

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

Sr.No.112-a

**Criminal Revision No.3174 of 2016
Date of Decision:17.09.2018**

Raghu Nandan

....petitioner

Versus

Satish and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Jatin Hans, Advocate
for the petitioner

ARVIND SINGH SANGWAN, J. :

Prayer in this revision petition is to set aside the judgement dated 20.12.2014 passed by the Judicial Magistrate First Class, Bhiwani, vide which the respondents/accused were acquitted in FIR No.14 dated 12.01.2009, under Sections 148,323,427,149 IPC, registered at Police Station City Bhiwani, as well as the judgement dated 07.06.2016 passed by the Additional Sessions Judge, Bhiwani, vide which the appeal filed by the complainant was dismissed.

Brief facts of the case are that on 27.12.2008, complainant Raghu Nandan was present at his house, some persons came to his house regarding purchase of his buffalo. The persons namely Satish son of Gaja Nand, Sona wife of Raj Kumar, Rajesh son of Munshi Ram, Suresh-brother-in-law of Rajesh, Prema wife of Mahender, Asha daughter of Raj Kumar

alongwith some other boys came there and demolished the wall of the house of the complainant towards the side of Kumhar Community. When they were restrained from doing so, they started pelting brick bats and stones on the complainant. The accused persons were armed with their respective weapons. The complainant also suffered brick bat blows. The complainant disclosed in his statement that the accused persons were having enmity with him and also inflicted injuries upon him earlier also and they wanted to take possession of the land of the complainant by ousting him.

After the investigation was complete, the police submitted the report under Section 173 Cr.P.C. The respondents-accused did not plead guilty and claimed trial and thereafter, the trial Court framed the charges under Sections 148,343,427 IPC read with Section 149 IPC.

The trial Court recorded the statement of PW1-ASI Bhim Singh, PW2-ASI Rajbir Singh, PW3- Ram Avtar, PW4-Om Parkash, PW 5-Raghu Nandan-complainant and PW6- Partap Singh retired DSP. Thereafter, the evidence of the prosecution was closed by Court order.

The accused persons in their statements under Section 313 Cr.P.C denied all the incriminating evidence which had come against them on record and in defence, produced on record the documents Ex.D1 to Ex.D7, pertaining to the civil litigation between the parties. Thereafter, the trial Court vide order dated 20.12.2014, acquitted the respondents. The operative part of the order reads as under:

“ I have heard learned counsel APP for the State and Ld.counsel for both the accused and perused the cased file very carefully.

In the present case, the accused have been charge sheeted under Sections 148 and 323 and 427 read with Section 149 of IPC. The allegations against

accused are that they caused mischief by breaking the wall of the complainant Raghu Nandan and caused injuries to complainant by forming unlawful assembly. To prove its case, complainant Raghu Nandan himself appeared in the witness box and in the examination-in-chief, he reiterated the contents of complaint. In his cross examination he deposed that he received injuries, which were caused to him by accused by throwing stones. Besides, the complainant, there is no other witness examined by the complainant Raghu Nandan to support his case. The complainant Raghu Nandan is alleging that the accused by forming and unlawful assembly broke wall of his house, when the complainant is alleging that boundary wall of his house has been broken by the accused, he was duty bound to examine any witness from his house or from his locality where wall was situated in which he failed.

Further, the complainant is alleging that he received injuries from stones thrown by the accused but MLR is not proved by calling the Doctor, who medico legally examined him.

Further Bhim Singh, who appeared as PW1 in his cross examination deposed that he had seen the place of occurrence which is owned by temple. He deposed that regarding ownership, he did not take any document in his custody. He admitted that in his investigation, he did not find Smt. Sohna, Ms. Asha, present at the place of occurrence and they were found innocent.

Ram Avtar appeared who is investigating officer as PW3 in his cross examination deposed that the broken wall belonged to one Shankar.

ASI Om Parkash appeared as PW4 and proved site plan Ex. PE. In his cross examination, he admitted that as per place of occurrence, site plan

Ex.PE prepared by him. The wall which has been shown by point Mark A that wall is not part of any house, whereas in the north side vacant land of temple is lying and on the north side, there existed street for general public. He admitted that in his investigation, complainant Raghu Nandan was not found as owner of the wall in question.

From the prosecution evidence as discussed above, it is proved that the wall, which is contended to have broken by the accused did not belong to Raghu Nandan. Hence, it is not proved that accused caused mischief by breaking wall of Raghu Nandan. From the perusal of the evidence on record as well as perusal of the case file, it is not proved that accused by forming unlawful assembly caused injuries to complainant Raghu Nandan and caused mischief by breaking wall of complainant.

As a sequel of my foregoing discussion, the prosecution has miserably failed to prove its case beyond shadow of reasonable doubt against the above named accused. Consequently, the above named accused are hereby acquitted of the charges leglled against them. Their bail bonds/surety bonds stand discharged. File be consigned to the record room, after due compliance.”

The petitioner thereafter preferred a revision before the Court of Sessions. The Additional Sessions Judge, Bhiwani, vide impugned judgement dated 07.06.2016, after hearing both the parties, dismissed the revision petition and the present revision petition has been filed challenging the aforesaid judgements passed by the Courts below.

Learned counsel for the petitioner has furnished the photocopy of the relevant lower court record and has submitted that both the Courts below have failed to appreciate that by forming an unlawful assembly, all

the accused persons came at the spot and inflicted injuries to the complainant and demolished the wall, which was on the land owned by the petitioner. It is also argued that for the purpose of proving the offence under Section 323 IPC, there is no requirement to lead medical evidence.

It is further argued that all the accused persons were armed with their respective weapons when they entered at the spot and demolished the entire wall. Therefore, the ingredients of Section 427 IPC, are proved on record.

After hearing learned counsel for the petitioner, I find no merit in the present petition. The Courts below have recorded a finding that the prosecution has failed to prove to whom the property belongs on which the boundary wall was erected. There is no corroborating evidence to prove that the accused persons have caused injuries to complainant Raghu Nandan as PW3 Ram Avtar is held to be a hearsay witness.

The Courts below have further recorded a finding that even from the statement of PW4 ASI Om Parkash, it has come that the site plan Ex.PE was prepared at the spot on 12.01.2009 and the disputed wall shown at Mark 'A' do not belong to the house of any of the parties and rather is shown as a vacant land. The land towards north is owned by a temple and on southern side there is a gali sare aam i.e. a common passage. This witness has stated that in his investigation nothing has come on record that the wall in question was owned by complainant Raghu Nandan and rather it was the land of the temple. This witness further admitted that no evidence was concluded regarding ownership of the wall and there is a civil litigation going on between the parties regarding the temple.

In view of the same, the arguments raised by learned counsel

for the petitioner that PW5 Raghu Nandan, has proved that the accused persons, came at the spot with their respective weapons and demolished the wall and caused injuries to him is not proved. This witness has made certain improvements in his deposition before the Court made on 06.12.2013 as against the earlier deposition dated 25.05.2011, regarding the manner in which he had stated the accused person had thrown stones on him and also in the manner he sustained the injuries. In the first version, this witness could not give the specific name of the accused persons. Whereas later on, he has named Satish and Rajesh as the persons, who had thrown stones on him, which hit on his private parts.

The bone of contention between the parties is a passage leading to the temple which, the complainant claims to be his own property and the accused persons claim it to be a temple constructed for the general public and the complainant is trying to block the common passage by constructing the wall.

Both the courts below have recorded a finding that on the appreciation of prosecution evidence, the complainant has failed to prove any right over the land where the wall was constructed. Since both the courts below have discarded the statement of the complainant who appeared as PW5, in the absence of any medical evidence, though the same may not be required for proving charge under Section 323 IPC, considering the fact that the version of the prosecution is highly doubtful as the complainant himself is not clear about the manner of causing the injuries and also in view of the finding recorded by the Courts below that there is a litigation pending before the Civil court regarding the disputed wall, I find no ground to interfere in the well reasoned finding recorded by both the Courts below

holding that the prosecution has failed to prove its case beyond a reasonable doubt. Accordingly, this revision petition is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

17.09.2018

neenu

Whether speaking/reasoned	Yes/No.
Whether reportable-	Yes/No