
(2011) 08 P&H CK 0278

High Court Of Punjab And Haryana At Chandigarh

Case No: CRA No. 685-DBA of 1997

State of Haryana

APPELLANT

Vs

Mukesh and others

RESPONDENT

Date of Decision: Aug. 18, 2011

Acts Referred:

- Penal Code, 1860 (IPC) - Section 148, 149, 302, 323, 325

Hon'ble Judges: Vijender Singh Malik, J; Hemant Gupta, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

State is in appeal aggrieved against the judgment dated 11.04.1997 passed by the learned Additional Sessions Judge, Sonapat, acquitting the respondents of the charges framed against them for the offences under Sections 148, 302, 325 and 323 read with Section 149 IPC.

2. The prosecution case was set in motion on the statement of Harish Chander made to ASI Chattar Singh on 31.03.1996 at about 7.00 pm. In his statement (Ex.PC), Harish Chander stated that in front of their houses, houses of Prem Singh son of Ramehar, Karan Singh and Suresh, both sons of Jagdishare situated. About 8 years ago, a quarrel has taken place between him and sons of Ramehar and Jagdish i.e. Prem Singh, Karan Singh and Suresh in respect of the division of wall and street. Since then they are not in speaking terms with each other. On 28.03.1996 at about 12 o'clock, when he was in flour mill installed in their house, Prem Singh son of Ramehar, Karan Singh son of Jagdish and Ghansham son of Kanha, Subhash son of Dani Ram, Bal Kishan son of Molu Ram, Mukesh son of Bal Kishan and Smt. Munesh wife of Suresh came with a common intention having lathis in their hands. Prem Singh exhorted that he will teach a lesson. On this, Karan Singh, Prem Singh and Ghansham entered into his house. Karan Singh gave a lathi blow on his shoulder; Prem Singh gave lathi blow on his head; whereas Ghansham gave a lathi blow on his

right shoulder. He rushed to the street, but was caught by Bal Kishan. Mukesh gave a lathi blow on his head as a result of which he fell down. Thereafter, Karan Singh gave a lathi blow on his left wrist. On hearing noises, Chandro wife of his younger brother Ram Phal; his son Sanjay Kumar; nephew Satish and Laxmi Narain son of his uncle Tara Chand rushed at the spot to rescue him. Then Mukesh gave a lathi blow on the head of Chandro wife of Ram Phal as a result of which she fell down. Then Karan Singh and Prem Singh gave lathi blows on her, while she was lying. They also inflicted injuries to Satish, Laxmi Narain and Sanjay Kumar. On hearing their noise, his brother Ram Phal and Suresh son of Sat Narain rushed at the spot. On seeing them, all the accused left the spot with their respective weapons. He further stated that he himself, Satish, Laxmi Narain were hospitalized, but stand discharged, whereas Chandro was admitted in the Civil Hospital, Gohana. He stated that Chandro made her statement on 28.03.1996 to the Police in the Hospital. Due to seriousness of injuries and not being in fit condition, she did not make her statement properly and did not mention the names of Karan Singh and Ghansham in her statement. On the basis of such statement, ruqa (Ex.PC/1) was sent to the Police Station for registration of an FIR. On receipt of ruqa, FIR (Ex.PC/2) was registered at about 7.30 pm on the same day.

3. On completion of investigations including medical reports, all the respondents were made to stand trial. After going through the entire evidence on record, the learned trial Court found that the prosecution has not been able to bring home the guilt of the accused and that the accused party has not been found to be aggressor. They rather had to cause injuries when some of them were attacked by the complainant party and they did not exceed in any manner in the exercise of their right of private defence. Accordingly, the learned trial Court by extending benefit of doubt ordered acquittal.

4. With the assistance of the learned counsel for the parties, we have gone through the record and found that there is no illegality or perversity in the judgment passed by the learned trial Court, which may warrant interference in appeal.

5. Chandro, who has received head injury allegedly at the hands of Mukesh, has made a statement Ex.PY on 28.03.1996 at about 7.00 pm. The said statement is sought to be explained by Harish Chander in his statement (Ex.PC) made to ASI Chatter Singh on 31.03.1996, the basis of FIR. The material improvement in the said statement is not only of involvement of Karan Singh and Ghansham, but also the fact that in the statement Ex.PY, Chandro has not stated the genesis of occurrence as dispute of gali, but the act of kissing of the daughter of the accused Smt. Munesh by PW-11 Harish Chander, the author of FIR. The learned trial Court has rightly found that once the statement of Chandro was available with the Investigating Officer on 28.03.1996, then there was no reason to lodge report on the statement of Harish Chander to launch prosecution against the respondents herein. Such FIR is result of deliberations so as to cast the net wide and also to change the genesis of

occurrence. Such FIR suffers from gross delay, which has not been explained.

6. The statement of Chandro Ex.PY was recorded after request was made by HC Ram Kumar to the Medical Officer, Civil Hospital, Gohana on 28.03.1996 vide Ex.PM. On such request, the Doctor has opined that she is fit to make statement. Once the patient was found to be fit to make statement, the explanation sought to be given by PW-11 Harish Chander that she was perplexed and not in a fit condition to make statement, cannot be believed. Still further, the learned trial Court has considered the statements of PW-11 Harish Chander and PW-13 Laxmi Narain and found that their statements are not of reliable and trustworthy witnesses. As per the defence version, disputes have arisen when PW-11 Harish Kumar kissed the daughter of Smt. Munesh. Such assertion stands corroborated by the statement of Chandro Ex.PY. PW-13 Laxmi Narain in his cross-examination firstly stated that he did not know if soon prior to this incident Harish Chander had allured the girl child of Munesh in his chakki (flour mill) and kissed the said child there. The defence version has proved photocopy of the compromise dated 28.03.1996 (Ex.DG), which bears the signatures of Harish Chander and Laxmi Narain.

7. On behalf of the accused party, Mukesh-accused No. 1, Prem Singh-accused No. 3, Subhash-accused No. 4, Bal Kishan-accused No. 6 and Smt. Munesh-accused No. 7 have also received injuries, which is apparent from the medico-legal reports Exs.DB to DE proved by PW-7 Dr. Karambir. One of the injuries suffered by accused Mukesh was on his head. The accused Smt. Munesh has also received injury on her head. The learned trial court found that PW-11 Harish Chander has given a vague statement in respect of the injuries suffered by the accused that some of the accused might received injuries in this incident, but he failed to give details. In his cross-examination, PW-11 Harish Chander stated that he did not know as to who out of the accused persons had received injuries in this incident. The Court also noticed that even though PW-7 Dr. Karambir has prepared the medico-legal report of Smt. Chandro, but the same was kept concealed and second medico-legal report was got prepared by PW-11 Harish Chander from PW-12 Dr. S.C.Jindal on 06.04.1996. PW-12 Dr. S.C.Jindal has admitted in his cross-examination that the attendants of Smt. Chandro had told him that she received injuries because of her own fault in her house. PW-11 Harish Chander in his cross-examination has admitted that he is a dismissed Police Constable, as there was charge of embezzlement of Rs. 85,000/- against him while he was posted in Police Station Nangloi. He also admitted that few years before Prem Singh had filed a complaint in the village against him alleging that he was indulged in carnal intercourse against the order of nature with a buffalo. PW-11 Harish Chander in his cross-examination has admitted that after this incident, a panchayat has been convened in the village and in the panchayat, it had come that Mukesh had not caused any lathi blow on the head of Smt. Chandro and that Bal Kishan and Mukesh accused were not related to the remaining accused in any manner and that the complainant party had no dispute or enmity of any sort with the accused Bal Kishan and Mukesh.

8. From the entire evidence, it transpires that the prosecution has miserably failed to explain the injuries suffered by Mukesh-accused No. 1, Prem Singh-accused No. 3, Subhash-accused No. 4, Bal Kishan-accused No. 6 and Smt. Munesh-accused No. 7. The evidence of the prosecution witnesses in respect of the injuries is vague and does not explain the manner of such injuries. The genesis of occurrence has, thus, been withheld. Still further, Chandro in her statement Ex.PY recorded after the opinion of the Doctor that she is fit to make statement, has stated that the dispute arose on account of kissing of the daughter of the accused Smt. Munesh by PW-11 Harish Chander. Such version is the first version soon after the incident. However, the investigation has not proceeded on the basis of first version, but on the basis of statement of Harish Chander (Ex.PC) made on 31.03.1996, that is statement made after due deliberations and changing the basis of incident.

9. The learned trial Court has considered the entire evidence to return a finding that the accused have not exceeded in their right of private defence. Such finding recorded by the learned trial Court is a possible finding. In appeal, we do not find that such view is perverse and not sustainable.

10. Consequently, we do not find any merit in the present appeal. The same is dismissed.