

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Revision No.2187 of 2017 (O&M)

Date of Decision: December 12,2017

Rajesh Kumar.....Petitioner

Versus

Ashok Kumar and Others.....Respondents

Coram: Hon'ble Mr. Justice Arvind Singh Sangwan

Present: Mr.Rahul Vats, Advocate for the petitioner.

Arvind Singh Sangwan, J.

Respondents-accused-Ashok Kumar and Kalu Ram were tried for an offence under Sections 148, 427, 447, 506 of the Indian Penal Code, 1860 ('IPC' for short). They were acquitted of the charges framed against them by the trial Court vide judgment dated 21.2.2005. Appeal filed by the State thereagainst was also dismissed by the appellate Court vide judgment 18.11.2016 Hence, the present revision petition under Section 401 of the Code of Criminal Procedure ('Cr.P.C.' for short) against the order of acquittal has been filed by petitioner-Rajesh Kumar.

Prosecution story, in brief, is that on 8.11.2012 Assistant Sub Inspector, Ami Chand along with other Police officials, including Head Constable Gurdeep Singh, were on patrolling duty at Shaheed Udham Singh Chowk, Jalalabad, where complainant-petitioner Rajesh Kumar came and got recorded his statement stating that he is a land owner and business man and having land comprising in Rectangle No.63 Killa No.26 and in the said killa, there is a 4-5 feet high and 132 feet long boundary wall constructed on the eastern side with *pacca* bricks. In the month of June, 2012, a dispute had been raised by the accused that they had purchased the land from the paternal uncle of the complainant and they, after hatching a conspiracy, came present at the spot on 20.10.2012 armed with deadly weapons and demolished the said wall and took the bricks thereof by committing a theft of ₹40,000/- belonging to the complainant. A restraint order was passed against the accused in a suit filed by the complainant, but despite that accused were threatening him. They, thus, occupied the said land by having constructed a 7 feet high wall having length of 132 feet. On the statement of the complainant, the accused were arrested and released on bail.

On completion of investigation and necessary formalities, challan was presented against the accused.

In the present case, in order to bring the charge against the accused, the prosecution examined complainant as PW1,

Mohinder Partap Dhingra as PW2, Ami Chand, Assistant Sub Inspector as PW3 and Iqbal Singh, Patwari as PW4.

Accused-respondents, in defence, tendered the documents Exhibit DA to Exhibit DK into evidence.

Learned counsel for the petitioner has submitted that the Courts below have acquitted the accused-respondents on the ground that there was a delay in lodging the FIR and the testimony of the complainant-Rajesh Kumar is not corroborated from any other evidence which is not correct as per the evidence on record.

After hearing the learned counsel for the petitioner, I find no merit in the present revision petition.

The prosecution had failed to establish the charge against the accused as the prosecution had examined only Rajesh Kumar-complainant and his version lacks corroboration. The evidence led by PW2 is inadmissible as he has not himself witnessed the occurrence and conceded the fact in cross-examination that the occurrence did not take place in his presence. Moreover, the Investigating Officer never recovered and produced the bricks. Apart from evidence, there is an unexplained delay of 19 days in filing the FIR as it was registered on 8.11.2012 but the alleged occurrence took place on 20.10.2012 .

The trial Court, while ordering the acquittal of the respondents of the charges framed against them, held that the complainant had failed to corroborate his version. The trial Court

has further noticed that there was a delay of 19 days in lodging of the FIR which could make his version shady and it has been held in Thulia Kali vs. State of Tamil Nadu (1972) 3 Supreme Court Cases 393 that the FIR in a criminal case is vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced during the trial. Therefore, the delay in lodging of the FIR should be satisfactorily explained so that the possibility of false involvement of the respondents in the case could be ruled out. Further, the trial Court has held that the documents Exhibit DA-Exhibit DJ shows that the real dispute between the parties seems to be civil one and the complainant by getting the instant FIR registered seems to have given a criminal colour to a civil litigation. The reasons given by the trial Court, while ordering the acquittal of the respondents, are sound reasons based on appreciation of evidence.

Learned counsel for the petitioner has failed to point out any misreading of evidence on record by the trial Court, which would warrant interference by the Court.

Since both the Courts below have recorded the concurrent finding that the petitioner-complainant has failed to prove his case, in view of the judgment of Hon'ble the Supreme Court in **Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748**, holding that where, in a case, two views are possible, the one which favours the accused, may be adopted by the revisional Court, the impugned order does not call for interference. Accordingly, this

revision petition is dismissed.

Since the revision petition is dismissed on merits, the application for condonation of delay is also dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

December 12, 2017

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