

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

CRM-A-269-MA of 2015

Date of Decision: 18.08.2015

Gursewak Singh

....Applicant

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. K.S. Sidhu, Advocate
for the applicant.

DAYA CHAUDHARY, J.

The present application has been filed under Section 378(4) of Code of Criminal Procedure for grant of leave to appeal against the judgment of acquittal dated 12.12.2014 passed by the trial Court.

Briefly, the facts of the case are that on the complaint filed by the applicant under Sections 323/354/447/382/506/148/149 IPC before the Judicial Magistrate Ist Class, Bathinda, the accused respondents were summoned. A *prima facie* case under Sections 323/506/354 read with Section 149 IPC was made out against them and they were charge-sheeted. The accused persons faced trial and were acquitted of the charges by the trial Court vide its judgment dated 12.12.2014. The judgment of acquittal has been challenged by applicant/complainant-Gursewak Singh by raising various grounds.

Learned counsel for the applicant submits that the judgment of the trial Court is against law and facts available on record. The applicant led evidence and proved his case against respondents No.2 to 6 but the trial Court failed to appreciate the evidence by giving undue advantage to the version put forward by the accused-respondents and the evidence led by the applicant was discarded. Learned counsel also submits that there were minor discrepancies/contradictions in the statements of the prosecution witnesses but a wrong finding has been recorded by the trial Court that DDR No.12 dated 27.06.2009 lodged at the instance of the applicant by the police was not proved, whereas, the certified copy of the said DDR was exhibited as Exhibit CW6/A. It was held by the trial Court that the Head Constable Pushpinder Singh-CW6 was not cross examined and his testimony cannot be read into evidence. The observation made by the trial Court was contrary to the fact and evidence. The cross examination of the said witness was deferred by observing that the Court time is over. The ocular evidence was supported by medical evidence and a wrong observation has been made that there was delay in filing of the complaint. At the end, learned counsel for the applicant submits that the judgment of the trial Court is liable to be set aside as the same is not based on proper appreciation of evidence available on record.

Heard the arguments of learned counsel for the applicant and have also gone through the judgment of the trial Court as well as other evidence available on the file.

The complaint was filed by the complainant containing allegations that his father Dev Singh and his sisters Veer Pal Kaur, Shinder Pal Kaur, Karamjit Kaur and also his mother Jangir Kaur were residents of Village Lehra Mohabbet. The sisters of the complainant, namely, Shinder Pal Kaur and Karamjit Kaur were married about ten years back.

The boundary of the field of father of the complainant and Sukhdev Singh was common. Accused-Gurbhagat Singh purchased land measuring 02 kanals and 17 marlas in the name of his wife-Gurmail Kaur. The land adjoining to land purchased by Gurbhagat Singh in the name of his wife, is that of complainant's father and accused persons were interested to take forcible possession of the land, in dispute. On 27.06.2009, the complainant, his father Dev Singh, his mother Jangir Kaur and his sister Veer Pal Kaur went to their field for plantation of crop. At about 7.30 a.m, the accused persons came on their motorcycles, armed with *Kasia*, *Gandasa* and *Soti* and raised *lalkara* to teach a lesson to the complainant. All accused gave injuries to the complainant party with the weapons which they were having. Thereafter, they fled away from the spot. While leaving the place, they gave threats also to the complainant and his family members. The complainant and his father were got admitted in the Civil Hospital, Bucho Mandi and thereafter, they were medico-legally examined by doctor and statements of the complainant and his father were recorded by Head Constable Jaswant Singh. DDR No.12 was recorded on 27.06.2009 but no action was taken against the accused persons.

In preliminary evidence, the complainant examined Dr. Rajan as CW-1, himself examined (Gursewak Singh) as CW-2, Gurjant Singh-eye witness as CW-3, Dev Singh, injured as CW-4, Head Constable Harmail Singh as CW-5 and Jangir Kaur-eye witness as CW-6.

On the basis of preliminary evidence led by the complainant, a *prima facie* case was made out against the accused persons, therefore, the accused persons were summoned under Sections 323, 506 and 354 read with Section 149 of the Indian Penal Code. Charge was framed against them. Subsequent to framing of charge, evidence was led by the complainant. Thereafter, the statements of accused persons were recorded

under Section 313 Cr.P.C.

In defence, the accused examined Gulzar Singh as DW-1, Gurbhagat Singh, who is one of the accused as DW2.

On appreciation of evidence available on file, the accused were acquitted of the charge by the trial Court vide its judgment dated 12.12.2014 on the ground that there were discrepancies and contradictions in the statements of witnesses. The complainant as well as other witnesses had stated that they lodged a DDR at the police station but copy of the same was not exhibited. CW-6 Head Constable Pushpinder Singh was not cross-examined and his evidence could not be read into evidence. It has also been observed by the trial Court that the complainant has not been able to prove filing of any complaint to any police authority regarding the alleged occurrence. Even the witnesses examined by the complainant have also admitted that any respectable member of the locality was not informed regarding the incident. The complainant was not in a position to explain 2½ months' delay in filing of the complaint. A finding was also recorded by the trial Court that the complaint was filed due to property dispute between the complainant and accused persons.

On perusal of statement of the complainant, it appears that not only serious contradictions and discrepancies are there but the complainant could not prove that he was physically assaulted by the accused persons and further that modesty of Veerpal Kaur was also outraged. Complainant Gursewak Singh, while appearing as CW-1, deposed on oath the version as narrated in the complaint. He has also admitted in his cross-examination that he had a land dispute with the accused person-Gurbhagat Singh. He went to Police Station on 29.06.2009 after the incident and also remained admitted in the hospital. The police official recorded the statements of the complainant and his family members

but no action was taken thereupon. The complainant has failed to show that any complaint was moved to the higher officer when no action was taken by the local police. Even no information was given to any respectable member of the village regarding said incident. Similarly, Veerpal Kaur-CW2 has stated in her cross-examination that she never met the police party. She has also denied regarding any intimation to the police or any respectable of the village regarding the occurrence. It was admitted by her that there was old property dispute between the parties.

CW-3 Dev Singh has reiterated the statement of the complainant but in cross-examination, he has stated that he did not inform the police or any respectable of the locality. The dispute between the parties has been admitted by said Dev Singh.

Similarly Gurjant Singh-CW4 has also corroborated the statement made by the complainant. Even he has admitted in cross-examination that he did not accompany the victim complainant to the hospital.

Dr. Rajan-CW7 tendered his affidavit. He, in his cross-examination, deposed that he does not know when the injured were discharged from the hospital. The injured did not narrate the incident to him. It was also stated by him in his cross-examination that the possibility of injuries on the person of Dev Singh and Gursewak Singh, due to fall from motorcycle cannot be ruled out.

DW-1 Gulzar Singh has admitted the land dispute between the parties but he has stated that the matter was resolved by the Panchayat, consisting of himself, his nephew Sukhpal Singh-Sarpanch and other respectable persons of the village.

Similarly, Gurbhagat Singh-DW2 also deposed on the same lines as that of DW-1 Gulzar Singh. Gurbhagat Singh-DW2 is one of the

accused but he deposed in favour of defence.

There is also delay of about 2½ months in filing of the complaint and no reasoning or explanation has been given by the complainant.

As per statement of the complainant, a medical *ruqa* was sent and thereafter, his and Dev Singh's statements were recorded, whereas, in the cross-examination, Veerpal Kaur has admitted that no such statement was recorded by the police. Nothing has been stated in her statement by Jangir Kaur-CW5 regarding tearing away of the clothes of her daughter Veerpal Kaur by the accused persons.

In view of the facts as mentioned above, the complainant is not able to prove the filing of any complaint to the higher authorities regarding the alleged occurrence. Neither any intimation was given to any respectable member of the locality nor it was informed to any other person. It has also not been proved on record that the complaint was filed due to earlier DDR, whereas, the earlier dispute was settled by way of compromise before the Panchayat. The motive has not been proved by the complainant and other witnesses.

Accordingly, there is no merit in the submissions made by learned counsel for the applicant and the application for grant of Leave to Appeal against the judgment of acquittal dated 12.12.2014 passed by the trial Court is declined.

Dismissed accordingly.

18.08.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE