

In the court of Gurpreet Kaur, Judicial Magistrate Ist Class,

Sri Anandpur Sahib. UID-PB-0562

Criminal Case No.	66 dt. 28.07.2016
Date of Decision:	25.03.2019
CIS no.	237-2016
CNR No.	PBROA1-000563-2016

State

Versus

1. Kamal Dev son of Sada Ram
2. Shiv Kumar son of Sada Ram
3. Yograj son of Sada Ram

All residents of village Takatpur, Tehsil Sri Anandpur Sahib, Distt. Rupnagar.

..... Accused

FIR No. 111 dated 05.09.2015
U/s 323, 34 of IPC
PS: Nurpur Bedi.

Present: APP for the State.

Accused on bail with counsel Sh. RS Dayal, Advocate

Judgment:

The accused above named has been sent up to face trial for commission of offences punishable under sections- 323, 34 of Indian Penal Code (here-in-after called as IPC) by the SHO, Police Station Nurpur Bedi.

2. Briefly stated, criminal law was set into motion on the statement of complainant Asha Rani (here-in-after called the complainant) that she is housewife. On 04.09.2015 she alongwith her daughter-in-law Nidhi Sharma at about 10:00 PM went to their cattle shed for sulking milk of cows-buffaloes. Thereafter, her daughter-in-law went inside to bring cattle feed. Then three persons, namely Yograj @ Pamma, Bittu and Kamal Dev broken the door of their house and entered into their house. They started

abusing and asked about her son. Said all the three persons gave push blow to her daughter-in-law and she locked the door from inside. Said three persons with 3-4 other unidentified persons while coming out from her house while raising lalkara were seen by her neighborer Naveen Kumar and Ashok Kumar. Wives of said three persons were also abusing in the street. If my daughter-in-law would not have locked the door from inside, said persons would have done something adverse. They were afraid through out the night. On the basis of statement, FIR was registered originally under section 452, 323, 148, 149 IPC out of which section 452 IPC is cognizable, statement of witnesses were recorded, accused were arrested and upon completion of investigation, final police report in the shape of challan was presented in the court u/s 323 r.w.s. 34 of IPC only and offence u/s 452 IPC was left by the IO to be included in challan vide inquiry report dated 29.04.2016.

3. Upon appearance of accused in the court, complete copies of challan alongwith documents annexed thereto were provided to the accused persons, free of cost, as required under section 207 of Cr.P.C.

4. After hearing the Ld. APP for the state and Ld. defence counsel a prima facie case under sections 323 r.w.s. 34 of IPC was found to be made out against all the accused. Charges under the said sections were framed and read over to accused persons to which they pleaded not guilty and claimed trial.

5. To prove its case against the accused, prosecution examined, complainant Asha Rani as PW-1, HC Ranjit Singh as PW-2, ASI Kuldeep Singh as PW-3 and Naveen Kumar as PW-4. Thereafter, evidence of

prosecution was closed by order.

6. Thereafter, statement of accused persons u/s 313 Cr.P.C was recorded wherein the incriminating material was put to accused. They denied the allegations in toto and thereafter accused persons suffered a joint statement to the effect that they did not wish to lead any defence evidence and closed their evidence.

7. The Ld. APP for the State argued that prosecution has successfully proved its case in the testimonies of complainant Asha Rani (PW-1), HC Ranjit Singh (PW-2), ASI Kuldeep Singh (PW-3) and Naveen Kumar (PW-4). He submitted that the prosecution has proved the incident against the accused persons. He contended that accused have caused injuries to complainant by house trespassing into her house. Lastly, he submitted that accused are liable to be convicted and punished accordingly.

8. In rebuttal, the counsel for accused urged that prosecution has failed to prove its case against the accused persons and present false FIR has been registered against the accused persons by the police in connivance with complainant. He urged that the complainant has leveled vague allegations against the accused. He submitted that accused cannot be convicted on the basis of vague and general allegations and thus, they be acquitted.

9. I have heard learned A.P.P. for the State and learned Counsel for the accused and have gone through the material placed upon record.

10. From the evidence and submissions advanced by ld. APP for the State and ld. Defence counsel, following points arise for determination:-

1. Whether on 04.09.2015 at about 10:0 PM in the area of village Takhatpur, PS Nurpur Bedi, accused persons in furtherance of common

intention voluntarily caused hurts to Nidhi Sharma and also committed house trespass by entering into the house of complainant Asha Rani used as a human dwelling and thus committed offence punishable u/s 323, 452 r.w.s. 34 of IPC?

11. I have given my thoughtful consideration to the rival contentions of both the counsels.

Point No.1

12. In order to bring home the guilt of accused, prosecution examined complainant Asha Rani (PW-1) who deposed that on 04.09.2015 at around 09:30 PM she was present at her home alongwith her daughter-in-law Nidhi Sharma. Her daughter-in-law was doing her house hold work and was sulking the milk of cow/buffaloes. Thereafter her daughter-in-law went inside the room to pick the cattle feed, then three persons namely Yograj @ Pamma, Bittu and Kamal Dev broken the door of their house and entered into their house. Thereafter they started abusing and asked about her son and they also threatened that they will not leave her son today. When she came out side, she saw all these three accused were armed with rods and axe. Thereafter all these three accused beaten her. Due to this she received injuries in her back and one of her teeth was also broken. Thereafter she raised alarm regarding the same. After hearing hue and cry two person namely Naveen Kumar and Ashok Kumar who were their neighbor came on the spot and rescued them from all these three accused. During altercation, the master card of accused Yograj Singh fell in their house. Thereafter all these three accused fled away from the spot and they locked the door of their

house after they went away. Thereafter all these three accused called police to inform them regarding this matter. On the same night police official came at their house. Thereafter on 05.09.2015 police officials called them to police station Nurpur Bedi regarding this case. IO recorded her statement which is already Ex. PA. It bears her signature at point A . Police also recorded her another statement which is Ex. PW1/A. It bears her signature at point-A. She identified all these three accused in the court.

During cross-examination she deposed that police has recorded her statement on 04.09.2015 when police had come to visit the spot and police also recorded the statement of Nidhi Sharma on the spot. She deposed that at the time of occurrence Kamaldeep, Naveen and Ashok Kumar were gathered at the spot. She admitted that her daughter-in-law has moved an application against her and her son, voluntarily said that she has made complaint against her daughter-in-law and her relative regarding thefts at her home before a false complaint by her. She deposed that on the day of occurrence she had made written complaint to the police to the PS Nurpur Bedi. She had sent persons to make the complaint to the police station Nurpur Bedi but again said she has personally made the complaint. She deposed that she cannot tell the time when she reached PS Nurpur Bedi but she reached after some time of occurrence. She deposed that she does not know whether her teeth was broken, the blood oozed out or not but it might have. She deposed that she has not disclosed regarding the uprooting of her tooth to the police and she only gave statement regarding the attack by the accused party. She deposed that she was not admitted in any hospital but she took medicine from Gurdev Hospital Nurpur Bedi. She deposed that she

does not identified signature at point-A on mark-A as to whether they have been made by her daughter in law or not. She deposed that she does not know whether she had handed over the credit card of Yograj on 04.09.2015 or 05.09.2015, voluntarily the card was handed over when police first came on the place of occurrence. She deposed that she had got recorded in her statement before police that occurrence has taken place at around 10 PM on said day. He deposed that she does not remember for how many times police recorded her statement and she does not remember how many times police recorded statement of her daughter-in-law. She deposed that the police had taken the photographs of the breakage caused by the accused party.

Further prosecution examined HC Ranjit Singh as PW-2 on 05.09.2015, she was posted as Head Constable at PS Nurpur Bedi. On that day he along with IO and police party in connection with checking and patrolling were present at Bus Stand Bainsa, where Asha Rani complainant met the IO and got recorded her statement before the IO against Kamal Dev etc. IO recorded her statement and IO made police proceeding on the same and ruqa sent through Shingara Singh to the PS and on the basis an FIR registered in the present case and IO prepared rough site plan.

During cross-examination she deposed that IO has not seized any weapon or any other thing on the spot. He deposed that there was not any breakage of household articles in the house of complainant Asha Rani and neither there was any signs of trespass. He deposed that when they visited the spot all the persons along with Gram Panchayat were standing in the street and no door of the house of the complainant has broken. He deposed that no injuries were affected to the complainant Asha Rani and her

daughter-in-law Nidhi. She deposed that she does not know whether both the parties have called by the IO to visit the police station. He deposed that they had not recorded any statement of any person on the spot. He deposed that he does not know whether any inquiry has been conducted by the DSP with regard to this case.

Further prosecution examined retired ASI Kuldeep Singh as PW-3 who deposed that on 05.09.2015, he was posted as ASI at PS Nurpur Bedi. On that day he along with police party in connection with checking and patrolling were present at Bus Stand Bainsa, where Asha Rani complainant met him and got recorded her statement before him against Kamal Dev etc. She got recorded her statement Ex.PA and after recording her statement the same read over to the complainant and after admitting it to be correct the complainant put her signature on the same in English. He attested the statement of the complainant and on the same police proceeding Ex.PW3/A and ruqa sent through Constable Shingara Singh to the PS and on the basis FIR Ex.PB was registered. Thereafter, IO reached at the place of occurrence and prepared rough site plan Ex.PW3/B. He recorded the statement of witnesses under Section 161 CrPC. Thereafter, he transferred and handed over the present case file to MHC.

During cross-examination he deposed that he does not recover anything from the spot at the house of Asha Rani. He deposed that he did not prepared any fard on the spot and neither prepared any site plan. He deposed that they said that no dispute has arisen between the parties, only the exchange of words was between the parties. He deposed that he did not find any danda or any other weapon on the spot and there was also not breakage

of any household articles in the house of Asha Rani. He deposed that he remained present at the spot for about half an hour and they have directed both the parties to visit the police station on the next day at 09.00 AM. He deposed that he has recorded the statement of Asha Rani at PS Nurpur Bedi only for one time. He deposed that Kamal Dev etc. have also moved application to SSP Rupnagar for inquiry and for the cancellation of FIR. He admitted that the whole Gram Panchayat of Village Takhatgarh has given their joint statement to DSP during investigation that no dispute has arisen between the parties. He deposed that they have been falsely involved in this case due to personal enmity by the complainant. He deposed that no medical legal report of the complainant Asha Rani was obtained as she has not obtained any injuries neither she was admitted in any hospital.

Lastly prosecution examined Naveen Kumar as PW-4 who deposed that on 04.09.2015 at about 9:30 PM he had come from her duty and he heard some noise outside his house and he came outside his house and he saw that a fight took place between Asha Devi, Gagan Dev. Infact there were heated arguments from both side and he intervene and separated both the parties and when they did not stop fighting then they informed to police over the telephone. But he does not know the motive of the fight between the parties. Her statement was recorded by the police. He identified accused Kamaldev, Shiv Kumar and Yograj present in the court today being accused.

During cross-examination he admitted that there is dispute between complainant and her daughter-in-law namely Nidhi. He admitted that no physical fight took place in his presence except the exchange of

heated arguments between the parties. He admitted that panchayat members of the village also reached at the spot. He admitted that house of Yograj is about 400 yards away from the house of Asha Devi. He deposed that he did not make a call to police himself and said dispute is between accused and Billu and said Billu is family member of complainant Asha Devi. He admitted that Yograj etc. has filed a civil case against Billu. He deposed that no site plan was prepared by police in his presence.

13. I have appreciated the above evidence adduced by prosecution on judicial file and I have considered the rival submissions of learned APP and learned defence counsel and after considering the totality of facts and circumstances on judicial file, I am of the considered view that the recovery of the weapons as alleged to be used by accused persons in present FIR has not been effected while investigation of this case as per admission of IO appearing as PW-3. Further, as per cross-examination of investigation officer of this case, he specifically admitted that whole gram panchyat village Takhtgarh has given their joint statement to DSP during investigation that no dispute has been arisen between parties. Apart from this, eye witness in this case appearing as PW-4 Naveen Kumar has himself deposed in his examination in chief that no fight took place between complainant and accused persons, rather only heated altercation has taken place and he has maintained his stance in his cross-examination as well. Further, one of the complainant as well as eye witness i.e Nidhi Sharma has failed to turn up for her cross-examination and was given up by complainant Asha Rani herself. The version of complainant Asha Rani appering as PW-1 in the light of aforesaid dscussion and evidence cannot be relied upon as the same suffered

from material infirmities. As such prosecution has failed to prove its case against the accused persons and accused persons are acquitted from charges u/s 323, 452 r.w.s. 34 of IPC framed against them. Earlier bail and surety bonds stands discharged. Accused are directed to furnish bail bonds u/s 437-A Cr.P.C to the tune of Rs.10,000/- with one surety in the like amount to which they requested for some time. Request allowed. Accused are directed to furnish the same within a week. File be consigned to record room after due compliance.

Announced

Dated: 25.03.2019

Surinder Partap Singh

Gurpreet Kaur, PCS

Judicial Magistrate Ist Class, Anandpur Sahib

UID-PB-0562

State Vs. Kamal Dev etc.

Present: Sh.Vijay Kumar, APP for the State.
Accused on bail with counsel Sh. RS Dayal, Advocate.

Accused vide their joint statement closed their evidence.

Arguments heard. Vide my separate detailed judgment of the even date, all the accused persons are hereby acquitted from the charges framed against them. Previous bail, sapurdari and surety bonds stands discharged. Accused requested for some time to furnish his bail and surety bonds by filing a separate application to this regard. Heard. Same is allowed. Accused is directed to furnish his bail and surety bonds u/s 437-A of IPC to the tune of Rs.10,000/- within a week. Case property if any be dealt with as per rules. File be consigned to the record room.

Announced

Dated: 25.03.2019

Surinder Partap Singh

Gurpreet Kaur, PCS

Judicial Magistrate Ist Class, Anandpur Sahib

UID-PB-0562

