

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.1965 of 2014

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Date of decision:20.10.2016

Birkha and others

...Petitioners

v.

State of Haryana and others

Respondents

.....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ashok Arora, Advocate for the petitioners.

Mr. Vikas Chopra, Deputy Advocate General, Haryana for
the respondent-State.

Mr. Dinesh Kumar, Advocate for respondents No.2 to 4.

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Inderjit Singh, J.

This criminal revision petition has been filed under Section 401 Cr.P.C. against the impugned judgment dated 24.12.2013 passed by learned Additional Sessions Judge, Hisar, whereby the learned lower appellate Court has accepted the appeal filed against the judgment of conviction dated 22.7.2009 and order of sentence dated 23.7.2009 passed by the learned Judicial Magistrate Ist Class, Hansi and the accused have been acquitted by giving the benefit of doubt.

Notice of motion has been issued in this case.

Mr. Vikas Chopra, learned Deputy Advocate General, Haryana

has put in appearance on behalf of the respondent-State and Mr. Dinesh Kumar, learned Advocate has appeared for respondents No.2 to 4 and contested this criminal revision petition.

I have heard learned counsel for the petitioners as well as learned Deputy Advocate General, Haryana and learned counsel for respondents No.2 to 4 and have gone through the record. Record of the lower Courts has also been summoned.

The brief facts of the case as noted down in the judgment dated 24.12.2013 passed by the learned Additional Sessions Judge, Hisar, are as under:-

“Brief facts, necessary for the disposal of the present appeal are that on 25.07.2002, three medical ruqa along with MLRs of Nihal Singh, Narain and Birkha all sons of Richpal residents of Dhani Kumharan were received in Police Station Sadar Hansi from General Hospital, Hansi. H.C. Surendra Kumar visited General Hospital, Hansi to record the statement of the injured but they were opined to be unfit for making statement. H.C. Surendra Kumar again visited the General Hospital on 27.07.2002. He recorded the statement of injured Narain Singh to the effect that they (Narain etc.) were six brothers and two sisters, all married and residing separately. Their agriculture land was not partitioned formally. However, they cultivated their shares by way of mutual partition. On 25.07.2002 at around 7.30 p.m., the complainant and his brothers Birkha and

Surjit were planting cabbage plants in their fields. When Surjit lifted some earth from the common passage, Rajpal, Nihal Singh, Dharmpal who were working in the adjacent field came there and started hurling abuses. Complainant also reached there. Rajpal instantly inflicted a Kasola blow on the right hand of complainant which got hit slightly below the elbow. Dharmpal hit a jalley straightway on his right hand on the same place. Then Nihal Singh hit Kasola from back side on the left leg of the complainant. The complainant fell down. The complainant party raised shouts of Mardiya-Mardiya. On hearing the shouts, the neighbouring land owners viz. Bharat Singh son of Maru Ram and Ramesh son of Dayal Singh rushed to the place of occurrence. On seeing them, the assailants left the place of occurrence with their respective weapons while raising threats of life at a future opportunity to them. Birkha and Surjit were also stated to have received injuries along with the complainant. It was also admitted that the complainant side had also inflicted injuries to the accused in their private defence. Legal action was called for against the accused. Statements of witnesses under Section 161 Cr.P.C. were recorded. Accused Rajpal and Dharmpal were arrested on 31.07.2002, accused Nihal Singh was arrested on 06.08.2002 and later on they were released on bail by the Court. Report under Section 173 Cr.P.C. was submitted against the accused in

the Court for trial.”

The learned Judicial Magistrate Ist Class, Hansi, vide judgment of conviction dated 22.7.2009 convicted the accused for the offences under Sections 323 and 326 IPC both read with Section 34 IPC and vide order of sentence dated 23.7.2009 the accused were sentenced to undergo rigorous imprisonment for three months for the offence under Section 323 read with Section 34 IPC. They were further sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹500/- each and in default of payment of fine they sentenced to further undergo imprisonment for fifteen days for the offence under Section 326 read with Section 34 IPC. Both the sentences were ordered to run concurrently.

Aggrieved against the judgment of conviction and the order of sentence, accused filed appeal before the learned Additional Sessions Judge, Hisar, who after hearing the learned counsel for the parties acquitted the accused by giving them the benefit of doubt.

I have gone through the judgments passed by both the Courts below. The judgment passed by the learned Additional Sessions Judge, Hisar, in no way, can be held as perverse or against the evidence. There is nothing on the record to show that any illegality has been committed by the learned Additional Sessions Judge.

At the time of arguments, learned counsel for the petitioners has not pointed out as to which material evidence has been misread by the learned appellate Court below and as to which material evidence has not been considered by that Court.

From the perusal of the record as well as the findings given by the lower appellate Court, I find that the findings have been given as per evidence while appreciating the evidence in proper manner.

Admittedly, it is a case of version and cross-version. Cross-case in respect of the same occurrence bearing FIR No.191 dated 27.7.2002 was registered for the offences under Sections 323, 326, 506 read with Section 34 IPC at Police Station Sadar, Hansi, wherein Narain Singh PW-5, Birkha Ram PW-6 and Surjit PW-7 were cited as accused. In the said case, Narain Singh, Birkha Ram and Surjit were held guilty and convicted by learned trial Court for committing the offences under Sections 323 and 325 read with Section 34 IPC regarding which the appeal is pending before the same Court.

At the time of arguments, learned counsel for the petitioners conceded that the complainant party has been cited as accused in the FIR. He also admitted that cross-version was registered against them for causing injuries under Sections 323 and 325 IPC. Learned Additional Sessions Judge after going through the evidence held that Nihal Singh also received injuries in the occurrence in question. PW-3 Dr. S.K. Gupta, in his cross-examination admitted that he also medico-legally examined Nihal Singh vide MLR Ex.D.1. The Court held that the injuries on the person of Nihal Singh have not been explained by the prosecution in this case. Accused Nihal Singh received simple as well as grievous injuries from the accused of that case, who are complainant side in the present case. It is also held by the learned appellate Court that no cogent evidence has been placed on record

[6]

by the prosecution that the accused of this case were the aggressor party in the occurrence in question. Further, the Court held that the occurrence took place on common passage. The Court also held that the prosecution failed to prove that the accused of this case were aggressors in the occurrence in question and also failed to explain the injuries on the person of Nihal Singh and there are also the discrepancies etc. in the case. Further more, Bharat Singh and Ramesh have not been examined by the prosecution, who also reached on the spot and were independent witnesses. The Court held that a reasonable doubt exists in the prosecution version. The findings given by the learned appellate Court are correct as per evidence and law. In no way, it can be held as perverse or illegal. The judgment has been passed by the learned Additional Sessions Judge, Hisar, by appreciating the evidence in right perspective and is correct as per evidence and law and does not require any interference from this Court.

Therefore, finding no merit in the criminal revision petition, the same is dismissed.

October 20, 2016.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No