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(207) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of Decision: 09.01.2025

RAMESHWAR DASS

... Appellant

Versus

STATE OF HARYANA & OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Aman Sharma, Advocate
for the appellant.

Mr. Ravish Kaushik, Addl. AG, Haryana.

JASJIT SINGH BEDI, J.

The present appeal has been filed against the judgment of acquittal dated 23.08.2024 passed by the Additional Sessions Judge, Yamuna Nagar at Jagadhri.

2. The FIR was registered on 17.09.2016, the judgment of acquittal passed by the Addl. Session Judge, Yamuna Nagar, Jagadhri is dated 23.08.2024, the appeal was filed on 26.09.2024 and the matter is being taken up for hearing now after 08 years of the registration of the FIR.

3. The brief facts of the prosecution case are that a telephonic information was received on 17.09.2016 to the effect that a fight had taken place in village Kot Basawa Singh and Usha Rani, Kamlesh Rani, Seema Devi wife of Mange Ram, Kashmiri Devi, Parveen Kaur, Seema Devi wife of Suraj Bhan, Leela Devi, Rameshwar Dass and Nirmal Singh were injured in the incident. The police party reached Civil Hospital, Yamuna Nagar and met



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Nirmal Singh, who presented his MLR as well as written complaint to the effect that Rai Singh and his 8 companions tried to harvest their maize (corn) crop grown on the land taken on lease from the Panchayat. When they tried to object, at about 10:30 a.m., the accused, namely, Kuldeep Singh, Surrender, Balkar Singh, Ran Singh, Jai Singh, Kaku, Rai Singh, Randeep Singh and Chhotu attacked them with wooden sticks, Lathies, swords and guns. Kuldeep was armed with a gun and a Lathi. He fired a shot in the air to scare the complainant party and gave a Lathi blow to Nirmal and Leela Devi. Surrender was also armed with a gun and he also fired a shot in the air and passed caste based comments, threatening them to leave the land or else they would be done to death. Balkar Singh was armed with a sword, who attacked Seema Devi, while Ran Singh had a gun, who also fired a shot in the air and passed caste based comments. Jai Singh was armed with a sword. He attacked Rameshwar and uttered caste based remarks, while Kaka attacked them with a Lathi. Kamlesh suffered injuries on her head. Nafe Singh also fired a shot in the air with his gun, uttered caste based remarks and attacked the complainant party with a wooden stick. Ran Singh also attacked them with a wooden stick and uttered caste based words. They called the police and the police came to the spot, but by that time, the accused had left the place of occurrence along with their weapons.

On the basis of the complaint and the MLRs of the injured persons, the FIR was registered under Sections 148, 149, 323, 447, 506, 285 IPC & Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short, the SC/ST Act).



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4. During investigation, the statements of witnesses were recorded. The place of occurrence was inspected and a rough site plan was drawn. Report of the Tehsildar regarding possession over the land, was obtained. Section 447 IPC was removed. On the basis of opinion of the doctor regarding injuries sustained by Leela Devi, Section 325 IPC was added. Accused, namely, Kuldeep Singh, Surender, Balkar Singh, Ran Singh, Jai Singh, Kaku, Rai Singh, Randeep Singh and Rupinder @ Chhotu were arrested. Their disclosure statements were recorded and the weapons of offence were recovered. Section 354 IPC was also added. During investigation, no boy by the name of Nafe Singh son of Batoura Singh was found. After completion of investigation, challan was submitted before the Court.

5. The prosecution examined PW1-Usha Rani, PW2-Seema Devi, PW3-Kamlesh Rani, PW4-Parveen Kaur, PW5-Tarun, Halqa Patwari, PW6-Sadhu Ram, Kanungo, PW7-HC Rohit, PW8-Seema Devi, PW9-Dr. Sunil, Medical Officer, PW10-SI Didar Singh, PW11-Leela Devi, PW12-HC Sandeep Kumar, PW13-Nirmal Singh, PW14-ASI Gurdial Singh, PW15-ASI Daulat Ram, PW16-Rameshwar, PW17-Retired DSP, Madan Lal, PW18-SI Charanjeet, PW19-Constable Parveen Kumar, PW20-Dr. Kapil Kamboj, PW21-Abhishek Verma, Clerk, PW22-Rajeev Miglani, Inspector, PW23-Rajinder Kumar, DSP and PW24-Kashmiri Devi.

6. In their statements recorded under Section 313 Cr.P.C., the accused claimed innocence and pleaded their false implication.



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7. The defence examined DW1-Jitender Singh, Registry Clerk, DW2-Dr. Harsimran Singh, Medical Officer, Civil Hospital, Jagadhri and DW3-Kulwinder Kaur.

8. Based on the evidence led, accused/respondent Nos.2 to 10 were acquitted by the Court of Additional Sessions Judge, Yamuna Nagar, Jagadhri vide judgment dated 23.08.2024.

9. It is the aforementioned judgment of acquittal which is under challenge in the present appeal.

10. The learned counsel for the appellant/complainant contends that the judgment of acquittal has been passed on the basis of conjectures and surmises. There is sufficient evidence to establish that the occurrence took place on the land of which the complainant party was in possession. The prosecution witnesses were consistent as regards the manner in which the occurrence had taken place. There was sufficient medical evidence of at least simple injuries having been caused to the complainant party. He, therefore, contends that the judgment of acquittal of accused/respondents Nos.2 to 10 be set aside and the accused be convicted of the offences in question.

11. The learned counsel for the State while supporting the case of the appellant/complainant contends that the impugned judgment was not based on proper appreciation of the evidence on record and, therefore, the judgment of acquittal was liable to be set aside.

12. We have heard the learned counsel for the parties.

13. As per the report of the Tehsildar, it has rightly been held that the occurrence had taken place on the land in possession of the accused party



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and therefore, no offence under Section 447 IPC could be made out and the same was removed during investigation.

14. As per the prosecution case, two possible versions have emanated from the evidence. As per the first version, the accused had entered the Panchayat land which was in cultivation of the complainant party to harvest the maize crop. However, as per the defence, the land in dispute was owned by the accused party. As per the settled law, if two versions of an incident are probable then the version will support the defence has to be given due weightage.

15. As regards the offence under Section 325 IPC, the X-ray report as well as the X-ray film must have been proved on record to prove such an offence, but neither the X-ray film has been placed on record, nor the doctor has been examined to prove the X-ray report of the injured. Rather, the X-ray report of Leela Devi Ex. P38 has been produced by the investigating officer, PW18 SI Charanjeet. Thus, the evidence led by the prosecution is not sufficient to prove the offence under Section 325 IPC against any of the accused persons.

16. As regards the offence under Section 326 IPC, the reproduction of Sections 325 and 326 IPC would seem apposite, which is as follows:-

“325. Punishment for voluntarily causing grievous hurt.- Whoever, except in the case provided for Section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

326. Voluntarily causing grievous hurt by dangerous weapons or means.- Whoever, except in the case provided for Section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or

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cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

In both these Sections, the punishment for grievous hurt is given, but for an offence under Section 326 IPC, it has to be shown that the weapon used for inflicting the particular injury, was dangerous in nature. It should be an instrument of shooting, stabbing, cutting etc., but in the present case, the allegations are that the injuries on the person of Kamlesh had been caused by Lathi.

Moreover, there is no medical evidence to show that Kamlesh had suffered any grievous injury. PW9 Dr. Sunil stated in his cross-examination that Kamlesh had not sustained any eye injury, nor was there any complaint of pain in the eye of Kamlesh. Hence, the offence under Section 326 IPC cannot be said to have been made out.

17. As regards the offence under Section 354 IPC, PW11 Leela Devi did not utter a word about outraging her modesty. Although, PW8 Seema Devi stated that accused Kuldeep Singh touched the private part of Seema Devi (not her), whereas PW3 Kamlesh stated that Kuldeep Singh caught hold of Seema from behind and pressed her breast, she nowhere stated that Kuldeep Singh had touched the private parts of Seema. Thus, the charge under Section 354 IPC against the accused was rightly not proved.



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18. As regards the offence under the SC/ST Act, Rule 7 of the Rules under SC/ST Act provides that “an offence committed under the Act shall be investigated by a Police Officer not below the rank of Deputy Superintendent of Police”.

This Court has observed in **Rakesh Kumar Vs. State of Punjab, 2004(2) R.C.R. (Criminal) 124**, that “the rule is mandatory and failure to investigate the offence by an officer of the rank of Deputy Superintendent of Police, would vitiate the trial”.

Moreover, in **State of Madhya Pradesh Vs. Babbu Rathore & another, Criminal Appeal No. 123 of 2020 [Arising out of SLP (CRL.) No.11369 of 2019] decided on 17.01.2020**, relied upon by learned Public Prosecutor for the State, the Hon’ble Supreme Court while relying upon **State of M.P. Vs. Chunnilal @ Chunni Singh, 2009(12) SCC 649**, held that:-

“when the offence complained are both under IPC and any of the offence enumerated in Section 3 of the Act, the investigation which is being made by a competent police officer in according with the provisions of the Criminal Procedure Code, cannot be quashed for non-investigating of the offence under Section 3 of the SC/ST Act by a competent police officer. In such a situation, the proceedings shall proceed in an appropriate court for the offences punishable under IPC notwithstanding investigation and the charge sheet being not liable to be accepted only in respect of offence under Section 3 of the SC/ST Act for taking cognizance of that offence.”.

19. In the instant case, initially, the investigation was conducted by PW18 SI Charanjeet, but the offence under Section 3 (xi) of the SC/ST Act having surfaced, the further investigation to some extent was carried out by PW17 Madan Lal, DSP and thereafter, the subsequent investigation was done



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by PW18 SI Charanjeet. PW18 SI Charanjeet stated in his cross-examination that an officer of DSP rank could only investigate the case under SC/ST Act and he was not authorized to investigate the FIR, but volunteered that he investigated the case as per the directions of higher authorities and that no written order was given to him by the higher authority to investigate the case. In view of the observations of the Hon'ble Supreme Court and this Court, the investigation as well as the trial in respect of of the offence under the SC/ST Act stands vitiated. Accordingly, the prosecution rightly failed to bring home the guilt of any of the accused under Section 3(xi) of the SC/ST Act.

20. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon'ble Supreme Court in **Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

21. In view of the aforementioned discussion and keeping in view the law laid down in **Kallu @ Masih & Ors.** Case (supra), we find no reason

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to interfere with the well reasoned judgment of acquittal passed by the Court of Additional Sessions Judge, Yamuna Nagar at Jagadhri. Therefore, the appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

09.01.2025

JITESH

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