

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 09.09.2015

CRM-A No.245-MA of 2014

State of Haryana

...Appellant

Versus

Dhoop Singh & 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?

Present: Mr. Vivek Saini, AAG, Haryana, for the appellant.

Dr. Parveen Hans, Advocate, for respondent Nos.4 to 6.

HEMANT GUPTA, J.

State of Haryana is in appeal aggrieved against an order passed by the learned trial Court on 30.03.2013, whereby all the respondents namely Dhoop Singh, Daya Nand, Sonu, Dharambir, Raja and Sukhbir have been acquitted of the charges under Sections 323, 324, 325, 307, 34 IPC.

The present is a cross-case to FIR No.260 dated 13.07.2009 under Sections 323, 506 & 307 read with Section 34 IPC, P.S.Narnaund, subject matter of CRA-D No.747-DB of 2013.

As per prosecution, on 12.07.2009 pursuant to a telephonic call regarding admission of Jaibir, Mangal, Baljeet sons of Nafe Singh and Surender son of Jaibir in General Hospital, Hisar, ASI Sadhir Ram sent HC Ramesh Kumar and EASI Attar Singh to General Hospital for necessary action, but the Doctor declared the injured Mangal, Jaibir and Surender unfit to make statement,

whereas Baljeet was referred to PGIMS, Rohtak. Next day i.e. 13.07.2009, ASI

Sadhu Ram alongwith other police officials reached General Hospital, Hisar and sought opinion about the fitness of the injured vide application Ex.PO. In pursuance of such application, the Doctor declared the injured fit to make statement vide opinion Ex.PO/1. Thereafter, ASI Sadhu Ram recorded the statement of Mangal son of Nafe Singh resident of Gurana. In his statement (Ex.PG), Mangal stated that yesterday i.e. 12.07.2009 at about 2.00 PM, when he alongwith his brothers Jaibir and Baljeet as well as his nephew Surender reached their village known as Goriwala while returning from Tibawala fields, they saw that Dharambir was ploughing their fields with tractor. His brother Baljeet got stopped the tractor and asked Dharambir not to plough the field, as the same was in their possession. Upon this, Dharambir alighted from the tractor and gave a gandassa blow on the head of Baljeet. He stated that when they tried to rescue Baljeet, Dhoop Singh and Sukhbir, who were also present there, caught hold him. In the meantime, Raja, Dayanand and Sonu, all residents of Gurana, alongwith their respective weapons reached there. After giving description of the different injuries received by them, he stated that all the accused went away on their tractor with their respective weapons. After arranging vehicle, he removed Surender, Baljeet and Jaibir to General Hospital, Hisar. However, Baljeet was referred to PGIMS, Rohtak, as he was having serious head injury. On the basis of such statement, an FIR was lodged. After the arrest of the accused and on completion of necessary formalities, they were made to stand trial.

To prove its case, the prosecution has examined as many as 13 witnesses, which include PW-7 Mangal – author of FIR; PW-8 Baljeet and PW-10 ASI Sadhu Ram – the Investigating Officer.

All the incriminating circumstances were put to the accused-

respondents while recording their statements under Section 313 Cr.P.C., but they

pleaded false implication. However, they examined DW-1 Dr. R. Kumar and DW-2 Dr. Arvind.

After examining the entire evidence led by the parties, the learned trial Court returned a finding that the case of the prosecution suffers from many infirmities and the prosecution has failed to prove its allegations against the accused beyond all reasonable doubt. The learned trial Court noticed that the prosecution has not disclosed khewat, khatoni, khasra/rectangle or killa no. of the land where the altercation took place. The learned trial Court also noticed that though in scaled site plan Ex.PH, the place of alleged occurrence has been shown as part of rectangle No.171, but no revenue record has been produced to show that the complainant party is recorded in possession of the said rectangle. The trial Court also found that in jamabandi of Khasra No.171 for the years 2006-07 (Ex.D1); 1996-97 (Ex.D2) and 2001-02 (Ex.D3) produced by the accused, Jaibir, Mangal or Baljeet have not been recorded in possession, whereas Bhalla and Mewa sons of Amil Lal are recorded in possession, as tenants at Will. Considering such evidence, the trial Court returned a finding that it is not established as to which of the party was the aggressor. Thus, the trial Court returned a finding that the accused are not liable to be held guilty and convicted for committing the alleged offence.

The learned trial Court also considered the defence evidence and found that the accused party also received simple as well as grievous injuries from the hands of the complainant party, but the prosecution has not explained the injuries on the person of Dharambir, Sonu and Dayanand. Thus, non-explanation of injuries on the person of the accused creates doubt on the genuineness of the allegations of the prosecution. In view of the said findings,

the trial Court while granting benefit of doubt acquitted all the accused of the charges framed against them.

Having heard learned counsel for the parties at length, we do not find any merit in the present appeal. The evidence led by the prosecution is in respect of causing injuries to Mangal, Baljeet and Jaibir. However, no evidence has been led as to how the accused suffered injuries on the said date. In the absence of any explanation of the injuries inflicted on the person of the accused, the finding recorded by the trial Court cannot be said to be vitiated in any manner.

Still further, the prosecution has not produced any revenue record to prove the possession of complainant party. In the absence of any evidence of possession of the complainant party and also that who was in possession of the land in dispute or the owner or the person in possession of the place of occurrence, the findings recorded by the learned trial Court cannot be said to be arbitrary, unjust and irrational, which may warrant any interference by this Court in an appeal against acquittal.

The findings recorded by the learned trial Court are possible findings, which have been arrived at after considering the entire evidence led by the parties. There is no perversity in the findings recorded.

It may be mentioned that vide separate order of today, CRA-D No.747-DB of 2013, an appeal preferred by the Dharambir, one of the accused herein, against the acquittal of Jaibir, Mangal, Baljeet and Nafe Singh, stands dismissed. It may be further stated that both the complainant party and the accused party are residents of same village, therefore, it would be fair and reasonable that the parties bury the hatchet and live in peace in their village.

Consequently, we do not find any merit in the present appeal. The same is dismissed.

(HEMANT GUPTA)
JUDGE

09.09.2015
Vimal

(RAJ RAHUL GARG)
JUDGE