

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

CRR No.187 of 2016 (O&M)

Date of decision: 13.12.2016

Bulaki Ram

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr.D.K.Sihag, Advocate for the petitioner.

JITENDRA CHAUHAN, J. (Oral)

The present revision petition has been directed against the judgment dated 8.10.2015 whereby judgment passed by Additional Sessions Judge, Fazilka in CRA No.1161/2013 was upheld.

Brief facts of the case are that in pursuance to the complaint dated 13.6.2007 moved by the complainant against respondents No.2 to 4 an FIR No.115 dated 25.3.2007 was registered. It was alleged that the respondents after hatching a conspiracy in order to commit theft started demolition of the boundary wall of the plot owned by the complainant with the help of cross-bars. On hearing the noise, the servant of the complainant, namely, Bihari Lal reached on the spot to prevent them from doing an illegal act but the accused did not pay any heed to them rather they threatened to kill him. On telephonic information passed by said Bihari Lal, the complainant reached on the spot but the accused by

that time had already left the place and had taken away bricks and other articles including cultivators, part of the sowing machine and other agricultural implements after loading them on *Pitter Rehra*. The learned trial Court acquitted the respondents holding that prosecution had failed to bring the guilt of accused persons beyond a reasonable shadow of doubt.

It is contended that lower Appellate Court was swayed by the findings recorded in the suit filed by Ram Sarup etc. against Bihari Lal which stood decreed but the appeal against the same was accepted by learned Additional Sessions Judge vide judgment dated 7.3.2013. The observations of the learned lower Court to the extent that the civil litigation was ultimately decided in favour of the respondent and the finding recorded by the learned lower Court is on the basis of the decision rendered in civil suit and without adverting to the facts involved in the present FIR. Learned Appellate Court further erred in holding the information supplied by the eye witness Bihari Lal to the complainant as hear-say evidence and without appreciating the material documents proved by PW3, Pala Ram as Ex.PW3/A and Ex.PW3/B from the accused persons in presence of Pala Ram and Har Kishan. Both these witnesses were examined as PW3 and PW6 respectively. He further submits that the Courts below erred in holding that the complainant failed to inform the police immediately. The court failed to appreciate the fact that occurrence in the present case took place at

brought to the notice of the Authorities without any delay whereas, the Appellate Court has recorded that the information was received in the evening. He further states that the trial Court further erred in observing that PW1, Gulati Ram failed in producing any bill regarding the purchase of bricks whereas the same were produced on file Mark P1. As per the allegations the accused persons committed theft of articles laying in the plot after demolishing the boundary wall. However, there is a dispute regarding the ownership of the plot in question. The plot infact was owned by Ram Sarup, husband of Ram Devi accused, who had filed suit for permanent injunction restraining the defendants Bihari Lal and Ram Sarup from interfering in the possession qua the plot in dispute. The said suit was decreed by the learned Appellate Court vide judgment Ex.PX. Appeal filed against the said judgment before the learned Appellate Court, was accepted and the suit of the plaintiff was dismissed. The civil litigation is still subsisting between the parties.

From the record, it emerges that there are material discrepancies in the case of the prosecution which go to the roots of the matter. As per the statement of PW2 Bihari Lal, the whole operation of removing the articles took about 1-1/2 hour. This also suggests that there was sufficient time and opportunity with the complainant to report the matter immediately to the police whereas he chose to inform the complainant Bulaki Ram, who made the complaint on the

subsequent date. It is also to be noticed that the plot in dispute is

located in a thickly populated area and it is highly improbable that none of the neighbours would come and restrain the accused. Further more no independent witness has been examined by the prosecution.

As per the disclosure statement of accused Parmanand allegedly 700 bricks were removed from the house of Buta Singh in the presence of PW1 Pala Ram. However, neither Buta Ram was joined as witness of the recovery nor has been cited as accused in the case. Therefore, learned Appellate Court has rightly observed that recovery of bricks in the matter has become doubtful. Learned counsel is unable to support his assertion that judgment in appeal is contrary to the evidence and erroneous in the facts and circumstances of the present case. Learned counsel for the petitioner has not been able to cite that certain evidence has been ignored or the view taken by the learned Court below suffers from any perversity.

In the circumstances, this Court feels that the judgment of acquittal passed by the learned Courts below do not suffer from any illegality or perversity. Accordingly, the same are upheld and the present revision petition is dismissed.

13.12.2016

Meenu

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether Reportable	-	Yes/No