination after framing of the charge. Learned trial Court has rather observed that after the charge was framed, complainant had failed to conclude the entire evidence despite availing of sufficient opportunities.

14. Learned trial court further observed as under:-

“.....Mahender Singh who has appeared in the witness-box as CW-2 admitted that Mishra Ji was

present at the time of occurrence and the accused persons have committed injuries to him also. But neither Mishra Ji has appeared in the witness-box nor there is any medical evidence qua the fact of inflicting injuries which were caused to Mishra Ji at the time of scuffle between accused and the complainant. Furthermore, he has admitted that there are houses of village people in the khasra no. 1623. Likewise, Joginder Singh who has appeared in the witness-box as CW-3 has admitted that there is not even a single drop of water in khasra no. 1623 and the houses of village people are there in khasra no. 1623. He has also admitted that since the time of institution of the present complaint, Johar has already vanished and the same is under total construction. The testimony of both these witnesses clearly substantiate the version of the accused that the plots were carved out in the Johar for the weaker section of the village people. The allegations of the complainant that the accused illegally encroached upon the village Johar is nowhere proved on the file and as such, the basic version of the complainant remains unproved.”

15. It would seem improbable that accused-respondent no. 1, who was elected MLA, involved in the instant case, would have caused simple injuries to the complainant and other witnesses. The witnesses in defence were examined to contend that accused-respondent no. 1 was not even present in the

village on 28.12.2001. There is statement of DW-5 ASI Ram Kumar posted as security guard with respondent no. 1. He stated that on 27.12.2001 they started from Panchkula and name of driver of car no. HR-03-C-7338 was Rajbir. They reached Pehowa in the evening. On 28.12.2001, they stayed in Pundri. DW-5 had further stated that accused-respondent no. 1 was not present in village Narukheri on 28.12.2001. This is also supported by Rajbir driver of the vehicle as DW-4. The entry of moment of accused-respondent no. 1 was duly made in the logbook.

16. Therefore, the entire version set up by the complainant would be suspicious. The presence of accused-respondent no. 1, who was sitting MLA, could be basically proved from the proceedings recorded by revenue official at the time of demarcation. There is no explanation why such demarcation proceedings were not produced before the trial Court.

17. There has been proper discussion of evidence led during the trial which went on for nine years. The ground of acquittal recorded by the trial Court cannot be rejected outrightly as the same are based on appropriate and proper analysis of evidence. I do not find this to be a fit case to grant Special Leave to Appeal. The application under Section 378 (4) Cr.P.C. is dismissed. Consequently, the appeal against acquittal would stand dismissed.

August 11, 2015
jk

(R.P. NAGRATH)
JUDGE