

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

CRA-S-2342-SB of 2004

Date of Decision: February 01, 2017

Yash Pal and another

...Petitioner

Versus

State of Haryana and another

...Respondents

CRA-S-2379-SB of 2004

Karam Pal and others

...Petitioner

Versus

State of Haryana

...Respondent

CRA-S-2380-SB of 2004

Hira and others

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Raman Gaur, Advocate
for the appellants (in CRA-S-2342-SB of 2004)

Mr. Munish Sharma, AAG, Haryana.

FATEH DEEP SINGH, J.

Since all the appeals detailed above are an outcome of
same very judgment dated 23.11.2004 passed by the Court of learned

Additional Sessions Judge, (Adhoc) Fast Track Court, Kurukshetra passed in the same very complaint bearing Sessions case No.13 of 2004 titled as Jai Kumar vs. Om Parkash and others, thus, akin to each other by all means are therefore being taken up together for disposal keeping in view the similar questions of law and facts are involved.

Heard, learned counsel for the parties and perused the records of the case. The complainant Jai Kumar, who claims that he is Mahant of *Dera Thakur Dwara* at Pehowa (hereinafter referred to as 'dera') asserts to be living there from the last 55 years serving as Mahant of the dera and where Smadh was also built. It is admitted by the complainant that there is civil as well as criminal litigations between him and the accused side and latter as per his allegations tried to oust him from the same. It is alleged by the complainant that the Court of learned Additional Sessions Judge, Kurukshetra had passed order of *status quo* qua this property. The brief allegations are that on 23.10.2000 at around 9 a.m. accused Om Parkash, Karam Pal, Dharam Pal son of Preetam, Ashok Kumar, Yash Pal, Ashwani Kumar, Hira, Prem, Dharampal son of Ajyodhiya Dass, Siri Chand and Nasib Singh @ Shiba in all numbering eleven with deadly weapons came to the dera in a TATA Sumo and tractor trolley and started looting the articles lying in the dera while at that time the complainant and his son Ashwani Kumar including one Krishan Gir were cutting grass in the fields. The accused robbed all the articles and loaded the same in the vehicle, demolished the dera and ran away from there. Complainant claims that he made a complaint to the Police but no action was initiated and, thereafter, the complaint in question was filed.

Learned Court below on the basis of the evidence summoned the accused for commission of offence under Sections 395 and 149 IPC to which they pleaded not guilty and claimed trial.

The complainant at the trial examined himself as CW1 and reiterated his allegations seeking corroboration from documents Ex.PA, Ex.PB, Ex.PC and Ex.PD and, thereafter, examined CW2 Krishan Gir to corroborate the allegations, who has sought to prove his statement Ex.PE and, thereafter, Ashwani Kumar son of the complainant stepped into the witness box corroborating these allegations and, thereafter, prosecution closed its evidence.

The accused denied the allegations in their stand taken under Section 313 Cr.P.C and in their defence proved documents Ex.DC, Ex.DD, Ex.DE and Ex.DF. It was through the impugned judgment the Court below held all the accused guilty for commission of offence under Section 455 read with Section 149 IPC and sentenced them as follows:-

Accused-appellants Hira, Prem and Nasib.	Under Section 455 read with Section 149 IPC were sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1500/- each and in default thereof to further undergo rigorous imprisonment for a period of three months.
Accused-appellant Om Parkash.	Under Section 455 read with Section 149 IPC was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.2000/- and in default thereof to further undergo rigorous imprisonment for a period of six months.
Accused-appellants Dharam Pal son of Preetam and Ashok Kumar.	Under Section 455 read with Section 149 IPC were sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/- each and in default thereof to further undergo rigorous imprisonment for a period of six months.
Accused-appellants Karam Pal, Yash Pal, Ashwani Kumar, Dharam Pal son of Ajyodhiya Dass and Siri Chand.	Under Section 455 read with Section 149 IPC were sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.2000/- each and in default thereof to further undergo rigorous imprisonment for a period of six months.

The same is subject matter of challenge before this Court. It is duly admitted by the learned State counsel that both the parties have a previous history of intense numbers of civil and criminal litigations. It is not a case where there is any corroborative evidence except oral testimony of so called eye-witnesses to bring about that the accused have actually and truly committed this offence. Having regard to the pending litigations between them puts the Court on its guard to scrutinise the evidence of the complainant with more care and caution. It is the very story of the complainant at the inception that the accused had demolished the dera, broke open the locks of *dera* and took away all the articles lying there. However, to the very specific query of the Court, learned State counsel was purely at lose of words what sort of evidence has been proved to this effect by way of videography or photographs or any of the articles having been produced before the trial Court. It is the own stand of the complainant that Kanshi Ram, father of the complainant owned 03 acres of land and which was mutated in the name of his 03 sons and 03 daughters and that there was a dispute over Will which the complainant claims was in his favour and was trying to deny his brothers their legitimate right to the estate of their deceased father. Though, he claims that name of the dera is *Brahm Juni/dera* of Jai Kumar comprising of 04 Kanals and 06 marlas of land and further that suit of the complainant was dismissed on 9.9.1998 by the Court of learned Additional Civil Judge, (Senior Division), Pehowa and nothing suggestive is there to bring about the fact as to the very existence of a dera and this premises at the place where the alleged occurrence is alleged to have taken place and rather what ensues from the cross-examination of the

complainant that it is only an agricultural land and there was no construction thereon and when he was confronted with a complaint was unable to state why he has not mentioned this fact that he owns a dera or name assigned to said dera as well as his statement made before SDM, Pehowa put to him and even the very mention of the weapon wielded by the accused which is not mentioned in the complaint which is confronted to him as Ex.PC and so is the fate of another witness Krishan Gir CW2 who has not supported at all the prosecution story and has belied the hope reposed by the complainant in him and, thereafter, it is the own son of the complainant CW3 Ashwani Kumar, who though claims that dera was dismantled but nothing have been brought forward as evidence to substantiate these allegations and rather what the accused have brought about in the defence are copies of judgments decree sheets of civil suit pertaining to the litigations which are proved as Ex.DC, Ex.DC/1, Ex.DD, Ex.DD/1, Ex.DE, Ex.DE/1, Ex.DF, Ex.DF/1, Ex.DG and which could not be controverted on behalf of the learned State counsel and rather what ensues from all this unrebutted evidence is that all is not well with the prosecution story and the complainant having lost on the civil side is trying to set up a plea by way of vengeance. The appellants have been convicted under Section 455 IPC and the very essential ingredients of offence under Section 455 IPC are that:- the accused committed lurking house-trespass; or house-breaking; or that committed so after having made preparation for causing hurt to any person or assaulting any person; or for wrongfully restraining any person or putting any person in fear of hurt; or of assault; or of wrongful restraint. Lurking house-trespass has been defined in Section

443 IPC *as an offence when the offender takes some active means to conceal his presence from someone who has right to exclude him.* A mere entry in the very presence of the complainant by the accused as per these allegations and that too on a place, an open piece of land raises many questions how there has been house trespass what to talk of lurking house-trespass. Criminal trespass as defined in Section 441 IPC and house trespass as detailed in Section 442 IPC shows that criminal trespass is committed *when anybody enters into or upon property in the possession of anyone with an intent to commit an offence or to intimidate, insult or annoy any person in possession of such property*, whereas, house trespass in Section 442 can only be *if anyone enters into or remains in any building, tent or vessel used as a human dwelling or any building used as a place for worship or as a place for the custody of property*. In the present case the only evidence is oral testimony which is not at all materially corroborated by any means. Though, the term building has nowhere defined in Indian Penal Code but by virtue of Section 442 IPC having reference to Section 380 IPC the term building in its ordinary and usual meaning is a block of bricks or stone work covered in by roof and, thus, means to say that there ought to be constructive masonry on the sides of the premises so that it is sufficient to constitute a building and, therefore, the essential requirement is that there ought to be some sort of structure to constitute a building.

Since what one can deduce from the evidence on the records of this case that it was in fact a open space in which the alleged occurrence has taken place and regarding which the civil Court drawn decrees and judgment in favour of the accused side rather are matters which

certainly undermine the very truthfulness and sanctity of the version put forth by the complainant side. It cannot be by any means proved by complainant as to the very existence of a premises, a building or what he calls a dera. As per the very golden principle of Criminal Jurisprudence the onus of proving his case always rests upon the prosecution and can by no means to be displaced by the weakness of the defence. Since in the present case the onus rests heavily upon the complainant to have proved his case and who has failed to prove either any preparation for causing hurt or assault or wrongful restraining by anyone from the side of the accused or causing any hurt or injury or trespass into any dwelling unit or building. The very applicability of Section 455 IPC to the mind of this Court is certainly highly uncalled for. The learned Court below totally failed to appreciate these essential ingredients to prove the commission of offence and rather has taken a pure lackadaisical approach into the matter, thus, undermines the very sanctity of dispensation of justice. The impugned judgment certainly is a wrong appreciation of evidence and perverse in its findings, thus, needs to be outrightly rejected by way of acceptance of present appeals, thereby, setting aside the judgment of conviction.

(FATEH DEEP SINGH)
JUDGE

February 01, 2017
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No