

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

CRR-137-2001

Date of decision:-2.11.2017

Amar Singh

...Petitioner

Versus

Ved Parkash and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Manoj Bajaj, Advocate
for the petitioner.

Mr.Keshav Partap Singh, Advocate
for respondents No.1 to 8.

Mr.Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.

Accused Ved Parkash, Dharam Pal, Babu Lal, Mukesh, Hari Singh, Rajpal, Mahipal, Smt.Kiran and Deshpal faced trial for the offences under Sections 302, 325 and 323 read with Section 149 IPC before learned Additional Sessions Judge, Faridabad and vide judgment dated 25.5.2000, they were acquitted of the charge framed against them.

Feeling aggrieved, the complainant approached this Court by way of filing the present revision petition.

Briefly stated, facts of the case as per prosecution story are

that FIR in this case was recorded on the basis of statement of complainant Amar Singh son of Sohan Lal of Jat community, resident of Aurangabad, an agriculturist by occupation, which he made to police at Government Hospital, Palwal on 20.7.1995. *Inter alia*, in the statement, he stated that they are six brothers, elder being Mohar Pal followed by Tejpal, then Malkhan thereafter Udal, then complainant (Amar Singh) and youngest being Puran; that on 19.7.1995 Ved Parkash and Hari Singh sons of Devi Ram related to complainant as uncles along with Babu and Rajpal sons of Ved Parkash, Mahipal son of Hari Singh, Deshpal son of Teji, whose land abuts agricultural land of complainant had dug a drain leading from *pucca* drain through fields of complainant proceeding to their fields; that they had challenged Mohar Pal, a brother of complainant saying that they had dug the drain of complainant and complainant party could do whatever they like; that Mohar Pal informed his brothers regarding that; Giasi uncle of complainant had lodged protest with Ved Parkash, then Ved Parkash stated that they would close the drain after watering the fields; that on 20.7.1995 at about 7:00 a.m. in the morning when complainant, his brothers Mohar Pal and Udal besides nephews Naresh and Jagat Singh went to their fields and they noticed that considerable damage had been caused to the standing crop due to digging of drain and when they came near their hut, then Ved Parkash and his son Babu Lal came to them threatening them that they would forcibly take the water through the said drain and complainant side could do whatever they wanted to; that there arose an altercation; that in the meanwhile, his brother Malkhan reached at the spot; that all of a sudden Hari Singh son

of Devi Ram, Mahipal son of Hari Singh, Mukesh son of Hari Singh, Desh Pal son of Teji, Rajpal and Dharampal sons of Ved Parkash of jat community arrived at the spot armed with *lathies*, *phawra* and swords shouting that they would take the water through the drain and complainant side could stop them; that Udal protested stating that they would not allow the taking of water through their fields, hearing that, Mahipal caught hold his brother Udal from behind, whereas Hari Singh inflicted a blow of *phawra* on head of Udal, suffering that blow Udal fell down, then Desh Pal inflicted two *lathi* blows hitting him on left elbow and eyes while Udal was lying on the ground; that Rajpal also gave a *lathi* blow on back of Udal; that when complainant and other persons accompanying him intervened, then Ved Parkash caught hold of complainant and Babu Lal gave two *lathi* blows to him, one hitting on his head and another on left hand; that Mohar Pal was caused injuries on his head and shoulder by Dharam Pal son of Ved Parkash and Mukesh son of Hari Singh using *lathies*; that Mukesh gave *lathi* blows on the person of Naresh; that the complainant raised alarm of *Maar Diya – Maar Diya*, which attracted Jagat Singh son of Tejpal and Malkhan son of Sohan Pal, who intervened and rescued the complainant side from the accused; that in that process Malkhan also received injuries; that Udal had become unconscious; that Ved Parkash and other had escaped from the spot towards village along with their respective weapons; that while going to the village, they also caused injuries to Tejpal; that Malkhan and Jagat Singh removed the injured to General Hospital, Palwal for treatment. However, keeping in view serious condition of Udal, he was referred to a

hospital at Delhi for treatment. According to the complainant, Ved Parkash, Hari Singh and others had caused injuries to them and their brother Udal in prosecution of their common object and with an intention to kill them.

On the said statement of complainant, ASI Mahender Singh appended his endorsement and then sent ruqa to police station, on the basis of which formal FIR was registered. It may be mentioned here that police party from Police Station Sadar, Palwal had reached Government Hospital, Palwal on getting written information from the hospital that injured Udal, Malkhan, Mohar Lal, Tejpal and Amar Singh were admitted in the said hospital in an injured condition. After registration of an FIR, the matter was investigated. Injured Udal had succumbed to the injuries suffered by him in the incident on 21.7.1995, therefore, offence under Section 302 IPC was added to the FIR.

On 25.7.1995, accused Hari Singh, Ved Parkash, Dharam Pal, Babu Lal and Mukesh were arrested, whereas Rajpal was arrested on 9.8.1995, Mahipal on 14.10.1995, Kiran Devi on 7.9.1995. Accused Desh Pal was later on arrested from military authorities.

After completion of investigation and other formalities, challan against accused was prepared and filed in the Court of Judicial Magistrate Ist Class, Palwal.

On presentation of challan in the Court of Judicial Magistrate Ist Class, Palwal, he supplied copies of documents relied upon in the challan to the accused free of cost as provided under Section 207 Cr.P.C. Then finding that offence under Section 302 IPC is exclusively triable by

Court of Sessions, learned Judicial Magistrate Ist Class, Palwal vide his order dated 9.12.1995 committed the case to the Court of learned Sessions Judge, Faridabad, from where it was entrusted to the Court of learned Additional Sessions Judge, Faridabad.

Learned Additional Sessions Judge, Faridabad finding that charge for offences under Sections 302, 325, 323 read with Section 149 IPC was disclosed against all the accused, charge-sheeted the accused for the said offences, to which, they pleaded not guilty and claimed trial. The case was fixed for evidence of prosecution.

During the course of its evidence, the prosecution had examined as many as eleven witnesses, namely, Dr.Surjeet Mehra as PW1, Amar Singh as PW2, Mohar Pal as PW4, Tejpal as PW5, Dr.Krishan Kumar as PW6, ASI Balwant Singh as PW7, Om Parkash as PW8, SI Bhagat Singh as PW9, ASI Mahener Singh as PW10 and SI Bhoop Singh as PW11.

Statements of accused were recorded under Section 313 Cr.P.C. in which the accused while denying the incriminating circumstances appearing against them submitted that they were innocent and had been falsely involved in the case.

Further, accused Mahipal and Rajpal took up a plea that from 2:00 a.m. to 10:00 a.m. on that day, it was turn of their family for irrigation of the fields; that for that purpose Desh Pal and Raj Pal had gone to the fields; that there existed a sanctioned *kutcha* drain emanating from *pucca* drain coming to their fields by the side of fields of Amar Singh for irrigation of land comprised in field Nos.18/19 and 20; that they

continuously paid taxes for irrigation of the land through canal water and the said drain was in existence on the spot since 1963; that they had been irrigating their fields through the said drain; that on 20.7.1995 in the morning Amar Singh, Udai and others with a view to cause damage to their fields No.18/19 and 20 stopped the flow of water from *pucca* drain and started demolishing the sanctioned *kutchha* drain adjoining six *karam* fields; that Mahi Pal, Raj Pal, Desh Pal, who were watering the fields, objected to such an action of Amar Singh and others, on which Amar Singh, Udai and others attacked them; that they ran from the spot but were surrounded by Amar Singh and others in field No.8 of Ved Parkash and others; that they were assaulted; that in self-defence, they (accused persons) also caused injuries to complainant party; that in the meanwhile Kiranwati also reached there; that she was also caused injuries; that in her self-defence, she inflicted injuries on the complainant party by throwing brick-bats. They further pleaded that the complainant party consisting of Udai and others was aggressors and only Kiranwati, Mahi Pal, Desh Pal and Raj Pal were present from the accused side at the spot, who had sustained injuries at the hands of the complainant party; that in the hospital Desh Pal was again assaulted by the associates of Amar Singh, who had ran away from the spot after causing injuries; that Kiranwati, Raj Pal, Desh Pal and Mahi Pal were medically examined in the hospital; that the matter was reported to the police by Kiranwati, but the police was in league with the complainant and thus did not record the FIR, rather implicated them in a false case; that Mahi Pal, Raj Pal and Desh Pal were in Army while Hari Singh was a Teacher.

In defence evidence, accused examined Parmal Singh son of Bhunda as DW1, R.P. Gupta, SDO as DW2, Braham Singh, Patwari as DW3, Tej Singh as DW4, Pehlad Singh as DW5, Mahi Pal as DW6, Rakesh Kumar as DW7 and Sh.Virender Singh Dagar, Advocate as DW8.

After hearing arguments, the learned trial Court had acquitted the accused of the charge framed against them, which left the complainant aggrieved and he has approached this Court by filing the present revision petition, notice of which was issued to the respondents, who appeared through counsel.

I have heard the learned counsel for the parties besides going through the records and I find that there is no merit in the revision petition.

The learned trial Court has given clean chit to the accused mainly on following grounds:

- (i) The trial Court had found the defence version to be plausible accepting the plea of self-defence raised by the accused.
- (ii) Defence version was also held to be believable.
- (iii) There being motive for false implication i.e. previous enmity between the parties in light of copy of judgment dated 9.12.1971 Ex.DS and order Ex.DS/1.
- (iv) The place of occurrence being one belonging to accused persons.
- (v) The site plan prepared by the Investigating Officer at

the spot to be factually wrong;

(vi)Learned trial Court in end of para No.17 has observed that:

'Thus the prosecution version regarding place of occurrence is doubtful in view of the finding of blood in the field of Ved Parkash depicted by point A in the site plan prepared by the Investigating Officer and once it is established that the occurrence took place not near the hut owned by the complainant party but in the field of accused, the defence put forward by the accused persons carried substance and thus possibility of the complainant party attacking the accused first gets credence.'

(vii)It being proved on record that the parties, who are collaterals had been irrigating their fields since 1963, as such it could not be said that accused persons wanted to take water forcibly through fields of complainant party for irrigation of their fields and accused party had a legal right to irrigate their fields through *kutchha* drain, which they had been doing since long.

(viii)Material improvements made by the prosecution witnesses in their statements.

(ix)Some lines in statement of complainant Ex.PE having been added afterwards to the effect that *'Hamnai*

Bachav Mai Unhai Chot Maari Hain' and if this line was not there, then no mention in the statement of Amar Singh regarding they having caused injury to any of the accused.

(x) PW2 Amar Singh in the statement in Court had stated the members of the complainant party were empty handed. It being so, then no explanation for injuries on the person of Kiranwati, Rajpal and Mohar Pal could be given. All of them had received three injuries each as per MLRs Ex.DD, Ex.DE and Ex.DF and injuries on the person of Rajpal were caused by sharp edged weapon.

(xi) As per prosecution story Raj Pal was armed with a sword but PW2 Amar Singh complainant in his statement recorded in the Court did not attribute any injury to him with sword.

(xii) Ocular and medical evidence regarding injury No.1 on the person of deceased being at variance. As per ocular version Udal had received injury No.1 on head with a sharp edged weapon, whereas as per medical opinion that injury was caused by blunt weapon.

(xiii) The learned trial Court had reached the conclusion that prosecution version falters on every material aspect making it highly doubtful and surmises cannot be used in arriving at a conclusion to convict an

accused, therefore, the charge against the accused not proved.

Learned counsel for the petitioner has referred to citations Yogesh Singh Versus Mahabeer Singh and others, MANU/SC/1349/2016, K.Chinnaswamy Reddy Versus State of A.P. and another, 1962 AIR(SC) 1788 and Satyajit Banerjee Versus State of West Bengal, 2005(1) R.C.R.(Criminal) 723 in support of his contention that by way of acceptance of revision petition, the case can be remanded to the trial Court, since material evidence was available on record, which was overlooked by the trial Court while passing of judgment of acquittal. According to learned counsel for the petitioner when the occurrence is admitted since the accused had taken plea of self-defence, then accused could not have been acquitted.

However, learned counsel for the respondents – accused submitted that no case for remanding the case is made out by setting aside the judgment of acquittal passed by learned Additional Sessions Judge, Faridabad. The trial Court had accepted the plea of right of self-defence raised by the accused finding the complainant party to be aggressor holding that the fight had taken place in the agricultural land of the accused, therefore, accused were rightly acquitted and revision petition be dismissed.

After hearing the rival contentions of the parties, I find that the trial Court has dealt at length the prosecution story and the defence version finding the defence version to be plausible and accepting the right of private defence of the accused party. Section 96 of the Indian Penal

Code provides that nothing is an offence which is done in the exercise of the right of private defence. Section 97 deals with right of private defence of the body and of property. Every person has a right, subject to the restrictions contained in Section 99, to defend, first his own body, and the body of any other person, against any offence affecting the human body; secondly the property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass. Section 100 IPC deals with the situation when the right of private defence of the body extends to causing death.

While exercising revisional jurisdiction, this Court is not to re-appraise the evidence so as to come to a different conclusion. The only thing to be seen is whether some material evidence was available on record, which was overlooked by the trial Court, the answer is to be in negative.

After hearing the rival contentions, I find that law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done.

In view of the above, I find no illegality or infirmity in the judgment passed by the Court below, the same is upheld and the revision is found to be without any merit and is dismissed accordingly.

Necessary information be sent to the quarter concerned.

2.11.2017

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No