

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-1022-DB-2015 (O&M)

Date of decision: 02.03.2016

Rakesh Kumar

..... Appellant

Versus

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 the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Krishan Singh, Advocate
for the applicant-appellant.

RAMENDRA JAIN, J.

CRM-6289-2016

Sufficient cause has been shown for restoration of main appeal which was dismissed for want of prosecution on 09.02.2016. Therefore, the application is allowed. The main appeal i.e. CRA-D-1022-DB-2015 is restored to its original number.

CRM-21351-2015

Sufficient cause has been shown to condone the delay in filing the present appeal.

Therefore, application is accepted. The delay of 10 days in filing the instant appeal is condoned.

CRA-D-1022-DB-2015

The appellant has preferred the present appeal against the judgment dated 31.01.2015, passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, acquitting respondents No. 2 to 8 under Sections 323/326/333/506 read with Section 34 of the Indian Penal Code (IPC).

2. Briefly stated, around 6.30 a.m. on 09.03.2013, respondents No. 2 to 8, had caused grievous and simple injuries to the appellant. Motive behind the occurrence was that the appellant as a Sarpanch of village Mandkheri, through district administration had got vacated the Panchayat land from the illegal possession of respondent No. 3-Krishan Lal and others. Since there was a proposal to construct a Dharamshala for the inhabitants of B.C. Category, therefore, on the date of incident, the appellant had collected some building material at the spot. However, in the meanwhile, respondents No. 2 to 8 reached there. They were armed with lathies, dandas, gandasis, etc. They fell the appellant on the ground and continuously gave him beatings with their respective weapons. The occurrence was witnessed by Ali Sher and Jarnail, who came at the spot and rescued the appellant. He was medico-legally examined at Civil Hospital, Jagadhri.

3. On the above statement of the appellant Ex. PG recorded by the police, a case under Sections 323/324/506/110 read with Section 34 IPC was registered. The police swung into action. During the course of investigation, the Investigating Officer, ASI Suresh Pal recorded the statements of relevant witnesses. He arrested respondents No. 2 to 8 and

got recovered various weapons of offence, pursuant to their separate disclosure statements. After taking opinion of the doctor regarding nature of injuries suffered by the appellant, Section 326 IPC was added. After completion of investigation, final report under Section 173 (2) Cr.P.C. was presented before the learned Area Magistrate.

4. Since the offence under Section 333 IPC was exclusively triable by the Court of Session, therefore, on commitment of the case to the Court of Session, the learned trial Court, charge-sheeted the respondents No. 2 to 8 under Sections 323/326/333/506 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

5. The prosecution in support of its case examined as many as 10 witnesses, besides tendering some documents.

6. PW-1 Dr. Deepika Gupta, through her affidavit Ex. PA, testified that on 09.03.2013, she had medico-legally examined appellant-Rakesh Kumar vide MLR Ex. PC and found three injuries on his person. Only one incised wound on dorsum of left hand laterally below little finger, spindle shaped of length 5 to 6 cm. width 2 cm. and tissue deep, bleeding was present. Mobility was restricted. Besides it, there was complaint of pain in both thighs and lower abdomen without any external mark of injury. She further testified that injury No. 2 on the dorsum of left hand was caused by a sharp edged weapon, whereas the remaining injuries were caused by blunt weapons. After seeing X-ray report, she deposed that there was a fracture of 5th metacarpal of left hand and thus, the same was declared grievous in nature. She had sent ruqa Ex. PB to the police station.

7. PW-2 Roshan Lal deposed that after completion of investigation he simply prepared the final report under Section 173 Cr.P.C.
8. PW-4 HC Rajinder Kumar had recorded formal FIR Ex. PJ on receipt of ruqa from PW-6 ASI Suresh Pal and made his endorsement Ex. PK on the same.
9. PW-8 Surender Kumar, Clerk of the office of D.D.P.O. simply produced the summoned record i.e. letter No. 615 dated 01.02.2013.
10. PW-9 Suresh Kumar, Panchayat Secretary of village Mandkheri had produced resolutions dated 12.11.2012, 05.02.2013 and 06.03.2013, Ex. PY, Ex. PZ and Ex. PAA respectively. He also produced report dated 06.03.2013 Ex. PBB. He testified that the same bears his signatures as well as of B.D.P.O. and the appellant.
11. The aforesaid witnesses are formal in nature.
12. PW-10 Partap Singh, B.D.P.O. testified that on 06.03.2013, the possession of Panchayat land was taken from respondent No. 3 and others with the help of police and civil administration and a report Ex. PBB in this respect was prepared at the spot under his signatures, besides the signatures of SI/SHO Nirmal Singh.
13. PW-3 Rakesh Kumar-appellant, has supported the prosecution story in its totality.
14. PW-5 Ali Sher, the alleged eye-witness of the occurrence also corroborated the testimony of appellant-Rakesh Kumar (PW-3).
15. PW-6 ASI Suresh Pal, Investigating Officer deposed about

the steps taken by him during the course of investigation.

16. PW-7 HC Rajesh Kumar, remained associated with the aforesaid Investigating Officer during the course of investigation and corroborated his testimony qua the steps adopted by him.

17. After the closure of prosecution evidence, statements of respondents No. 2 to 8 under Section 313 Cr.P.C. were recorded, putting entire incriminating evidence brought on record against them to which they denied and pleaded their false implication.

18. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial Court acquitted respondents No. 2 to 8 by giving them benefit of doubt vide impugned judgment.

19. Learned counsel for the appellant contended that the impugned judgment is based on surmises and conjectures. The learned trial Court has erred in acquitting the respondents, despite the fact that it was well proved on the record that around 6.30 a.m. on 09.03.2013, respondents No. 2 to 8 in furtherance of their common intention had caused simple as well as grievous hurt to the appellant with their respective blunt and sharp edged weapons, while he was discharging his duties as a public servant. The motive behind the occurrence was also proved beyond any shadow of doubt that appellant had got vacated the Panchayat land from the illegal possession of respondent No. 3 and others with the help of administration. The learned trial Court has failed to appreciate that the testimony of appellant was corroborated by PW-5 Ali Sher. Recoveries of weapons of offence were also made in pursuance of

the disclosure statements suffered by respondents No. 2 to 8.

20. After giving our thoughtful consideration to the above submissions, we find the present appeal completely devoid of any merit for the reasons to follow.

- (i) There was unexplained delay of 36 hours in lodging the FIR. The occurrence allegedly took place around 6.00 a.m. on 09.03.2013, but the FIR was lodged around 6.15 P.M. on the next day which has rendered the prosecution case doubtful.
- (ii) The learned trial Court has observed that some manipulation was done in the application Ex. PL moved by the Investigating Officer to the treating doctor to know the condition of the appellant to record his statement. Initially, the treating doctor had written that the patient was 'fit' to make statement, but later on the word 'un' was added before the word 'fit' which was visible from naked eye. To clarify the above discrepancy, the author of the same was not examined. Hence, the above manipulation had created doubt in the mind of the Court. The medical evidence and ocular evidence is contradictory to each other. The appellant as PW-3 deposed that respondent No. 3- Krishan Lal had given a gandas blow on his palm, but no such injury was shown in the MLR, rather a sharp edged injury has been shown below his little finger.

More so, no visible injury i.e. abrasion, contusion or laceration was found on any part of the body of injured during his medico-legal examination, contrary to his version that he had sustained 14 injuries by dandas, lathies and gandasi at the hands of respondents No. 2 to 8. Even no medical opinion was sought whether the sharp injury received by the appellant was possible with the alleged recovered gandasi. More so, the gandasi was not shown to the doctor. Even the presence of PW-5 Ali Sher, the alleged witness of the occurrence was doubtful.

(iii) No resolution was produced on record to prove that the appellant was discharging his official functions at the time of alleged incident. Therefore, the prosecution has failed to prove charge under Section 333 IPC against respondents No. 2 to 8.

21. Learned counsel for the appellant has not been able to put any dent in any of the above findings of the learned trial Court. Hence, finding no other option the same are to be upheld.

22. In view of the above discussion, the instant appeal being completely devoid of any merit is dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

March 02, 2016

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