

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

CRR-611-2017(O&M)

Date of decision:-3.4.2018

Jagdev Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present: Mr.Sushil Jain, Advocate
for the petitioner.

H.S. MADAAN, J.

Accused Balbir Singh, Shamsher, Amarjeet and Gianender booked in FIR No.379 dated 29.12.2006 for the offences under Sections 323/325/506 IPC, registered with Police Station Ganaur, faced trial by Sub Divisional Judicial Magistrate, Ganaur, who vide judgment dated 7.9.2012 acquitted the accused of the charge framed against them by giving benefit of doubt.

Briefly stated, facts of the case are that on 9.11.2006, complainant – Jagdev son of Surajmal, resident of village Moi at that time residing at Gautam Colony, Narela, Delhi had gone to village Moi to sow wheat crop in his agricultural land measuring about 25 acres; at about 3/4:00 a.m. his brothers came there and stated that he had no share in the agricultural land; when the complainant asserted his right over the land then his brothers got infuriated; Gianander and Amarjeet were armed with

iron rods and they caused injuries with such weapons to the complainant on right foot, whereas their co-accused Balbir and Shamsheer having lathies also caused injuries to the complainant on right foot; Smt.Savitri wife of complainant tried to rescue him but she was also given injuries by the assailants; on an alarm being raised by the complainant and his wife Smt.Savitri, Shamsheer son of Ved and Surender son of Mahe arrived at the spot and then the accused ran away from there along with their respective weapons. The complainant and his wife both the injured were taken to hospital at Ganaur by their son Jitender, however, they were referred to hospital at Sonapat and therefrom to PGI, Rohtak. In the meanwhile, some respectables of the village approached the complainant for compromise but those efforts proved futile. On the basis of statement made by the complainant – injured Jagdev to the police on 29.12.2006, formal FIR was registered. The matter was investigated. The accused were arrested.

After completion of investigation and other formalities, challan against accused was prepared and filed in the Court of Sub Divisional Judicial Magistrate, Ganaur.

On presentation of challan in the Court of Sub Divisional Judicial Magistrate, Ganaur, copies of documents relied upon in the challan were supplied to the accused free of cost as provided under Section 207 Cr.P.C.

Learned Sub Divisional Judicial Magistrate, Ganaur finding that charge for offences under Sections 323, 325, 506 IPC read with Section 34 IPC was disclosed against accused Balbir, Shamsheer and

Amarjeet, charge-sheeted them for the said offences vide order dated 24.9.2007, whereas accused Ginander was charge-sheeted vide order dated 18.1.2012, to which, they pleaded not guilty and claimed trial. The case was fixed for evidence of prosecution.

During the course of its evidence, the prosecution had examined as many as seven witnesses, namely, Jagdev – complainant as PW1, Dr.Ravinder Kumar as PW2, SI Dharampal as PW3, Smt.Savitri as PW4, Inspector Rajpal as PW5, Jitender as PW6 and ASI Balwan as PW7.

Thereafter, the evidence of prosecution was closed by Court order.

Statements of accused were recorded under Section 313 Cr.P.C. in which the accused while denying the incriminating circumstances appearing against them submitted that they were innocent and had been falsely involved in the case.

Accused did not lead any evidence in defence.

After hearing arguments, the learned trial Court had acquitted the accused of the charge framed against them, which left the complainant aggrieved and he had filed an appeal in the Court of Sessions, which was assigned to learned Additional Sessions Judge, Sonapat, who vide judgment dated 4.6.2016 dismissed the same.

Feeling dissatisfied, the complainant has approached this Court by way of filing the present revision petition along with the application for condonation of delay.

I have heard the learned counsel for the petitioner besides

going through the records and I find that there is no merit in the application for condonation of delay of 150 days in filing the present petition. However, on merits also the petitioner has no case.

Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

The learned trial Court while returning verdict of acquittal has given the following reasoning:

To prove the charge against the accused, the prosecution had to prove that accused caused simple and grievous injuries to Jagdev and Savitri in furtherance of their common intention and that accused criminally intimidated them that they will be killed. However, prosecution has miserably failed to prove these facts on record. There is an inordinate delay of 50 days in registration of the present FIR. The incident alleged by complainant took place on 9.11.2006, whereas, the complainant got recorded his statement for the first time to the police on 29.12.2006. The explanation of delay rendered by the complainant is not sufficient to condone the delay. As per complainant, he did not report the matter to the police because some efforts were made by the accused as well as other respectables of the village for compromising the matter. However, during cross-examination, PW1 admitted

that he cannot tell the name of any of the respectable who came to him for compromising the matter. As such, it is very much evident that the story of compromise has been told by the complainant just to explain the delay which he has otherwise caused. The delay caused by the complainant in registration of the FIR against accused seems to be intentional and as such, it is very much evident that the story against the accused has been concocted by the complainant after due deliberation. The Hon'ble Supreme Court of India held in Shankarlal Versus State of Rajasthan, 2004 (3), Criminal Court Cases, 578 that where the delay is caused in registration of the FIR and same is not explained sufficiently by the complainant, it creates a serious doubt in the genuineness of the prosecution case and no reliance can be placed upon the version of the prosecution in the present case also, the complainant has caused delay of 50 days in giving the first information report against the accused and said delay has not been satisfactorily explained.

Further, as per the complainant, the incident allegedly took place in the agricultural land belonging to him. According to him, when he cried for help, then Shamsher son of Ved and Surender son of Mahe came there and rescued him and his wife from the clutches of accused. However, neither Shamsher nor Surender has been examined by the prosecution to corroborate the testimony of

complainant in material particulars. The Hon'ble Punjab and Haryana High Court held in Jaswant Singh Versus State of Haryana 2008 (3), Criminal Court Cases 483 that where an independent witness is not examined by the prosecution and there is no material on record that the witness was given up being won over, it is to be presumed that said witness intentionally was not examined by the prosecution and said fact is fatal to the present case. In the present case, there is no material on record to prove that both the independent witnesses namely Shamsher and Surender have been won over by the accused. Non-examination of the said independent witnesses creates a serious doubt over the statement of complainant and other two witnesses who are his family members and thus, interested witnesses. The testimony of complainant and his family members has not been corroborated by any other link evidence.

It is further evident that civil proceedings are pending between the parties. The partition proceedings are pending between the parties and the parties are admittedly not in good relation. Therefore, it is very much evident that the present complaint has been filed by the complainant only to pressurize the accused in the said civil proceedings. The allegations levelled by the complainant against the accused are not corroborated by any link evidence. No Lathi or iron rod was ever recovered from the possession of accused.

Even, the x-ray report has not been proved by the prosecution.

All the facts taken together, it is very much evident that the prosecution has miserably failed to prove the charge against the accused beyond reasonable doubt and as such the accused are entitled to benefit of doubt. Therefore, accused are acquitted of the charges framed against them.

The Court of Sessions agreed with the trial Court and did not find any reason to interfere with that judgment. There are concurrent findings recorded by the Courts below that prosecution has failed to prove its charge against the accused beyond shadow of reasonable doubt.

The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done.

In view of the above, I find no illegality or infirmity in the impugned judgments passed by the Court below, the same are upheld and the revision is found to be without any merit and is dismissed accordingly.

Necessary information be sent to the quarter concerned.

3.4.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No