

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

**CRR No.664 of 2014 (O&M)
Decided on: 06.08.2018**

Balkar Singh and another

....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Dheeraj Narula, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana
for respondent No.1.

Mr. S.K. Verma, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J.

Challenge in this revision petition is to the judgment dated 22.01.2014 passed by the Additional Sessions Judge, Sirsa vide which the Lower Appellate Court had set-aside the judgment of acquittal dated 19.02.2013 passed by the Chief Judicial Magistrate, Sirsa in FIR No.486 dated 11.07.2008 registered under Sections 323, 427, 452 of the Indian Penal Code (in short 'IPC') at Police Station City Sirsa, District Sirsa and convicted the petitioners under Sections 323, 427, 452 read with Section 34 IPC and has further sentenced them to undergo rigorous imprisonment for a period of 02 years and to pay a fine of Rs.2,500/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 04 months.

Brief facts of the case are that the aforesaid FIR was

registered on the statement dated 11.07.2008 made by the complainant – Makhan Singh son of Bhag Chand resident of Nankpur, Police Station Sadar Sirsa, making allegations that he is running a clinic in J.J. Colony Sirsa. On 10.07.2008 at about 05/05:30 p.m., he was sitting in his clinic and at that time, Balkar Chand and Harjeet Singh, both residents of village Nanakpur entered into his shop and started talking to him and then started abusing. When the complainant asked them not to do so, they became annoyed. Balbir Singh lifted a stone from outside of the shop and gave the blow which hit below his left eye. Thereafter, Harjeet Singh had beaten him with kick blows, which hit at his abdomen. They also scattered the medicines. He raised noise, upon which Gurmeet Singh son of Sukhdev Singh came there and rescued him. Thereafter, the accused ran away on a motorcycle. The complainant was got admitted in Civil Hospital, Sirsa. His statement was recorded by the police which bears his signatures. On his complaint, a formal FIR was registered, investigation was carried out, site plan of the place of occurrence was prepared and the accused were arrested. Thereafter, statement of the witnesses were recorded and after completion of the investigation, challan was presented before the Court.

The prosecution, in its evidence, examined PW1 – Makhan Singh, who deposed that on 10.07.2008, when he was present in his clinic, the accused – Harjit Singh and Balkar Singh came to his shop and started abusing him and thereafter, Harjit Singh gave a blow with a stone, which hit near his left eye and thereafter, they gave kicked blows in the abdomen and scattered the goods lying in the shop. Thereafter, Rajinder Kumar and Gurmit Singh, came at the shop and the accused

ran away on their motorcycle.

PW2 – Rajinder Kumar, stated that he was going for a work along with Gurmit Singh and when they reached near the clinic of complainant – Makhan Singh, they saw 02 persons were beating him and this witness and Gurmit Singh saved Makhan Singh and got him admitted in the hospital. This witness has further stated that the accused did not cause injuries to Makhan Singh in his presence, but they were grappling with him. This witness has also stated that he had not seen anything in the hand of Harjeet Singh and Balkar Singh and had shown ignorance, if they were having any brick or a stone.

PW3 – Jagdeep Aggarwal, proved on record the MLR Ex.PC, diagram of injuries Ex.PD. He also proved the medical ruqa Ex.PE sent to the police.

PW4 – Sham Lal, EHC, proved the recovery memo Ex.PF, by which the motorcycle bearing No.HR-22-G-4899, was taken into police possession.

PW5 – Amar Singh, proved the photographs Ex.PW5/A to Ex.PW5/C relating to the place of occurrence.

PW6 – Dr. Savneet Gill, proved the opinion certificate Ex.PW6/A, vide which injured Makhan Singh was declared fit to make the statement.

PW7 – ASI Roshan Lal, deposed on the line of the version as mentioned in the FIR and stated that when he reached General Hospital, Sirsa, he moved an application Ex.PW7/A to the Medical Officer. On the next day, he again visited the hospital and recorded the statement of the injured as Ex.PA, after getting the fitness certificate of

the injured for making the statement. He made endorsement Ex.PA/1 and sent the same to Police Station for registration of the case, upon which a formal FIR Ex.PA/2 was registered. This witness has also proved on record the site plan Ex.PW7/B, the arrest memo of the accused and the recovery memo of the motorcycle.

Thereafter, the trial Court recorded the statement of the accused persons under Section 313 Cr.P.C., in which they denied all the incriminating evidence put to them and pleaded false implication, however no defence evidence was led by the accused persons.

The trial Court, thereafter, acquitted the petitioners/accused persons holding that there is an inordinate delay in lodging of the FIR, which is not explained by the prosecution. It was also held that there was cutting on the date in the application Ex.PW7/A from 11.07.2008 to 10.07.2008. It is also held that PW2 – Rajinder Kumar is not an eye-witness as he has not corroborated the statement of the complainant on material facts as he has stated that he had not seen the accused persons causing injuries to the complainant and has also not seen any weapon like brick or stone their hands. It was also held that as per the MLR Ex.PC, the version that PW2 – Rajinder Kumar, accompanied the injured, do not find mention and, therefore, the trial Court disbelieved the testimony of PW2 – Rajinder Kumar. The trial Court, further held that there was a civil litigation going on between the parties and has relied upon the order Ex.D1, in this regard.

Thereafter, the complainant filed an appeal before the Lower Appellate Court, which has been allowed vide impugned judgment of conviction and order of sentence dated 22.01.2014.

Aggrieved against the aforesaid judgment, the petitioners have preferred a revision before this Court and vide order dated 28.02.2014, their sentence was suspended by this Court.

Counsel for the petitioners has submitted that the petitioners are facing the trial for the last 10 years and are not previous convicts and they have been implicated in this case on account of a land dispute between the parties. It is further submitted that the Lower Appellate Court has wrongly reversed the findings of the trial Court to hold that the testimony of PW2 – Rajinder Kumar, is that of an eye-witness, which is not sustainable as the trial Court has properly appreciate the cross-examination of this witness, as he has stated that when they reached the shop of the complainant, the accused were grappling with the complainant – Makhan Singh and no weapon like brick or stone was in their hands.

Counsel for the petitioners has further argued that while re-appreciating the evidence in entertaining an appeal against acquittal, the Lower Appellate Court has not recorded a finding that strong and convincing evidence has come on record to hold the petitioners guilty of the offence.

Counsel for the petitioners has relied upon the judgment passed by the Hon'ble Supreme Court in ***“Mrinal Das and others vs The State of Tripura”***, 2011(9) SCC 479, wherein it is held that where 02 views are possible, the one which led to acquittal of the accused and the other to conviction, the Appellate Court must rule in favour of the accused persons and the order of acquittal should not be lightly interfered.

Counsel for the petitioners has further submitted that though the Lower Appellate Court has relied upon the judgment ***“Arulvelu and another vs State”***, 2009(4) RCR (Criminal) 638, however, has not properly interpreted the same, which support the version of the petitioners.

Counsel for the appellant has relied upon the judgment ***“Naresh Kumar vs State of Himachal Pradesh”***, 2017(3) RCR (Criminal) 852, wherein the Hon'ble Supreme Court has held that the Appellate Court before setting-aside an order of acquittal is required to record a finding that conclusions of the trial Court were so perverse and wholly unreasonable so as not to be a plausible view by misreading and incorrect appreciation of an evidence. It is, thus, submitted that the Lower Appellate Court, while reversing the order of acquittal has not recorded a finding that the judgment passed by the trial Court is either perverse or wholly unreasonable.

Lastly, counsel for the petitioners has argued that since the petitioners have faced the agony of protracted trial for the last 10 years, the Lower Appellate Court has not considered, releasing the petitioners on probation of good conduct as per Section 360 Cr.P.C. read with Section 4 of the Probation of Offenders Act, and no reasons have been assigned by the Lower Appellate Court as to why such concession be not granted to the petitioners.

In reply, counsel for the State as well as counsel appearing for respondent No.2, has however, opposed the submissions made by counsel for the petitioners and have submitted that the findings recorded by the Lower Appellate Court is based on proper re-

After hearing counsel for the parties and considering the fact that the petitioners have shown evidence that there is earlier civil dispute pending between the parties and also in view of the fact that both the petitioners are not involved in any other criminal case and are also not facing trial in any other case and are facing agony of protracted trial for the last 10 years and the trial Court has acquitted them of the charges and in view of the judgment ***Mrinal Das and others case (supra)*** passed by the Hon'ble Supreme Court, I deem it appropriate that the petitioners be released on probation of good conduct for a period of 01 year on furnishing their probation bonds before the Chief Judicial Magistrate, Sirsa to his satisfaction.

(ARVIND SINGH SANGWAN)
JUDGE

vakub

Yes/No

Yes/No