

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-455-MA-2015 (O&M)

Date of decision: 22.11.2017

Mohan Singh

... Appellant

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Krishan Singh, Advocate
for the appellant.

Ms. Harpreet Kaur, AAG, Haryana.

Mr. Inderjeet Singh, Advocate
for respondents No.2 to 8.

ARVIND SINGH SANGWAN, J. (ORAL)

This appeal is directed against the judgment dated 23.10.2013 passed by the trial Court acquitting the respondents-accused in criminal complaint No.591-I dated 23.08.2008 under Sections 148, 149, 323, 452, 506, 34 of the Indian Penal Code ('IPC' for short).

An application for condonation of delay of 442 days was also filed along with application under Section 378 (4) of the Code of Criminal Procedure ('Cr.P.C.' for short) for grant of leave to appeal.

For the reasons stated in the application that the appellant has inadvertently filed an appeal before the Court of Sessions at Yamuna Nagar and the same was withdrawn with liberty to file the present appeal, delay of 442

days in filing the appeal is condoned.

As the appeal is pending since 2015 and notice has also been issued to counsel for the respondents, the arguments have been heard on merits of the case as well.

Brief facts of the case as set up in the complainant are that the complainant had filed a civil suit against the accused persons, which was pending in the Court of Collector, Yamuna Nagar and accused persons were restrained from entering into the disputed property i.e. Bara, vide order dated 06.06.2006. Despite the said order, the accused persons forcibly entered into the disputed property, with a common intention and conspiracy tried to unload the sand from the trolley on the disputed property. When the complainant and his wife Smt. Baltej Kaur requested them not to take law in their hands, they were given beatings and abused. On hearing their voice, Rattan Lal and Jitender Singh reached at the spot and rescued them.

In support of the case, the complainant-appellant examined one Rattan Lal as CW1, his wife Smt. Baltej Kaur as CW2 and himself as CW3 and closed the preliminary evidence. The respondents-accused were summoned by the trial Court to face the trial for commission of offence punishable under Sections 148, 323, 452 IPC read with Section 149 IPC vide order dated 28.07.2009.

In the pre-charge evidence, the complainant examined Dr. Amit Goel as CW1, Dr. Jitender Singh as CW2 and himself as CW3. Thereafter, the accused persons were charge-sheeted under Sections 148, 149, 323, 452, 506 read with Section 34 IPC vide order dated 16.05.2013, to which they pleaded not guilty and claimed trial.

During pendency of the case, one of the accused Kusum died and accused Ram Saran was declared juvenile and his case was sent to Juvenile Justice Board.

In the after-charge evidence, the complainant examined Dr. Amit Goel as CW1, Chander Ram as CW2, Jitender Singh as CW3 and himself as CW4 and tendered his MLR as Ex.C1, copy of plaint as Ex.C2, MLR of his wife as Ex.C3, complaint under Section 202 Cr.P.C. as Ex.C4 and application Mark A and Mark B and closed the evidence. Thereafter, the statement of accused persons under Section 313 Cr.P.C. was recorded and they denied all the allegations.

In defence, one of the accused Rishi Pal appeared as DW1 and tendered into evidence Points List as Ex.D1, filed book as Ex.D2, amended title as Ex.D3 and closed the defence evidence. Thereafter, the trial Court vide impugned judgment dated 23.10.2013 acquitted the respondents-accused of the charges framed against them. The operative part of the judgment is reproduced as below: -

“I have heard learned counsel for both the parties and gone through the case file very minutely.

In the present complaint case was charge sheeted against the accused for commission of offence punishable under Sections 148, 149, 323, 452 read with Section 34 of Indian Penal Code.

In order to prove its case, complainant has examined three witnesses out of which CW1 Dr. Amit Goel has deposed that he has medico legally examined to Mohan Singh and Baltej Kaur but injuries is tenderness but no external injuries was present. Injuries were simple in nature. But it has already been mentioned that all the injuries were caused by blunt weapon. It is not possible that complainant and his wife were beaten up with lathies and dandas

but only tenderness has been suffered by them. This version of the complainant is not believable.

Complainant himself appeared in the witness box and deposed in the witness box and deposed that many hospital falls within the civil hospital and J.P. Hospital but why it was not taken to the nearest hospital and admitted in J.P. Hospital only. This makes version of complainant doubtful.

CW2 Jitender Singh has deposed that no fight had occurred in his presence. He was not eye witness. His statement is not material and reliable in the present case. He was merely here see witness. It received telephone call and reached on spot. Complainant has failed to prove that accused in furtherance situated unlawful assembly caused injuries to the complainant after trespassing Bara of the complainant. Complainant has placed on record any proof of ownership of Bara. Therefore, no proof that fight occurred in the presence of complainant. Hence, the version of complaint is not reliable.

In view of the aforesaid discussion, the prosecution has failed to prove any case against the accused persons and as such the accused present in the court are acquitted of the charges framed against them. Their bail bonds and surety bonds stand discharged. File be consigned to record room after due compliance.”

Counsel for the appellant has argued that it is proved on record that the accused persons caused injuries to the appellant and his wife with lathis and dandas. It is submitted that the accused formed an unlawful assembly, came in a tractor trolley and forcibly entered into the Bara with the intention to cause injuries and tried to unload the sand. When the complainant and his wife protested, they were given injuries and CW1 Rattan Lal and CW2 Jitender Singh saved them from the accused persons. It is further submitted that from the MLR Ex.C1 and MLR Ex.C3, which were proved by Dr. Amit Goel, while

appearing as CW1, it is proved that the injuries were sustained by the appellant. It is thus submitted that the case of the appellant is duly proved from ocular as well as medical evidence.

In reply, counsel for the respondents-accused has submitted that a perusal of the MLRs shows that only tenderness is present and no external injury was found. It is also submitted that the complainant failed to explain why the MLRs were not got conducted from a Govt. hospital and from the statement of CW2 Jitender Singh, it is proved that in fact no fight has taken place in his presence and he is not an eye witness.

After hearing learned counsel for the parties, I find no merit in the present appeal. A perusal of the MLR Ex.C1 shows that Dr. Amit Goel has reported tenderness regarding five injuries and similarly, he has reported tenderness in the MLR of his wife Smt. Baltej Kaur regarding six injuries. In cross-examination of Dr. Amit Goel CW1, it has come that tenderness is pain, which is caused by pressing the part of body. It is further stated that the patient has come to the hospital on 06.06.2006 at about 2:00 PM and this witness has not denied the possibility of suffering the abovesaid injuries by way of fall on hard surface. This witness has further stated that there are no external mark on any injury.

Even a perusal of the statement of complainant's witness CW2 Jitender Singh, it is apparent that he was not an eye witness and has stated that he reached the spot on receiving a telephone call and this witness has further stated that no fight had occurred in his presence and when he reached the spot, his father was conscious and no statement was recorded in his presence.

Though the appellant-complainant has stated that they were

rescued by two eye witnesses i.e. Rattan Lal and Jitender Singh, however, Rattan Lal was not examined in his after-charge evidence and therefore, the version given by the complainant is not corroborated by any independent witness. The appellant has failed to assign any reason why the statement of the independent witness was not recorded before the trial Court.

It is also worth noticing that it has not come in the evidence that the complainant has reported the matter to the police and on having failed to take any action, present complaint was filed. No witness from the police authorities has been examined to show that any complaint was lodged with the police and no action was taken. The occurrence took place on 06.06.2006, whereas the present complaint was filed on 23.08.2006 i.e. after about two months and there is no proper explanation of delay about the intervening period.

In view of the above, I find no illegality in the impugned judgment passed by the trial Court acquitting the accused-respondents No.2 to 8.

Accordingly, the application under Section 378 (4) of Cr.P.C. as well as the present appeal are dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

22.11.2017
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No