In The Court of Sumitra Kadian, Judicial Magistrate Ist Class, Fatehabad.

Criminal Case No.07-I of 2014.

Date of Institution:15.01.2014.

CIS No.: CHI -0000047 of 2014.

Date of Decision:16.11.2015.

- State versus 1. Parvati wife of Man Singh, resident of village Kalana, Tehsil Bharda (Rajasthan)
 - 2. Bhoop Singh son of Begraj, aged 55 years, resident of Jandwala Bagar, Tehsil and District Fatehabad.
 - 3. Fatch Singh son of Begraj, aged 62 years, resident of village Jandwala Bagar, Tehsil and District Fatchabad.
 - 4. Bimla wife of Fateh Singh aged 60 years, resident of village Jandwala Bagar, Tehsil and District Fatehabad.
 - 5. Birma wife of Bhup Singh, aged 50 years, resident of village Jandwala Bagar, Tehsil and District Fatehabad.
 - 6. Krishan Kumar son of Bhup Singh, aged 27 years, resident of village Jandwala Bagar, Tehsil and District Fatehabad.
 - 7. Shishpal son of Fateh Singh son of Begraj, aged 31 years, resident of village Jandwala Bagar, Tehsil and District Fatehabad.

FIR No.312 Dated 23.11.2013. Offence U/s 147/148/447/506/120-B of Indian Penal Code.

Police Station: Bhattu Kalan.

Present:

Mr. Arun Bansal, Assistant Public Prosecutor, for the State. Accused Krishan, Shishpal, Birma, Bhup Singh, Bimla and Fateh Singh on bail represented by Sh.K.K.Jangra, Advocate. Proceedings against accused Parvati stands abated VOD 11.09.2015.

JUDGMENT:

The above named accused have been sent to this

Court by the Station House Officer, Police Station: Bhattu Kalan, to face trial for the

commission of offence punishable under Sections 147/148/447/506/120-B of Indian Penal Code, 1860 (hereinafter to be referred as IPC for short).

2. Brief facts of the case of prosecution are that on 23.11.2013 Chando (hereinafter to be called as complainant) presented an application before S.H.O., Police Station: Bhattu Kalan. Vide this application, she requested for taking legal action against Parvati, Amar Singh, Ram Sawrup, Bhoop Singh, Fateh Singh, Bimla, Birma, Krishan and Shishpal. It was alleged in the application that a civil suit between the complainant and her sister-in-law (ननद), Parvati, was pending in Hon'ble Punjab and Haryana High Court, Chandigarh. Vide order dated 28.10.2013, the parties were directed to maintain status quo regarding possession. As per jamabandi for the year 2009-2010 and khasra girdwari, the complainant was owner in possession of land bearing kharsra No. 40/8(7-11), 19/1(0-8), 170/8/3(0-19), 12/2(6-19), 13/2(6-19), 14/1(1-19), 18/1(7-4), 19/1(7-12), 40/8/2(0-8), 12/2(0-7), 13/1(6-15), 18/1(4-0), 170/3/2(7-12), 4/1(7-4), 7(8-0) and 8/1(6-13) situated at village Jandwala Bagar, Tehsil and District Fatehabad. At the instigation of Parvati, Amar Singh and Ram Sawrup, Bhup Singh, Fateh Singh, Bimla, Birma, Krishan and Shishpal dismantled the partition wall of khasra No. 40//19/1(0-8) and ploughed the same. On 22.11.2013, water of complainant's quota was diverted and an attempt to kill her was also made. With these allegation, she prayed for taking legal action against the accused. On the basis of this complaint, formal **FIR** registered Section was under 147/148/447/506/120-B IPC. Accused Bhup Singh was arrested on 04.12.2013. At the time of arrest, he produced tractor bearing registration No. HR-22A-5852 'Sawraj' 735 and the same was taken in police

possession. On 05.12.2013, accused Fateh Singh, Bimla, Birma, Shishpal were arrested. Accused Amar Singh, Ram Swarup were found innocent. On 23.12.2013, accused Krishan and Parvati were arrested. Investigating officer visited the place of occurrence and prepared rough site plan of the spot. Statements of witnesses under Section 161 of Code of Criminal Procedure, 1973 were recorded. On completion of investigation, the final report under Section 173 of Code of Criminal Procedure, 1973 was submitted in the Court on 15.01.2014.

- 3. Copy of challan and other accompanied documents were supplied to the accused free of costs in compliance of provision contained in Section 207 of Code of Criminal Procedure, 1973. Vide order dated 25.02.2014, the accused were charge-sheeted for the commission of offence punishable under Sections 148/447/506 read with Section 149 of IPC and Section 120-B by the court of undersigned, to which they did not plead guilty and claimed trial.
- 4. In order to prove its case against the accused following witnesses have been examined by the prosecution:-

<u>Serial</u>	<u>Name</u>	Documents exhibited/confronted.
<u>No</u>		
PW1	Chando	Application Ex.PW1/A.
PW2	Hari Singh	NIL
PW3	Dharmender	Report Ex.PW3/A, Khasra girdawari Ex.PW3/B
	Patwari	and Ex.PW3/C, Report Ex.PW3/D, Khasra
		girdawari Ex.PW3/E, Jamabandi Ex.PW3/F, ak
		sizra Ex.PW3/G and Ex.PW3/H.
PW4	Umed Singh	Statement recorded under Section 161 Code of
		Criminal Procedure, 1973 Ex.PW4/A.
PW5	Rajbir	NIL
PW6	Surender	NIL.

PW7	ASI Jaibir	Formal FIR Ex.PW7/A, Endorsement Ex.PW7/B,
	Singh	Site plan Ex.PW7/C, Application to Tehsildar
		Ex.PW7/D, Arrest memo Ex.P1, Property seizure
		memo Ex.PW4/A. Arrest memos Ex.P2 to Ex.P7.
PW8	HC Bhupinder	NIL

Vide his separately recorded statement dated 11.09.2015, the learned Assistant Public Prosecutor for the State closed the evidence of the prosecution.

- 5. The accused in their statement recorded under Section 313 of the Code of Criminal Procedure, 1973 denied the entire prosecution case and pleaded false implication. They opted to adduce evidence in defence and they tendered in evidence Ex.D3 and Mark A. Vide their jointly recorded statement dated 16.11.2015, the accused closed their defence evidence.
- 6. I have heard learned Assistant Public Prosecutor and learned defence counsel and have gone through the case file thoroughly and very carefully.
- 7. In order to secure conviction against the accused, the prosecution has examined a total of eight witnesses. *PW1 Chando* has deposed that she owned 4/5 acres of land and regarding the said land, a case was pending between her and accused Parvati in Hon'ble Punjab and Haryana High Court. Around 10-11 months before, Parvati, Fateh Singh and Bhup Singh, Shishpal, Krishan, Birmal, Bimla Amar Singh and Ram Swarup restrained Hari Singh from irrigating her land. She moved application Ex.PW1/A in police station. *PW2 Hari Singh* deposed that Chando is his wife by Kareva marriage. On 20/22.11.2013, Rajbir (his

son) and Surender (his grand son) were irrigating their land. Then, Bhup Singh, Fateha Singh, Birma, Shishpal, Krishan and Bimla came there and threatened that they had obtained the field. They were armed with weapons. They started irrigating the land. On their threat, he and his relatives came out of the filed. There was a dispute regarding land between him and accused persons. Thereafter, they got FIR registered and police arrested the accused persons. PW3 Dharmender Patwari deposed that on 27.11.2013, ASI Jaivir Singh demanded jamabandi and khasra girdawari of land bearing khasra No. 40/19/1 and 170//12/2 comprised in khewat No. 269. He handed over documents Ex.PW3/A to Ex.PW3/H to him. As per these documents, Chando and Hari Singh were in possession of the said land. PW4 Umed Singh pleaded ignorance about the facts of the present case. PW5 Rajbir has deposed that on 22.11.2013, he, along with Hari Singh and Surender, was irrigating his field. A scuffle took place there between him and accused persons. The accused persons asked them to come out of the field whereas as per record no land was recorded in the name of Parvati. Bhup Singh, Fateh Singh, Shishpal, Birma, Bimla and Krishan were armed with weapons. They ploughed the land bearing khasa No. 40//19. Police recorded his statement. PW6 Surender deposed on the lines of PW5. **PW7 ASI Jaivir Singh** deposed that on 23.11.2013, Chando presented an application Ex.PW1/A on which formal FIR Ex.PW7/A was registered by him. He prepared site plan Ex.PW7/C. On 25.11.2013, he moved application Ex.PW7/D before Tehsildar, Bhattu Kalan. On 27.11.2013, he collected the revenue record of disputed land. On 04.12.2013, accused Bhup Singh was arrested and tractor bearing registration No HR-22A-5852 (Swaraj 735), along with harrow, was taken in police possession. On 05.12.2013, accused Fateh Singh, Bimla, Birma and Shishpal were arrested. Accused Krishan and Parvati were arrested on 23.12.2013. After completion of investigation, final report was prepared by SI/SHO Foza Singh. *PW8 HC Bhupinder Singh* supported the testimony of PW7. This is all the prosecution evidence that has been produced before the court.

8. The main allegation against the accused persons, related to commission of offence punishable under Section 447, is that they forcibly ploughed the land bearing khasra No.40//19/1 and restrained Hari Singh from irrigating the land and also diverted water. Therefore, it was for the prosecution to prove that on the fateful day, land in dispute was in the possession of the complainant. To prove the possession of complainant over the land in dispute, PW3 Dharmender Patwari has been examined. As per jamabandi for the year 2009-2010 (Ex.PW3/F), the land bearing khasra No. 40//8/1, 12/1, 19/1, 170//8/3, 12/2, 13/2, 14/1, 18/1 and 19/1 is in possession of Chnado and Hari Singh. The khasra girdawari (Ex.PW3/F) and report of Patwari (Ex.PW3/D) also depict the same picture. But a perusal of Ex.D1 reveals that possession of 1/3 rd share of land bearing khasra No.40//8, 12, 13, 18, 19, 170//3, 4/1, 7, 8, 12, 13, 14/1, 18, 19, 22, 23, 240, 600, 628, 711, 712 was given to Parwati 26.10.2013. PW3 Dharmendar Patwari has also deposed that possession proceedings were carried out in favour of Parvati and she obtained possession. He admitted his signature on Ex.D1. During cross examination complainant Chando has admitted that on 26.10.2013, possession proceedings related to disputed land were carried out in favour

of Parvati at the instance of the court. PW2 Hari Singh has also admitted that possession proceedings were carried out in favour of Parvati in respect of disputed land. Meaning thereby, before the incident in question, possession of 1/3 rd share of land in dispute had been handed over to accused Parwati. It is also an admitted fact that civil litigation pending between the parties resulted in favour of accused Parwati. On the basis of Ex.D1, admission of PW1 and PW2 and evidence of PW3, it is concluded that on the fateful day, land in dispute was not in exclusive possession of complainant. The aforementioned evidence shows possession of Parwati over the land in dispute. Therefore, when the land was in possession of accused Parwati on the fateful day, the offence punishable under Section 447 IPC is not made out against the accused persons.

9. As far as the offence punishable under Section 120-B and 148 of IPC is concerned, this court finds that none of the prosecution witnesses have attributed any injury to any accused. No recovery of sticks etc was effected from any of the accused persons. There is no similarity in the allegations in the evidence of prosecution witnesses regarding commission of offence punishable under Section 506 of IPC. PW1 Chando, who is complainant, has not spoken a single word regarding the alleged threat. It has already been concluded that Parwati was also in possession of disputed land on the fateful day. In view of all these facts, it cannot be said that accused persons gathered on spot to achieve any of the object mentioned in Section 141 of IPC. Hence, simple gathering of accused persons on the spot cannot be termed as unlawful assembly.

10. It is an admitted fact that Hari Singh, Rajbir, Jagdish, Devi Lal and Satpal were convicted for causing hurt to Bimla and Birma. Judgment (Mark-'A') proves this fact. Ex.D3 (Judgment dated 08.02.2013 pronounced by Sh. Ashwani Kumar, the then learned Additional Sessions Judge, Fatehabad) shows that judgment of conviction was upheld against Hari Singh, Rajbir Singh, Jagdish, Devi Lal and Satpal. The civil dispute between both the parties is not a disputed fact. PW1 and PW2 have admitted that the age of accused Parwati is more than 80 years. PW3 Dharmender Patwari also deposed that accused Parwati could not move and therefore, her signatures were obtained at home. Meaning thereby, the defence version that Parwati cannot move on her own is correct. The natural corollary of this conclusion is that Parwati could not be present on the spot. Previous conviction of PW2 and PW5 for causing hurt to accused Birma and Bimla and pendency of civil litigation related to same land in dispute between the parties suggest that false implication of accused in the present case is also possible. It is very much possible that no such incident occurred but due to previous enmity this case was got registered against the accused persons. It is a well settled law that when two views are possible on the basis of evidence, the view favouring the accused be adopted. Because the prosecution has to prove its case against accused beyond reasonable doubt. Culpability can never be imposed on surmises or conjectures. But it must be proved by cogent, reliable and clinching evidence. It is the fundamental principle of criminal jurisprudence that to secure conviction, the prosecution must prove the guilt of the accused beyond reasonable doubt. Proof beyond reasonable doubt does not mean such degree of proof which, excluding possibility of error, produces absolute certainty. To put it simply, the evidence must be so convincing that no reasonable person would ever question the accused's guilt. It is not enough to believe that he or she is guilty, or to think that the person "probably" committed the offence in question.

11. For the reasons recorded above, this Court comes to the conclusion that prosecution has failed to prove guilt of accused beyond reasonable doubt. Hence, giving benefit of doubt, the accused persons are acquitted of the charges levelled against them. Their bail bond and surety bond stand discharged. File be consigned to the record room after due compliance.

Sd/-

Pronounced in Open Court: (Sumitra Kadian)

Dated:16.11.2015. Judicial Magistrate Ist Class,

Fatehabad.

Note: This Judgment comprises in Nine pages and each page has

been checked and signed by me.

Sd/-

(Sumitra Kadian) Judicial Magistrate Ist Class,

Fatehabad::16.11.2015.