

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

(1) CRR No.548 of 2013 (O&M)
Decided on:-10.08.2017.

Shinderpal Kaur.

.....Petitioner.

Versus

Jarnail Singh and others

.....Respondents.

(2) CRR No.549 of 2013 (O&M).

Shinderpal Kaur.

.....Petitioner.

Versus

Balwinder Singh and another

.....Respondents.

(3) CRR No.550 of 2013 (O&M).

Shinderpal Kaur.

.....Petitioner.

Versus

Jaswant Singh and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Narinder Singh Dadwal, Advocate
For the petitioner.

HARI PAL VERMA, J.

This order shall dispose of the aforementioned three criminal
revision petitions as the same have arisen from a common FIR No.22 dated

22.02.2003 under Sections 447, 448, 427, 452, 148 and 149 IPC registered at Police Station Kot Ise Khan, District Moga. Moreover, all the petitions have been filed against common judgment dated December 05, 2012 passed by learned Additional Sessions Judge, Moga whereby appeals filed by the respondents-accused against the judgment of conviction and order of sentence dated 16.11.2011 passed by learned Judicial Magistrate 1st Class, Moga, were allowed.

However, for convenience and clarity, the detailed order is being passed in ***CRR No.548 of 2013*** titled as ***Shinderpal Kaur Versus Jarnail Singh and others.***

Briefly stated, facts of the prosecution case are that on 22.02.2003, when ASI Lakhvir Singh along with other police officials was present at canal bridge Gagra, complainant Shinderpal Kaur (petitioner herein) along with her grandmother Basant Kaur met him and got recorded her statement that she resides at village Lohara with her grandmother Basant Kaur widow of Nahar Singh. The house in which they reside was owned by the husband of the sister of her grandmother, namely, Bant Ram. Said Bant Ram had executed a Will of the house in favour of her grandmother Basant Kaur. However, daughter-in-law of Bant Ram, namely, Amarjit Kaur wife of Surinder Kumar also claimed her right over the said house and a civil litigation was pending between the parties.

The complainant further stated that on 22.02.2003 at about 2-2.30 P.M., accused Jarnail Singh, Darshan Singh, Kindri, Sukhdip Singh, Banso, Jaswinder Kaur, Joginder Singh, Balwinder Singh, Nachhattar Singh,

Kulwant Singh, Surjit Singh and some other unidentified persons came at their house and forcibly occupied the same. They had also thrown away their household articles in the street, which were lying in the house. They had also broken the household articles. At that time, the complainant, her grandmother Basant Kaur, Gurnam Singh and Gopi were present in the house. The accused had also beaten the complainant and her grandmother and both of them saved their lives by running away from the spot.

On the basis of these allegations, the aforesaid FIR was registered against the accused. Statements of the witnesses were recorded and after completion of investigation, Challan under Section 173 Cr.P.C. was presented in the Court against the accused persons. Copies of Challan, as envisaged under Section 207 Cr.P.C., were supplied to the accused. Finding a prima-facie case against the accused, they were charge sheeted under Sections 452/427/148/149 IPC, to which they did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined as many as five witnesses, including complainant Shinderpal Kaur as PW2, her grandmother Basant Kaur as PW1 and the investigating officer ASI Lakhvir Singh as PW5. Thereafter, statements of the accused under Section 313 Cr.PC were recorded by putting them all the incriminating material available on record against them. However, the accused denied all the allegations and pleaded false implication. They did not lead any evidence in their defence.

After considering the evidence and hearing the parties, the trial Court, vide judgment dated 16.11.2011, held the accused, namely, Jarnail Singh, Darshan Singh, Kulwinder Singh, Sukhdip Singh, Jaswinder Kaur,

Gurwinder Kaur, Joginder Singh, Jaswant Singh, Surjit Singh, Balwinder Singh and Kulwant Singh guilty for commission of offence under Sections 452, 427, 148 and 149 IPC. However, accused Nachhattar Singh had died during the trial. Vide separate order dated 16.11.2011 passed by the trial Court, the aforementioned accused, except accused Nachhattar Singh, were sentenced as under:

<u>Offence</u>	<u>Sentence</u>
Section 452/149 IPC	Rigorous imprisonment for one year and to pay a fine of Rs.200/- each and in default of payment of fine, imprisonment for 15 days each.
Section 148 IPC	Rigorous imprisonment for six months and to pay a fine of Rs.100/- each and in default of payment of fine, imprisonment for 7 days each.
Section 427 IPC	Rigorous imprisonment for three months and to pay a fine of Rs.50/- each and in default of payment of fine, imprisonment for 2 days each.

It was, however, ordered that the sentences imposed upon accused shall run concurrently.

Aggrieved against the aforementioned judgment and order passed by learned trial Court, the respondents-accused had preferred three appeals before the Court of Session i.e. one filed by accused Jaswant Singh, the second filed by accused Balwinder Singh and the third appeal filed by accused Jarnail Singh, Darshan Singh, Kulwinder Singh, Sukhdip Singh, Jaswinder Kaur, Gurwinder Kaur, Joginder Singh, Surjit Singh and Kulwant Singh.

Vide common judgment dated 05.12.2012 passed by learned Additional Sessions Judge, Moga, all the three appeals were accepted and the accused were acquitted of the charge levelled against them by giving them the benefit of doubt. Accordingly, the judgment of conviction and order of sentence passed by the trial Court were set aside.

It is in these circumstances the petitioner-complainant has approached this Court by filing the present revision petitions.

Learned counsel for the petitioner has contended that the impugned judgment dated 05.12.2012 passed by learned appellate Court is based upon conjectures and surmises. Though the prosecution has been able to prove its case against the accused, but the appellate Court has overlooked the evidence produced by the prosecution. The findings given by learned appellate Court are not based upon correct appreciation of evidence and, therefore, the impugned judgment of acquittal is not legally sustainable.

He has further argued that Basant Kaur (PW1) and Gurnam Singh (PW4) have fully corroborated the statement of petitioner-complainant Shinderpal Kaur (PW2), but learned appellate Court has not considered the case of the petitioner in a positive way and has committed a grave error of law while acquitting the respondents-accused. He has, thus, prayed for upholding the judgment of conviction and order of sentence dated 16.11.2011 passed by learned trial Court and setting aside of the impugned judgment dated 05.12.2012 passed by learned appellate Court.

I have heard learned counsel for the petitioner-complainant and perused the record.

Perusal of the record reveals that in order to prove ownership of Basant Kaur, neither the original Will nor certified copy of the same was produced on record. No document showing possession of the petitioner-complainant and her maternal grandmother Basant Kaur has been produced. No document like voter list, ration card or electricity bill etc. has been placed on record to prove possession of the petitioner and her maternal grandmother. Thus, the prosecution has not been able to prove that the petitioner-complainant was owner and in possession of the house, where the alleged occurrence had taken place.

The petitioner-complainant, while appearing in the witness box as PW2 has deposed in her cross-examination that she could not produce the voter list. She has admitted that she was married at village Talwandi Mallian in the year 1996 and since the year 2003, her ration card is at Jagraon. Therefore, when she was married at village Talwandi Mallian, there was no occasion for her to live in the house at village Lohara along with her maternal grandmother. This fact creates a serious doubt regarding the truthfulness of prosecution version.

It is the case of the prosecution that the accused had also damaged the household articles belonging to the petitioner-complainant. However, no detail of those articles has been given and no recovery memo was prepared by the investigating officer in this regard. Petitioner Shinderpal Kaur as PW2 has also admitted in her cross-examination that they had not taken any article on Superdari, which shows that no article was taken into possession by the police.

Petitioner-complainant Shinderpal Kaur as PW2 has also deposed that the respondents-accused had given beatings to her as well as her maternal grandmother Basant Kaur. However, no medico-legal report of Basant Kaur has been proved on record by the prosecution regarding the alleged injuries caused to her by the accused.

Moreover, the scope of revisional jurisdiction is vested with limited powers. Hon'ble Apex Court in ***Johar and others Versus M/s Mangal Prasad and another 2008(3) SCC 423*** while dealing with the scope of revisional jurisdiction, has observed as under:

“17. The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under section 397 and 401 of the Code Criminal Procedure, it exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severally restricted, particularly when it arises from a judgment of acquittal.”

Under the criminal law, the prosecution is required to prove its case beyond all probabilities. The accused is considered to be innocent unless proved guilty by the prosecution by leading cogent evidence. However, in the present case, the prosecution has not been able to prove its case against the respondents-accused beyond shadow of reasonable doubt. Therefore, this Court finds that the impugned judgment passed by the appellate Court does not suffer from any material infirmity, illegality or irregularity which may warrant interference of this Court by invoking its revisional jurisdiction.

Accordingly, the impugned judgment dated 05.12.2012 passed by learned Additional Sessions Judge, Moga is upheld and the present revision petitions, being devoid of any merit, are dismissed.

Photocopy of this order be placed on the files of other connected cases.

August 10, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No