

(2019) 01 P&H CK 0098

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 3839 Of 2018 (O&M)

Krishan Chand And Others

APPELLANT

Vs

State Of Haryana And Another

RESPONDENT

Date of Decision : 23-01-2019

Acts Referred:

Indian Penal Code, 1860 — Section 148, 149, 323, 324, 325, 452, 506
Code of Criminal Procedure, 1973 — Section 313

Citation : (2019) 01 P&H CK 0098

Hon'ble Judges : Shekher Dhawan, J

Bench : Single Bench

Advocate : Vineet Singh Pabla, Ashish Sanghi, Parveen Chauhan

Final Decision : Dismissed

Judgement

1. Present revision petition is directed against the judgment of conviction dated 14.11.2018 and order of sentence dated 16.11.2018 passed by learned Additional Sessions Judge, Karnal vide which while reversing the judgment of acquittal dated 17.11.2015 passed by learned Judicial Magistrate Ist Class, Karnal, the petitioners were convicted and sentenced.

2. Facts relevant for the purpose of decision of the present revision petition; as per complainant, Shyam Sunder, on 3.6.2012 at 2.00 O'clock, he and his wife were present at this home and his son Sandeep had gone out of station. A quarrel had taken place between his wife and Simran alias Pinki. Thereafter, Simran called her brother, Krishan and other relatives namely, Moni, Seema and Dimple and Bhateri Devi and they started beating the complainant and his wife. Krishan gave a knife blow on his right wrist. All the accused persons bolted the house and gave slaps and fist blows to the wife of the complainant and she had sustained internal injuries. On hearing the 'raula', number of persons gathered on the spot and they saved the complainant and his wife from the clutches of the accused persons. On that basis, FIR No. 310 dated 4.6.2012 under Sections 148, 323, 324, 325, 452 and 506 read with Section 149 IPC was registered at Police

Station Sadar, District Karnal.

3. After completion of investigation proceedings, challan was presented in the Court for trial. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused, recording of statement of prosecution witnesses and examination of accused under Section 313 Cr.P.C. and after considering the prosecution version and the defence evidence on record, learned trial Judge acquitted the accused in this case vide judgment dated 17.11.2015.

4. Complainant filed an appeal against the aforesaid judgment of acquittal and another appeal was filed by the State of Haryana and learned Additional Sessions Judge, Karnal set-aside the judgment of acquittal passed by learned Judicial Magistrate Ist Class, Karnal and convicted and sentenced the accused persons as follows:

Under Section 148 To undergo Rigorous Imprisonment for the period of six read with Section 149 months for Krishan Chand and Moni and Simple of the Indian Penal imprisonment for all the ladies. Code, 1860 (IPC).

Under Section 323 To undergo Rigorous Imprisonment for the period of read with Section 149 Three months for Krishan Chand and Moni and Simple IPC imprisonment for all the ladies. Under Section 324 To undergo Rigorous Imprisonment for the period of Six read with Section 149 months for Krishan Chand and Moni and Simple IPC imprisonment for all the ladies.

Under Section 148 read with Section 149 of the Indian Penal Code, 1860 (IPC).

To undergo Rigorous Imprisonment for the period of six months for Krishan Chand and Moni and Simple imprisonment for all the ladies.

Under Section 323 read with Section 149 IPC

To undergo Rigorous Imprisonment for the period of Three months for Krishan Chand and Moni and Simple imprisonment for all the ladies.

Under Section 324 read with Section 149 IPC

To undergo Rigorous Imprisonment for the period of Six months for Krishan Chand and Moni and Simple imprisonment for all the ladies.

Under Section 325 read with Section 149 IPC

To undergo Rigorous Imprisonment for the period of One year with fine of Rs.500/- each and in default of payment of fine, to undergo the imprisonment for a period of three months for Krishan Chand and Moni and Simple imprisonment for all the ladies.

Under Section 506 read with Section 149 IPC

To undergo Rigorous Imprisonment for the period of Six months for Krishan

Chand and Moni and Simple imprisonment for all the ladies.

Under Section 452 read with Section 149 IPC

To undergo Rigorous Imprisonment for the period of One year with fine of Rs.500/- each and in default of payment of fine, to undergo the imprisonment for a period of three months for Krishan Chand and Moni and Simple imprisonment for all the ladies (except convict Simran).

5. Being aggrieved of passing of said judgment of conviction dated 14.11.2018 and order of sentence dated 16.11.2018 by learned Additional Sessions Judge, present revision petition has been filed by the convicts.

6. Learned counsel for the petitioners, at the time of arguments, contended that learned Magistrate had already appreciated the entire evidence including the testimony of complainant and eye-witnesses and while considering the same to be unbelievable because of full of contradiction on material points, acquitted the accused persons. Thereafter, there was no ground for learned Additional Sessions Judge to set-aside the said judgment of acquittal. Otherwise also, the judgment of acquittal is normally not to be interfered. Learned Additional Sessions Judge, Karnal while deciding the appeal against acquittal completely ignored the fact that the ocular testimony was full of material contradictions and that was contrary to the medical evidence available on the file. As such, the judgment of conviction and order of sentence recorded by learned Additional Sessions Judge are liable to be set-aside.

7. While arguing on this point, learned State counsel as well as learned counsel representing the complainant contended that learned Magistrate had completely ignored the basic facts that main witnesses, i.e., the injured and eye-witnesses had supported the prosecution case and their testimony was well corroborated by medical evidence and as such, there was no reason with learned trial Magistrate to record the judgment of acquittal and learned Additional Sessions Judge, Karnal has rightly set-aside the said judgment. The judgment of conviction and order of sentence recorded by learned Additional Sessions Judge do not call for any interference in the revisional jurisdiction.

8. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that the prosecution case is mainly based upon the testimony of PW-5, Shyam Sunder, who is complainant in this case. PW-7, Babli is injured in this case and PW-11 Sher Singh is an eye-witness. Complainant, Shyam Sunder had detailed the names of accused persons in his complaint. As per the complainant, he along with his wife Babli (PW-7) were sitting in the room of their house and all the accused persons attacked them and they were saved by the neighbours. Sher Singh, a neighbourer appeared as PW-11. PW-7, Babli has also narrated the correct facts before the Court. PW-3, Dr. Ashish Verma had medico legally examined Shyam Sunder and had observed injuries on the wrist of the complainant. As per his report, there was fracture on the right hand of the complainant as well.

9. Learned Additional Sessions Judge has also rightly observed that there were minor contradictions in the statement of prosecution witnesses. Such like contradictions are bound to come in the statements of the prosecution witnesses if their statements are recorded after a lapse of considerable time because human memory is bound to fade. More so, the prosecution witnesses are not expected to give parrot like tutored version. If the statements of complainant as well as his wife and neighbour, Sher Singh are scrutinized with greater care and caution, they had specifically attributed against the accused persons, but learned trial Magistrate completely ignored these facts as well as medical evidence and had given undue weight to the minor contradictions in the statements of the witnesses. Law on the point is settled that such minor contradictions cannot overweigh the version of aggrieved persons who are complainant and injured in this case. They have no reason to allow the real culprits to go scotfree and falsely implicate the petitioners, unless proved so. But that is not the case before the Court. The matter was reported to the police by the complainant and the matter was investigated and thereafter the witnesses were examined and they have wellstood the test of cross-examination. The judgment of conviction passed by learned Additional Sessions Judge observing all these things, does not call for any interference. As such, the present revision petition stands dismissed qua judgment of conviction passed by learned Additional Sessions Judge.

10 As regard to jurisdiction and scope of interference by learned Additional Sessions Judge in an appeal against judgment of acquittal, the matter was before Hon`ble Apex Court in State of Rajasthan Vs. Shera Ram alias Vishnu Dutta, (2012) 1 SCC 602 wherein, after discussing a large number of judgments, Hon`ble Apex Court observed as under:-

"12. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience."

11. In view of the above, there is no illegality in the judgment of conviction dated 14.11.2018 passed by learned Additional Sessions Judge, Karnal and the present revision petition is without any merit and same stands dismissed.

12. As regard to order of sentence, this Court is certainly inclined to take a little lenient view in this case as all the members of a family have been roped in the

litigation and they are behind the bars for more than two months. Petitioners No. 2 to 5, namely, Seema daughter of Puran Chand; Dimple daughter of Puran Chand; Bhateri Devi, wife of Puran Chand; and Simran wife of Sandeep, have already undergone actual sentence of more than 2 months and there being no other case and taking a lenient view on the point of sentence, their order of sentence is modified to the extent that the sentence of petitioners No. 2 to 5, namely, Seema daughter of Puran Chand; Dimple daughter of Puran Chand; Bhateri Devi, wife of Puran Chand; and Simran wife of Sandeep, shall be reduced to the period which they have already spent while remaining in custody during the period of investigation, trial, appeal and proceedings of present petition before this Court. Accordingly, they (Seema daughter of Puran Chand; Dimple daughter of Puran Chand; Bhateri Devi, wife of Puran Chand; and Simran wife of Sandeep) be released from custody in this case, if not required in any other case.

13. However, no ground is made out to interfere with the order of sentence dated 16.11.2018 passed by learned Additional Sessions Judge qua remaining convicts, i.e., petitioner No.1, Krishan Chand son of Puran Chand and petitioner No. 6, Moni son of Gokul Chand.

14. Resultantly, the present revision petition stands disposed of in the above terms qua petitioners no. 2 to 5 and qua petitioner No.1 and 6 the same stands dismissed in TOTO.