

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

**CRR No.1831 of 2011 (O&M)
Date of Decision: 09 October, 2017**

Dilawar Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. B.S. Baath, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab

FATEH DEEP SINGH, J.

This criminal revision petition by the complainant Dilawar Singh under Section 402 Cr.P.C is against the initial findings of the Court of learned Chief Judicial Magistrate, Shaheed Bhagat Singh Nagar, whereby, the learned trial Court dismissed the case of the complainant/revisionist, thereby, acquitting Satinderjit Singh, Kulbir Singh, Rashpal Singh and Satnam Singh of the charges so framed under Sections 324,326 read with Section 34 IPC in case FIR No.229 dated 31.07.2004 of Police Station, City Nawanshehar. The same was subsequently upheld by the learned Appellate Court of learned Additional Sessions Judge, Shaheed Bhagat Singh Nagar, whereby, two different appeals one by complainant Dilawar Singh bearing Criminal Appeal No. RBT-14 of 2009 titled as Dilawar Singh vs. State of Punjab and others and another by State bearing Criminal Appeal No. RBT-04 of 2009 titled as State vs. Satinderjit Singh

and others too stood dismissed upholding the findings of the Court below and that is how the petitioner is before this Court.

The brief allegations are that complainant Dilawar Singh made a statement that on 30.07 2004 around 9.30 a.m when he was irrigating his field which had been taken by him on *Batai* basis from Sohan Singh, at that time, Kulbir Singh armed with spade, Satinderjit Singh armed with small *gandasi*, Rashpal Singh and Satnam Singh both empty handed reached there and started diverting flow of water towards their own fields and Kulbir Singh gave a blow of spade to Dilawar Singh, whereas, Satnam Singh raised a *lalkara* and Satinderjit Singh gave a blow of *gandasi* on his left hand. At that time, Avtar Singh reached there and protected Dilawar Singh from the clutches of the accused and, subsequently, got him admitted to Primary Health Centre, Aur, where his statement was recorded leading to registration of the present case.

The prosecution upon framing of charges to which the accused pleaded not guilty examined PW1 Dilawar Singh, complainant/Injured; PW2 Bhagat Ram; (Sic) PW3 Dr. Paramjit Singh (Sic); PW3 Dr. Davinder Singh Chahal (Sic); PW4 Sunil Dutt; PW5 Dr. Gurpal Singh; PW6 ASI Gurdial Singh; PW7 Dr. Ashok Guru and PW8 Suman Bala.

The accused were put to oral as well as documentary evidence in their stand under Section 313 Cr.P.C who denied the same taking the plea of political rivalry but did not lead any evidence in defence leading to passing of consecutive impugned findings.

Upon hearing learned counsel for the parties and

perusing the records of the case, as has been argued by the two sides, it is the own stand of the complainant right at the very onset of his case in his statement Ex.PA/1 got recorded leading to registration of the FIR Ex.PA/2 upon endorsement by the Police that he has taken land in question on lease from Sohan Singh and on the day of occurrence he was irrigating his fields when the accused side had attacked but to the very query of the Court learned counsel for the petitioner at the very onset accepts that no document pertaining to *warabandi* of the date and place of occurrence has been proved on record and, thus, as has been submitted by respondent side creates a doubt on the element of genesis in the story of the prosecution. Furthermore, the contentions of the respondent side could not be controverted by the learned counsel for the petitioner as to the very element of this lease/*batai* arrangement between the owner Sohan Singh and the complainant Dilawar Singh nor the owner has been examined to further this plea of prosecution to show presence of injured at the place of occurrence. Though, the complainant claims that he has written a complaint to the Police on the same day but it neither finds mentioned nor proved on the records and rather what is highlighted from the records endorsement Ex.PA/1 when the Police arrived on the date of occurrence to record the statement of the complainant at the Hospital, the complainant was found unfit to make the statement rather undermines the stand of the complainant to this effect. The very story of the prosecution that all the accused had assaulted him and rather in his MLR which was initially conducted on 30.07.2004 and subsequently the Board has examined his injuries on 17.09.2004 only a single injury has come about on his person and as per this

document Ex.PW2/B injury by way of fracture of 4th Metacarpal bone is shown to be grievous in nature. To the very query of the Court, learned State counsel has readily accepted the fact that doctor who conducted the X-ray examination has never been examined and, thus, his stand as laid down in ratio **LIC of India and another vs. Ram Pal Singh Bisen 2010(2) R.C.R Civil 459** to the effect that mere exhibiting a document does not dispenses with its proof. Since injury has been reported to be grievous on the basis of X-ray examination, the prosecution should have proved the same from the person, who conducted the X-ray examination and, opined the same thus, a yawning gap in the legitimate and legal proof of the injury on the person of the complainant has come about and the doctor who conducted the same has not stepped in to testify and the only Radiographer has been examined and who cannot displace the expert whose opinion and report of X-rays was very much essential and necessitated. Learned counsel for the two sides though have sought to agitate over the veracity and legality of this evidence, however, going through the consecutive judgments of the two Courts below, both the Courts have taken serious cognizance of this lacuna in the prosecution story. In the light of well settled principle of law and the golden rule of Criminal Jurisprudence that onus lays heavily upon the prosecution to establish its case beyond shadow of reasonable doubt in which the prosecution has miserably failed which leads to one and the only conclusion which has been drawn by the two Courts below and which concurrent findings certainly has its cascading effect on the case of the petitioner.

The ambit of criminal revision is very limited in its scope to judge the very legality or propriety of order. Thus, apparently

learned counsel for the petitioner could not pinpoint any perversity or illegality which necessitates intervention by this Court. The findings of the learned trial Court and so of the leaned Appellate Court are well reasoned and based on sound reasoning and does not calls for any interference. Thus, the present revision petition being wholly devoid of any merits stands dismissed.

(FATEH DEEP SINGH)
JUDGE

09 October, 2017

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No