

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

**CRR No.2303 of 2008
Date of Decision: 05.04.2017**

ISHWAR SINGH

.....Petitioner

Vs

STATE OF HARYANA AND ORS.

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Lokesh Sharma, Advocate for
Mr. Ashwani Bhardwaj, Advocate
for the petitioner.

Mr. P.P. Chahar, D.A.G., Haryana.

Mr. Rahul Srivastva, Advocate for
Mr. Vikram Punia, Advocate
for respondent Nos.2 to 5.

RAJ MOHAN SINGH, J.

[1]. The present revision petition has been filed by the petitioner against the judgment of acquittal dated 02.07.2008 recorded by Additional Sessions Judge (I) Bhiwani in favour of respondent Nos.2 to 5.

[2]. Brief facts are that the FIR was registered on the basis of DDR recorded by the Police on the basis of telephonic information given by some unknown person. As per the said DDR, Dharambir, since deceased, who was the real brother of

the accused Surender, Mahender and Bijender was killed by his family members in view of his having eloped with maternal grand daughter of his Bua Munni Devi. The accused were chargesheeted and the charges were framed to which they pleaded not guilty and claimed trial. After conclusion of the evidence, statements of accused were recorded under Section 313 Cr.P.C.

[3]. Accused pleaded false implication. They pleaded the previously litigation as a motive to implicate them in the present false case. They took up the defence that they were implicated at the behest of PWs Sajjan and Ishwar Singh, who were inimical towards them because relatives of said Sajjan and Ishwar Singh were convicted for the offence under Section 307 IPC which was lodged by Mohinder Singh-respondent No.3.

[4]. Similar stand was taken by Mohinder Singh in his statement under Section 313 Cr.P.C. In the stand taken by respondent No.4, it was stated that FIR No.238 was lodged against Surajbhan and others including sons of PW Ishwar Singh and they were convicted in the said criminal case. Certified copies of the documents Ex.DD and Ex.DE in respect of death certificates of their brother Dharambir and one Zile Singh were tendered in evidence.

[5]. The judgment Ex.DF dated 01.02.2007 was tendered which was recorded by the Judicial Magistrate Ist Class, Charkhi Dadri in FIR No.238 dated 22.11.1999 wherein Ved Pal son of Ishwar Singh and Surajbhan son of Partap Singh were convicted and sentenced for the offence under Sections 323, 506, 427 IPC read with Section 34 IPC for assaulting Bhim Singh son of Gunpal Singh and his uncle Satyavan besides damaging his vehicle.

[6]. Copy of judgment dated 15.03.2005 was also tendered as Ex.DG passed by Additional Sessions Judge (FTC), Bhiwani in FIR No.32 dated 10.02.2002 whereby Rambir and Surajbhan son of Partap and also Vedpal, Vikram and Vidhyadhar son of PW-1 Ishwar were convicted and sentenced for the offences under Sections 148, 323, 325, 307, 506 IPC read with Section 149 IPC for causing injuries to Mohinder Singh-respondent No.3. The accused also tendered in evidence the certified copy of CWP No.19568 of 2004 titled "*Mohinder Singh and others vs. State of Haryana and others*" as Ex.DH wherein a *khap* panchayat of 40 villages of Sangwan Gotra headed by its President Col. Risal Singh (Retd.) was pressurizing them to compromise with the above named accused in FIR No.238 dated 22.11.1999 and FIR No.32 dated 10.02.2002, otherwise social boycott was threatened.

[7]. The present FIR was registered not on the basis of any written complaint. Oral information was given to the Police on the telephone by an unknown person and on the basis of that DDR No.30 dated 04.05.2006 was recorded by SHO Dheeraj Kumar. Resultant FIR was registered on the basis of said DDR entry. No information in respect of commission of any cognizable offence was given to the SHO in terms of Section 154(1) Cr.P.C. The very registration of the FIR was on questionable mark.

[8]. There were two Investigating Officers in the present case and each one of them had prepared the rough site plan in contrast to another. SHO Dheeraj Kumar while preparing the rough site plan Ex.PR showed the place of occurrence to be outside the house of the accused Surender situated in the fields, whereas Inspector Heera Singh showed the place of occurrence in the rough site plan Ex.PK on *katcha* path leading to village Gudana, near the fields of Satbir and Suganpal.

[9]. The aforesaid owners of the fields were never associated in the investigation. In the aforesaid site plans, presence of PW-1 Ishwar Singh and PW-2 Sajjan Singh was shown and the site plan was prepared according to their pointing towards the place of occurrence as both the witnesses claimed themselves to be the witness of the occurrence. The

said version was disbelieved by the Inspector Ram Avtar while appearing as PW-14, who was entrusted with the investigation on 15.03.2007.

[10]. The depositions of Ishwar Singh and Sajjan Singh were found to be false, in view of earlier litigations between the parties. Inspector Ram Avtar instead relied upon statement of Dharambir PW-5 and Anil, who was not examined for sending the accused in for the trial. Dharambir while appearing as PW-5 did not support the prosecution case. Since Anil Kumar was left by the prosecution, therefore, prosecution was with only statement of PW-1 Ishwar Singh and PW-2 Sajjan Singh.

[11]. Since both the aforesaid witnesses were disbelieved by Inspector Ram Avtar PW-14 during re-investigation and verification of the facts of the case, therefore, all the four accused persons Surender, Mahender, Virender and Bijender were ultimately acquitted by the trial Court after due appreciation of the material on record.

[12]. Moreover, the present petition has been filed by the witness, who cannot be termed to be a victim of the alleged offence. Against the judgment of acquittal, the State of Haryana has not preferred any appeal. The present petition at the instance of witness cannot even, fall within the ambit of Section

401 Cr.P.C. The findings of acquittal cannot be converted into one of the conviction as per Section 401(3) Cr.P.C.

[13]. In view of above, finding no substance in the present petition, the same is dismissed accordingly.

April 05, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No