

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

Crl. Appeal No.S-3312-SB of 2015 (O&M)

Date of Decision: January 24, 2019

Sanjay Kumar

...Appellant

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.A.S.Tewatia, Advocate
for the appellant.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant Sanjay Kumar against State of Haryana and other respondents, challenging the judgment dated 07.04.2015 passed by learned Addl. Sessions Judge, Palwal, vide which appeal filed by accused-respondents against the judgment of conviction dated 27.03.2014 and order of sentence dated 28.03.2014 passed by learned Judicial Magistrate Ist Class, Hodal, was allowed and they were acquitted of the charges framed against them.

From the record, I find that challan was presented against Avtar Singh and other accused in case FIR No.193 dated 18.07.2006 under Sections 148, 149, 323, 342 and 506 IPC, registered at Police Station Hodal. The brief facts of the prosecution case as noted down in the impugned judgment by learned JMIC, Hodal, are as under:-

“2. *In brief the facts of the prosecution case are that on*

19.07.2006 Sanjay kumar son of Puran Chand has given a complaint to Mohd. Idrish ASI to the effect that he drives his Truck from Mahabir Transport Company Godota Chowk near Dinesh Dharam Kanta Hodal, on which he appointed Khema son of Roopi as driver of the said vehicle. He resides in village Bansa with his family member. Dalchand son of Govind Lal, Hawa Singh son of Raja Ram, Sunil son of Raja Ram, residents of village Banswa and their maternal grand father Natthi resident of village Bhawrona, quarreled with them in the month of March. Regarding which they have given a complaint to the Police Station Hassanpur. Thereafter, these people threatened them to cause their death with their family members and to destroy them. On 16.07.2006 at about 10.00 O'clock, in the night at Hodal Godota Chowk, Kanhaya son of Roopi and Rajbir son of Gopal attacked on the Truck driver Khema. They gave him fist blows and leg blows. On hearing the noise, Jiwan Lal son of Roopi and Gopal son of Puran Chand rescued him. At the time of going, they threatened to cause his death as well as owner Sanjay of the said truck and today these people have escaped him.

3. It has been further mentioned in the complaint that on 17.07.2006 at about 4.00 P.M. Kanhaya and Rajbir along with 12-13 hired persons came on Motorcycle bearing registration No.HR30B-9766 Suzuki Max and Hero Honda bearing registration No.HR50-8959 and HR51H-1602 and one white colour Maruti Car on which there is no number plate, to whom he identified them and their names are Dalchand, Hawa Singh, Sunil son of Raja Ram, maternal grand father of Hawa Singh i.e. Natthi, Kanhaya, Rajbir, Gopal and 3-4 more persons to whom he did not know, in collusion with each other, attacked on him. These people did beating with him and called him names and these people forcibly took him and confined him in a room. On getting a chance, he called the police from his

mobile. On hearing this, they ran away from the spot. Thereafter on 17.07.2006 at about 10.00 O'clock in night he came to hotel of Tota for taking meal. There Rajbir, Gopal, Tej Ram, Hawa Singh, Amit and some more persons tried to cause his death. Rajbir has given a teeth bite on the arm of his right hand. Tej Ram caught his neck. Gopal has given several attacks on his head. Hawa Singh and Sunil and other persons gave him leg and fist blows and they also beaten him with dandas. On the spot, Tarachand son of Shivcharan, Yogesh Pande and Arun reached the spot and they rescued him otherwise they would cause his death. At the time of going they were saying that today they have escaped him and in future they would cause his death. On this information, a case was registered. Investigation was conducted. Statements of witnesses were recorded and after completion of all other necessary formalities of investigation, a challan under section 173 Cr.P.C. was presented in the Court, for trial.”

On presentation of challan against accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused were charge-sheeted under Sections 148, 323, 342, 506 read with Section 149 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Dr.Mala Saini, PW-2 Sanjay Kumar, PW-3 SI Mohd. Idrish (Retd.), PW-4 Gopal, PW-5 Head Constable Suresh Kumar, PW-6 Head Constable Amar Singh, PW-7 Tarachand, PW-8 Krishan Kumar and PW-9 Yogender.

At the close of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. They denied the correctness of the incriminating evidence against them.

Learned JMIC, Hodal, after appreciating the evidence,

convicted the accused-respondents under Sections 148, 323, 342 and 506 read with Section 149 IPC and sentenced them to undergo rigorous imprisonment for a maximum period of one year under Section 506 read with Section 149 IPC. An appeal was filed by accused-respondents and learned Addl. Sessions Judge, Palwal, accepted the appeal vide impugned judgment dated 07.04.2015 and acquitted the accused-respondents. Aggrieved from the judgment dated 07.04.2015 passed by learned Addl. Sessions Judge, Palwal, present appeal has been filed.

I have learned counsel for the appellant and have gone through the record.

The perusal of the findings given by learned Addl. Sessions Judge, Palwal, shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by learned trial Court. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned trial Court. The perusal of the findings shows that learned trial Court has appreciated the evidence in right perspective.

As per prosecution version, the occurrence took place in four parts. First occurrence took place in March 2006, second on 16.07.2006, third on 17.07.2006 at 4.00 p.m. but these earlier occurrences have not been reported to the police at that time. The fourth occurrence is of 17.07.2006 at 10.00 p.m., whereas the FIR was got registered on 18.07.2016 i.e. after the delay. It is settled law that delay in itself is not fatal to the prosecution case

but in the cases of delay, the Court is to appreciate the evidence more

cautiously and carefully. In the present case, six accused have given the injuries but injured Sanjay Kumar has got himself medico legally examined after two days of the occurrence, which creates doubt in the prosecution version. Similarly, Sanjay Kumar has appeared as witness in this case as PW-2 but he has not deposed anything regarding main occurrence of 17.07.2016, which took place at 10.00 p.m., which actually became the base for registration of present FIR.

Learned Court of Session held that PW-4 Gopal is real brother of the complainant and it is surprising that whenever any occurrence took place, he used to remain present there. Other witness is real maternal uncle. No independent witness has been examined to support the allegations. Learned lower Appellate Court considered the contradictions etc. in the statement of the PW-4 Gopal etc. Further, accused Natthi is stated to be of 80 years. Otherwise also, if six persons came to cause injuries to the complainant, they would have caused more serious injuries.

All these facts show that prosecution has failed to prove the guilt of the accused beyond reasonable doubt and the judgment dated 07.04.2015 passed by learned Addl. Sessions Judge, Palwal, is correct, as per evidence and law and does not require any interference from this Court.

Resultantly, finding no merit in the present appeal, the same is dismissed.

January 24, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No