

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.881 of 2003.
Decided on:-02.12.2015.

Dayanand.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. S.M. Sharma, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

Mr. Shiva Khurmi, Advocate
for respondents No.2 to 5.

HARI PAL VERMA, J.

The petitioner has filed the present revision petition against the judgment dated 15.1.2003 whereby learned Additional Sessions Judge, Rohtak acquitted respondents No.2 to 5-accused in FIR No.403 dated 16.12.2001 registered under Sections 148, 323, 452, 325, 302 and 149 IPC registered at Police Station Meham.

Briefly stated, the aforesaid FIR was registered on the ground that on 15.12.2001 a VT message (Ex.PL) was received from the Police Post, PGIMS, Rohtak regarding admission of injured Raghbir (since

deceased) and injured Dayanand (PW6) in the hospital. The Ruqa (Ex.PC) was sent by the doctor informing admission of Raghbir and Dayanand with alleged history of assault in the village Lakhan Majra. The doctor declared Dayanand to be medically fit to make the statement, but Raghbir was found unfit. Then, the statement (Ex.PG) of Dayanand (PW6) was recorded by the police. In his statement, injured Dayanand had stated that on the date of incident when he was present in his house along with his all four daughters, his brother Raghbir apprised him that accused Rajesh son of Bahadur had assaulted him and gave filthy abuses in front of the shop of Jagdish Pandit. Dayanand consoled him by saying that it was a petty matter. However, at about 7.30 p.m., accused Rajesh son of Bahadur (not sent for trial because of his military service and was posted at Border) armed with Gandasa, Rakesh son of Bahadur armed with Lathi, Bahadur son of Tek Ram armed with Jaily, Krishan and Suraj Mal both sons of Tek Ram empty handed, came there collectively and said that they would teach a lesson for picking up quarrel with Rajesh. After saying so, Krishan caught hold Dayanand whereas Suraj Mal caught hold Raghbir when Rajesh gave a Gandasa blow on the back side of the head of Dayanand. Rajesh and his father Bahadur gave Lathi and Jaily blows to Raghbir.

Complainant-injured Dayanand (PW6) also stated that they had also given injury to the accused in their self-defence and it is because of their daughter Luxmi and wife Saheb Kaur who rescued them otherwise the

accused would have given more injuries to them. His wife Saheb Kaur and daughter Luxmi brought them to the medical college for treatment.

As per MLR (Ex.PA), following injuries were noted on the body of Raghbir:

- “1. Swelling 8 x 6 cms. over left temporal region. Surgeon's opinion sought.
2. Lacerated wound 4 x 1 cms. on left hand on dorsal aspect. Opinion of orthopaedic surgeon sought. Plus any other injury detected.”

Similarly, as per MLR (Ex.PB), following injuries were inflicted upon Dayanand:

“One lacerated wound 8 x 1 cms. on the occipital region. Plus any other injury detected.”

The injuries on the person of both the injured were kept under observation. Weapon used was blunt and duration was within six hours.

However, Raghbir succumbed to his injuries at 10.30 a.m. on 16.12.2002. The doctor had given an opinion that cause of death was due to cranio cerebral injury which was ante-mortem and sufficient to cause death in natural course of events.

The necessary investigation was conducted and the case was committed for trial. All the four accused were duly charged for the offence punishable under Sections 148, 449, 302 and 307 read with Section 149 IPC to which they did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined Dr. P.D. Garg (PW1), Dr. Raman Shukla (PW2), Ram Dhan (PW3), Dr. Jitender Kadiyan (PW4), Dr. Nature Bakshi (PW5), injured Dayanand (PW6), eye witness Luxmi (PW7), HC Ram Niwas (PW8), HC Phul Kumar (PW9), Constable Rajbir Singh (PW10), Constable Shamsheer Singh (PW11), HC Mangat Ram (PW12), ASI Samunder Singh (PW13), Constable Samit Kumar (PW14), Inspector Inder Singh (PW15) and HC Sarup Singh (PW16). However, the prosecution gave up PWs Geeta, Saheb Kaur, Rajender, Jai Narain, Rakesh, Constable Jasbir and HC Rajbir as unnecessary and closed its evidence.

The accused in their statements under Section 313 Cr.PC denied the circumstances appearing against them in evidence and pleaded innocence. In their defence, they examined Dr. Satender Vashisht as DW1 to prove their medico-legal examination reports.

Learned trial Court vide judgment dated 15.1.2003 acquitted respondents No.2 to 5-accused as there was unexplained delay in referring the matter to the police and sending special report of the FIR to the Magistrate. The trial Court found that the possibility of recording the report even after the death of Raghbir, after due deliberation and consultation to falsely implicate innocent persons, cannot be ruled out. The trial Court observed that the occurrence had taken place at about 7.30 p.m. and the police post was quite close to the scene of occurrence i.e. 500 Sq. yards from

the house of complainant party. The report (Ex.PG) of injured Dayanand was shown to have been recorded at 2.40 a.m. whereas registration of the FIR under Sections 148, 323, 452 and 308 read with Section 149 IPC was at 4.40 a.m. The doctor sent death report (Ex.PF) at 10.30 a.m. and thereafter, FIR under Section 302 IPC was registered and its special report reached the illaqa Magistrate at 3.30 p.m. on 17.12.2001.

The trial Court further observed that as per the prosecution case, DDR No.27 was recorded at 10.30 p.m. which was at the instance of accused Rakesh. He and injured Krishan were having number of serious injuries on their persons and they were sent to hospital for their medical examination. Therefore, the police could have met injured Dayanand and Raghbir at that very time and there was no question for the police to reach the hospital after getting the VT message at 10.50 a.m. and thereafter to record the statement of injured Dayanand at 2.40 a.m. in the night. Even at that time, injuries on the person of Raghbir and Dayanand were not found more serious than those on the person of Rakesh and Krishan.

The trial Court also observed that the complainant's statement was disbelieved regarding the fact that who had caused injuries to the deceased and the complainant also failed to disclose the fact as to who was holding which of the weapon. In this manner, the complainant had improved his statement.

I have heard learned counsel for the parties.

Learned counsel for the petitioner has argued that the delay in lodging the FIR is totally procedural and, therefore, this fact cannot be misconstrued leading to acquittal of accused. He has further submitted that as no independent witness has come forward and was not willing to cooperate with the prosecution agency, the prosecution story cannot be belied. Similarly, because the independent witnesses have not come forward to depose in the Court, it cannot be a ground for rejecting the evidence of injured person. Learned trial Court has presumed the injuries on the person of Rakesh and Krishan as serious though there is nothing in the evidence of Dr. Satender Vashisht (DW1) who had medico-legally examined Rakesh and Krishan.

The trial Court in para Nos.69 to 72 of the judgment has observed as under:

“69. From the bare perusal of evidence of Daya Nand PW6 in court, it is very clear that on material aspect of the case of prosecution his evidence is an improved version and so not trustworthy or reliable. He has stated that Rakesh gave two lathi injuries on the head of Raghbir and Bahadur gave a jaily blow from its reverse side on left hand of Raghbir. In his report Ex.PG to the police, he had simply mentioned that Rakesh and Bahadur had given lathi and jaily blows to Raghbir, details of which would be told by Raghbir himself. Had Daya Nand, in fact, witnessed those specific injuries, now attributed to Rakesh and Bahadur, he could have stated so in his report Ex.PG.

Therefore, this improved version is not safe to rely upon, especially when it is not in consonance with MLR of Raghbir, according to which, there were not two injuries on the head of Raghbir, but only one. In said FIR, he had also not mentioned that jaily was used from reverse side as is now stated by him in the court. Moreover, his substantive evidence that jaily blow was given at the palm of left hand of Raghbir, is at material variance, with medical evidence of Raghbir according to which there was no injury on his left palm.

70. *Testimony of Daya Nand PW6 that accused persons had come inside his house after opening the 'sankal', is also an improved version before the court, which was not there in the FIR. Same is the case with his testimony in court regarding light of electric bulb, in the courtyard, at the time of occurrence.*

71. *Testimony of Daya Nand PW6 that Suraj Mal had given lalkara before giving injuries, has been falsified by none, but by his own daughter Luxmi PW7, according to whom, lalkara was given by Rajesh. Even that statement of Luxmi, is an improved version before the court.*

72. *Further, according to Daya Nand PW6, accused Rajesh had given a 'gandasa' blow from its reverse side on the back of his hand. This statement is at material variance with his report Ex.PG, according to which, 'gandasa' blow was given on the back of his head and not at the back of his hand. Even no injury was found on the back of his hand in his medical examination."*

The statement of PW6 Dayanand is, therefore, clear to the extent that he has not supported his report Ex.PG for causing injuries in self-

defence and PW6 Dayanand and his daughter Laxmi (PW7) have tried to adjust their respective statements in the Court as per post-mortem report forgetting the fact that the said injuries were not even mentioned in the MLR and they have not mentioned these injuries in their statements given to the police.

Moreover, the scope of revisional jurisdiction is vested with limited powers. The Hon'ble Apex Court in ***Johar and others Versus M/s Mangal Prasad and another 2008(3) SCC 423***, while dealing with the scope of interference in the revisional jurisdiction, has observed as under:

“17. The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under Sections 397 and 401 of the Code of Criminal Procedure, it exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severally restricted, particularly when it arises from a judgment of acquittal.”

In the aforesaid authority, the Apex Court has held that in the revisional jurisdiction when the High Court entered into merits and sought re-appreciation of entire evidence, it has been held that such orders are passed in excess of their vested jurisdiction.

Taking into consideration the fact that Dayanand (PW6) failed to establish that who had caused injuries to the deceased, the trial Court had found that there was improvement in the statement of witness and as such,

rightly disbelieved his statement. Moreover, the prosecution has also failed to establish any injury on the part of complainant Dayanand and the prosecution did not bring anything on record to corroborate such injuries. There is another angle in the case that there is delayed FIR in the case for which no satisfactory explanation has been given by the prosecution. Further, no independent witness has been examined by the prosecution to prove its case.

In view of the above, I find no reason to interfere with the impugned judgment of the trial Court. As such, affirming the same, the instant revision petition is dismissed.

December 02, 2015
Yag Dutt

(HARI PAL VERMA)
JUDGE