

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1178-SB-2005
Date of Decision : 17.09.2019

Ramji Lal and others.....Appellants

VERSUS

State of Haryana..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. S.S.Dinarpur, Advocate
for the appellants.

Mr. S.S.Pannu, DAG, Haryana.

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MANJARI NEHRU KAUL, J.

1. The instant appeal has been preferred against the impugned judgment of conviction and order of sentence dated 04.07.2005 passed by the Addl. Sessions Judge, Jagadhri vide which the accused/appellants were convicted under Sections 148, 326, 325 & 323 read with Section 149 IPC and sentenced as under:-

<i>Under Section</i>	<i>Name/s of the accused/appellant/s</i>	<i>Sentence</i>
326 IPC	1. Ramji Lal	Rigorous imprisonment for two years and fine ₹ 1,000/- each, in default of payment of fine, to further undergo rigorous imprisonment for six months each.
	2. Pardeep Kumar alias Koka	
	3. Naresh Kumar alias Lala	rigorous imprisonment for three years and fine ₹ 1,000/- each, in default of payment of fine, to further undergo rigorous imprisonment for six months each.
	4. Narender Kumar alias Balinder	
	5. Gurdeep Kumar alias Manga	
325 IPC	rigorous imprisonment for one year each to all the accused/appellants.	
323 IPC	rigorous imprisonment for six months each to all the accused/appellants.	
148 IPC	rigorous imprisonment for six months each to all the accused/appellants.	

All the sentences were ordered to run concurrently.

2. The prosecution case in a nutshell is as under:-

PW3 complainant-Ram Rattan, PW4 Ram Kishan and accused/appellant-Ramji Lal are real brothers while PW5 injured Sandeep is the son of complainant PW3 Ram Rattan, injured Darshani Devi and PW6 injured Ramesh Kumar are the wife and son of PW4 Ram Kishan respectively.

There was a dispute between the accused/appellant-Ramji Lal and his family on one hand and PW3 Ram Rattan and PW4 Ram Kishan on the other hand qua their respective shares in their agricultural land in which regard there was a prolonged civil litigation between them, which ultimately attained finality in favour of the accused party, a year prior to the date of occurrence i.e. 04.05.2001. The grouse of the complainant party was that the accused/appellants did not give them their due share in the property.

The prosecution case further is that on 04.05.2001 at about 06:30 P.M.when the complainant party was returning from their fields and were near the octroi post of the village, the accused party came there. Accused/appellant Naresh Kumar inflicted a lathi blow hitting the complainant-Ram Rattan on his right hand. The complainant-Ram Rattan managed to snatch the lathi from accused/appellant Naresh Kumar. Thereupon Naresh Kumar took a gandasi from his father accused/appellant Ramji Lal, who was standing nearby and aimed the same on the head of the complainant and while trying to save himself, his fingers got severed. Thereafter, all the other accused/appellants

i.e. Naresh, Balinder, Ramji Lal and Pardeep inflicted injuries on the complainant party with their respective weapons i.e. lathis and gandasis which they were carrying. The complainant party in their right of private defence inflicted injuries on the accused persons as well. On a hue and cry raised by the complainant party, the accused/appellants fled from the spot along with their respective weapons. Thereafter, the injured were removed to the hospital for treatment. The prosecution case, further is, that as the complainant- Ram Rattan had become unconscious after receiving the aforementioned injuries and it was only on 05.05.2001 at 02:00 P.M., he got his statement recorded before PW10 SI Raghu Nath at the Civil Hospital, Jagadhri, after regaining consciousness, on the basis of which FIR (Ex.PB) No.126 dated 05.05.2001 under Sections 323, 324, 34 IPC was registered at Police Station Jagadhri against the accused.

3. On completion of the investigation, the appellants were charged for offences punishable under sections 148/323/324/325/326/307/34 read with Section 149 of the Indian Penal Code and as they pleaded not guilty, they were brought to trial.

4. It may also be mentioned that a case of version and cross-version was registered against both the parties.

5. In support of their case, the prosecution examined as many as 11 witnesses including the injured witnesses. All the accused when examined under Section 313 Cr.P.C. denied the charges and pleaded that on account of the civil litigation having been decided in their favour, the complainant party was nursing a grudge against the accused. It was the

complainant party which attacked the accused, who acted only in self defence.

6. The accused/appellants did not lead any defence evidence.

7. The learned trial Court held the accused/appellants guilty under Sections 148, 326, 325, 323 read with Section 149 IPC and sentenced them as already detailed above.

8. I have heard learned counsel for the parties and also perused the evidence as well as other material on record.

9. The admitted facts which are not in dispute are that the parties, who are closely related to each other, had indeed been embroiled in a civil litigation spanning many years, which was finally decided in favour of the accused party; the verdict in the civil litigation had attained finality a year prior to the alleged occurrence and the possession of the land in dispute was with the accused party on the date of occurrence; the possession thereof had been delivered to the accused party, as per admission of PW3 Ram Rattan himself by the Kanungo, with the help of the police.

10. In the background of the above admitted facts, it needs to be seen as to which out of the two parties could have initiated the occurrence resulting in injuries on both sides.

11. The first challenge of the learned counsel for the appellants is qua the delay in the registration of the FIR which was registered on the next day of occurrence. As per the learned counsel for the appellants, the delay was used by the complainant party to fabricate a coloured version in connivance with the investigating agency.

12. The learned State counsel however vehemently argued that the delay in the registration of the FIR could not be said to be fatal as the

complainant party had suffered injuries in the said occurrence and the complainant had been declared unfit by the doctor to make a statement. Hence, it was only on being declared fit, the statement (Ex.PA) of the complainant could be recorded.

13. Coming to the first challenge qua the delay in the registration of the FIR, a perusal of the evidence on record reveals material contradictions in the testimony of the injured witnesses which create a big dent in the case of the prosecution. PW4-Ram Kishan in his cross examination stated that the police had come to the hospital on 04.05.2001 itself just a couple of hours after their admission. As per this witness the police had recorded his statement on the same day i.e. on 04.05.2001. PW3-Ram Rattan-complainant in his cross-examination also categorically stated that his statement had been recorded at 05:00 P.M. on the day of occurrence itself in the hospital. If that be the case, then a serious doubt is cast on the authenticity of the statement of the complainant-Ram Rattan PW3 because the same is at complete variance with that of PW10 ASI Raghu Nath who deposed that he had recorded the statement Ex.PA of the complainant on 05.05.2001. Further, on one hand the complainant PW3-Ram Rattan has deposed that he had become unconscious due to the injuries suffered by him in the occurrence but in the same breath while stepping into the witness box as PW3 he deposed that he and the other injured witnesses were talking with each other while on way to the hospital. If he had been unconscious, it is indeed strange as to how he as well as the other injured witnesses could have been in a position to talk and if they had all been actually talking then the question which would arise for consideration is—Why were their statements not recorded on the day of admission itself but were shown to

have been recorded on the following day? More so, the injuries received by the witnesses even as per their respective medico-legal reports could not be said to be so serious as to render all of them unfit to make a statement. Strangely enough, though they were unfit to make a statement on 04.05.2001 and their statements could be recorded only on 05.05.2001, most of them excepting PW5 Sandeep were discharged from the hospital on 06.05.2001. The testimony of PW6 Ramesh Kumar has further dealt a severe blow on the case of the prosecution inasmuch as he has also categorically deposed that on 04.05.2001 when the police came to the hospital he was conscious but his statement was recorded on the following day by the police. The question which yet again arises is that if he was conscious, which fact is corroborated from his MLR duly proved by PW8-Dr. Anita Sethi, then why was his statement not recorded on 04.05.2001? His testimony as well as the testimony of the other injured witnesses falsifies the version of the prosecution that since all the injured were unconscious on 04.05.2001, their statements could be recorded only on 05.05.2001 by PW10 ASI Raghu Nath. All these circumstances and contradictions point unerringly to the investigation of the case being most slipshod from which an inference does arise that there is more than meets the eye and a big question mark is raised not only about the role of the investigating agency in the case but also whether the injuries suffered by the complainant party were actually as serious as projected by the prosecution which would have rendered them unfit to make a statement to the police? Thus, the contradictions about the date and time when the statements of the witnesses including the first statement (Ex.PA) of complainant-Ram Rattan was recorded by the police go to the root of the

prosecution case and definitely raises eyebrows about the truthfulness of the prosecution version especially when PW4 Ram Kishan has corroborated the statement of PW3 Ram Rattan to the effect that the police had arrived in the hospital soon after their admission and had recorded their statements on the same day itself. Further PW8 Dr. Anita Sethi who examined the injured on 04.05.2001 itself soon after they were admitted in the hospital has categorically deposed that all the injured witnesses were conscious at the time of their admission except PW5 Sandeep who too was conscious though had a history of unconsciousness half an hour before the said examination. In this background, it is indeed mystifying as to why the police despite the fact of having recorded the statement of the injured on 04.05.2001 chose to get the FIR registered only on the following day. All these material discrepancies are definitely major in nature and demolish the entire edifice of the prosecution case. The delay in the registration of the FIR in the light of the glaring contradictions appearing in the testimony of the prosecution witnesses does give reasonable apprehension of the introduction of not only an embroidered version but also about the true facts having been twisted. It need not be over emphasized that once there is a delay in the registration of the First Information Report, the report gets bereft of its spontaneity and the possibility of an embroidered version creeping in cannot be ruled out.

14. No doubt, delay in FIR is not always fatal to the prosecution case but in the facts and circumstances of the instant case, wherein a serious doubt and a question mark has crept in about the actual time and date of the recording of the first statement itself, a reasonable apprehension does arise of the version having been manipulated to bring the said facts in line with the prosecution story.

15. The learned counsel for the appellants has further challenged the impugned judgment by vehemently urging that it was the complainant party who were the aggressors since they were nursing a grudge against the accused party. It was only in exercise of their right of private defence that the accused/appellants inflicted injuries on the complainant party.

16. The learned State counsel on the other hand argued that in fact the accused/appellants formed an unlawful assembly and caused injuries on the complainant party. He urged that the circumstances on record clearly established that it was the accused party who attacked the complainant party without any provocation as a result of which the complainant party received injuries at their hands.

17. The instant case is one of those cases wherein the onus rests on the prosecution as to what could have been the compelling circumstances to prompt the accused/appellants to attack the complainant party. Admittedly, it has come in evidence that the occurrence in hand took place after a year of the civil litigation between the parties attaining finality. In the preceding one year of the alleged occurrence, nothing has come on record qua any untoward incident between the two parties taking place even though the parties are closely related and are co-villagers. Hence, the moot question which would arise is - Why would the accused/appellants launch an unprovoked attack on the complainant party when as per the admitted facts on record, the accused party was already in exclusive possession of the land and during the preceding one year no untoward incident of any kind had taken place between them?

18. The complainant party rather themselves in their cross-examination have admitted that due to their defeat in the civil litigation they

were nursing a grudge against the accused/appellants. In this background, when the accused party had emerged victorious in the civil litigation coupled with the fact that the possession already was with the accused party and that too for almost a year prior to the occurrence, then the question of their launching an unprovoked attack on the complainant party does not appeal to reason. Thus, the grouse if at all, could have been with the complainant party only.

19. It is the admitted case that both the parties suffered injuries in the alleged occurrence. The appellants seemingly were thus well within their right to save themselves from the unprovoked attack of the complainant party and inflict injuries on them in their right of private defence.

20. As a sequel to the above, I hold that the prosecution has failed to prove the guilt of the accused party beyond reasonable doubt. Resultantly, this appeal is allowed and the impugned judgment of conviction and order of sentence dated 04.07.2005 passed by the Addl. Sessions Judge, Jagadhri is set aside. The appellants are consequently acquitted of the charges against them. The appellants are on bail and accordingly their bail bonds stands discharged.

(MANJARI NEHRU KAUL)
JUDGE

17.09.2019
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Note: Whether speaking/reasoned
Whether Reportable:

Yes / No
Yes / No