

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

I.

**CRR-3916-2016 (O&M)
Date of Decision: April 19, 2017**

Babu Ram and another

.....PETITIONER(s).

VERSUS

State of Haryana

.....RESPONDENT(s).

II.

CRR-4368-2016 (O&M)

Babu Ram and another

.....PETITIONER(s).

VERSUS

State of Haryana

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

**Present: Mr.Ashit Malik, Advocate
for the petitioners.**

Mrs.Neelam Kashyap, D.A.G., Haryana.

**Mr.S.K.Gupta,, Advocate, for
Mr.S.K.Saini, Advocate,
for the complainant.**

SURINDER GUPTA, J.(Oral)

**Custody certificate dated 7.12.2016 filed in Court today is
taken on record.**

Heard.

This order shall dispose of the aforesaid two petitions.

Learned counsel for the petitioners submits that the police had filed two challans in case bearing FIR No.6 dated 16.1.2009 registered at PS Dhand, District Kaithal for offence punishable under Sections 323, 325 read with Section 34 IPC and in cross version case registered vide DDR No.24 dated 17.1.2009 on the statement of the petitioner-Babu Ram.

After conducting the trial, the petitioners were convicted by the learned trial court while in the cross-case, accused Prithi Singh, Satpal and Rajinder were acquitted. The petitioners filed two appeals before the Additional Sessions Judge, Kaithal which were disposed of by common judgment dated 4.10.2016. While dismissing both the appeals, learned appellate court made no reference to the evidence produced in the cross case by the petitioners. It was observed only in the last paragraph that both the appeals are dismissed. This has resulted in great prejudice to the petitioners. The first appellate court should have decided either both the appeals separately or if both were to be decided by common judgment, reference was required to be made to the evidence produced by the petitioner in the cross case and record definite finding with regard to the charges framed in that case and plea raised by appellant in appeal. He seeks remand of the appeal to the Additional Sessions Judge, Kaithal for deciding both the appeals afresh on merits.

Learned counsel for the private respondent/complainant agrees that the first appellate court had not made any reference to the

evidence produced by the petitioner in the cross case while disposing of both the appeals by common judgment.

On perusal of the judgment of the appellate court, I find that as the submissions were raised before it regarding the injuries suffered by the petitioner in the cross case but reference was made only to the evidence led in the main case and the evidence led in the cross case was totally omitted and not considered. This has resulted in great prejudice to the petitioners whose appeal against the acquittal in the cross case has not been decided on the basis of evidence on record and effect of that evidence on facts of main case was also not considered.

Keeping in view the above fact, I accept both the petitions and set aside judgment of appellate court and remand both the appeals with direction to the Sessions Judge, Kaithal to entrust the same to the court of Additional Sessions Judge there for afresh disposal in accordance with law.

Both the petitioners who are in jail are ordered to be set at liberty and their bail bond/surety bond which were furnished are restored and will remain in force till the disposal of the appeals. Parties will appear before Sessions Judge, Kaithal on 22.5.2017.

A copy of this order be sent to the Superintendent, District Jail, Kaithal.

(SURINDER GUPTA)
JUDGE

April 19, 2017
Paritosh Kumar

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>