

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

**CRA-D-1213-DB of 2014
Date of decision :19.1.2016**

Chamela Ram

.....Appellant

Versus

State of Haryana and another

.....Respondents

**CORAM : HON'BLE MR.JUSTICE S.S. SARON
HON'BLE MR.JUSTICE GURMIT RAM**

1. To be referred to the Reporters or not? Yes / No
2. Whether the judgment should be reported in the Digest? Yes / No

Present :- Mr.J.K. Goel, Advocate
for the appellant.

GURMIT RAM, J.

1. This appeal is preferred by above-said appellant Chamela Ram (complainant) assailing the judgment dated 12.5.2014 passed by the learned Additional Sessions Judge, Karnal in criminal case bearing FIR No.96 dated 28.4.2012, u/Ss 452 and 307 of the Indian Penal Code ('IPC' – for short), Police Station Butana vide which accused Dharam Pal (herein respondent No.2) was acquitted in this case by giving him benefit of doubt.

2. The prosecution version, in brief, as put forth before the learned trial Court was that on 28.4.2012 ASI Joga Singh of Police Station Butana along with other police officials was present in the area of bus-stand, Nilokheri in connection with patrolling, where came to him complainant Chamela Ram son of Datu Ram, resident of village Sandir, who besides producing his MLR No.SA/6/12 of the said date made his statement Ex.P7

before him, which was as under:-

“He is labourer by profession. About one and a half years ago, his nephew Dharam Pal son of Babu Ram had broken the wall of *varandah* of his cattle in front of his residential house. Further, he forcibly installed his fodder cutting machine therein, besides tying his cow to grab his *varandah*. In this connection, he filed a case against his nephew in the Court which was decided in his favour. Thereafter, he constructed the wall today morning which was demolished by his nephew about one and a half years ago and untied his cattle from the *varandah* and tied them in front of his (Dharam Pal's) house. Today at about 9:00 A.M., his nephew trespassed into his house and started abusing them. He further said that today he will teach him a lesson for constructing the wall and also for untying his cattle from the *varandah*. He will not leave him alive. Then he with the intention to kill him throttled his neck with a *parna* i.e. a piece of cloth. His son who was present at the spot rescued him from the clutches of the accused with great difficulty by intervening the matter. He would have been killed by his said nephew, had his son Vikram Singh not rescued him. Reference was also made to a case bearing FIR No.69 dated 9.9.2012 u/Ss 323, 452, 506 read with Section 34 of the IPC, Police Station Butana stated to be pending against his nephew and his wife Rani Devi. Prayer was made for taking legal action against his nephew Dharam Pal (accused).”

3. After recording the above statement of complainant, it was read

over to him, who then thumb marked the same after admitting it to be correct. Then ASI Joga Singh made his endorsement on the above-said statement (Ex.P7) of the complainant and sent ruqqa to the police station, on the basis of which, the FIR (Ex.P9) was registered in this case. Then he visited the spot of occurrence and prepared its rough site-plan. Further he also recorded the statements of witnesses. He also arrested the accused who during interrogation suffered disclosure statement and got recovered the alleged *parna* (sheet of cloth) from his residential house which was taken into police possession vide a memo after preparing its parcel. Then opinion of the doctor with regard to nature of injury by producing before him this *parna* was taken, who gave his opinion that possibility of injury No.1 being caused by this *parna* cannot be ruled out, which was anyhow declared as simple in nature. On completion of investigation, challan against the accused was presented in the Court of learned Illaqa Magistrate who after making compliance of the provisions of Section 207, Cr.P.C., committed this case to the Court of learned Sessions Judge, Karnal for its trial.

4. Finding a prima facie case u/Ss 452 and 307 of the IPC against the accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

5. The prosecution in order to establish its case against the accused examined nine witnesses in total.

6. Then the accused was duly examined as required u/S 313 of Cr.P.C. Entire incriminating evidence as brought on the file during trial of the case against him was put to him, which he denied entirely and pleaded his innocence and false implication in this case.

7. In defence, accused also examined two witnesses.

8. The learned trial Court after hearing the learned counsel for both parties and going through the record as well acquitted the accused of the charges framed against him by giving him benefit of doubt vide the impugned judgment.

9. The appellant (complainant) being not satisfied with the impugned judgment has come up in the instant appeal. Record of the learned trial Court was requisitioned.

10. We have heard learned counsel for the appellant and perused the record with his able assistance.

11. Learned counsel for the appellant has firstly contended that while passing the impugned judgment, the learned trial Court did not properly weigh the fact with regard to the civil litigation going on between the parties. Then it is also his contention that there was clear cut opinion of PW1 Dr. Sandeep Abrol that as per the MLR Ex.P1, nature of injury was such that could be caused by a *parna*. Then during medical examination of the appellant, a bruise of the size of 3 cm x 2 cm on the left side of neck 8 cm below left ear was found, but the learned trial Court brushed aside this medical evidence as well as above opinion of the doctor without assigning any valid reason. The alleged delay in lodging the FIR was also explained by the prosecution during trial of the case, but the learned trial Court had also failed to take judicial notice of this explanation while disbelieving the version of prosecution on the ground of this delay.

12. For the proper appreciation of above contentions of learned counsel for the appellant, we deem it expedient to look at the evidence of prosecution led during the trial of the case, the sum and substance of which is as under:

Complainant Chamela Ram in order to support the prosecution version appeared during trial of the case as PW9. He made his statement in the Court on the same line as made by him before the police on 28.4.2012 vide his statement Ex.P7.

PW8 Vikram Kumar son of the complainant, as per the case of prosecution was present at the spot and had witnessed the alleged occurrence. It was found mentioned in his statement that accused would have certainly killed his father, had he not interfered into the matter. Further he corroborated the prosecution version by lending support to the statement of his father PW9.

PW1 Dr. Sandeep Abrol was posted as Medical Officer, General Hospital, Nilokheri on the relevant date. He medico-legally examined complainant Chamela Ram and found following injury on his person:

“History of assault. Complaining of pain around neck. Bruise 3 cm x 2 cm on left side neck 8 cm below left ear.”

Further he proved the carbon copy of the MLR as Ex.P1 and reported injury as simple in nature caused by blunt weapon. Further, on 11.5.2012, he gave opinion Ex.P2 on police request that possibility of injury No.1 mentioned in this MLR being caused by *parna* Ex.P3 cannot be ruled out, which was produced before him by the police at that time in a sealed parcel.

The Investigating Officer, Joga Singh ASI appeared as PW5. He stated that he recorded the statement of complainant Ex.P7 on 28.4.2012, upon which he made his endorsement Ex.P8, on the basis of which FIR Ex.P9 was recorded. Further he visited the spot of occurrence

and prepared rough site-plan Ex.P10. Further he deposed about the arrest of the accused and proved his disclosure statement Ex.P5 suffered by him during interrogation. Further he also proved the recovery of *parna* which was got effected by the accused as per his disclosure statement and the recovery memo Ex.P6 vide which this *parna* after preparing its parcel was taken into police possession. Ex.P11 is the rough site-plan of the place of recovery. Then he also got prepared the scaled site-plan (Ex.P4) of the spot of occurrence.

13. In this case, it is admitted plea of prosecution that the alleged occurrence took place on 28.4.2012 at about 9:00 A.M. Then as per the MLR Ex.P1, injured was examined by PW1 Dr. Sandeep Abrol on the same day at 2:25 p.m. Then it also came in the cross-examination of PW8 Vikram Kumar son of the complainant that he and his father went to hospital in an auto which was at the distance of about 3 kms. from the village. Then as per the version of complainant, the accused had throttled his neck by putting his *parna* around it with an intention to kill him and had caused the alleged injury to him. If the matter had been so, then the delay of 5 ½ hours in the medical examination of the injured creates a doubt about the correctness of prosecution version. There is no explanation on the part of complainant as to what he had been doing during this period of 5 ½ hours before his medical examination. Then it had come in the cross-examination of PW8 as above-said that the hospital was at the distance of about 3 kms. from the village and they went to hospital in an auto. Then another interesting point to note in this case is that the matter was reported to the police at about 6:00 p.m. on the same day, so there is also delay of about nine hours in lodging the FIR. Then it was also found mentioned in the MLR (Ex.P1) that patient was

fully conscious and cooperative, when he came to the hospital and was medico-legally examined. Then it also came in the statement of PW1 as above discussed that the alleged injury on the person of complainant was found to be simple in nature. If this witness had given the opinion Ex.P2 that this injury could have been caused with *parna* (Ex.P3), then that does not mean that prosecution case stood established against the accused, when there is no evidence on the record that this injury was dangerous to life. Then it also came in the cross-examination of this witness that this injury could not be self inflicted, but its possibility having been caused by friendly hands cannot be ruled out. So the evidence with regard to the offence under Section 307, IPC, was quite lacking in this case.

14. Then certain discrepancies were also found in the evidence of prosecution. During cross-examination PW9 Chamela Ram stated that the alleged wall was constructed on the same day before 9:00 A.M. It took about four hours for its construction. The meson and labourers had also left the spot before the occurrence. PW8 Vikram Kumar, the son of the complainant, on this point deposed that accused was having a grudge against them, since they had raised wall in their portion of *varandah*. Then it was also found mentioned in his cross-examination that the alleged wall was got constructed after the decision of the civil suit, but he failed to tell about the exact dates regarding its construction as well as of the decision of the civil suit.

15. Then according to PW9, he became unconscious at about 9:00 A.M. and regained consciousness at about 5:00 p.m. His son accompanied him to the hospital. Then his son as PW8 had stated in his cross-examination that he went to the school at 8:30 A.M. on a bicycle. At that

time, the school timing was at 10:00 A.M. and the alleged occurrence took place on Friday. His brothers also accompanied him to the school. He accompanied his father to the hospital after this occurrence which took place at 10:00 A.M. Then in the MLR Ex.P1, it was not recorded that injured was accompanied by any body, when he came to the hospital for medical examination. Then PW8 on the one hand has been stating that he had witnessed the occurrence since he was present at the spot, while on the other hand he has been stating that on the date of occurrence he left for his school at 8:30 A.M. along with his brother. Then as above-said in the MLR Ex.P1, the fact of accompanying PW8 with PW9 was not found recorded, which further renders the presence of PW8 at the spot at the time of the alleged occurrence to be highly doubtful.

16. Then as per the copy of judgment Ex.P14, the present appellant had filed a suit for mandatory injunction with consequential relief of permanent injunction against his brother Babu Ram (father of respondent No.2-herein). In this suit, he took the plea that the alleged wall was demolished by the defendant and others without specifically mentioning the name of present respondent No.2.

17. Then in the copy of judgment Ex.D3 dated 21.3.2014 rendered in criminal case bearing FIR No.105 dated 19.4.2011, Police Station Butana, it is found mentioned that this case was got registered against the present respondent No.2 and his son Jony at the instance of complainant Singari Devi, the wife of present appellant. In this case, it was her plea that the alleged wall was demolished by Dharam Pal (herein-respondent No.2) along with his sons on 19.4.2011 at about 8:00 A.M. So in the above-said civil suit which was disposed of vide judgment Ex.P14, the present

appellant took the plea that the alleged wall was demolished by his brother Babu Ram and others without mentioning the name of Dharam Pal (respondent No.2 - herein) specifically and whereas his wife Shingari Devi in criminal case which was decided vide judgment Ex.D3 had raised specific allegation in this regard against Dharam Pal (respondent No.2- herein) and his sons. After trial of the case, he (respondent No.2 herein) and his son were acquitted in this case vide this judgment.

18. Then factum of previous litigation between the parties is also admitted by the prosecution witnesses. PW9 Chamela Ram(complainant) in his cross-examination admitted that prior to this occurrence, proceedings under Sections 107/151, Cr.P.C., were initiated against both the parties. Then PW8 Vikram Kumar in his cross-examination admitted that three cases are pending in the Court between the parties. So far the plea of previous litigation is concerned, it can be used both way i.e. either in favour of the prosecution or in favour of the accused. Prosecution alone cannot get any benefit out of it.

19. In the light of above discussion, this appeal being found to be meritless stands dismissed and disposed of accordingly.

Copy of this order be sent to the quarter concerned for strict compliance.

19.1.2016
Brij

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE