



IN THE COURT OF MS. GURPREET KAUR, PCS,
SUB DIVISIONAL JUDICIAL MAGISTRATE,
GURUHARSAHAI. (UID NO.PB-0323).

Crl. Case No. RBT-33 of 10.04.2015/18.01.2018,
CIS No. CHI/124/2015,
CNR No. PBFZD10004572015
Date of Decision:- 12.03.2019

State Versus 1. Buta Singh son of Kot Chand,
 2. Kuldeep Singh son of Buta Singh,
 3. Sonu son of Ganga Ram,
 all residents of Village Wassal Mohan Ke, Tehsil
 Guruharsahai,
 4. Rimple Kumar son of Balwant Singh, resident
 of Village Pindi, Tehsil Guruharsahai,
 5. Sandeep Kumar son of Buta Singh, resident of
 Village Wassal Mohan Ke, Tehsil Guruharsahai,
 . . . Accused.

FIR No. 169 dated 10.07.2014,
Under sections 379, 431, 427, 34 of IPC,
Police Station Guruharsahai.

Present:- Shri Balwinder Singh, APP for the State.
 All accused Mohinder Singh on bail with counsel
 Shri RK Monga Advocate.
 Shri Gaurav Monga Advocate, counsel for complainant.

JUDGMENT:-

The above named accused have been sent to face trial
Under sections 379, 431, 427, 34 of Indian Penal Code by the Station
House Officer of Police Station Guruharsahai.

Gurpreet Kaur,
SDJM, Guruharsahai.

2. Brief facts of the prosecution case are that the present case was registered on the basis of an application moved by the complainant Tilak Raj, Sarpanch son of Harkishan Lal, to the effect that cremation ground of Village Wassal Ke Mohan is in existence for the last about 40 years and ahead of that cremation ground, there exists a colony of the Gram Panchayat and a passage of 2 karams is there leading from cremation ground towards the said colony, since long. However, the accused persons namely Buta Singh son of Kotu Ram, Sandeep, Kuldeep sons of Buta Singh, Sonu son of Ganga Ram and Rimple son of Balwant Rai alongwith other 12/13 unidentified persons have dismantled the said passage and have committed theft of the bricks paved over there. They have also dismantled seepage drain adjoining the said passage. The said persons are also threatening the villagers that no one can harm them. Gram Panchayat has also passed a resolution in this regard. On the basis of the said application, Panchayat Secretary visited the spot and found the facts of the application to be true. It was also reported that due to the said act of the accused persons, Gram Panchayat has suffered a loss

*Gurpreet Kaur,
SDJM, Guruharsahai.*

of about Rs.55,500/-. On the basis of the said statement, thorough inquiry was conducted and on the basis of the said inquiry report and the report of BDPO, Guruharsahai, present case has been registered against the accused persons for offence punishable under sections 379, 431, 427, 148, 149 IPC. Investigation was initiated. Statements of the witnesses were recorded. Accused were arrested. After completion of the necessary formalities, present challan was presented against the accused.

3. On appearance of accused, copies of documents relied upon by the prosecution were supplied to the accused free of cost as required under section 207 Cr.P.C.

4. Finding a prima facie case for the offences under sections 379, 431, 427, 201 of Indian Penal Code, charge was framed against the accused, accordingly, to which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined PW1 ASI Gurlal Singh- Investigating Officer, PW2 Tilak Raj-complainant, PW3 Kuldeep Singh Panchayat Secretary, PW4

*Gurpreet Kaur,
SDJM, Guruharsahai.*

Rupinder Singh- Panchayat Secretary, PW5 Rajesh Kumar son of Jagtar Singh. Thereafter, evidence of the prosecution was closed by order vide order dated 06.03.2019.

6. Statement of accused under section 313 Cr.P.C. was record, wherein he denied the entire evidence of the prosecution and pleaded false implication. However, he did not lead any evidence in defence.

7. I have heard the learned APP for the State, assisted by learned counsel for the complainant, learned defence counsel and have also gone through the record very carefully and minutely.

8. It is the case of the prosecution that accused persons have dismantled the said passage and have committed theft of the bricks paved over there. They have also dismantled seepage drain adjoining the said passage.

9. In order to prove the allegations leveled against the accused, the prosecution has examined as many as five witnesses. PW1 ASI Gurlal Singh is the Investigating Officer, who in his examination in chief has deposed about the investigating conducted

*Gurpreet Kaur,
SDJM, Guruharsahai.*

by him in the present case. However, the said witness did not turn up for his cross examination and as such, his testimony cannot be read into evidence.

10. Prosecution has further examined PW2 Tilak Raj-complainant, on whose application, the criminal machinery was put into motion in the present case. This witness, initially deposed as per the case of the prosecution and his further examination in chief was deferred for want of resolution. However, In his further examination in chief, this witness did not produce any resolution dated 08.07.2014 and stated that no such resolution exists. He further stated that he never moved any application against the accused persons. He further stated that earlier he made statement in the court under pressure and influence of panchayat members. The said witness was declared as hostile and the learned APP for the State cross examined him, but nothing fruitful could be extracted in favour of the case of the prosecution.

11. PW3 Kuldeep Singh- Panchayat Secretary appeared as prosecution witness but could not produce the summoned record

*Gurpreet Kaur,
SDJM, Guruhashahi.*

pertaining to the report of BDPO, Guruharsahai and specifically stated that the relevant record be deemed as unavailable. In his cross examination, he has stated that even at the time of recording of his statement by the police, the said record was not in his possession.

12. PW4 Rupinder Singh- Panchayat Secretary appeared and his statement was recorded partly. However, the said witness did not appear for his further examination and as such, his testimony cannot be read into evidence.

13. Apart from the above, the prosecution has also examined PW5 Rajesh Kumar, who in his examination in chief, has deposed as per the case of the prosecution. However, in his examination in chief, he stated that he never remained Member Panchayat or Sarpanch of the Village. He further stated that he cannot tell the year on which the bricks were layed on the path and he has not seen the affixing of bricks on the path. He further stated that he has not seen any record pertaining to the bricks in any of the offices. He further stated that he cannot tell if any demarcation of the passage was ever conducted nor he can tell about the number of bricks. He further stated that he did

*Gurpreet Kaur,
SDJM, Guruharsahai.*

not inform the police regarding the alleged removing of bricks from the path in his presence.

14. No other witness has been examined by the prosecution. Even the alleged report of BDPO has also not been produced or proved on record by the prosecution. As discussed above, star witness of the case i.e. PW2 Tilak Raj complainant has been declared hostile. Statement of the Investigating Officer i.e. PW1 ASI Gurlal Singh and that of PW4 Rupinder Singh- Panchayat Secretary cannot be read into evidence being not complete one. In the absence of the evidence of the Investigating Officer, all the material documents relied upon by the prosecution remained unproved on record. Other evidence led by the prosecution in the shape of PW3 and PW5 is not sufficient to prove the allegations leveled against the accused by the prosecution. So, in the absence of any cogent or convincing evidence, the prosecution has miserably failed to bring home the guilt of the accused beyond the reasonable shadow of doubt.

15. After hearing learned APP for State, learned defence counsel and in consideration of the in-cumulative and totality of the

*Gurpreet Kaur,
SDJM, Guruharsahai.*

whole above said circumstances and going through the evidence placed on the file, this court is of the considered opinion that the prosecution has failed to prove its case against accused the accused persons. So all the accused persons are acquitted of the charges framed against him. Case property, if any, be disposed of, as per rules, awaiting expiry of period prescribed for appeal/revision, if any and subject to its outcome. File be consigned to the record room, Guruharsahai.

Pronounced in open court
Dated : 12.03.2019
“Mukesh Kakkar” Stenographer Gr. II

(Gurpreet Kaur), PCS
Sub Divisional Judicial Magistrate,
Guruharsahai(UID NO.PB-0323).

*Gurpreet Kaur,
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