

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3090-2015

Reserved on: December 4th 2017Pronounced on: 14th December, 2017

Bhupinder Singh

..Petitioner

versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR JUSTICE RAMENDRA JAIN

Present: Mr. Jagjit Singh, Advocate, for the petitioner

RAMENDRA JAIN, J.

1. Through this instant revision, the petitioner has assailed the impugned judgments dated 08.01.2014 of the trial court acquitting the petitioner under sections 295-A, 323,380,452, 506 and 149 IPC and dated 22.4.2015 of the first appellate court, dismissing his appeal, thereby affirming the judgment of acquittal dated 08.01.2014 passed by the trial court.

2. Criminal law was set into motion on the basis of the statement of complainant Bhupinder Singh made before ASI Jaswant Singh, to the effect that he runs a spare part shop at Nirankari Mohalla, Ludhiana. On 14.8.2002, he purchased a shop from Satinder Pal Singh and his wife Harpreet Kaur for Rs.7,25,000/-. An agreement, to this effect, was executed by respondent nos. 2 to 5 in his favour. After the shop was purchased, the petitioner did not start any business. He had only placed his furniture therein. He used to visit his shop oftenly. At around 8.00 PM, on 01.05.2003, when he went to his shop, he saw that accused persons,

namely, Satinderpal Singh, Manpreet Singh, Kawaljit Singh, Harnam Singh and Sukhpreet Singh were already sitting in his shop by breaking its lock. He asked Satinder Pal Singh as to why he broke open the lock of his shop, whereupon, all the accused started beating him. Respondent Manpreet Singh pulled his beard. He raised an alarm “Mar Ditta, Mar Ditta”. On hearing his hue and cry, people of the nearby locality assembled there. The accused persons, on seeing the people, sped away from the spot, after locking the shop. They, while leaving the place of occurrence, threatened the complainant to eliminate him, in case he reported the matter to the police. Satinder Pal Singh also stole his furniture lying in the shop. On account of threat extended to him, he did not go to the police station to lodge a report against the accused persons. On 10.5.2003, his friend Jasjit Singh came to him. He narrated the entire version to him, who advised him to report the matter to the police. On the basis of this statement, the police registered FIR against the accused. After completion of necessary formalities, a final report under section 173 of the Code of Criminal Procedure was submitted against respondent nos. 2 to 5 before the trial court.

3. On finding a prima facie case, the respondents were charge sheeted under sections 295-A, 323, 380, 452, 506 and 149 IPC, to which they pleaded not guilty and claimed trial.

4. After closure of the evidence by the prosecution, statements of the accused under section 313 of the Code of Criminal Procedure were recorded, putting all incriminating evidence appearing against them on the record, to which they pleaded innocence and false implication in the case. They took the following defence:-

“ Complainant Bhupinder Singh had entered into an agreement

to purchase the shop in dispute from Satinderpal Singh and his wife Harpreet Kaur vide agreement dated 14.08.2002 for a sum of Rs.7,25,000/-. The complainant had taken the loan for an amount of Rs.6,60,000/- for running his business from Manpreet Singh and his brother Gurdeep Singh and he had issued the security cheques for the return of loan amount which are Ex.D-1 to D4, but he could not return the loan amount to Manpreet Singh and his brother Gurdeep Singh and he had suggested to sell the shop to Manpreet Singh and Gurdeep Singh and consequently Manpreet Singh and Gurdeep Singh had entered into an agreement to sell with the complainant on 10.04.2003 thereby the shop was sold to them and the possession was also delivered and there is a recital in this regard in the agreement dated 10.04.2003. Thereafter, the complainant resiled from this agreement and started saying his alleged claim over shop. Then Manpreet Singh and Gurdeep Singh had filed a civil suit for specific performance of agreement dated 10.04.2003 in which the injunction was also granted in their favour and this suit is still pending. The complainant with the oblique motive and in order to regain the shop and in order to pressurise him, Manpreet Singh and his other relative who are co accused, had concocted a false story of the alleged trespassing by him and other allegedly on 01.05.2003 and has also levelled a false allegations of alleged theft and beating upon them whereas no such, occurrence did take place and the complainant lodged this false FIR after due

deliberation and by the help of PW Jasjeet Singh who is his close friend and the complainant has also procured the false alleged injury report and they never committed the offence as alleged by the complainant.”

5. Respondent nos. 2 to 5, in their defence, also examined Vimal Kumar as DW1, Rajeev Kumar as DW2, Amandeep Banga as DW3, Sohan Singh as DW4 and Kishan Singh, Civil Ahlmad as DW5 and proved documents Ex.DW3/1 to Ex.DW3/5, Ex.DW4/1 and Ex.DW4/2 and thereafter closed the defence evidence.

6. The trial court, on appraisal of evidence on record and hearing arguments addressed by both the sides, acquitted the accused-respondents. In appeal, the accused-respondents remained unsuccessful and the first appellate court dismissed their appeal, affirming well reasoned judgment of acquitted of the trial court.

7. Learned counsel for the petitioner has vehemently contended that both the learned courts below have committed a grave error in acquitting the respondents without appreciating the ocular as well as documentary evidence on record in its correct perspective. The findings recorded by both the learned courts below that there was a delay in lodging the FIR, are completely erroneous, inasmuch as the complainant has satisfactorily explained the delay in the FIR itself. No finding has been recorded by both the learned courts below with respect to an offence under section 295-A IPC

8. Having given thoughtful consideration to the submissions made by learned counsel for the petitioner, this court is of the considered opinion that revision, being without any merit, deserves to be dismissed for the

reasons to follow:

9. In order to substantiate his case, petitioner Bhupinder Singh stepped into the witness box as PW1 and deposed on the lines of the prosecution. Jasjit Singh, a closed friend of the petitioner as well as an alleged eye witness to the occurrence, appeared in the witness box as PW2 and corroborated the version of the complainant in its entirety. PW3 Avtar Singh proved on record the statement of complainant as Ex.PB and testified that beard hair was taken into police possession vide memo as Ex.PC. PW5 Dr. Sanjiv Hans, proved on record medical report Ex.PX and pictorial diagram as Ex.PY. PW9 Jaswinder Singh proved on record an agreement to sell as Ex.PW9/1. PW10 Amarjit Singh deposed that from 1998 to 2004, he was working in the shop of Bhupinder Singh, which was situated at Street No.7, Nirankari Mohalla. He further deposed that on 01.05.2003, he along with Gurdev Singh was present in the market when some one from the public told him that the accused are beating his employer Bhupinder Singh and then he along with Gurdev Singh arrived at the spot. When people started assembling at the spot, the accused fled away and thereafter, he noticed that Bhupinder Singh had suffered injuries on his person and his furniture along with 2-3 bags of nut bolts were missing. He dropped Bhupinder Singh at home.

10 On the other hand, respondent nos. 2 to 5, in their defence, examined Vimal Kumar DW1, who deposed that he is a manufacturer of motor parts and tractor parts. He has been working in the shop, namely, Ganpati Auto Industries, Janta Nagar, Ludhiana, whereas accused Satinderpal Singh is selling motor parts in the shop under the name and style of M/s Standard Motor Company and his shops are situated at

Standard Complex near Manju Cinema, G.T.Road, Ludhiana. He further testified that he had been the frequent visitor of this complex for selling his parts, taking orders, delivering parts and collecting payments for the last 20 years. Satinder Pal Singh along with his wife Harpreet Kaur, being owners of the shop, vide agreement dated 14.8.2002, had sold the shop to complainant Bhupinder Singh, but he did not take possession thereof. Bhupinder Singh was also known to him. He used to discuss this matter with him. Bhupinder Singh had borrowed some money from Manpreet Singh and his brother Gurdip Singh, but he could not repay the loan amount to them. He also issued cheque in favour of Manpreet Singh and Gurdeep Singh as a security of the loan amount. On 1.05.2003, he was present in the said complex and at the above said shop till evening for taking new orders for new months. He has specifically deposed that on that day, no occurrence took place, as alleged by Bhupinder Singh. DW2 Rajeev Kumar also corroborated the deposition of DW1 Vimal Kumar. DW3 Amandeep Singh Banga, Civil Ahlmad in the court of Ms. Pushpa Rani, Civil Judge (Junior Division), Ludhiana, proved certified copy of the plaint as Ex.DW3/1. He also proved on record photocopies of cheques as Ex.DW3/2 to Ex.DW3/5 as per his record. DW4 Sohan Singh, Criminal Ahlmad, who brought the summoned file of Civil Suit No.232 dated 14.05.2003 titled as “Gurdeep Singh versus Bhupinder Singh”. DW5 Kishan Singh, Civil Ahlmad, who brought summoned file of Civil Suit No.215 dated 10.8.2005 titled as “Bhupinder Singh versus Satinder Pal Singh”. He proved certified copy of plaint and written statement Ex.DW4/1 and DW4/2, respectively.

11 It is the case of the prosecution that on 10.5.2003, his friend Jasjit Singh came to him and narrated the entire story to him. His friend

advised him to report the matter to the police. Petitioner Bhupinder Singh has also admitted in his cross-examination with respect to arrival of his friend and advised him to report the matter to the police, but he did not disclose this fact that his friend Jasjit Singh had seen the incident with his own eyes, though as per the testimony of PW2 Jasjit Singh, he had himself seen the said occurrence, but did not come forward to save his friend from the clutches of the accused. He though remained present at the place of occurrence for some time, but on account of some urgent work to attend, he left the place. He further admitted in his cross-examination that he had family-cum-business relationship with Bhupinder Singh. He did not remember as to how many times he had deposed in favour of Bhupinder Singh. He further admitted that he accompanied Bhupinder Singh on each and every date of hearing. He also disclosed this fact to Bhupinder Singh that before his statement was recorded by the police, he was present at the spot. He saw the occurrence for about 4-5 minutes from a distance of 10/12 feet, but he did not disclose this fact to the police. He further admitted that he cannot tell as to which of the accused attributed which injury on the person of the complainant. He even testified that many people of the market had gathered at the spot, but he can not tell the name of any person despite the fact that he knew many shopkeepers of the said market who had assembled at the spot. He also admitted that he had not informed of the incident to the police or the complainant. He had neither called them through telephone or by visiting the house of the complainant. The testimony of this witness, as discussed above, clearly spells out that he was not present at the place of occurrence. PW4 ASI Jaswant Singh, in his cross-examination has admitted that complainant Bhupinder Singh had

shown him agreement dated 14.2.2003, but he did not take the same in his possession. Therefore, the same could not be produced on the judicial file. PW5 Dr. Sanjiv Hans deposed that probable duration of both the injuries were uncertain as there was no mark on the area, from where the hair of beard were allegedly pulled. From the evidence, as discussed above, produced on the record by the prosecution, it can easily be inferred that the prosecution has not been able to prove its case beyond reasonable shadow of doubt. Rather, the evidence produced by the accused-respondent nos.2 to 5 in their defence, especially the testimony of DW1 Vimal Kumar, who was present at the time of occurrence, is unimpeachable, trustworthy and could not be shattered even lengthy cross-examined conducted by the learned defence counsel. Therefore, the defence version is plausible and worth reliance. Both the learned courts below, in the considered opinion of this court, have rightly discussed the evidence produced by the prosecution and the defence in its correct perspective. The contention of the learned counsel for the petitioner that both the learned courts below misread and misconstrued the evidence available on the record, cannot at all be countenanced and the same, being misconceived, is rejected outrightly.

12 So far as the contention of the learned counsel for the petitioner that there was a delay of 10 days in reporting the matter to the police and explained by the complainant satisfactorily is concerned, this court is of the considered view that as per the record, the alleged incident took place at around 8.00 P.M on 01.05.2003, but the FIR was lodged on 10.5.2003, after a delay of 10 days. In such circumstances, the conduct of the complainant can be gauged from the fact that such an incident, he did not deem it appropriate to discuss and disclose to his family members. He even did not

bother to visit to any doctor to get the medical assistance. PW2 Jasjit Singh, a close friend of Bhupinder Singh as well as the alleged eye-witness to the occurrence, also did not make any endeavour to save his friend from the clutches of the accused nor did he report the matter to the police or the family members of the complainant. It is a sorry-state-of affairs that a close friend, remained mute spectator, saw the occurrence quietly and did not come forward to save his friend Bhupinder Singh. Meaning thereby that no occurrence took place between the petitioner and respondent nos. 2 to 5. All these factors, in the considered opinion of this court, go to the root of the prosecution case and create a serious doubt with respect to his presence at the spot. Both the learned courts below have dealt with this point of delay elaborately giving sound reasoning therein and as such, do not call for interference. This court does not feel any necessity to further go into Section 295-A IPC, keeping in view the fact that the complainant has not been able to explain an inordinate delay of 10 days satisfactorily in reporting the matter to the police. Even otherwise, the occurrence, allegedly, narrated by the complainant in the absence of any cogent or plausible evidence creates a doubt in the mind of the court, inasmuch as the testimony of PW2 Jasjit Singh, the alleged eye witness and a close friend of the complainant, has not supported the case of the prosecution. Both the learned courts below, in the considered opinion of this court, have also rightly not relied upon the testimony of this witness keeping in view the fact that his presence at the spot was doubtful.

13. In view of the discussion made above, this court does not find any illegality or perversity in the impugned judgments passed by the learned courts below. Consequently, the revision, being without any merit, fails and

is dismissed.

14th December, 2017
VK

(RAMENDRA JAIN)
JUDGE

- | | | |
|----|---------------------------|--------|
| 1. | Whether reasoned/speaking | Yes/No |
| 2. | Whether Reportable | Yes/No |