

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

CRA-S-4430-SB-2013(O&M)

Date of decision:-29.1.2020

Vijay and others

....Appellants

Versus

State of Haryana and another

....Respondents

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

Present : Mr.Arjun Attri, Advocate
for the applicants/appellants.

Ms.Dimple Jain, AAG, Haryana.

Mr.Rakesh Gupta, Advocate
for respondent No.2.

H.S. MADAAN, J.

In a criminal complaint filed by Smt.Kiran wife of Bhagat Ram, resident of Ward No.12, Nuh, District Mewat against accused Vijay, Deepak, Sanjay, Raju, Nirmlesh, Banti and Sunita, all residents of Ward No.12, Nuh, District Mewat for the offences under Sections 148, 149, 323, 325, 452 and 506 IPC, after recording of preliminary evidence, all the accused except Banti wife of Parkash were summoned to face trial for offences under Sections 323, 452, 148 and 506 read with Section 149 IPC, whereas complaint against Banti was dismissed vide order dated 7.9.2010 passed by the trial Magistrate, Nuh.

On appearance of accused Nos.1, 3 to 5 and 7, they were admitted to bail, whereas accused No.2 Deepak had died on 27.10.2013, therefore, the proceedings against him were dropped.

As cross case arising out of the same incident had been committed to the Court of Sessions, so the complaint case was also sent there for trial along with the main case. Formal charge against the accused was framed. The complainant led evidence. Statements of accused under Section 313 Cr.P.C. were recorded. The accused led evidence in defence.

The trial Court had formulated points for determination to the effect as to whether on 24.3.2009 at about 10:00 a.m. in the area of Nuh the accused present in the Court armed with deadly weapons and by forming unlawful assembly with co-accused Deepak son of Vijay (already died) caused simple hurt with blunt as well as with sharp edged weapon to PWs Ram Singh, Kiran and Anand, grievous hurt with blunt weapon to PW Kiran and simple hurt with blunt weapon to PW Bhagat Ram and also threatened them that they would be killed in future, in order to achieve their common object.

On conclusion of trial, vide judgment dated 20.11.2013, all the accused were convicted for the offences under Sections 323, 324, 325 and 506 read with Section 149 IPC and vide order 21.11.2013, they were sentenced as follows:

Under Section	Sentence	In default
323 read with Section 149 IPC	RI for six months and Fine Rs.500/- each.	RI for 10 days
324 read with Section 149 IPC	RI for one year and Fine Rs.1,000/- each.	RI for 20 days
325 read with Section 149 IPC	RI for three years and Fine Rs.2,000/- each.	RI for 2 months

506 read with Section 149 IPC	RI for two years and Fine Rs.1,500/- each.	RI for 1 month
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All the sentences were ordered to run concurrently. It was further directed that if the amount of fine is realized, Rs.10,000/- be given to the complainant-cum-injured Kiran and Rs.12,000/- be given to the remaining injured Bhagat Ram, Ram Singh and Anand in equal shares as compensation after expiry of the period appeal/revision, if any, and remaining Rs.3,000/- be deposited in State Exchequer.

The said judgment and order left the accused/convicts aggrieved and they have filed the present appeal.

Notice of the appeal was issued to the respondents, who put in appearance through counsel.

It may be mentioned here that on application having been filed, remaining sentences of the appellants/accused had been suspended during the pendency of the appeal.

I have heard learned counsel for the parties besides going through the record.

The cardinal principles of criminal jurisprudence are that the prosecution must prove its charge against the accused beyond a shadow of reasonable doubt. Such onus to prove guilt of the accused to the hilt is stationary on the prosecution and it never shifts. The accused is not expected to prove his defence with some exactness and rigor, with which the prosecution is required to prove guilt of the accused. The accused is required to render only a reasonable and plausible explanation, which may cast a doubt in the mind about the truthfulness

of the prosecution story. Furthermore, as per our jurisprudence, hundreds of guilty persons may go scot-free but even one innocent should not be punished.

In this case the complainant was unable to prove charge against the accused conclusively and affirmatively, despite that the Court below chose to fasten criminal liability upon the accused conveniently ignoring several glaring infirmities and irregularities.

Firstly, as per the case of the complainant, the incident had been reported to the police but formal FIR was not registered and only an entry in the DDR was made, that means the police did not find merit in the said version and the investigation carried out did not warrant sending of the persons named as culprits therein to face trial.

Secondly, there has been gross delay in filing of the complaint in the Court inasmuch as, the incident as per case of the complainant had taken place on 24.3.2009 but the complaint was filed in the Court on 23.7.2009 i.e. after a period of more than four months putting a question mark over authenticity of the incident more particularly when there is great variation in the version given in the DDR, copy Ex.PW1/A and in the complaint as well as in the version given by the eye-witnesses in the Court inasmuch as in the complaint the incident is shown to have taken place in the house of the injured, whereas as per ocular version a part of incident had taken place in front of Syndicate Bank.

Thirdly, there has been a cross version of the incident regarding which FIR No.111 dated 3.4.2009 for the offences under Sections 323, 324, 307 read with Section 34 IPC was registered with

Police Station Nuh against husband of the complainant, namely, Bhagat Ram and her sons Ram Singh and Anand on the allegations that on 24.3.2009 at about 10:30 a.m. in the area of Nuh, the accused in the said FIR in furtherance of their common intention voluntarily caused simple hurt to Vijay Kumar, Nirmalesh, Deepak and Sumitra, simple hurt with sharp edged weapon to Vijay Kumar and Nirmlesh and also attempted to commit murder of the said Vijay Kumar giving stab wound in his abdomen.

The complainant has failed to explain the injuries of such type and magnitude on the accused side pointing out that her version is not correct and truthful.

Even otherwise, the parties have compromised the matter in this case as well as in the connected matter.

Thus, I find that the judgment of conviction and order of sentence passed by the Court below are not sustainable and are result of misappraisal of evidence and wrong interpretation of law and those have resulted in failure of justice. The same are set aside by way of acceptance of this appeal. The appellants are acquitted of the charge for which they have been held guilty and convicted vide the impugned judgment.

The appeal stands allowed accordingly.

Necessary intimation be sent to the quarter concerned.

29.1.2020
Brij

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No