

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.4375 of 2015

.....

Date of decision:16.9.2016

Parvinder Kailay and another

...Petitioners

v.

State of Punjab and others

Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mrs. Baljit Mann, Advocate for the petitioners.

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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 8.9.2015 passed by learned Additional Sessions Judge, Jalandhar, dismissing the appeal filed against the judgment dated 6.3.2013 passed by learned Sub Divisional Judicial Magistrate, Phillaur, whereby the accused have been acquitted of the charges framed against them.

I have heard learned counsel for the petitioners and have gone through the record.

From the record, I find that challan had been presented against 13 persons in FIR No.82 dated 6.6.2006 registered for the offences under Sections 323, 452, 506, 427, 120-B and 148 IPC at Police Station Goraya, District Jalandhar. Accused Kinder Lal alias Kinda was declared proclaimed

offender. Remaining accused appeared and contested the trial. The learned Sub Divisional Judicial Magistrate, Phillaur, vide judgment dated 6.3.2013 acquitted all the accused. Aggrieved from this judgment, an appeal was filed and the learned Additional Sessions Judge, Jalandhar, dismissed the same vide judgment dated 8.9.2015. Aggrieved from these judgments the present revision petition has been filed.

The brief facts of the case as noted down by learned Sub Divisional Judicial Magistrate, Phillaur, in the judgment dated 6.3.2013 are as under:-

- “2. Briefly stated, the present case has been registered against the accused on the statement of complainant Kuldip Chand son of Bakshi Ram resident of Village Chak Dhothar, P.S. Goraya recorded by ASI Vijay Kumar on 06.06.2006, in which he stated that he is resident of the above stated address. They are four brothers. His two brothers Amrik and Balwinder have been residing in England along with their families. His elder brother Dalbir Chand is doing agriculture work at Sirsa (Haryana). His children are residing in the village. He owned a minibus bearing No.PB-08-Q-3175 and its route is Jandiala to Apra via Goraya. He himself driving the above stated bus. His father Bakshi Ram has opened transport office at Goraya and his nephew Parvinder Kaile is doing work in that office.
3. On 15.01.1998 he has purchased 7 marlas of land from Mohan Singh, Jhalman Singh and Malkiat Singh sons of late

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Dalip Singh, who are residing in England. He has purchased 12 marlas of land through registered sale deed and he has purchased the possession of the remaining land. After the sale deed he has raised boundary wall over the land on two sides and also raised the construction of a room. He has raised other part of boundary wall and also installed two gates there 15/20 days ago. He is still to install the main gate. No body has objected to it.

4. Yesterday on 05.06.2006 at about 12.00 P.M. Kinda son of Nant, Sodhi Ram son of Avtar Chand, Avtar Singh, Gorkha sons of Gurnam Ram, Ashok Kumar son of Mohan Lal, Hardial son of Shanta Ram, Varinder Kumar son of Sohan Lal, Lal Chand son of Rakha Ram, Chaman Lal son of Shankar, Babbi doctor son of Chanan Ram, Sukhdeep and Amandeep son of Pargan, Joga and other 25/30 unidentified persons came there holding DANGS, SOTAs, swords and GANDASI on Ford Tractor trolley raising Lalkaras. Hardial, Varinder Kumar and Sodhi raised Lalkara to damage the walls and caught hold the persons who were sleeping there, as doctor Hargun would himself handle the situation. He and his nephew Parvinder Kaila and Manvir sons of Dalbir Chand were sleeping inside the boundary wall and Mohindera tractor was parked there. Then he and his nephews got up suddenly to hear the Lalkara. Then the above stated Sukhdeep was driving the tractor and he

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demolished the wall by hitting the walls with the back of tractor. They were also abusing that the complainant and other have taken the possession of the Shamlat Deh and damaged every thing and also kill them. As there are so many persons, so they ran away. The above stated persons hit them with stones and bricks. His nephew Parvinder Kaily received many injuries. He along with Mandeep also received brick bats. He and his nephew raised hue and cry. Then his father Bakshi Ram has also come at the spot. The above stated persons damaged the boundary walls raised by him and also damaged the gate. They have also damaged the lights, show and silencer of their tractor. Ford tractor belongs to Sukhdeep Singh & Amandeep Singh. Hardial, Narinder and Sodhi threatened that if any one came forward, then they would kill them. Many persons gathered at the spot. Then they fled away from the spot. Action be taken against them.”

The prosecution examined the witnesses. The learned Sub Divisional Judicial Magistrate, Phillaur, after discussing the evidence on record in minute detail acquitted the accused. The learned Sub Divisional Judicial Magistrate, Phillaur, has given the findings after appreciating the evidence correctly and properly. In no way, the findings given by the learned Sub Divisional Judicial Magistrate, Phillaur, can be held as perverse or against the evidence.

At the time of arguments, nothing has been argued as to which

material evidence has not been considered and as to which material evidence has been misread by the Courts below. Nothing has been pointed out as to how the findings given by the Courts below are illegal. Rather, the findings given by the Courts below have been given as per the evidence after appreciating the evidence in right perspective. PW-1 complainant Kuldeep Chand deposed as per prosecution version. In his cross-examination, he stated that at the time of occurrence, he was sleeping in his house. The occurrence had taken place in the night. He remained in his house in the night. He also stated that his house is situated at a distance of 70/75 feet from the alleged place of occurrence, which means that the complainant had not seen the occurrence. The property and the house of the complainant are at different places. Further ASI Vijay Kumar had not come into the witness box to prove the above stated site plan, but the Court below held that even from the perusal of the site plan, house of the complainant and property in dispute are separate properties. The Court held that if the complainant was not present at the place of occurrence, then it means that he has not seen the occurrence. The Court further held that the complainant had purchased 12 Marlas of land whereas the property is 17 Marlas of land i.e. 5 Marlas more than the purchased land and the dispute is between the parties regarding those 5 Marlas. The Court further held that the occurrence took place at the intervening night of 5/6.6.2006 at 12 O'clock and the civil suit had been filed in the Court on 8.6.2006 and there was no such mention in the civil suit nor any application was filed later on to show that the boundary walls of the plots had been demolished by the accused on the

intervening night of 5/6.6.2006 which creates doubt in the prosecution version. Further more, the occurrence took place at night time and there is nothing on the record as to how the accused have been identified. There is nothing whether at that time there was any light or anybody has seen the accused. Further more, it is in the evidence of PW-2 Parvinder Kailay-injured , who stated that it was 12.00/1.00 O'clock night. Though, they were sleeping inside the room, he heard the noise and then he ran away from the room. It means that when he heard the noise, he ran away from the room. Then how it can be presumed that he had seen the occurrence as alleged by the prosecution. The Investigating Officer in this case has not been examined. PW-2 Parvinder Kailay also in his cross-examination stated that he did not know who had caused injuries to them. There were many persons so he could not identify them. It is also the complainant's version that these 13 persons along with 20-25 more persons came at night time. If so many persons had come to take possession of the property or to demolish the boundary wall etc., then they will not cause simple injuries to the complainant side. As per the medical evidence, Dr. Usha Kumari PW-10 has proved the MLR of Parvinder Kailay. All the injuries are stated to be blunt in nature. She also stated that possibility cannot be ruled out that the injuries could be self-suffered. The findings of the learned Courts below have been given after appreciating the evidence in right perspective. These findings are correct as per evidence and law and do not require any interference from this Court and the same are upheld and the accused have been rightly acquitted.

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Finding no merit in the present criminal revision petition, the same is dismissed.

September 16, 2016.

(Inderjit Singh)
Judge

hsp

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