

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

**CRR No.173 of 2016 (O&M)
Date of Decision: March 27, 2017**

Ashwani Kumar and others

...Petitioners

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Karan Chaudhary, Advocate
for the petitioners.

Mr.Sultan Singh Gill, Deputy Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Petitioners have filed this revision petition under Section 401 Cr.P.C. against respondent State of Punjab, challenging the judgment dated 11.12.2015 passed by learned Addl. Sessions Judge(A), Gurdaspur, vide which the appeal filed by the State was accepted and the judgment dated 25.07.2014 passed by learned Judicial Magistrate Ist Class, Gurdaspur was set aside and the matter was remanded back.

Notice of motion was issued. Learned State counsel appeared and contested the revision.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that challan was presented against

Ashwani Kumar, Devo Rani and Lakshmi Rani in case FIR No.51 dated 07.10.2008 under Sections 323, 324, 452, 427, 148 and 149 IPC. The brief facts of the case as noted down in the judgment passed by learned JMIC, Gurdaspur, are as under:-

“2. Prosecution has presented instant charge-sheet with the submissions that a quest was received at P.S. Purana Shallaan on 07.10.2008 regarding admission of Rakesh Kumar son of Dharampal and Rano Devi wife of Ravi Kumar residents of Village Karwal at Civil Hospital, Gurdaspur. After receiving the quest, ASI Mahinder Singh went to Civil Hospital, Gurdaspur along-with police party and got fitness certificate of injured from the doctor concerned. Thereafter, Rakesh Kumar injured, got recorded his statement to the effect that he was milkman by profession. In the month of February, 2008 there was some dispute regarding joint land between his family and Ashwani Kumar son of Satpal, whereas Satpal was his real uncle. A compromise was effected with the intervention of Gram Panchayat and respectable on 23.02.2008 in pursuance of which, disputed land was partitioned after demarcation. As per the condition of compromise, a Wall was constructed in the disputed land on 06.10.2008 by him (Rakesh Kumar). Afterwards, in the intervening night of 06/07.10.2008 at about 02:00 AM on hearing some noise, he woke up and observed that Ashwani Kumar armed with Sword, Laxmi Rani wife of S/o of Satpal armed with stick, Sheela Rani wife of Surinder Kumar armed with iron rod and Devi Rani W/o Satpal empty handed along-with two unidentified muffled persons were demolishing the said Wall raised by him. He woke up his mother Satya Devi and asked all the said persons to stop demolishing of wall. But Ashwani Kumar raised slogan to assassinate Rakesh Kumar and his mother Satya Devi for constructing Wall in their land. Then Ashwani Kumar and Laxmi Rani, inflicted blow with their respective weapon on him, which hit on his little and ring finger of left hand and on head. Devo Rani, Sheela Rani and Laxmi Rani also gave several beatings to Satya Devi. On hearing alarming noise, Sunil Kumar son of Mohan came to the spot. Sunil Kumar rushed to Ravi Kumar, brother of Rakesh Kumar and reported the matter. Thereafter Ravi Kumar and his wife Rani Devi came at the spot. But they were also injured by all the accused in the last prayer is made to take legal action against the accused.”

Charges were framed under Sections 323, 324, 452, 427, 148

and 149 IPC, to which the accused pleaded not guilty and claimed trial. The prosecution examined PW-1 Rakesh Kumar, complainant, PW-2 Rani Devi, PW-3 Sunil Kumar and PW-4 Dr.Rajesh Lakhanpal. Thereafter, the evidence of the prosecution was closed by order on 05.09.2013.

After recording the statement under Section 313 Cr.P.C. and after discussing the evidence on record, learned JMIC, Gurdaspur, acquitted the accused-petitioner of the charges framed against him. An appeal was filed by the State before the Session Court and learned Addl. Sessions Judge (A), Gurdaspur, accepted the appeal vide impugned judgment dated 11.12.2015 without deciding the same on merits and remanded back the matter for fresh decision after giving one opportunity to the prosecution to conclude the evidence.

Aggrieved from the judgment dated 11.12.2015 passed by learned Addl. Sessions Judge (A), Gurdaspur, present revision petition has been filed by the petitioner.

From the record, I find that learned Addl. Sessions Judge(A), Gurdaspur, while setting aside the judgment dated 25.07.2014 passed by learned JMIC, Gurdaspur, has mainly relied that no warning of any kind was given to the prosecution earlier to the day when the evidence was closed by order. In my view, there is no such need to give any warning to the prosecution that the Court is going to close the evidence. The only fact the Court is to see is whether reasonable opportunities have been granted to the prosecution to produce and complete the evidence or not. Furthermore, if the prosecution is delaying the case without any reason and not producing the PWs, the Court has every right to decline further adjournment to the prosecution. In the present case, the charges were framed in year 2008 and

reasonable opportunities had also been granted by the Court including sending the letter to the Senior Superintendent of Police to produce the complete evidence. Writing of letter to SSP to produce the witnesses itself shows that the prosecution was not producing the evidence and not taking effective steps to complete the evidence.

Learned Addl. Sessions Judge(A), Gurdaspur, further held that there is no specific provision to close the evidence of the prosecution in this manner. This reasoning is also not as per law. The Court is conducting the trial and the Court is to see the interest of both prosecution as well as accused and the accused cannot be harassed for years together and prosecution cannot be allowed to sleep over the trial and if the prosecution is not producing the evidence expeditiously, then the Court has every right to decline further adjournment and it cannot be held that there is no such provision to close the prosecution evidence. It is a technical reasoning that Court can decline further adjournment but cannot close the evidence by order. The effect of both the circumstances is the same. If the further adjournment is declined to the prosecution, it means that no further adjournment will be allowed to the prosecution to produce further evidence. In this case, the occurrence is of October 2008 and for the last so many years, the trial is going on. More than 20 opportunities were granted to the prosecution to complete the evidence. When further adjournment was declined by the trial Court, that order was not challenged anywhere.

In view of the above discussion, I find that the judgment dated 11.12.2015 passed by learned Addl. Sessions Judge(A), Gurdaspur, is not as per law and the same is set aside. Finding merit in the present revision petition, the same is allowed. The matter is remanded back to the lower

Appellate Court to decide the appeal filed by the State on merits as per law.
The parties are directed to appear before lower Appellate Court on
27.04.2017.

March 27, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No