

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

CRR-4042-2012 (O&M)

Date of decision: 18.3.2015

Pyare Lal

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Hardeep Deswal, Advocate for the petitioner

Ms.Mahima, Assistant Advocate General, Haryana

SNEH PRASHAR, J.

1. The present revision petition has been filed against the judgment dated 9.10.2012 passed by learned Sessions Judge, Jind vide which the findings recorded by learned Chief Judicial Magistrate, Jind vide judgment dated 20.3.2012 acquitting respondent No.2, were affirmed.

2. A written complaint dated 2.8.2008 was given by Pyare Lal (revisionist) to the Station House Officer, Police Station Sadar, Jind stating therein that he, his wife Maya Devi and daughter Kamlesh had purchased land measuring one kanal thirteen marlas situated on Safidon Road, Jind, within the revenue estate of village Haibatpur, from Kaushalya Devi wife of Ved Parkash, resident of Panchkula vide registered sale deed dated 7.6.2009 and mutation no. 699 was sanctioned

in their favour regarding the sale. Kaushalya Devi had purchased the land from one Lakhi s/o Shadi on 15.6.1972. Prior to that Lakhi had given the land on lease for 99 years to Sat Bhushan s/o Banarsi Dass, resident of Jind. After the death of Sat Bhushan, his son Arun Kumar had relinquished the lease hold rights in favour of Kaushalya Devi by executing a release deed dated 7.6.1999. As such, Kaushalya Devi had a right to sell her share in the land. She had delivered the possession of the land to them (complainant etc.) at the time of registration of the sale deed dated 7.6.2009. Prior to that she was shown in cultivating possession on the basis of report no.248, Register no.16 and she remained owner in possession of the said land from 1972 to 1999. On 1.8.2008, Suraj Mal Pahlwan, resident of village Sisar alongwith 15-20 persons laced with lethal weapons came to him (revisionist Pyare Lal) and said that the land belonged to Giano Devi and he had been sent to take possession of the same. He asked him to leave the land or lose his life. Out of fear, he came to his house from the spot because Suraj Mal etc. being criminal type of person wanted to forcibly occupy the land.

On the statement of the complaint, FIR No.258 dated 10.9.2008 was registered under Sections 148, 452, 506 read with Section 149 of the Indian Penal Code at Police Station Sadar Jind. During investigation, Sections 148 and 149 IPC were deleted. Suraj Mal Pahlwan-respondent was arrested and on completion of investigation, he was challaned and sent for trial.

3. The respondent was charge-sheeted for commission of offence punishable under Sections 456, 506 of IPC. Evidence of the

prosecution was recorded. Statement of the accused under Section 313 of the Code of Criminal Procedure was recorded and on his plea of innocence, he was called upon to adduce evidence in defence.

4. On conclusion of trial, considering the evidence adduced and submissions made by the learned Public Prosecutor for the State and learned defence counsel, the respondent was acquitted of the charges leveled against him.

5. Feeling aggrieved, the complainant –revisionist preferred an appeal, which was dismissed by learned Sessions Judge, Jind vide judgment dated 9.10.2012.

Impugning the judgment dated 9.10.2012 passed by learned Sessions Judge, Jind the instant revision petition was preferred by the complainant-petitioner.

6. Heard the submissions made by Mr.Hardeep Deswal, Advocate representing the petitioner and Ms.Mahima, Assistant Advocate General, Haryana for the State.

7. To begin with learned counsel for the revisionist argued that the respondent was acquitted mainly on the ground that the First Information Report was got registered by the complainant-petitioner after an inordinate delay of eight days. The delay in lodging the report was not intentional or fatal to the case since it was the version of the complainant –petitioner that he had immediately reported the occurrence to the police. If the police recorded the FIR after eight days, fault could not be attributed to the revisionist-petitioner. As regards there being no corroboration of the statement of the revisionist-petitioner, it is well

known that no public person comes forward in support of a victim in such type of matters. Moreso, respondent no.2 Suraj Mal had himself admitted during his statement recorded under Section 313 Cr.P.C. that he had gone to the disputed land. His said admission was sufficient for proving the occurrence.

As regards the factum of conviction of the revisionist-petitioner in a murder case, learned counsel contended that the revisionist-petitioner has already filed an appeal against the judgment of conviction and sentence awarded to him by the trial court has since been suspended and he has been released on bail. Moreso, his being an accused in murder case, was no ground to disbelieve his version regarding the occurrence.

8. Scrutinizing the evidence of the prosecution including the testimony of the revisionist, the reasons recorded by learned Sessions Judge, Jind for dismissing the revision were as under:-

“12. In this case, the complainant Pyare Lal was the solitary star witness of the alleged incident who appeared in the witness box as PW2. There is no independent corroboration to his unbelievable deposition. He is a retired teacher. A perusal of his complaint Ex.PW-2/A shows that he did not mention the time of alleged incident in it. However, making a material improvement in this respect in his statement as PW2, he stated the time of alleged incident as 10-11 AM. However, he has categorically admitted in his cross-examination that the place of occurrence is situated on Jind-

Safidon road, a highway on which people and vehicles are available and even a hotel namely Golden Hut exists in its front, but despite that no independent person was joined in the investigation nor examined in the Court. From his statement, it is manifestly clear that the same is totally unbelievable and untrustworthy, because neither in his application Ex.PW2/A nor in his statement as PW2, he disclosed that which of the assailant was armed with which weapon. In his cross-examination also, he categorically admitted that Giano and others are still co-sharers in the disputed land. He further admitted that the mutation sanctioned in their favour was cancelled and the appeal filed by him before the Commissioner was also dismissed on 09.11.2009.

13. There is also unexplained inordinate delay of 8 days in lodging the report with the police, because according to the prosecution version, the alleged occurrence took place on 01.08.2009, but the FIR was lodged on 10.09.2009. The explanation furnished by the complainant that he had contacted the police officials present at the barrier on Safidon Road, Jind, but they asked him to approach the Superintendent of Police, Jind is not satisfactory much less plausible, because he did not report the matter to the police either in the camp office of the Superintendent of Police, Jind or in Police Post, Urban Estate, Jind which as per his

own admission in his cross-examination fall on the way from the place of occurrence to his residence in Urban Estate, Jind. Though from the complaint Ex.PW2/A, it is apparent that the same was got typed on 02.08.2009, but it is not clear from that when it was moved before the police, because there is no receipt number etc. on it. More so, it is manifestly clear from it that it was made by the complainant after due deliberation with his family members. Thus possibility of embellishment of the facts cannot be ruled out.”

9. Learned counsel for the revisionist- petitioner failed to demonstrate any illegality or perversity in the findings of the learned Sessions Judge arising out of misappreciation of the evidence of the prosecution / deposition of the revisionist-petitioner. Indeed, in the First Information Report the revisionist-petitioner named only one person namely respondent No.2 Suraj Mal and remained completely silent with regard to identity of other 15-20 persons, who he alleged were accompanying him. Neither the time of the incident nor the kind of weapon the respondent and other assailants were carrying, were mentioned. In case, the occurrence took place during broad day light i.e. at 10 AM -11 AM, as stated by the revisionist-petitioner during his cross-examination, it is certainly strange that the place of occurrence being situated on highway, no public person being an eye witness of the occurrence was available. The testimony of the revisionist-petitioner was totally vague and inconsistent in itself.

10. Delay in lodging the First Information Report may not be fatal to the case, but in the light of the peculiar facts and circumstances of the instant case, pointed out above, a strong doubt crops up that the story presented was a sheer dubious concoction. No doubt as mentioned in para 14 of the judgment of learned Sessions Judge during the course of arguments learned counsel for the respondent-accused conceded that he had visited the disputed land, but simultaneously he gave the reason for doing so and stated that he had gone there for compromise.

11. In view of the above, finding no ground for intervention in the judgments' passed by the learned courts below, the present revision petition is dismissed.

18.3.2015
gsv

(SNEH PRASHAR)
JUDGE