

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

**CRM No. 44069 of 2013 in/and
CRA-D-1232-DB of 2013
Date of decision : 16.3.2016**

Om Parkash

.....Appellant

v.

State of Haryana and others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Sarfraj Hussain, Advocate
for the applicant/appellant

Mr. Kapil Aggarwal, Addl. AG, Haryana
for respondent No.1-State

Mr. Nipun Vashishth, Advocate
for respondents No. 2 to 10

RAMENDRA JAIN, J.

CRM No. 44069 of 2013 :

Heard. Sufficient cause has been shown for condonation of delay in filing of the appeal. The application is, therefore, accepted. The delay of 130 days in filing of the appeal is condoned.

CRA-D-1232-DB of 2013 :

In nutshell, on 6.7.2008 on receipt of a VT message regarding admission of injured Om Parkash, Pushpender and Hukam Singh in Swastik Hospital, Gurgaon, HC Vijay Singh reached there. However, the doctor opined all the injured as unfit to make statement. On the next day HC Vijay Singh recorded the statement of injured Om Parkash, that around 8.45 A.M. on 6.7.2008, respondents No.2 to 10 armed with lathies, iron rods and dandas entered his house. Respondent No.2-Jai Bhagwan by shouting to teach him a lesson for taking money gave a lathi blow on his forehead. Thereafter, all the assailants started beating him and his sons Hukam Singh and Pushpender. They were rescued by Neeraj and Mann Singh. The motive behind the occurrence was of demanding money by him from Jai Bhagwan. Respondents No.2 to 10 while leaving also threatened to kill them.

On the aforesaid statement of the complainant, case was registered against respondents No.2 to 10 for commission of offences under Sections 148, 149, 323 and 506 IPC. Investigation was commenced. Injuries of Hukam Singh were declared grievous and dangerous to life. Accordingly, Sections 325/307 IPC were added. Accused were arrested. Lathies, iron rods and dandas were recovered from them. After completion of investigation, final report under Section 173 Cr.P.C. was presented in the Court only against respondents No.2 to 8.

On commitment of the case to the Court of Sessions, the trial Court charge sheeted respondents No.2 to 8 under Sections 148, 149, 323, 325, 307, 452 and 506 read with Section 149 IPC, to which they pleaded not guilty and claimed trial. During trial, upon an application under Section 319 Cr.P.C.,

accused-respondents No. 9 and 10 were summoned as additional accused and they were also charge sheeted under the aforementioned sections.

It is necessary to mention here that injured Hukam Singh died during trial.

The prosecution in support of its case, examined following 10 witnesses in re-trial, after summoning of accused-respondents No.9 and 10.

Dr. Rajender Chauhan PW1, C. Kapil PW2, Dr. Manish Jha PW3, SI Abhay Singh PW4, Girish Kumar, Draftsman PW5, Om Parkash PW6, Pushpender PW7, HC Vijay Kumar PW8, SI Mahender Singh PW9 and Inspector Sanjay Kumar PW10.

After closure of prosecution evidence, statements of the respondents-accused under Section 313 Cr.P.C. were recorded putting entire incriminating evidence came on record, to which they denied and pleaded false implication.

After hearing learned counsel for both the sides and scanning the evidence on record respondents No.2 to 10 were acquitted vide impugned judgment dated 25.3.2013. Being aggrieved, the present appeal has been filed by the complainant-appellant.

Learned counsel for the appellant contended that the impugned judgment is based on surmises and conjectures. Learned trial Court has wrongly acquitted the private respondents without appreciating the evidence in a prospective manner. Ocular version was duly supported by the medical evidence. Hence, the private respondents were liable to be convicted under all the offences, they were charged with.

We have given our thoughtful consideration to the above

submissions and find the present appeal completely devoid of any merit for the reasons to follow.

Admittedly, cross case for the same incident was also registered against the complainant party. Complainant Om Parkash as PW6 has admitted registration of a case under Sections 294 and 323 IPC against them for the same occurrence. He testified that they did not cause any injury to the accused party. From the above factual position it is evident on record that the complainant party had suppressed the genesis of the occurrence from the Court and thus, their testimonies are not worth reliance in credence.

The defence produced by the private respondents clearly shows that respondents No.3 and 4 Hari Om and Nirmala respectively, had sustained injuries in the same incident. Hence, the complainant's version has rendered doubtful, because of non explaining of the injuries sustained by the above respondents at the hands of complainant party.

The ocular version is also not supported by the medical evidence. As per the prosecution version, the three injured were attacked by 9 assailants with deadly weapons by barging into the house of the complainant. Injured Pushpender had sustained only one bleeding wound on left leg, besides complain of pain, swelling and deformity of left leg. Injured Om Parkash had sustained one lacerated wound on the centre of forehead and one lacerated wound on the bridge of nose. The other two injuries were pain and difficulty in breathing and pain in right upper leg and knee. Injured Hukam Singh had sustained one injury on right shoulder. The above injuries suffered by the complainant party are not so grave in nature, therefore, does not commensurate to the manner alleged by the prosecution, because injuries suffered by

Pushpender though was declared a fracture, but since no X-ray report was produced, therefore, the same cannot be termed as such.

There is interpolation in the medical record also, because in the initial MLR Ex.PL of injured Hukam Singh, no injury on his abdomen was found. PW5 Dr. Lokesh has categorically testified that in MLR Ex.PF prepared in AIIMS, portion A to A1, showing history of hit in the abdomen renal area has been added lateron, because the same is not mentioned in the carbon copy brought by him. He has categorically deposed that he had not found any injury while examining MLC. He clarified that Hukam Singh had history of renal transplant and that there was no medical record to suggest injuries on the person of Hukam Singh as dangerous to life. He also clarified that in MLR Ex.PF though he had referred nature of injuries as dangerous, but it does not mean that he has referred the same as “dangerous to life”. He has also specifically deposed that the injury was only dangerous and not dangerous to life. Since the deposition of Dr. Lokesh has falsified the entire prosecution case qua Section 307 IPC and there is also interpolation and forgery in the medical record, therefore, the private respondents have rightly been acquitted by the learned trial Court.

Since the cross case was registered against the complainant party also, therefore, the story put forth by the private respondents seems to be more probable, more particularly, when the prosecution has changed the place of occurrence and has suppressed the genesis of occurrence. The defence version that, in fact, around 9.00 a.m. on 6.7.2008, respondent No.3 Nirmala daughter of respondent No.6-Jai Bhagwan was passing through the abandoned house of Rajbir being in a dilapidated condition, at that time injured Pushpender son of

complainant Om Parkash was urinating there. On seeing Nirmala, he exposed towards her while urinating. Nirmala got enraged. Several villagers, Hari Om and Rajinder came to the support of Nirmala. Complainant party also came there armed with weapons. A fight ensued, wherein accused Nirmala and Hari Om sustained injuries. The respondent party also caused injuries to the complainant party in their self defence. The defence witnesses namely DW1 Hoshiar Singh Dhillon has proved MLR Ex.DW1/A, DW1/B of Hari Om and Nirmala respectively by testifying that they were examined by Dr. Ajay Kumar. According to the aforesaid MLRs, three injuries were suffered by Hari Om and four by respondent Nirmala. Hence, as discussed above, since the complainant party concealed the above fact, therefore, the entire prosecution story has rightly been treated as doubtful. There are material discrepancies in the statements of the prosecution witnesses which have also rendered the prosecution case doubtful. More so, injured Hukam Singh had come forward completely with a different story that on account of drunken condition of respondent-Jai Bhagwan, they were attacked. However, this deposition was found totally false, because the above incident had taken place in the year 2011, whereas, the occurrence related to this case took place in the year 2008.

The complainant party has also tried its level best to introduce false version which is evident from the fact that PW7 Pushpender gave a statement to the police on 18.7.2008 i.e. after 12 days of the occurrence. He testified that during this period he remained semi unconscious. However, Dr. Manish Jha PW11 has belied his above version by testifying that he was quite well and all his vital parameters were normal. More so, Puspender has suffered only one injury on his leg. Thus, it has rightly been observed by the learned trial Court

that it is not believable that due to such injury on non vital parts, he would have remained semi unconscious for 12 days.

Complainant Om Parkash had stated that blood had oozed out from the injury received by him, but no blood stained earth was taken into possession. There are major contradictions in the prosecution story. The testimonies of the prosecution witnesses are also discrepant on material points.

We have gone through the impugned judgment and found no illegality or perversity in the same.

Accordingly, the appeal being completely devoid of any merit, is hereby dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

16.3.2016
Ashwani