

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

CRR No. 2957 of 2016

DATE OF DECISION :- March 27, 2018

Prem Kumar and others

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Raman Goklaney, Advocate for the petitioners.

Accused Prem Kumar, Milakh Raj, Tilak Raj, Kaushalaya Bai, Vidya Bai and Mahesho Bai alias Renu Bai faced trial by Judicial Magistrate Ist Class, Fazilka who vide judgment dated 9.1.2014 acquitted the accused of the charge framed against them.

Briefly stated the facts of the case as per prosecution story are that F.I.R in this case was recorded on the basis of statement of complainant- injured Harbans Lal, which he made to the police on 25.10.2006 stating therein that they are three brothers and two sisters having a plot at village Kharass Wali Dhani and a passage of 11 feet adjoins to that plot; that on 24.10.2006 they were going to raise construction of wall in their plot, then at about 1.30 P.M. Tilak Raj armed with a Sabbal (crow bar), Milakh Raj armed with a Balla (batton), Prem Kumar armed with Trungle, Vidya Bai armed with a Balla (batton), Mahesho Rani armed with a gandasi (axe), Kaushalaya Bai armed with a Balla came there. Tilak Raj raised a lalkara that lesson be taught to the complainant side for rasing construction

of the wall and then he attacked the complainant hitting with Sabbal on the backside of his head. Milakh Raj gave a Balla blow to the complainant hitting him on his head, then accused Vidya Bai gave a Balla blow hitting the complainant on his waist, Mahesho Devi gave a gandasi blow hitting the complainant on his left shoulder. When Rakesh Kumar-brother and Piari Bai-mother of the complainant came forward to rescue the complainant then Tilak Raj gave a Sabbal blow hitting Rakesh Kumar on the backside of his head. Mahesho Rani gave a Balla blow hitting Rakesh Kumar on his right shoulder. Mahesho Devi gave a gandasi blow from its reverse side hitting Piari Bai on her right ear, Kaushalya Bai gave a Balla blow hitting on her right shoulder. On alarm being raised, Chhinderpal Singh and some other persons arrived at the spot and saved the complainant side from the clutches of accused then all the accused fled away from the spot along with their respective weapons. The injured were taken to Civil Hospital, Fazilka by Chhinderpal Singh. They were medico legally examined there.

Information from that hospital was sent to Police Station Sadar Fazilka regarding admission of the injured in the said hospital. Then ASI Narinder Pal Singh along with other police officials went there and obtained written opinion from the concerned doctor regarding fitness of the injured to make statements. The doctor opined that the injured was in a fit condition to make statements. However, the injured stated that efforts for getting the matter compromised were being made therefore they did not get their statements recorded with the police official.

It was on the next date i.e. 25.10.2006, when ASI Narinder Pal Singh along with other police officials went to Civil Hospital, Fazilka then he recorded statement of Harbans Lal. ASI Narinder Pal Singh appended his

endorsement below the said statement. However, F.I.R. No. 386 dated 25.10.2006 under Sections 452, 324, 323, 427, 148, 149 IPC had already been recorded with Police Station Sadar Fazilka. The investigating officer prepared the site plan of the place of incident and recorded statements of witnesses.

Accused were arrested in his case and released on bail as per orders of the Court. Subsequently offence under Section 326 IPC was added.

Statements of witnesses were recorded. After completion of investigation and other formalities, challan against the accused was presented. On presentation of challan, they were supplied copies of documents relied upon therein free of cost as provided under Section 207 Cr.P.C.

Finding a prima facie case, charge for offences under Sections 326, 323, 148, 149 IPC was framed against the accused. They pleaded not guilty and claimed trial.

Case was fixed for evidence of prosecution and it examined Harbans Lal the complainant-injured as PW1, Dr. Rajesh Sharma as PW2, Rakesh Kumar the injured-eye witness as PW3, Piaro Bai and other injured-eye witness as PW4, ASI Ashwani Kumar as PW5, ASI Narinderpal Singh as PW6 and thereafter prosecution closed its evidence.

On closure of the prosecution evidence, statements of accused were recorded under Section 313 Cr.P.C. wherein all the incriminating circumstance appearing against them were put to them to which they denied the same contending that they have been falsely implicated and they have not caused any injury to the complainant and others.

The accused did not lead any evidence in defence.

After hearing arguments, the trial Magistrate acquitted the accused of the charge framed against them.

The State preferred an appeal against that judgment, which was dismissed qua accused Kaushalaya Bai, Vidya Bai and Mahesho Bai alias Renu Bai. However with regard to accused Prem Kumar, Milakh Raj, Tilak Raj for offences under Sections 148, 326 IPC, it was dismissed to that extent but was allowed with regard to an offence under Section 323 IPC qua Prem Kumar, Milakh Raj and Tilak Raj and they were ordered to be released on probation for a period of six months.

This judgment has left the accused-convicts aggrieved and they have filed the present Criminal Revision Petition praying that the same be accepted, the impugned judgment of their conviction be set aside and they be acquitted of the charge framed against them.

The Additional Sessions Judge did not find any fault with regard to the finding returned by the trial Magistrate that prosecution had failed to prove its charge against accused Kaushalaya Bai, Vidya Bai and Mahesho Bai alias Renu Bai beyond a shadow of reasonable doubt, as such, agreed with the trial Court as regards acquittal of those accused. The Additional Sessions Judge agreed with trial Court as regards acquittal of accused Prem Kumar, Milakh Raj, Tilak Raj for offence under Sections 148, 326 IPC though finding force in the contention raised by the State counsel in the appeal that an offence under Sections 323 was disclosed against Prem Kumar, Milakh Raj, Tilak Raj for which they had been granted benefit of probation.

I have heard learned counsel for the petitioners and I find that

there is no merit in the petition. The impugned judgment passed by Additional Sessions Judge, Fazilka is based on proper appraisal, appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein much less apparent on the fact of it. The judgment certainly cannot be termed as perverse. Accordingly, the petition stands dismissed.

(H.S. MADAAN)
JUDGE

March 27, 2018
p.singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No