



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRA-S-247-SB-2015 (O&M)

Date of decision: 23.04.2026

Kapil and another

...Appellant(s)

VERSUS

Inderjit and another

...Respondent(s)

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

Present :- Ms. Roja Agnihotri, Advocate for the appellant(s)
(Legal Aid Counsel).

Mr. Sagar Aggarwal, Advocate for respondent No.1.

Mr. Paras Talwar, Sr. DAG Haryana.

VINOD S. BHARDWAJ, J. (Oral)

1. The present appeal has been filed against the judgment dated 19.08.2014 passed by the Additional Sessions Judge, Karnal whereby the appeal preferred against the judgment dated 08.02.2011 passed by the Judicial Magistrate 1st Class, Karnal, acquitting the appellants-accused, was allowed and the appellants were convicted for commission of offence under Sections 323, 324 read with Section 34 of the Indian Penal Code, 1860 and ordered to be released on probation.

2. As there was no representation on behalf of the appellants, Ms. Roja Agnihotri, Advocate, was appointed as a Legal Aid Counsel to assist this Court on behalf of the appellants.

3. Learned counsel for the appellants contends that the FIR in the present case was registered on the complaint of respondent No.1 Inderjit

Singh, wherein he had stated that he is the owner of a *Bara*. His elder brother Jagdish @ Kali had also made a *Bara* by putting earth in the *Johar*. His brother started putting garbage dumps on his *Bara*. On 05.06.2005, when he was working in his *Bara* at about 9:30 A.M., his nephew Kapil called his father, Jagdish @ Kali, at the *Bara*. His brother then snatched the *Kassi* from the labourer, and when he was asked to return it, he gave a blow of an inverted *Kassi* on the complainant's shoulder. He caught hold of his brother's hands, and thereafter, his nephew Kapil gave a blow of an inverted *Kassi* on his head. He raised a hue and cry, on hearing which Ashwani Kumar and his father reached at the spot and rescued him from the clutches of the accused. Thereafter, both the accused fled away from the spot. The complainant was then shifted to the hospital, and accordingly, FIR No.160 dated 05.06.2005, was registered under Sections 323, 324, 34 of the Indian Penal Code, 1860 at Police Station Butana, Karnal.

4. On completion of the investigation, challan under Section 173 of Cr.P.C. was filed in the Court against the accused, and the parties led their respective evidence.

5. Eventually, the trial Court concluded that, despite affording an opportunity, the prosecution could not prove the case beyond a reasonable doubt. The appellants-accused herein were acquitted of the charges framed against them. The operative part of the judgment dated 08.02.2011 passed by the Judicial Magistrate 1st Class, Karnal, reads thus:-

“13. After hearing the arguments advanced by the learned APP for the State as well as learned defence counsel and after perusing the case file carefully, this Court is of

considered opinion that the prosecution has failed to prove the charges against the accused. PW2 is a formal witness who proved the MLR Ex. PW2/1 whereby he proved the injuries sustained by the complainant. PW4 is the alleged recovery witness failed to remember any material particulars regarding the place, time and manner of alleged recovery during his cross-examination as such much reliance cannot be placed on his testimony either. The case of the prosecution rests principally on the testimony of the complainant examined PW1, Investigating Officer examined as PW3 and the alleged eye witness PW5. However, there are material contradictions in the versions of these witnesses and there are material lacuna in the case of the prosecution. While the complainant and the eye witness maintain that their statements were recorded by the Investigating Officer in the hospital, whereas the Investigating Officer claims that he recorded the statement of eye witnesses Ashwani and father of the complainant Dariyai Lal at the spot. The Investigating Officer says that the place where the incident took place was owned by the complainant and was not Panchayati Johar, whereas, the complainant admits that the land was Panchayati Johar. The alleged eye witness Ashwani examined as PW5 during his cross-examination makes an unsuccessful attempt to hide his relationship with the complainant and denies knowledge about the name of father-in-law of the complainant, whereas, the complainant stated that

Ashwani Kumar was his brother-in-law. The alleged eye witness Ashwani stated that he knew only three persons present at the spot, but failed to name any one of those. The persons named by the complainant himself i.e. Narwail Singh and wife of Dev Raj came in the witness box at the behest of the accused and stated that no fight ever took place between the complainant and the accused in their presence. The prosecution failed to examine Dariyai Lal, who is father of the parties. None of the other witness of the village has been joined in the investigation or examined despite the fact that the complainant maintains that atleast fifty persons gathered at the spot at the time of incident. The fact that the complainant is a Doctor himself could have procured a medical report can also not be ruled out. In these circumstances, this Court is of the considered view that the creditworthiness of the testimony of the complainant as well as other eye witness has been shrouded.

14. In the light of above discussion, this court is of considered view that the prosecution has failed to prove the case against the accused. Therefore, the accused are acquitted of the charge framed against them. Bail bonds furnished by them stand discharged. File be consigned to the record room after due compliance.”

6. Aggrieved thereof, respondent No.1-complainant preferred criminal appeal bearing No.24 of 2013 (CIS No.060600072512011) before

the Court of Sessions. The Additional Sessions Judge, Karnal, reversed the judgment passed by the Judicial Magistrate 1st Class, Karnal and convicted the appellants-accused for the commission of an offence under Sections 323, 324 read with Section 34 of the Indian Penal Code, 1860 vide judgment dated 19.08.2014, and they were ordered to be released on probation. The First Appellate Court specifically took into account that the medical evidence could not be disbelieved and that the ocular version was specifically corroborated by the medical evidence. The relevant extract of the judgment reads thus:-

“13. The oral evidence led by the aforesaid witnesses regarding suffering of injuries upon the person of PW1 Inderjit has been duly corroborated by medical evidence in the form of statement of PW2 Dr. Krishan Kant, who medico-legally examined PW1 Inderjit vide MLR, Ex.PW2/1. The statements of PW1 Inderjit & PW5 Ashwani regarding the mode and manner have been corroborated by the statement of PW3 HC Raghbir Singh, who has investigated the present case. He has described about the various steps taken during the course of investigation. He has also proved the site plan, Ex.PW3/A as well as recovery memo of kassi, Ex.PW3/F etc.

14. In this way, prosecution has duly established that accused inflicted the injuries upon the person of complainant PW1 Inderjit by way of giving lathi and kassi blows.

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18. Thus, taking into account, the entire peculiar

circumstances of this case as discussed above, this Court is of the considered view that the prosecution has successfully proved its case against both the accused persons beyond reasonable doubt. That being so, there is no reason to disbelieve the ocular as well as medical evidence of prosecution in the peculiar circumstances as explained above and thus the appeal is hereby accepted and the impugned judgment and order of the learned trial court is hereby set aside.

19. *That being so, with the reasons recorded above, both the accused namely Jagdish & Kapil are hereby held guilty for the commission of offence punishable under sections 323 & 324 read with Section 34 of IPC. Let, the accused be heard on the quantum of sentence after lunch. ”*

7. The Appellate Court however noticed the mitigating circumstances in favour of the appellants and directed their release on probation. The relevant part of the judgment reads thus:-

“12. Having regard to the antecedents and other relatable factors, to me, it would be expedient in the interest and justice would be sub-served, if the benefit of probation is granted to the respondents/convicts, inter alia on the following grounds:-

(i) *It is not a matter of dispute that the incident has taken place on 05.6.2005 and they have already faced the pangs & suffered the agony of protracted trial and appeal for the last more than nine years.*

- (ii) *They are first offenders and there is no history of their previous conviction.*
- (iii) *They have been leading a life of peaceful citizens in the locality.*
- (iv) *There is no legal impediment to release them on probation*
- (v) *They are prepared to pay compensation/costs of litigation.*
- (vi) *They are only bread-earner and there is no other person to maintain their families, children and old parents.*
- (vii) *Even the modern trend of penology also leans towards the reformation of the offenders, so as to make them useful citizens of the society. No useful purpose was going to be achieved by again sending them to jail.”*

8. The appellants/petitioners have successfully completed their period of probation.

9. Aggrieved thereof, the present appeal has been filed.

10. Learned Legal Aid Counsel for the appellants contends that the trial Court had rightly placed reliance on the material contradictions in the statements of Ashwani and Dariyai Lal, i.e. the witnesses who had come in support on the distress call of the complainant and thus disbelieved the prosecution case. The benefit was rightly extended and the appellants-accused were rightly acquitted. There were no valid reasons for which the reasoned and speaking judgment passed by the Judicial Magistrate 1st Class, Karnal ought to have been set aside.

11. Counsel for respondent No.1-complainant, as well as the State counsel, contend that the First Appellate Court has taken into consideration all the relevant facts and thus returned a finding of conviction. They contend that, taking into consideration mitigating circumstances, the benefit of probation had, however, been extended to the appellants-accused.

12. I have heard the learned counsel for the respective parties and have gone through the documents appended with the present appeal with their able assistance.

13. The sole grievance of appellants-accused herein is that the judgment of acquittal had been set aside and they were convicted for the commission of an offence under Sections 323, 324 read with Section 34 of the Indian Penal Code, 1860. It is not in dispute that even though the trial Court had acquitted the appellants herein, the said acquittal was based upon non-corroboration of the allegations by witness Dariyai Lal-father of the parties and Ashwani, who allegedly came at the spot and rescued respondent No.1-complainant from the clutches of the accused.

14. It, however, remains undisputed that PW1/Inderjit Singh had sustained injuries, and the same was corroborated by the testimony of PW2/Dr. Krishan Kant, who had medico-legally examined him. The MLR has also been placed on record. Solely because the witnesses were attracted to the spot on a distress call made by the injured/complainant, the version of the injured himself cannot be disbelieved. The ocular version stands corroborated by the medical evidence and it cannot be assumed that the said injury was self-inflicted or occurred under any other circumstances. The weapon used in offence has also been recovered from the spot and the

injuries had also been duly established. Disbelieving the entire prosecution version solely on account of certain discrepancies in the testimonies of eye witnesses, who were attracted to the spot on a distress call, was hence rightly rejected by the Appellate Court.

15. The High Court, in its revisional jurisdiction, does not reappreciate or scrutinize the evidence. The scope is limited to the judgment suffering from any illegality, impropriety, perversity or gross misappreciation of the evidence. If the conclusion drawn by the Court is a possible and probable view, from the evidence available on record, such view would not be upset merely because another view is also possible or probable.

16. Since, the finding of the conviction recorded by the First Appellate Court vide its judgment dated 19.08.2014 cannot be said to be misconceived or based upon no evidence on record, I find that there is no illegality, impropriety, perversity or mis-appreciation of evidence that has been established on the record.

17. Consequently, the present appeal is ***dismissed*** and the judgment dated 19.08.2014 passed by the Additional Sessions Judge, Karnal, in Criminal Appeal No.24 of 2013 (CIS No.060600072512011) arising out of FIR bearing No.160 dated 05.06.2005 registered under Sections 323, 324, 34 of the Indian Penal Code, 1860 at Police Station Butana, Karnal, is hereby affirmed.

(VINOD S. BHARDWAJ)
JUDGE

23.04.2026

Mangal Singh

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