

CRR-4370-2016

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

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Date of Decision:14.02.2020

Digamber

... Petitioner

Versus

Shyam Lal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Ms. Tanika Goyal, Advocate for
Mr. Kunal Dawar, Advocate,
for the petitioner.

HARNARESH SINGH GILL, J.

Challenge in the present revision petition is to the judgment dated 12.08.2016 passed by the learned Additional Sessions Judge, Palwal, vide which appeal preferred by the respondents has been accepted and the judgment of conviction dated 06.02.2015 and order of sentence dated 07.02.2015 passed by the learned Sub Divisional Judicial Magistrate, Hathin, holding the respondents guilty under Sections 323 and 325 read with Section 149 IPC, in a complaint filed by the petitioner-complainant, were set aside.

The petitioner had filed a complaint under Sections 148, 323, 325, 506 and 149 IPC. It is mentioned in the complaint that on 04.01.2009, at about 9.30 a.m, when the complainant and his nephew-Sonbir were

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present in the fields, they noticed that flow of water had stopped. When both of them had gone to see as to how it stopped, they found that the pipeline had been damaged from some places by Satpal and Arun so as to stop the flow of water. When they inquired as to why Satpal had done so, he stated that they (Satpal and others) had not only stopped the flow of water but also damaged their pipeline. In the meantime, Shyam Lal, Devender, Ranbir, Chattar Singh, Hoshiyar Singh and Mohan had come there and attacked the petitioner and Sonbir. They (petitioner and Sonbir) had made a complaint to the police, but no action had been taken. Rather, the respondents-accused had got FIR No.270 dated 05.01.2009, registered against the complainant party.

The trial Court while holding the respondents guilty for the commission of offences punishable under Sections 323 and 325 read with Section 149, had discussed the evidence as under:-

“12. CW 5 Sonbir also stated that on 04.01.2009 at about 9.30 a.m, he and his uncle Digamber were irrigating the fields by their tractor. The water supply stopped. They went to the canal for checking. They found their pipeline damaged. The accused stated that they damaged the pipeline. Accused Arun called upon other and exhorted to teach them a lesson. They caused injuries to them with the handle of tractor and lathies. Sukhdev and Hari Ram came there and saved them. Nothing fruitful from the cross-examination of these witnesses could be extracted by the learned defence counsel. He only stated that the complainant himself has already been convicted by this Court. However, it was nowhere observed that the complainant was aggressor party.

13. Both the parties caused injuries to each other. It

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has been duly proved by CW 1 Dr. V.P.Gupta and CW 3 Dr. Manish Kumar. CW 1 Dr. V.P.Gupta proved the report Ex.PW 1/B and Ex.PW 1/C wherein the fracture of left ring finger was found. CW 3, Dr. Manish Kumar proved the MLRs Ex.CW 3/A and Ex.CW 3/B of Digamber and Sonbir, respectively. Thus, the injuries on their persons are proved.

The respondents were, accordingly, sentenced to undergo as under:

u/S	Period	Nature	Fine
323/149 IPC	1 year	Rigorous imprisonment	Rs.500/- each
325/149 IPC	3 year	Rigorous imprisonment	Rs.1000/-each

Both the sentences were ordered to run concurrently.

Aggrieved of the judgment and order passed by the learned trial Court, the respondents preferred an appeal before the learned Additional Sessions Judge, Palwal. Vide impugned judgment dated 12.08.2016 passed by the learned Additional Sessions Judge, Palwal, the appeal was accepted; the judgment of conviction and order of sentence passed by the trial Court were set aside and the respondents-accused were acquitted of the charges framed against them.

Being dissatisfied with the judgment dated 12.08.2016, the petitioner has preferred the present revision petition.

I have heard the learned counsel for the petitioner and with her able assistance, have gone through the case file.

The incident, as per complaint, took place on 04.01.2009 and nothing was produced on record that any application had been moved to the concerned S.H.O. or higher police officers and they had not taken any action upon it. No plausible explanation had been given in this regard.

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Moreover, petitioner-complainant while appearing as CW 4, admitted in his cross-examination that he does not know from which Hakim, he had taken his treatment. This also raises a serious doubt on the story put forth by him and Sonbir. The complainant also did not produce any cogent evidence to show that any injured in the present case had suffered any serious injury. It is not believable that upon an indiscriminate attack by about eight persons duly armed with Ballam, Lathi, Farsa etc. on two persons, only one of them would receive a fracture of proximal phalynx right index finger and the other would sustain a fracture of middle phalynx left ring finger. The appellate Court has rightly held that on seeing the nature and kind of injuries sustained by Digamber and Sonvir, the possibility that they might have received injuries while giving blows to Satpal and Shyam Lal as alleged by the respondents, could not be ruled out.

Thus, taking into consideration the evidence on record, the Appellate Court has rightly arrived at a conclusion that the complainant could not be able to prove his case against the accused and, therefore, they had been acquitted of the charges framed against them.

Moreover, it is well settled by now that if the view adopted by the Court while acquitting the accused is a reasonable one and the conclusion reached by it had its grounds well set out on the material on record, the acquittal may not be interfered with. A Division Bench of this Court in case State of Haryana v. Satbir, 2013(7) R.C.R. (Criminal) 1490, has held as under:-

“There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other.

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The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.”

Still further, Hon’ble Supreme Court in State of Rajasthan Vs. Shera Ram @ Vishnu Dutta, Criminal Appeal No. 1502 decided on 1.12.2011 has held that if the two views are possible on the evidence adduced in the case, then one favourable to the accused, may be adopted by the Court. It was held as under:-

“12. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal, the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with.

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Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where inference is imperative and then ends of justice so require and it is essential to appease the judicial conscience.”

Learned counsel for the applicant could not point out any misreading or misinterpretation of the evidence so as to warrant interference by this Court. It could not be pointed out that the conclusion drawn by the Appellate Court was arrived at by recording any perverse finding. In my opinion, the findings recorded by the Appellate Court are based on the evidence led by the parties.

In view of the above, this Court is not inclined to interfere with the impugned judgment.

Therefore, finding no merit in the present revision, the same is dismissed.

14.02.2020
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Note:	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No