

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-480-2014 (O&M)

Decided on: 05.08.2016

Dilbagh Singh

.... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sanjay Singh , Advocate, for
Mr. Inderpal S. Parmar, Advocate,
for the petitioner.

Mr. R.S. Nain, AAG, Punjab.

Jitendra Chahuan, J. (Oral)

This revision is directed against the judgment dated 30.10.2013 passed by learned Additional Sessions Judge, Ludhiana vide which the respondents No.2 to 6 were acquitted in appeal in case FIR No.30 dated 01.02.1997, registered under Sections 323, 324, 452 and 148 read with Section 149 IPC, registered at P.S. Division No.2, Ludhiana.

In brief, the case of the prosecution as recorded in the judgment passed by the trial Court is as under:-

“In brief, the prosecution story is that the present case was registered on the basis of application of complainant Dilbagh Singh, the contents of which in brief are that Smt. Bhajan Kaur (wife), Charanjit Singh and Amrik Singh (sons of the complainant own property bearing No.B XIV, 2475, Ajit Nagar, Suffian Road, Ludhiana. The property was unfit and unsafe for human habitation as such Smt. Bhajan Kaur, Charanjit Singh and Amrik Singh have already filed a petition for ejectment against Pritam Singh, which is pending in the Court. It is further stated in the application that the major part of the roof had already fallen down. Pritam Singh with the help of some his companions threatened to reconstruct the

shop without the consent of his wife and sons. Due to this reasons, Bhajan Kaur, Charanjit Singh and Amrik Singh filed a suit for permanent injunction restraining Pritam Singh from making any structural alterations or re-constructing any part of the shop in dispute and in the said case, the Court pleased to grant an order of stay against Pritam Singh. It is further stated that Baljit Singh, Head Constable posted in Division No.2, Ludhiana alongwith an other police man in uniform, whose names the applicant does not know, accompanied by Pritam Singh, Kashmir Kaur, Lal Singh, Binder @ Talli today came to the property in dispute, today i.e. 11.4.1996 at 10.00 AM. Sh. Baljit Singh, Head Constable and other police Officers are presently posted as Gun Man for Mr. Bhagwan Singh Saini, who is contesting an election as Member of Parliament. Sh. Pritam Singh, Kashmir Kaur, Lal Singh, Binder and all other police official tried to construct the roof in violation of the order of injunction, passed against Pritam Singh. He and his wife told Baljit Singh that Court has granted a stay in respect of shop and that they should not commit any act which may amount to contempt of court by constructing the roof of the shops in dispute. At that stage, Baljit Singh remarked that he has seen a number of Courts and he does not care for them. He further remarked that the courts blindly passed stay orders which are simply waste papers for the police. When complainant requested said Baljit Singh, HC not to do so, he became furious and started beating him. He along with other officials beat him with fist and slaps. Complainant further stated that HC Baljit Singh gave him a Danda blow on the top of his nose, with the result blood started oozing from his nose. Pritam Singh, Kashmir Kaur and Lal Singh, Binder Singh also beat him with blows. They made him lie on the road and dragged him. They gave him beating on his chest. It is stated that HC Baljit Singh and another police officials accompanying Pritam Singh, his wife, son and Binder intentionally and deliberately committed contempt of court. Thereafter, the complainant went to the Civil Hospital, Ludhiana got himself medically examined. It is also stated that Gulwinder Singh has not committed any offence and his only fault is that he took photographs regarding the high handedness on the part of the police officials. It is further stated that at about 2.00 PM Gurchetan Singh, Sub Inspector alongwith HC Baljit Singh and other police officials whose names he does not know, came to his house threatened to kill him and his family members in case they lodged any protest against them to the higher police officials. On the basis of this application, present case registered against accused Pritam Singh, Kashmir Kaur, Lal Singh, Binder Singh and Gurchetan Singh and accused Ajit Singh was kept in column No.2 of the challan. During investigation, the Investigation Officer inspected the spot, prepared visual site plan, recorded statements of witnesses and arrested the accused persons and

after completion of necessary formalities, challan against the accused persons was presented in the Court.”

Copies of documents were supplied to the accused free of cost

under Section 207 Cr.P.C. Charges under Sections 452, 148, 342 and 323 read with Section 149 IPC were framed against the accused to which they did not plead guilty and claimed trial. In order to prove his case, the prosecution examined PW-1 Charanjit Singh, PW-2 Dilbagh Singh (complainant), PW-3 Gurdeep Singh and PW-4 Gulwinder Singh. Accused Ajit Singh was summoned subsequently by the aid of Section 319 Cr.P.C. The charges were again framed under Section 452, 323, 342 and 148 read with Section 149 IPC. After re-framing of charges, the prosecution again examined PW-1 Karnail Singh, PW-2 DSP Amrik Singh, PW-3 Dr. Daljit Singh Kochar and PW-4 Malkiat Singh, retired DSP and thereafter the prosecution evidence was closed by order of the Court.

The statements of accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances were put to them. They denied the same and pleaded false implication. The accused led defence evidence and produced copy of plaint as Ex. DA, copy of written statement Ex. DB, copy of order Ex. DC, statement of Pritam Singh Ex. DD, copy of order Ex. DF and thereafter accused closed the defence evidence.

After appraisal of the evidence, the learned trial Magistrate convicted accused/Respondent Nos. 2 to 6 under Section 323, 452, 342 read with Section 149 IPC and sentenced them as under:-

Name of convict	Under Section	Rigorous imprisonment	Fine	In default to pay fine, further RI
Pritam Singh	323 read with Section 149 IPC	6 Months	Rs.500/-	One month

-do-	452 read with Section 149 IPC	3 years	Rs.2000/-	6 months
-do-	342 read with Section 149 IPC	6 months	Rs.500/-	One month
Kashmir Kaur	323 read with Section 149 IPC	6 Months	Rs.500/-	One month
-do-	452 read with Section 149 IPC	3 years	Rs.2000/-	6 months
-do-	342 read with Section 149 IPC	6 months	Rs.500/-	One month
Lal Singh	323 read with Section 149 IPC	6 Months	Rs.500/-	One month
-do-	452 read with Section 149 IPC	3 years	Rs.2000/-	6 months
-do-	342 read with Section 149 IPC	6 months	Rs.500/-	One month
Binder Singh	323 read with Section 149 IPC	6 Months	Rs.500/-	One month
-do-	452 read with Section 149 IPC	3 years	Rs.2000/-	6 months
-do-	342 read with Section 149 IPC	6 months	Rs.500/-	One month
Gurchetan Singh	323 read with Section 149 IPC	6 Months	Rs.500/-	One month
-do-	452 read with Section 149 IPC	3 years	Rs.2000/-	6 months
-do-	342 read with Section 149 IPC	6 months	Rs.500/-	One month

Feeling dissatisfied, the accused filed two different appeals before Additional Sessions Judge, Ludhiana. Vide impugned judgment dated 30.10.2013, the appeals were accepted and the accused/respondents were acquitted of the charges.

Feeling aggrieved, the present revision has been filed by the complainant against order of acquittal passed by Additional Sessions Judge, Ludhiana. On behalf of the appellant, it is contended that the prosecution has proved its case beyond reasonable shadow of doubt. Despite there being sufficient evidence on record, the Court below has fallen in error in acquitting the accused. Minor contradictions are bound to occur after a gap of time. The Court below by taking the benefit of the minor contradictions has acquitted the accused.

I have heard the learned counsel for the parties and have gone through the record of the case.

Learned Additional Sessions Judge while recording acquittal of the accused/respondent Nos. 2 to 6 has observed that the son of the complainant, namely, Charanjit Singh who appeared as PW-1 was not an eye witness of the occurrence. Therefore, no reliance could be placed on his testimony. The complainant himself appeared as PW-2. Admittedly, the accused/respondents No.2 to 5 are the tenants of the complainant-landlord. The tenants/respondents No.2 to 5 tried to close the shutter of the shop. The Court of Additional Sessions Judge has rightly held that once the accused/respondents No.2 to 6 were in possession of the property as tenants, no offence under Section 452 Cr.P.C. can be said to be made out as they were in legal possession and they cannot be evicted from the demised shop except in due course of law. Once the possession of the accused is held to be valid, the question of trespassing does not arise.

Finally, it has been observed by learned Additional Sessions Judge that the complainant while making complaint Ex.PB before the police deposed that the danda blow was given to him by SI Gurchetan Singh whereas the trial Court convicted the accused No.1 to 4 i.e. the tenant, his wife and sons for the offence punishable under Section 323 IPC. However, accused Binder Singh has been acquitted by the trial Court to whom danda blow has been attributed by the complainant.

Further, the allegations of confining Gulwinder Singh by the police also remain unsubstantiated. Further, the police confined Gulwinder Singh in the police station, the alleged photographs taken by him would not have seen the light of the day as the police had every opportunity to destroy the evidence. The presence of SI Gurchetan Singh is alleged after a gap of 2 hours so he cannot be fastened with the liability of alleged beating.

There is a dispute between the parties with regard to a piece of land. Thus, the false implication of the accused at the hands of complainant cannot be ruled out. The witnesses produced by the complainant are none else but his wife and sons. This being so, the Court of Additional Sessions Judge has rightly acquitted the accused.

It is a settled law as has been held in ***C. Antony Vs. K.G. Raghavan Nair***, 2002(4) RCR (Criminal) 750 that even if a second view on application of evidence is possible, the Court will not interference in the acquittal of the accused. In the cases of acquittal, there is double presumptions in his favour, first the presumption of innocence, and secondly, the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the influence of guilt is irresistible.

In view of the observations made above, this Court does not find any reason to interfere in the judgment of acquittal passed by Additional Sessions Judge. Consequently, the revision petition is dismissed.

(JITENDRA CHAHUAN)
JUDGE

05.08.2016
Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No