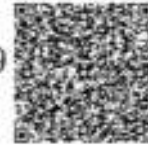


CRR-2637-2018

#1#

2024:PHHC:105709



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR-2637-2018

Date of Decision:-12.08.2024

Balwan Singh.

.....Petitioner.

Versus

State of Haryana & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Amandeep Rana, Advocate for the Petitioner.

Mr. Deepak Grewal, Deputy Advocate General, Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The present revision petition has been filed against the judgment dated 23.02.2018 passed by Sessions Judge, Gurugram whereby the judgment of acquittal passed by Judicial Magistrate Ist Class, Gurugram dated 7.10.2015 has been upheld.

2. Concisely, the facts, culminating from the statement of the complainant Balwan son of Hukam Chand are that, they were four brothers. He was the eldest one and after him there was accused Shri Krishan, Dharambir and then Mahavir. All his three brothers had filed a suit for partition against him, which is pending before court. In that partition suit, a status quo order was passed by the court with respect to the suit property. About 10-15 days ago, his three brothers dismantled two rooms of his house and by this way violated the orders of the court regarding status quo. On



02.02.2007 accused Dharambeer, Mahaveer and Shri Krishan came along with a photographer and started taking photographs of his house. When he refused, Dharamveer hit him with a brick bat on right side of his head. Mahaveer gave a blow of iron rod on the middle finger of his right hand and Shri Krishan gave a blow of a Danda to his back. In the meanwhile, the wife of Mahaveer, Suman also came to the spot and hit him with a brickbat on his nose. When his wife tried to save him, she was also beaten by the accused persons. He was saved by his son Deepak, who also got them admitted in Tirath Ram hospital. On the above said facts, appropriate actions against the accused persons was sought by the complainant.

3. Accordingly, the FIR in the instant case was registered. Investigation was carried on. Statement of the witnesses were recorded. Accused were arrested. MLR and X-ray were obtained. After completion of other formalities, report under Section 173 Cr.PC was submitted before court.

4. A prima facie case was found against the accused and accordingly they was charge-sheeted under Section 323 & 325 r/w sec. 34 IPC, to which they pleaded not guilty and claimed trial.

5. In support of its case, the prosecution examined Shakuntla wife of Balwan as PW1, Banwari Singh(Balwan Singh) as PW2, Deepak Sharma as PW3, ASI Ram Dayal as PW4, ASI Vinay as PW5, Dr.Sanjay Kumar as PW6 and Constable Deepak as PW7. Thereafter prosecution evidence was closed by court order.

6. After conclusion of the prosecution evidence, statements of the accused were recorded under sec. 313 Cr.PC. The accused claimed innocence and pleaded that they had been falsely implicated in the present case. They opted to lead evidence in their defence.



7. In defence evidence the accused examined Sandeep Kumar as DW1, Hukam Chand as DW2, Laxman, photographer as DW3 and Dharamveer as DW4. Thereafter, the accused closed their defence evidence after tendering documents Ex.D1 to Ex.D3 which are certified copy of the judgment dated 26.2.2011, passed in civil suit titled 'Balwan Singh Vs. Shri Krishan', statement of Balwan in the above said civil suit and report of the Local Commissioner, respectively.

8. Based on the evidence lead, the accused came to be acquitted by the court of Judicial Magistrate Ist Class, Gurugram vide judgment dated 07.10.2015.

9. The complainant preferred an appeal before the Court of Sessions Judge, Gurugram and vide judgment dated 23.02.2018 the said appeal came to be dismissed.

10. The present revision petition has been preferred by the complainant challenging the aforementioned orders.

11. The Counsel for the petitioner contends that the courts below have failed to consider that the petitioner as well as other material witnesses had supported the case of the prosecution and the case was proved beyond reasonable doubt. The allegations that have been levelled were specific and grave in nature. The judgments of acquittal were passed on conjectures and surmises without proper appreciation of the facts. It was apparently a case wherein the accused party was the aggressor side and therefore, the findings arrived at that it is a case of free fight could not be accepted. He, therefore, contends that the impugned judgments were liable to be set aside and the case be remanded back for a retrial.

12. The Counsel for the State has supported the case of the complainant to state that the judgments of acquittal were liable to be set



aside.

13. I have heard counsel for the parties.

14. In order to prove its case, prosecution has examined as many as seven witnesses. PW1 to PW3 supported the version of the prosecution through their respective evidence. Their oral testimony was also supported by medical evidence, adduced by PW6. There are some contradictions or manipulations in the evidence of the prosecution witnesses. As per PW1, she was struck by an iron rod by accused Mahaveer on her head which resulted in a fracture and she received stitches. But in her MLR there is no injury on her head. PW3, Deepak came to the spot after the incident and took injured to the hospital. He is not a witness of the occurrence. The prosecution has not been able to explain the injuries suffered by the accused persons for which a criminal complaint titled Dharambir Vs. Balwan Singh was filed. The accused also examined an independent witness namely Sandeep as DW1, who stated that it was Balwan who had started the quarrel and hit Dharamveer with an iron rod. He suffered injuries on his nose as his daughter threw a brick towards Dharamveer which struck on his nose. The father of the parties namely Hukam Chand also stepped into witness box as DW2 and stated that it was Balwan, who had started the fight.

15. Admittedly, both sides are inimical to each other with respect to the property for which a partition suit was also filed and ultimately same ended in dismissal vide judgment Ex.D1. In the present case injuries have been sustained by both the parties. There is a cross version of the incident from each of the parties and it is difficult to ascertain as to which one of the parties is the aggressor. As per settled law where there is a free fight between the parties and the genesis of an occurrence has been withheld by the prosecution, truth and falsehood are so inter mixed that after applying the



principle of separating the grain from chaff, the truth cannot be arrived at then, the benefit of doubt must be given to the accused.

16. Further the evidentiary value of the defence witnesses cannot be discarded specially when 02 of the witnesses are independent and the third being the father has also supported the defence version. Therefore, it is very difficult to ascertain as to which party was the aggressor and the true facts of the case are hard to discern.

17. In view of the above, I find no merit in the present petition and the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

August 12, 2024
Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No