

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

CRR-2056-2013

Date of decision : 19.01.2017

Ashok

...Petitioner

Versus

Phool Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Ashok Kumar Jindal, Advocate,
for Mr. Sanjay Mittal, Advocate,
for the petitioner.

Mr. R.S.Budhwar, Advocate,
Mr. B.K.Bagri, Advocate,
for the respondents.

JITENDRA CHAUHAN, J.

The petitioner through the instant revision petition has assailed the impugning judgment dated 15.02.2013 (Annexure P-1), passed by learned Additional Sessions Judge, Rewari (for short, 'the appellate Court'), whereby, the appeal preferred by the petitioner, against the judgment of acquittal dated 19.10.2010 (Annexure P-2), passed by learned Chief Judicial Magistrate, Rewari, was dismissed and the accused-respondents were ordered to be acquitted in FIR No.127 dated 02.12.2002, registered under Sections 447, 427 and 506 read with Section 34 of the Indian Penal Code (for short, 'IPC'), at Police Station Bawal.

Brief facts of the case are that on 02.12.2002, complainant-Duli Chand came to the police station and presented an application to Sub-Inspector, for registration of case against respondents who allegedly

destroyed the crops of the petitioner. As per the assertion of the complaint, there are 5 kanals 10 marlas land recorded in the name of his father Manohar Saini as *gair morushi* in village Nangal Shabajpur. The Girdawari and jamabandi of the land stand recorded in the name of his father since last two years. After the death of his father, he was in cultivating possession of the land. They had sown the crops in the land. Respondent/accused-Lal Chand moved written complaint in Police Station Bawal. After some time, respondents/accused Lal Chand, Phool Singh and Rajesh destroyed their crops in absence of the complainant party and also took the possession of the land after raising a hut on the spot. On this application, the offence under Sections 447, 427, 506 read with Section 34 IPC was found to exist and case was registered. The investigation was conducted by Amar Singh, Sub-Inspector. The statements of witnesses under Section 161 of the Code of Criminal Procedure (for short, 'Cr.P.C.') were recorded. The accused were arrested in this case who later on were released on bail by the court. After completion of usual investigation, challan was presented in the Court for trial of the accused.

Copies of challan and other documents were supplied to the accused free of costs as envisaged under Section 207 Cr.P.C.

Accused/respondents were charge-sheeted under Sections 447, 427, 506 and 34 IPC to which they did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined PW1-Duli Chand son of Manohar Lal, PW1/A-Gopal son of Manohar Lal, PW2-Amar Singh, Inspector, PW2/A-Puran Chand son of Ishwar Dass, PW3-Ashok son of Hira Lal, PW4-Azim Khan, retired Inspector, PW5-Amar Singh, Deputy

Superintendent of Police (retired) and PW6 Duli Chand son of Manohar Lal and thereafter, closed its evidence.

The statements of accused/respondents were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing in the prosecution evidence were put to the accused. The accused denied the same and pleaded innocence and false implication.

In defence, the accused/respondents examined DW1 Suraj Bhan.

After appraisal of the evidence, Chief Judicial Magistrate, Rewari, vide impugned judgment 19.10.2010, acquitted the respondents.

Feeling dissatisfied, the complainant filed an appeal before the Additional Sessions Judge, Rewari, which was dismissed vide impugned judgment dated 15.02.2013. It was a State case, but the State did not file any appeal against acquittal. Even the State was not pleaded as proforma respondent in the array of the parties by the complainants in the appeal.

Still feeling aggrieved, the present revision petition has been filed by the complainants assailing both the aforesaid judgments dated 19.10.2010 and 15.02.2013. The State has not been impleaded in this revision also.

Learned counsel for the complainant/petitioner contends that the Courts below have erred in acquitting the accused/respondents inasmuch as there was plethora of evidence on record to warrant the conviction of the accused/respondents. The learned trial Court misinterpreted and wrongly considered the documents produced by the prosecution. Consequently, the accused are liable to be convicted and sentenced as per law.

On the other hand, learned counsel for the accused-respondents contends that the land in dispute allegedly cultivated by the complainant/petitioner, in fact, belongs to Gram Panchayat and a civil litigation with regard to possession of the said land was going on between the parties. He further contends that both the parties had entered into a compromise before the Gram Panchayat that till final decision of the civil Court, land in dispute would be kept vacant and none of the parties would cultivate the said land. But complainant/petitioner showing disrespect to the decision of the Panchayat, started cultivating the land. It is further contended that the complainant/petitioner had failed to prove the charges framed against the accused/respondents and sought dismissal of the appeal.

I have heard the learned counsel for the parties and have gone through the record of the case.

The plea taken by the accused that the instant complaint is a counter-blast to the complaint filed by them against the complainant party cannot be said to be unfounded. It has come on record that the parties have been engaged in criminal/civil litigation for the past 14/15 years. It has been admitted by both the parties that the land in dispute belongs to Gram Panchayat and was under the possession of Manohar Lal, father of the complainant/petitioner, as gair morusi tenant w.e.f. 1979-80. Ultimately, a compromise Ex.D1 was effected between the parties in the presence of Gram Panchayat, wherein, it was agreed that till the decision of the case by the civil court, the land of Gram Panchayat would be kept vacant and none of the parties would cultivate the same. The alleged incident took place on 02.12.2002 but till that date, civil suit was pending between the parties.

Therefore, there was no occasion for the complainant to sow barley crop on the disputed land. Even if the assertion of the complainant is taken to be true, the same goes against him as he himself breached the compromise and thus, can be said to be a trespasser on the land in dispute. The compromise Ex.D1 is sufficient to prove that the land was lying vacant and the complainant cannot be considered to be in cultivating possession of the same.

As regards the question of giving threat to Ashok and Gopal, it is to be seen that where the threat is extended by certain conditions, the same does not come within the mischief of Section 506 IPC. It is evident from the record that the parties had been maintaining strained relations. When the alleged threat was extended to petitioner-Ashok and Gopal, the accused were admittedly without any weapon. Thus, the complainant ought not to have felt intimidated by mere words without use of any weapon or criminal force.

The testimony of complainant-Duli Chand and both the alleged eye-witnesses, namely petitioner-Ashok and Gopal has not been corroborated by any independent witness in spite of the fact that the alleged occurrence took place in full public view and many persons were present there. Thus, it appears that the complainant/petitioner has roped in the accused/respondents for wrecking vengeance on them.

It is a settled law as has been held in *C. Antony Vs. K.G. Raghavan Nair, 2002(4) R.C.R. (Criminal) 750* that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double

presumption of innocence; and secondly, the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

From the perusal of the case file, this Court is of the considered opinion that the quality of evidence led by the prosecution is not sufficient to fasten the accused-respondents with criminal liability. This Court feels that the impugned judgments of learned Appellate Court as well as learned Trial Court, have been passed after proper appreciation of evidence on record and application of judicial mind.

Consequently, the present revision petition fails and is hereby dismissed.

19.01.2017
adhikari

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :Yes No

Whether Reportable : Yes No