

CRR-3254-2014

[1]

In the High Court of Punjab and Haryana at Chandigarh.

**CRR-3254-2014 (O&M)
Date of Decision: 27.08.2015**

Sunil Singh and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.A. Sheoran, Advocate,
for the petitioners.

Ms. Trishanjali Sharma, AAG, Haryana.

Mr. Ramender Chauhan, Advocate,
for respondent No.2.

SABINA, J.

Petitioners have filed this petition challenging the order dated 01.10.2010, whereby the Appellate Court had remanded the case to the trial Court for fresh decision.

Learned counsel for the petitioners has submitted that the petitioners had faced trial qua commission of offence punishable under Section 147, 149, 323, 325, 452 and 506 of the Indian Penal Code, 1860. Petitioners were acquitted of the charges framed against them by the trial Court vide order dated 27.08.2011. Aggrieved against the said order

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complainant-respondent went in appeal. Before the Appellate Court, complainant took the plea that the case is liable to be remanded to the trial Court as all the incriminating circumstances have not been put to the accused when their statements were recorded under Section 313 of Criminal Procedure Code, 1973. Learned counsel has further submitted that said grievance, if any, could have been raised by the accused and not by the complainant.

Learned State counsel as well as counsel for respondent No.2 have opposed the petition.

During the course of arguments, it has transpired that it is a case of version and cross version. FIR was registered at the instance of respondent No.2 against the petitioners, whereas a private complaint was filed by the petitioners. The trial Court ordered the acquittal of the accused in both the cases.

Prosecution story, in brief, was that on 21.10.2006 at about 7:30 P.M. Shakti Singh son of the complainant and Shyambir brother of the complainant were sitting in the room, which had been constructed in front of their house. In the meantime, accused armed with weapons came there and inflicted injuries on the person of complainant Virender Singh and his son Shakti Singh and his brother Shyambir and his wife Munni. The trial Court ordered the acquittal of the

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petitioners. Before the Appellate Court, the complainant had submitted that the judgment passed by the trial Court was liable to be set aside as the trial Court had failed to put the medical evidence to the accused at the time of recording of their statements under Section 313 Cr.P.C. Complainant prayed that the case be remanded to the trial Court for a fresh decision after recording the statements of the accused under Section 313 Cr.P.C. The said fact is evident from Para 8 of the judgment of the Appellate Court which reads as under:-

“8. Counsel for the appellant has pointed out that trial-court has committed error while rendering the judgment of acquittal of the accused in this case without proper appraisal of evidence of the prosecution. He has further contended that even the radiologist's opinion pertaining to fracture found on the person of Shyambir Singh has not been put to the accused while recording their statements under section 313 Cr.P.C. which shows the glaring mistake on the part of the trial-court. He has further argued that trial-court has not given any plausible opinion as to why he ignored the medical evidence available on record against the accused before giving them

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clean chit. He prayed for remanding back the case of the prosecution for fresh decision after recording the statements of accused under section 313 Cr.P.C. by putting entire incriminating evidence available on record against them and thereafter, for rendering fresh decision. However, learned counsel for the accused has contended that since matter is old one, therefore, it should not be remanded back for fresh decision otherwise it would take further long time.”

There is force in the argument raised by learned counsel for the petitioners that the complainant could not have taken objection that the statements of the accused had not been correctly recorded under Section 313 Cr.P.C. The said plea could have been taken by the accused. Moreover, a perusal of the judgment of the trial Court reveals that the accused had not been acquitted on account of any fault in the recording of the statements of the accused under Section 313 Cr.P.C.

Thus, in view of the facts and circumstances of the present case, the Lower Appellate Court fell in error while setting aside the judgment passed by the trial Court merely on the ground that statements of the accused had not been

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correctly recorded under Section 313 Cr.P.C.

Accordingly, this petition is allowed and impugned order dated 01.10.2010 is set aside. Appellate Court is directed to dispose of the appeal on merits in accordance with law. Parties are directed to appear before the Appellate Court on 21.09.2015.

August 27, 2015
kapil

(SABINA)
JUDGE