

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

**CRA-AS-96-2015 (O&M)
Date of decision: - 15.9.2017**

Poonam

.....Appellant.

versus

Subhash and others

.....Respondents.

CORAM: - HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: - Mr. Kunal Dawar, Advocate for the appellant.

ARVIND SINGH SANGWAN, J (ORAL)

Prayer in the present appeal is for setting aside the judgment dated 11.6.2015, vide which, lower Appellate Court while allowing appeal filed by respondents-accused have acquitted them and for upholding the judgment dated 5.8.2014 passed by the trial Court convicting the respondents -accused as well as order of sentence dated 7.8.2014.

Brief facts of the case are that on 13.2.2009, police received a complaint from petitioner-complainant, Poonam that when she had gone to her parental home to attend marriage of her brother, the accused-Subhash came to her house and started taking photographs of the house and when Kanwar Singh objected to do the same, he left the place. After some time, Subhash again came back with other co-accused, Hoshiyar & Sunder carrying *lathi* and *jelly* in their hands and started abusing the ladies in the house. In that process, they caused injures to the complainant-party. On the basis of complaint, FIR No. 34 was registered on 13.2.2009. The police after completion of challan submitted the report before the trial Court and respondents-accused were charge-sheeted under

Prosecution in its evidence examined Subhash as PW-1, who has supported the version given in the FIR; Poonam as PW-2, one of the witness; Nirmala as PW-3; Sunita as PW-4 who deposed on the same lines as the earlier witnesses. PW-5 Dr. J.K.Saini proved the MLR of Poonam as Ex. PW5/B and MLR of Subhash as Ex. PW5/C. Investigating Officer SI Ved Pal appeared as PW-7 and proved the Ex PW 7/B and Ex.PW6/A. Thereafter, trial Court recorded the statements under Section 313 Cr. P.C in which respondents-accused pleaded that they have been falsely implicated in the present case.

In defence, respondents-accused examined DW-1, Dr. J.K.Saini, who proved the MLR of Subhash as Ex. DW1/B, MLR of Kiran as DW1/C, MLR of Bimla as Ex. DW1/D and x-ray report of Subhash as Ex. DW1/E. Vijender Kumar has been examined as DW-2 who deposed that on 2.2.2009, he has seen the parties having quarrel. Similarly DW-3, Birender singh has also stated that there was a dispute with regard to settling the civil suit and the parties gave *kick* and *fist* blows to each other. DW-4 Ruda Ram also deposed that in fact the occurrence has taken place in respect to plot in which Court had granted stay. Lastly, ASI Vijay Kumar was examined as DW-5 who proved the DDR No. 11 dated 2.2.2009, registered at the instance of respondents-accused.

Trial Court vide its judgment dated 5.8.2014 held the respondents-accused guilty as regards under Sections 323/324/506/34 IPC and sentenced them to undergo imprisonment for a period of six months vide order of sentence dated 7.8.2014.

The respondents-accused thereafter, preferred an appeal before the lower Appellate Court and the lower Appellate Court, vide its impugned judgment dated 11.6.2015 allowed the appeal and acquitted the respondents-

accused. The Court while acquitting the respondents-accused has recorded the

following findings: -

“19. From the aforesaid document it is clear that both the parties had free fight with each other. Two persons were injured from complainant side and three were injured from accused side. Accused had more injury on then person which have not been explained at all either by complainant Poonam or Subhash s/o Jagmal PW1, whereas as per the statement of doctor as well as DW5 Vijay Kumar coupled with DDR no. 11, accused party received injury in the same incident but police while submitting challan under Section 173 Cr. P.C., has not mentioned anything why the accused party have been challaned despite the fact that there was a free fight and accused party had received more injury than the complainant party. It was the duty of the prosecution to explain why the story of accused party was not believable or whether they were aggressor. From challan report it is clear that police did not bother to consider the valuable evidence of the accused party.

20. As I have already discussed that neither complainant Poonam nor injured Subhash and other witnesses have explained the injury on the person of accused party and in absence of such it is clear that prosecution has withheld the true genesis of the incident or they have not come forward with a true story.

21. Though ASI Vedpal PW7 who was the investigating officer has admitted that in this incident accused party had also received injury from the hand of complainant party and that they have also medically examined but as per him he has no knowledge whether they had presented any application in police station.

22. This part of the statement of investigating officer shows that the investigation of the police is of one side but when investigating officer came to know that three person of accused party had also suffered injuries and they were medically examined with complainant then it was his duty to join accused party into investigation. It is very surprising that investigating officer has stated that he did not bother to verify the fact of the incident from the neighbourer and took action merely on the statement of complainant party; this shows that in this case, investigation was conducted in a very casual manner. Though, there were material contradictions in the statement of Poonam and injured Subhash to the effect that accused party stated to have been armed with jelli and lathi then how injury with knife could have been attributed to accused-Subhash but as prosecution has failed to explain the injuries on the person of accused party thus I do not deem it proper to discuss any more.

23. From the statement of investigating officer, Doctor as well as of from PW-1 injured Subhash also and from the ground of appeal it is clear that in the incident both parties received injury but the injuries of accused parties were not taken into consideration. The dispute was started over a plot when despite stay order, complainant party started raising construction. To show this fact in Court when Subhash started taking photograph on his mobile then he was assaulted by complainant party. Thus it is clear that the incident did not take place as stated by the prosecution, the main stress of appellant is that the complainant party acted as an aggressor as the civil litigation is going on between the parties and due to stay order complainant party feeling aggrieved, thus they started raising construction to show themselves in possession.

24. Law is well settled that if two parties clashed, court is to determine as to which of the parties acted as aggressor if it cannot be determined, then both the parties are to be acquitted.

25. The present case is not of sudden fight as the parties were ill disposed to each other, their relations were strained.

26. The important aspect of the case is that the occurrence did not take place at the house of complainant-Poonam while taking the photographs of her house by accused-Subhash rather it took place on the plot because there was no occasion or motive for accused-Subhash to take the photographs of the house of complainant whereas as per defence, evidence was more probable, convincing and appeal to a common man. Thus, it is clear that complainant has concealed the very genesis of the incident.

27. Accused party had filed a private complaint against complainant party but due to lack of knowledge of both the parties or their counsel, police case as well as the complainant were not heard together it was not brought to the notice of the Court, thus, the private complaint of accused party stated to have been dismissed. If both the cases have been decided together then court would have come to the conclusion which of the party was aggressor but as both cases decided differently thus learned trial Court failed to consider this fact. Reliance can be had ***GIAN Singh and others vs. State 1972 PLR 972, Bachan Singh other vs. The State 1969 PLR 393, Harbhajan Singh vs. State of Punjab 1998 (3) CCJ 579.***

28. Though learned counsel for the respondent-complainant has argued that the evidence and argument which now has taken by appellant has already been disbelieved while dismissing their complaint but this

submission has no merit. In view of the aforesaid discussion, the learned trial Court committed grave error while convicted the accused without considering their oral as well as medical evidence thus finding the impugned judgment without appreciation of evidence same is hereby set aside. Consequently, the appeal has been accepted and appellants-accused party have been acquitted.”

Appellant has assailed the findings recorded by the lower Appellate Court and submitted that in fact trial Court has held that respondents-accused have caused injuries to the appellant and injured witnesses and the lower Appellate Court has not properly appreciated the same. It is also submitted that case of the petitioner is proved from ocular and medical evidence on record.

After hearing learned counsel for the parties, I find no merit in the present petition.

Admittedly, it is a case of version and cross-version, in which appellant-complainant got registered an FIR but respondents-accused have also filed a criminal complaint in which appellants were acquitted. In the present case, neither the petitioner-complainant have explained injuries on the body of accused persons nor could prove that it is the accused persons who were the aggressor party. It has come on record that there was a dispute going on between the parties in the civil Court regarding a plot and on that account there was a sudden fight between the parties and therefore, the lower Appellate Court has rightly recorded finding that it is not proved which of the parties was an aggressor party.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

15.9.2017
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No