

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

**CRR-1416-2013 (O&M)
Date of decision: 03.11.2017**

Sat Narain

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Arjun Lakhanpal, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for setting aside the judgment dated 15.09.2010 passed by the trial Court acquitting the respondents-accused in FIR No.74 dated 03.04.2006 under Sections 325/34 of the Indian Penal Code ('IPC' for short), registered at Police Station Rai, Sonapat and the judgment dated 05.07.2012 passed by the lower appellate Court dismissing the appeal filed by the petitioner-complainant as well as the order dated 05.07.2012 dismissing the application filed by the petitioner under Section 391 of the Code of Criminal Procedure ('Cr.P.C.' for short) for seeking permission to lead additional evidence.

This appeal has been filed along with an application seeking condonation of delay of 87 days in filing the revision petition. Notice of this

application was issued. This matter is pertaining to the year 2013 and perusal of the last order shows that the application for condonation of delay has not been decided so far. Since the arguments on merits of the case have been heard, for the reasons stated in the application, delay of 87 days in filing the revision petition is condoned.

Brief facts of the case are that the aforesaid FIR was got registered by the complainant Sat Narain with the allegation that on 11.02.2006, the accused in furtherance of common intention have caused injuries to the complainant Sat Narain and his wife Krishna. After completion of investigation, police submitted a report under Section 173 Cr.P.C. and respondents were charge sheeted under Section 325 read with Section 34 IPC vide order dated 13.11.2006. In the prosecution evidence, the petitioner examined himself as PW1, his wife Smt. Krishna Devi as PW2, PW3 Tara Chand, PW4 Dr. Manju Arora, PW5 Ashwani Kumar, PW6 SI Raj Pal and PW7 SI Abdul Shahid. After recording the statement of the complainant under Section 313 Cr.P.C., the respondents-accused examined one witness Gordhan as DW1 and thereafter, trial Court, vide its judgment dated 15.09.2010, acquitted the respondents-accused. The operative part of the judgment is reproduced as under: -

“The ld. counsel further argued that the incident is alleged to have occurred on 11.02.2006, whereas the matter was reported to the police on 29.03.2006 i.e. after more than one and a half months of the alleged occurrence and the delay has not been satisfactorily explained by the prosecution. It was argued that the contention of the Public Prosecutor that the matter was not

reported to the police immediately after the alleged occurrence due to the fact that efforts were made for compromising the matter between the parties by the panchayat is not acceptable and this cannot be considered to be a sufficient ground for not taking into consideration the factum of delay in making the complaint to the police. It was also argued that it is very strange that the complainant did not get himself medically examined despite the fact that he had also allegedly been beaten black and blue by the accused along with his wife Krishna. It was also stated that the weapons alleged to have been used by the accused for the purpose of assaulting the complainant and his wife have not been recovered, which creates a serious dent in the story of the prosecution. In the end, it was argued that under such circumstances, the benefit of doubt deserves to be extended to the accused. I find sufficient force in the contentions raised by the ld. defence counsel. It is clear that there are material contradictions in the statements of the witnesses. The complainant while appearing as PW1 had deposed that they reached the hospital at 5.00 PM whereas the time of arrival in the hospital as per the LR of Krishna placed on record is shown as 7.30 PM. Further, the complainant stated that the boundary wall was raised in one day, while PW2 Krishna specifically deposed during her cross-examination that the construction continued for about two days. The complainant has stated that his wife Krishna got

unconscious during the incident, whereas Krishna herself does not say anything about this fact during her evidence. The complainant and his wife have submitted that they both went to the hospital, whereas PW3 Sat Narain has deposed that he also went along with his son and daughter in law to the hospital and rather he got them admitted. PW4 Dr. Manju Arora has also deposed that Krishna came for her medical examination along with her brother in law Anand. Further as per the version of PW1 Sat Narain, the tempo used for going to the hospital was hired from the road side, whereas PW3 stated that he had brought the tempo to the village from where he along with his son and daughter in law Krishna went to the hospital, which is a very big contradiction in itself.

The incident is alleged to have occurred on 11.02.2006, whereas the matter was reported to the police on 29.03.2006 is after more than one and a half month of the alleged occurrence and the delay has not been satisfactorily explained by the prosecution. Pendency of the matter before the Panchayat for the purpose of arriving at a compromise between the parties is not acceptable and this cannot be considered to be a sufficient ground for not taking into consideration the factum of delay in making the complaint to the police. It is very strange that the complainant did not get himself medically examined despite the fact that he had also allegedly been beaten mercilessly by the accused along with his wife Krishna. The weapons alleged

to have been used by the accused for the purpose of assaulting the complainant and his wife have not been recovered which creates a serious dent in the story of the prosecution.

As a result of the above discussion, benefit of doubt deserves to be extended to the accused.”

Feeling aggrieved, the petitioner filed appeal before the lower appellate Court along with an application under Section 391 Cr.P.C. to lead additional evidence to allow the complainant to examine two witnesses namely Raghbir Singh and Joginder who are members of the Panchayat. The lower appellate Court dismissed the appeal as well as application under Section 391 Cr.P.C. vide its judgment and order of even date i.e. 05.07.2012.

Counsel for the petitioner has submitted that both the Courts below have acquitted the respondents-accused mainly on the ground that there are discrepancies in the statements of the prosecution witnesses which are minor in nature and occurred due to lapse of time and also on the ground that the occurrence is of 11.02.2006, whereas FIR was registered on 29.03.2006 i.e. after a period of more than one and half month. This delay was duly explained that after the occurrence, the parties have approached the Panchayat for the purpose of arriving at a compromise, however, no compromise could be effected and thereafter, the matter was reported to the police.

On the other hand, learned counsel for the respondents-accused has submitted that the delay in registration of FIR is not properly explained, as no witness from the Panchayat was examined by the complainant-petitioner and even as per the own version given in the FIR, the complainant

was himself approached the Panchayat for the purpose of effecting the compromise and he never intended to register the FIR with the police and therefore, the delay of one and half month is not explained. It is also submitted that there are material discrepancies in the prosecution witness with regard to time, manner of causing injuries and regarding taking the injured persons to the hospital. Learned counsel for the respondents-accused has submitted that as per the statement of PW1 Sat Narain, they reached the hospital at 5.00 PM, whereas PW2 Krishna stated that they reached at 7.30 PM. The complainant-PW1 further stated that the boundary wall regarding which there was a dispute, was raised in one day only, whereas PW2 Smt. Krishna stated that it was constructed in two days. It is also stated by the complainant that his wife Krishna became unconscious after the incident but PW2 Krishna has not stated so in her deposition. PW2 Smt. Krishna has stated that she along with the complainant had gone to the hospital, whereas PW1 Sat Narain has stated that he has gone to the hospital along with son and daughter-in-law and thus, there were such material discrepancies.

After hearing learned counsel for the parties, I do not find any merit in the present petition. There is no proper explanation of delay of one and half month in reporting the matter to the police especially in view of the fact that it is own case of the complainant that he was trying to arrive at a compromise with the respondents-accused before the Panchayat and no witness of the Panchayat was produced to prove this fact. A careful perusal of the statements also shows that there are material discrepancies regarding the time and construction of the wall, which goes to the root of the case.

It has been held by the Hon'ble Supreme Court in **Zahira**

Habibulla H. Sheikh and anr. Vs. State of Gujarat and others, 2004 (4)
SCC 158 that where two views are possible, the view which goes in favour of the accused persons, in deciding an appeal against acquittal, the view favouring the accused should be upheld. In the instant case, both the Courts below have concurrently held that the prosecution has failed to prove its case beyond doubt and have acquitted the respondents-accused who have faced the protracted trial pending since 2006.

In view of above discussions, I do not find any illegality in the impugned judgments passed by the Courts below.

Petition is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

03.11.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No