

In the High Court of Punjab and Haryana at Chandigarh

CRR-2158 of 2014
Date of Decision:15.1.2015

Satish Kumar

---Petitioner

versus

State of Haryana and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Rakesh Dhiman, Advocate
for the petitioner**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

REKHA MITTAL, J.

The present petition has been directed against the judgment dated 10.12.2013 passed by the Additional Sessions Judge, Gurgaon whereby appeal preferred by the respondents-accused against their conviction and sentence for offence punishable under Sections 323, 506 read with Section 34 of the Indian Penal Code (in short “IPC”) has been accepted and the judgment of the trial court is set aside.

The facts relevant for disposal of the present petition are that the petitioner and the accused are neighbours and residents of Indira Colony, Jharsa. As per allegations, there is a Mulberry tree in front of

house of the complainant. On 8.2.2007 at 8-00 p.m., his (complainant's) younger brother Shashi Kapoor and mother Bimla Devi were present at home. Plot adjacent to their house belongs to Mange Ram, his uncle (Tau). In that plot, Mange Ram and his sons Hari Chand and Satbir (accused) were levelling soil with JCB machine and it uprooted Mulberry tree whereupon Shashi Kapoor took objection. The respondents/accused got enraged, Mange Ram caught hold of Shashi Kapoor whereas his sons Hari Chand and Satbir caused injuries to him with spade at his head and body. When he (complainant) went to help his brother, Satbir caused injuries on his head with spade. He screamed and his mother Bimla Devi reached the spot and Satbir and Hari Chand caused injuries at face of Bimla. Blood started oozing from her injuries and she became unconscious. On raising raula, Rajender son of his uncle (Tau) and other persons gathered there. The accused left the spot with their respective weapons giving threat of life to them. The injured were brought to Civil Hospital in a three wheeler but Bimla was referred to Safdarjang Hospital, Delhi. On completion of investigation, challan was presented in the court.

The accused were charged for committing offence punishable under Sections 323, 506 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

To prove its case, the prosecution examined Satish Kumar, complainant PW1, Shashi Kapoor, injured PW2, Rajender, an eye witness to the occurrence PW3, Dharam Singh ASI PW4 and Yoginder Singh, Investigating officer PW5.

The learned Magistrate held the accused guilty of the charged

offence and accordingly they were convicted and sentenced for the said offence.

Feeling dissatisfied with the judgment of the learned trial Court, the matter was carried in appeal by the convicts which was decided in their favour by the Additional Sessions Judge, Gurgaon.

Aggrieved by the verdict of the first Appellate Court, the present petition has been preferred by the complainant-injured.

Counsel for the petitioner has submitted that the Court in appeal grossly erred by intervening in the findings recorded by the trial court which are based upon appreciation of the entire matter in right perspective. It is further submitted that the reasons which weighed in the mind of the Appellate Court to set aside the judgment of the trial court cannot stand the test of judicial scrutiny, therefore, the judgment of the Appellate Court may be set aside and that of the trial court may be restored.

I have heard counsel for the petitioner and gone through the records.

The appellate court has recorded its findings in paras 13 to 18 that persuaded it to reverse the findings of the trial court and held in favour of the convicts. Counsel for the petitioner is not in a position to challenge those findings being the result of mis-appreciation of evidence or non-application of mind. It is pertinent to mention that as per plea of the complainant, he, Shashi Kapoor and Bimla Devi were caused injuries by the assailants with a spade. Bimla Devi, the injured victim did not appear in the witness box to corroborate version of the complainant. The Appellate Court has rightly held that there is no such principle in law that all the

injured must be examined to prove the charge. However, oral version of the complainant and injured Shashi Kapoor does not get corroboration from any source whatsoever. The prosecution did not adduce medical evidence in regard to examination of the injured by Dr. Rekha Yadav or treatment given to Bimla Devi at Safdarjang Hospital, Delhi. Rajender, an alleged eye witness to the occurrence has fairly conceded during cross examination that he was not present at the spot when the injured were inflicted injuries, therefore, his testimony does not corroborate statements of the injured victims with regard to the manner of the occurrence and the persons who caused injuries to the victims. Not only this, testimony of the complainant-injured that they sustained injuries with a spade gets falsified and belied in view of testimony of Yogender Singh ASI PW5, the investigating officer who candidly stated that he did not find use of spade in the occurrence rather injuries were found to have been caused by throwing bricks and stones. Keeping in view various omissions, discrepancies and contradictions discussed in detail in paras 13 to 18 of the judgment of the first Appellate Court, I do not find any error in appreciation of evidence nor there is material on record to hold that the judgment of the Appellate Court is perverse or view taken by the said court is wholly unreasonable or there is non-consideration of any evidence or misreading of evidence etc.

When the facts and circumstances of the present case are examined in the light of principles culled out by the Hon'ble Supreme Court of India in the recent judgment ***Basappa vs. State of Karnataka 2014(2) RCR(Criminal)144***, I do not find any reason much less well founded to disturb the findings recorded by the Appellate court whereby presumption

of innocence in favour of the accused has been re-inforced.

In view of what has been discussed hereinabove, findings no merit, the petition is dismissed in limine.

(REKHA MITTAL)
JUDGE

15.1.2015
PARAMJIT