

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

CRA-S-No.1595-SBA OF 2005
DATE OF DECISION :1st NOVEMBER, 2017

State of Haryana

.... Appellant

Versus

Prem Chand & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

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Present : Mr. Chetan Sharma, AAG, Haryana.

None for the respondents.

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A. B. CHAUDHARI, J. (Oral)

Being aggrieved by the judgment and order dated 14.01.2004 passed in Criminal Case No.132 of 2003 arising out of FIR No.288 dated 30.06.1997 registered under Sections 323, 324, 325 & 148 IPC at Police Station Ismailabad, District Kurukshetra, the present appeal was filed by the State of Haryana in this Court against the acquittal of the accused.

Heard learned counsel for the rival parties.

In support of the appeal learned counsel for the State, Mr. Chetan Sharma, AAG, Haryana, vehemently argued that the trial Court went wrong in acquitting the accused when as a matter of fact there was trustworthy record produced by the prosecution but the trial Court ignored the same and has wrongly acquitted the respondents-accused.

Learned State counsel then contended that there was parol evidence of the complainant which went unchecked and as such the

prosecution has proved its case beyond reasonable doubt and therefore the order of acquittal deserves to be reversed and conviction may be recorded.

None appears for the respondent. With the assistance of counsel for the State I have gone through the impugned order so also the reasons given by the learned trial Court and the trial Court record as well.

The incident had taken place on 30.06.1997 at about 11.00am. It was the case of the prosecution that Jeet Ram complainant had made a report that on the earlier occasion on 28.06.1997, he along with others when returning from the village after loading sun-flowers in the tractor trolley in the evening at about 6-7pm Prem accused raised *lalkara* and the other accused persons armed with *gandasi*, *farsa* and *lathis* came running towards them. Banta gave direct blow on the right side of the forehead, while Prem gave *gandasi* blow on left leg. Prem then gave *gandasi* blow on the head of Sat Pal and Ishra gave *lathi* blow to Balwinder. Thus there were injuries because of the assault made by the accused persons.

Upon appreciation of evidence the learned trial Court recorded the reasons in paragraphs 12, 16 and 17 which read thus:

“12. So far as the fight between the two groups has taken place and the point of dispute between the two parties was regarding khal in the Gohar. The complainant party has received injuries in the fight that is not in dispute. Weapons were used in fight that is also not in dispute. The complainant side had to pass out their Tractor-Trolley through

the Gohar and the complainant side had asked the accused to close the khal, but they did not close it. At this, the complainant party started closing the Khal. At which the accused party felt provoked and caused injuries to the complainant party. But, if statement of PW-1 Jeet Ram in state case is perused, it is clear that he has set-up the case as per complaint, but it is revealed from his cross-examination that khal was carved out in the Gohar on the date of occurrence, but when he went to his field in the morning, he went to his field through that Gohar by his Tractor, out of the Gohar with carved khal. The accused were not present at that time. He did not know, when the accused came in the field after his arrival in the field. He did not see any of the accused for digging out of the khal. When he went to his field in the morning with the Tractor-Trolley, he found the khal carved out. The khal was running in the same way till date. He had concealed pipe in the khal. Pipes had leaked due to which there was water in the Gohar. When they started closing the khal of Gohar with their own hands only when Prem Chand had refused to close the khal. The khal was dry at that time. There was no water running in the khal at that time. He had no knowledge as to how the Tractor-Trolley had

passed from the Gohar whether by closing the same or when the khal was not closed.

16. Thus what is revealed from the statement of this witness that the complainant party had not seen the accused party carving out the khal and when the complainant party went to the field with Tractor-Trolley in the morning it had seen the khal existing through the Gohar and the accused were not present at that time and the Tractor-Trolley in the morning it had seen the khal existing through the Gohar and the accused were not present at that time and the Tractor-Trolley had passed through the same Gohar, which was having a khal through the same Gohar, which was having a khal in the morning for going to the Sun-flower field and when they wanted to return back through the Gohar they asked the accused to close khal. When the accused refused, they became provoked and started closing the khal with their own hands at which the fight between the two parties had taken place. When the Tractor-Trolley could passed through the Gohar in the morning, why not in the evening though loaded with sun-flower plant crop that was only one khal because there were no chances at any resistance to Trolley while passing through the Gohar, because with the loading of

sun-flower crop of one killa in the Tractor-Trolley, the base of the Tractor Trolley had not got widened because Gohar was surrounded by the fields from both sides and Tractor-Trolley could pass easily through it in the evening through the Khal was lying carved out in the same and when there is no evidence that the khal was carved out by the accused because the accused were not present at the time when the Tractor-Trolley had passed through the Gohar in the morning, then how it could be said that the accused had carved out the khal. Moreover, the Gohar was common and it did not belong to complainant exclusively and it is not explained by the complainant that how the Tractor-Trolley and from where the Tractor-Trolley had passed after the occurrence and how the complainant were taken to hospital whether from somewhere else or through same Gohar, and even from the conduct of the complainant, it is clear that they themselves had concealed the pipe in the khal a day or two days after the fight. When they wanted that accused should close the khal, then what right they had got to conceal the pipe in the same khal.

17. Prosecution examined Sat Pal as PW-5 on oath, who is relative of complainant. He has

supported the complainant. It is revealed from the cross-examination of this witness that Balwant, Ishwar and Baljit were also present in the hospital Ismailabad. He could not tell as to whether they got themselves medico-legally examined or not, but they had not sustained the injuries. It is revealed from his statement that Raj Pal and Bhushan had not reached in the hospital during night. Raj Pal and Bhushan did not meet him during night. Raj Pal and Bhushan did not meet him during that process.”

The reasons given by the trial Court above are in my opinion, plausible and possible. There is no occasion for this Court to take another view of the matter. Looking to the parameters laid down in the case of ***Darshan Singh versus State of Punjab & another, (2010) 2 Supreme Court Cases 333*** and in particular para 61 thereof, I do not think it is possible to interfere in the order of acquittal. Para 61 reads thus:

“61. In a case of acquittal, if the trial Court’s view is a possible or plausible view, then the appellate Court or the High Court would not be justified in interfering with it. It is the settled legal position that there is presumption of innocence and that presumption is further fortified with the acquittal of the accused by the trial Court. The appellate Court or the High Court would not be

justified in reversing the judgment of acquittal unless it comes to a clear conclusion that the judgment of the trial Court is utterly perverse and, on the basis of the evidence on record, no other view is plausible or possible than the one taken by the appellate Court or the High Court.”

In that view of the matter, I make the following order:

ORDER

- (i) CRA-S-No.1595-SBA OF 2005 is dismissed.

1st NOVEMBER, 2017
‘raj’

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>