

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2260-SB of 2004 (O&M)

Date of Decision: 08.05.2017

Shishpal and another ..Appellants

versus

State of Haryana ..Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Suneet Singh Deol, Advocate, for
Mr. Vikram Singh, Advocate,
for the appellants.

Mr. Gaurav Bansal, Assistant Advocate General,
Haryana.

Mr. Vishwajeet Mehla, Advocate,
for the complainant.

RAMENDRA JAIN, J.

1. By way of instant appeal, the appellants have challenged the impugned judgment of conviction dated 08.11.2004 and order of sentence dated 09.11.2004 passed by the Sessions Judge, Kurukshetra, convicting and sentencing them in the following terms:-

U/s 332/353 IPC To undergo rigorous imprisonment for
one year each and to pay a fine of Rs.2000/-
each and in default thereof, to further
undergo rigorous imprisonment for four
months each.

U/s 186 IPC To undergo rigorous imprisonment for
two months each.

2. It is significant to note that the appellants have been acquitted of the offences under Sections 333 and 506 IPC. All the sentences were ordered to run concurrently.

3. The prosecution story as unfolded by complainant Parbhu Dayal, a conductor in the bus of Haryana Roadways, Kurukshetra depot, is that on 24.9.2003, he was on duty in bus bearing no.HR-37-3563, being driven by Sukhbir Singh driver. At about 3.15 PM, the bus was bound to move from Kurukshetra to Indri. At about 3.30 PM, when the bus reached village Umri, some passengers got down and some boarded the bus and thereafter the complainant gave a whistle for moving the bus ahead. In the meantime, the appellants who belonged to village Umri, forced the complainant to alight from the bus, caught his neck, started beating him and also tore his uniform. He raised alarm. Consequently, the driver namely, Sukhbir Singh and one Ram Dhari rescued the complainant from the clutches of the appellants. While leaving the spot, the appellants abused the complainant and threatened to kill him. The bus was, thereafter taken to Indri. All endeavours to get the matter compromised remained abortive. On 26.9.2003, the complainant, on being felt severe pain in the injuries sustained during the scuffle, got himself admitted in Government Hospital, Kurukshetra. During the scuffle, the complainant's wrist watch and ₹ 850/- fell down. As per the Medico-legal report Ex.PD, five injuries were found on his person which were caused by a blunt weapon within probable duration of 48 to 72 hours. Injuries 2 to 4 were declared simple. Injury no.1 was referred to ENT department for seeking opinion of the doctor. Injury no.5 was advised for ultra-sound.

4. A medical ruqa Ex.PE was sent to the Police Station Sadar,

Thanesar (Kurukshetra). ASI Pritam Singh, on receipt of the ruqa, reached the hospital. He submitted an application, Ex.PF, before the doctor for obtaining his opinion whether complainant Parbhu Dayal was fit to make a statement. Dr. Jitender Kumar gave his opinion Ex. PF/1 that Parbhu Dayal-complainant was fit to make the statement. Consequently, his statement Ex.PA was recorded. ASI Pritam Singh made his endorsement Ex.PA/1 and sent it to the Police Station Sadar Thanesar, on the basis of which, FIR Ex.PA/2 was recorded. On 27.9.2003 ASI Pritam Singh inspected the spot, prepared a rough site plan Ex.PL and recorded the statements of the eye witnesses, namely, Kulbir Singh, Hukam Singh, driver Sukhbir Singh and Ram Dhari. The appellants were arrested on 6.10.2003. On 7.10.2003 on the application Ex.PG moved by the police, Dr. Jitender Kumar gave his opinion Ex.PG/1 that injury no.1 was grievous in nature. Subsequently, on 22.10.2003, the police submitted an application Ex.PH, whereupon, Dr. Jitender Kumar gave his opinion Ex.PH/1 that loss of hearing from the right ear of Parbhu Dayal depends upon the success of the operation. On the basis of the doctor's opinion regarding grievous hurt and after obtaining legal opinion, offence under section 333 IPC was added. On completion of necessary investigation, a report under Section 173 of the Code of Criminal Procedure was presented before the learned Ilqa Magistrate for the trial of the appellants.

5. On being found a prima facie case against the appellants, the trial court framed charges against the appellants under sections 332, 333, 186, 353 and 506 read with section 34 of the Indian Penal Code, to which they pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution, in all, examined 09 witnesses.

7. In their statements recorded under section 313 of the Code of Criminal Procedure, the appellants denied all the incriminating circumstances material appearing against them and pleaded their innocence. They took the plea that they have been falsely implicated in the case due to enmity in the village. However, they did not lead any evidence in their defence.

8. After appraising the evidence adduced by the prosecution on record and considering arguments addressed, the trial court convicted the appellants for an offence under Sections 332, 353 and 186 of the Indian Penal Code and sentenced them in terms recorded in the opening paragraph of this judgment.

9. I have heard learned counsel for the parties, perused the impugned judgment of conviction and order of sentence as also re-appraised the evidence on record with the able assistance of the learned counsel for the parties.

10. At the very out-set, learned counsel for the appellant has contended that during the pendency of the appeal, with the intervention of the relatives of both the parties and respectables of the village, a compromise was arrived at amicably between the complainant and the appellants with a view to maintain peace and harmony in the village. A compromise dated 7.3.2017, in this regard, has been placed on the record stating that they do not have any grudge against each other. However, learned counsel for the complainant has fairly conceded that since the offences committed under Sections 332, 353 and 186 of the Indian Penal

Code are non-compoundable, therefore, the application moved by the appellants under section 320, Code of Criminal Procedure, in this respect, is not maintainable. The application is, accordingly, dismissed being not maintainable. Faced with this situation, learned counsel for the appellants submitted that he is ready to argue the case even on merits. The appeal, is, accordingly, taken up for its hearing on merits.

11 Learned counsel for the appellants contended that PW-1 complainant Parbhu Dayal, the conductor of the bus, has not supported the prosecution version in its entirety. He resiled from his previous statement, Ex.PA, made before the police under Section 161 of the Code of Criminal procedure. In his testimony before the trial court, the complainant has categorically deposed that he did not know as to whether the injuries were caused to him by the present appellants or not. He has also testified that he had named the appellants thinking that they had beaten him as they were present there. After getting him declared hostile, the learned Public Prosecutor cross-examined him, but nothing favourable to the prosecution could be elicited from his mouth. In the compromise Ex.PB, he stated that he does not want any action against the present appellants. That apart, more significantly, the two alleged eye witnesses, namely, PW2 Kulbir Singh and PW6 Hukam Singh have also not supported the prosecution version on material particulars and therefore, they have also turned hostile. PW2 Kulbir Singh, the alleged eye witness, has deposed that a quarrel between the bus conductor Parbhu Dayal and the passengers took place at Umri. Some bus passengers were beating the conductor. He has specifically deposed that the present appellants were not beating him. During his cross-examination by learned Public Prosecutor, this witness, while denying that the accused had

started beating conductor Parbhu Dayal, categorically deposed that he already knew both the accused and they were not even present at the spot. Similarly, PW6 Hukam Singh, the alleged eye witness, to the occurrence, deposed that the passengers got down from the bus at Indri. He saw that a scuffle was taking place. Many persons had gathered there. He did not know who had given beatings to whom. Consequently, this witness was declared hostile and cross-examined by the learned Public Prosecutor, but he denied the prosecution version completely that both the accused had started beating the bus conductor Parbhu Dayal and that the driver of the bus, the passengers, he himself and Ram Dhari rescued him.

12 From the testimony of PW1 complainant Parbhu Dayal, it is evident that he did not notice who had inflicted injuries to him.

13 So far as the testimony of PW7 Sukhbir Singh, the driver of the bus, is concerned, the learned counsel for the appellant has argued that the learned trial court has totally over-looked this aspect that this witness has improved his own earlier version made before the police and now came out with a new one deposing that noise was heard from behind that some passengers fell down, but later on, it revealed that no passenger had fallen down. More so, according to this witness, the complainant was given some medical aid at a small clinic at Bhadso, but surprisingly, the prosecution did not even bother to examine any doctor to find out the real truth to the effect that the complainant had received first aid initially at Bhadso. In such circumstances, the testimony of this witness, in my considered opinion, does not inspire confidence and is discrepant in material particulars. From the testimony of this witness, it can easily be inferred that the attention of the bus driver was towards driving and as such, he was not fully aware

with respect to any quarrel that had, allegedly, taken place in the moving bus with PW1 complainant Parbhu Dayal, the conductor of the Haryana Roadways bus. Likewise, the testimony of PW8 Ram Dhari is also not trust-worthy, keeping in view the fact that he had made contradictory statement on material particulars. While stepping into the witness box as PW8, he has specifically deposed that two boys took down the conductor from the bus by catching his neck, whereas the appellants, being aged 39 and 33 respectively at the time of incident in the year 2004, cannot be termed as boys. Therefore, by any stretch of imagination, the prosecution case, in my considered view, is not fully proved on the strength of the testimony of all the witnesses produced by the prosecution in support of its case, inasmuch as the alleged eye witnesses and the complainant himself have turned hostile and did not support the prosecution version. On the basis of the statements of the witnesses, as discussed above, it can safely be inferred that the alleged scuffle did not take place between the complainant and the appellants in village Umri, and as such, the appellants deserve to be acquitted of the charges.

14 In view of what has been observed hereinabove, the prosecution has not been able to prove its case beyond reasonable shadow of doubt. The appeal is, therefore, allowed, the impugned judgment of conviction dated 08.11.2014 and order of sentence dated 09.11.2014 passed by the Sessions Judge, Kurukshetra, are set aside and the appellants are, therefore, acquitted of the charges.

08.05.2017
VK

(RAMENDRA JAIN)
JUDGE

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| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether Reportable: | Yes/No |