

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

218

**CRA-AS-99-2020
Date of decision: 19.04.2022**

MAHENDER SINGH AND ANR

... Appellant

Versus

DAYA NAND AND ORS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Jagjot Singh, Advocate for the petitioners.

VINOD S. BHARDWAJ. J.(Oral)

1. The instant appeal raises a challenge to the judgment dated 19.12.2019 passed by Additional Sessions Judge, Bhiwani whereby respondents-accused were acquitted of the offences punishable under Sections 323 and 506 read with Section 34 of the Indian Penal Code, 1860 and Section 3 (2) (va) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The facts in brief as they emanate from the case file and are necessary to be noticed for adjudication of the instant appeal are that Police received information on 29.04.2017 to the effect that one Mahender son of Phool Chand belonging to Scheduled Caste and resident of village Asalwas Marehta was admitted in General Hospital, Bhiwani with an alleged history of sustaining injuries in a quarrel. Upon the police party reaching the General Hospital, statement of injured Mahender was recorded which is Ex.PW2/A. In the said statement, the complainant alleged that his nephew Sombir was Sarpanch of the village and that he had submitted a resolution of Gram

Panchayat to Tehsildar for demarcation of land of Panchayat. Kanungo Makhan Lal was thereafter deputed by the Tehsildar for conducting the demarcation. On 28.04.2017, the said Kanungo had reached along with the staff in village Asalwas Marehta for demarcation of land at about 1:30 P.M. The Sarpanch, the Members of Panchayat and other respectables of the village were also called at the spot to carry out the demarcation in their presence. In the meanwhile respondents-accused Dayanand son of Banwari, Surender son of Daya Nand, Dharambir son of Ved Parkash and Ajay son of Vijay Pal all residents of the said village and relatives of former Minister in the State of Haryana are alleged to have reached there and are alleged to have started abusing Sombir in the name of his caste and challenged as to how he dared to get the Panchayat land demarcated without their permission as the respondents-accused are proprietors of the village. The respondent-accused Ajay is alleged to have caught hold of collar of Sombir whereafter Daya Nand, Surender and Dharambir are alleged to have given beating to Sombir and abused him in the name of his caste. Upon a protest being raised, the respondents gave fist and kick blows. However, villagers gathered at the spot at which respondents-accused persons left the place of incident.

3. On the basis of said statement, the instant FIR bearing No. 227 dated 29.04.2017 was registered at Police Station City, Bhiwani for offences punishable under Sections 323 and 506 read with Section 34 of the IPC and Section 3 (2) (va) of the Scheduled Caste & Tribes (Prevention of Atrocities) Act, 1989. A final report under Section 173 Cr.P.C. was filed upon completion of the investigation and a copy thereof was furnished to the respondents-accused.

4. In order to prove its charge against the respondents-accused, the following witnesses were examined by the prosecution:

<i>Sr. No.</i>	<i>Name of witness.</i>
<i>PW1</i>	<i>Makhan Lal, in-charge Kanungo, Jui.</i>
<i>PW2</i>	Mahender Singh (complainant).
<i>PW3</i>	Sombir.
<i>PW4</i>	Jasbir
<i>PW5</i>	SI Jai Singh SHO, P.S.City Bhiwani.
<i>PW6</i>	ASI Satpal Singh.
<i>PW7</i>	Chanderpal DSP, First Battalion, IRB Bhondsi.
<i>PW8</i>	SI Dilbag Singh.
<i>PW9</i>	Dr. Vikash Rewaria.
<i>PW10</i>	Dharamender Singh, draftsman.
<i>PW11</i>	Ram Niwas, Tehsildar, Bhiwani.

5. Statement of accused was recorded under Section 313 Cr.P.C. and the entire evidence was put to them, which they denied and pleaded innocence. However, no evidence was led in defence by the respondents-accused. Upon consideration of the prosecution evidence and submissions advanced by the respective parties, the Additional Sessions Judge, Bhiwani held that the prosecution has failed to prove its case against the respondents-accused beyond reasonable doubt and thus extended the benefit of doubt to the respondents-accused and acquitted them of the charges framed against

them. Hence, the present appeal.

6. Assailing the judgment of Additional Sessions Judge, Bhiwani, learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution evidence has been disregarded by the Court. He submits that PW-1 Makhan Lal who was the Kanungo had specifically deposed in his testimony before the Court that a mob had gathered at the place of inspection and that they had also abused the Sarpanch in the name of his caste. He has further made a reference to the Medico Legal Report of Sombir to point out that injuries had been sustained by him. He thus submits that the offences in question were duly established and no such benefit should have been extended to the respondents-accused. A reference was also made to the evidence of PW-4 Jasbir and to the CD of the incident that was produced before the Court to supplement their argument that the event in question had actually taken place in the manner as alleged and was duly established by the prosecution.

7. I have heard learned counsel appearing on behalf of the appellant and have gone through the record with his able assistance.

8. It is apparent from perusal of the statement of PW-1 Makhan Lal as extracted by the Additional Sessions Judge, in his judgment that he had gone to the spot to carry out a demarcation and that a mob had in fact collected at the place of demarcation. It is however stated by him that various persons had come at the spot and had allegedly abused the Sarpanch in the name of his caste, however, the said witness has not specifically stated that the respondents-accused persons had actually abused the Sarpanch of the Village in the name of his caste. The mere presence of the respondents-accused at the place on occurrence does not hold them liable for being

prosecuted for offence punishable under Sections 323 and 506 read with Section 34 of the IPC & Section 3(2) (va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It has to be established by the prosecution that the accused sought to be prosecuted had actually participated in the commission of offence and had hurled abuses to demean and dishonour the person belonging to a Scheduled Caste on account of his caste & status in the society.

9. Further, it is also noticed from the testimony of the Tehsildar who had appeared as PW-11, that the record pertaining to the caste certificate of the complainant had been lost. As such, the prosecution even failed to establish that the complainant belonged to a Scheduled Caste. There can be no presumption in respect to factual aspect of the caste of the complainant which is in fact the very foundation of offence under the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act and that the same has to be established by the prosecution by making affirmative evidence.

10. Similarly, the reliance of the prosecution on the testimony of PW-4 Jasbir Singh has been discarded by the Additional Sessions Judge, Bhiwani after specifically noticing that when the CD was played, there was no audio in the same. Resultantly, the said evidence would at best only show that certain people had gathered at the place of occurrence, however, it is not a proof of commission of the offence. Additionally, there is no certification in terms of Section 65 (B) of the Evidence Act as would make the said CD admissible in evidence.

11. Reference was also made to the Medico Legal Report about the injuries that have been sustained by the complainant. It has been noticed that

there were only two injuries on the person of the complainant. One injury was a complaint of pain over back in lower part while the second injury is stated to be an abrasion of size 1x1 cm over left arm. The trial Court has specifically noticed that PW-1 Makhan Lal who is an independent witness and a Government official has deposed about the mob having hurled abuses, however, no incident of beating or extending any injury to the complainant had occurred. Even the CD and deposition of PW-4 fails to establish the occurrence of having caused injuries on the person of the complainant. Resultantly, there is nothing to establish that the injuries as reflected in the MLR are an outcome of the incident in question. The relevant extract of the finding recorded by the Additional Sessions Judge, Bhiwani is reproduced herein below

21. The present case of the prosecution is based on the testimony of PW2 Mahender and PW3 Sombir who are family members. They have stated that on the date of occurrence the land of panchayat was being demarcated by Makhan Lal (PW1) and at the time of demarcation, all accused came at the spot and abused them in the name of their caste and also caused injuries to them. No MLR of PW3 Sombir has been proved by the prosecution. The MLR of PW2 Mahender has been proved by PW9 Dr. Vikash. In the MLR Ex.PW9/B only two injuries are shown. One injury is mentioned as complaint of pain over back in lower part and no external injury was seen. Injury No.1 is abrasion of size 1x1cm. over left elbow. No swelling was present. PW2 Mahender (complainant) has stated that the villagers, who had gathered at the spot, rescued him from the clutches of the accused. The prosecution has not examined any villager who witnessed the occurrence. PW1 Makhan Lal Kanungo has not stated that the accused caused any injury to the complainant and PW2 Sombir. He has only stated that when he started demarcation, then some persons including the accused came there and raised obstruction. Although, he has stated that the mob had

abused Sarpanch of the village in the name of his caste, but he has not specifically stated that accused present in the court had abused the Sarpanch in the name of his caste. The statement of PW1 Makhan Lal was also recorded under Section 161 Cr.P.C. which is Ex.D1 and in this statement it was not stated by him that the accused had abused Sarpanch in the name of his caste. PW4 Jasbir has stated that he had prepared video of the occurrence in his mobile phone from which the CD Ex.PW4/B was prepared. The CD Ex.PW4/B was played on the laptop during course of arguments, but there was no audio in CD and it is not proved from CD that the accused abused the complainant in the name of his caste. It is also not proved from the CD that the accused caused any injury to the complainant or PW3 Sombir. According to PW4 Jasbir, CD was prepared from his mobile phone at Raj Modeling Studeo, Bhiwani, but no witness from Raj Modeling Studeo has been examined for proving the CD. PW4 Jasbir has admitted that the complainant Mahender is his uncle in relation and therefore, he is interested witness.

22. Learned defence counsel has argued that this false case was got registered by the complainant at the instance of Naresh, Ex-Sarpach of village, due to political rivalry. The accused have tendered the copy of a plaint Ex.D1, which shows that accused had filed a suit for permanent injunction against Gram Panchayat through its Sarpanch Naresh Kumar. The accused have also tendered the copy of judgment Ex.D2, which shows that the civil suit filed by the accused against Gram Panchayat was partly decreed in their favour and Gram Panchayat was restrained from interfering in possession of the accused over the property in dispute. Accused have also tendered the copy of a criminal complaint Ex.D3, which was filed by Naresh Kumar against accused Daya Nand and some other persons. The accused have also tendered the copy of statement Ex.D4, which shows that the complainant of this case Mahender (PW2) appeared as a witness on behalf of complainant Naresh Kumar. The accused have tendered the copy of order dated 03.02.2012, which shows that the above said complaint was withdrawn by complainant Naresh Kumar. The accused have also tendered the copy of report of Superintendent

Police, Bhiwani dated 08.01.2018 Ex.D7 in which it was mentioned that one complaint filed by Sombir (PW3) against the accused was found false.”

12. After taking into consideration the testimony of the independent witnesses namely PW-1 Makhan Lal as also the deficient and discrepant material produced by the prosecution which did not link the petitioner to the commission of the offence in the manner as suggested, the trial Court held that the prosecution could not prove the case beyond shadow of reasonable doubt and thus, extended the benefit of doubt to the respondents-accused persons.

13. The appellant has not been able to advert to any evidence or material to establish that the finding is illegal and/or not sustainable on a meaningful reading of the evidence. I find that there is no illegality or perversity in the judgment passed by the Additional Sessions Judge, Bhiwani.

Hence, the present appeal is hereby dismissed.

(VINOD S. BHARDWAJ)

JUDGE

APRIL 19, 2022

Vishal Sharma

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