

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

**CRR No.1091 OF 2006
DATE OF DECISION : 05.08.2015**

MAHENDER AND OTHERS

....PETITIONERS

VERSUS

STATE OF HARYANA

....RESPONDENT

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Present : Mr. M.S. Khathuria, Advocate
for the petitioners.

Mr. Munish Sharma, AAG, Haryana.

FATEH DEEP SINGH, J.

Initially, the Court of learned CJM, Jhajjar tried all the six accused namely Mahender, Surender @ Supender, Rai Singh, Ravinder @ Rupender, Dhanpati and Roshani in this case and vide judgment and order of sentence dated 23rd January, 2002 found all of them guilty for commission of offences under Sections 326/324/323/342 and 149 of the IPC and sentenced them as under:-

“To undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/- each under sections 148/323/149 and 342/149 of Indian Penal code, R.I. for two years and to pay a fine of Rs.2000/- under

Section 324/149 IPC, R.I. for three years and to pay a fine of Rs.3000/- under section 325/149 IPC and further rigorous imprisonment for four years and to pay a fine of Rs.4000/- under Section 326/149 of IPC. The aforesaid sentences of imprisonment was to run concurrently. In case of default of fine, the accused would further undergo R.I. for three months each under section 323/149 & 342/149 of IPC, six months under section 324/149 IPC, nine months under section 325/149 IPC and one year under section 326/149 IPC.”

The convict-petitioners preferred an appeal against their conviction and through judgment and sentence dated 20th April, 2006, the Court of learned Additional Sessions Judge, Jhajjar allowed the appeals of Ravinder @ Rupinder, Smt. Dhanpati and Smt. Roshani thereby setting aside the judgment of conviction qua them and dismissing the appeal of Surender @ Supender, Mahender and Rai Singh. The later have come up before this Court in the instant revision challenging their convictions.

Heard. Mr. M.S. Khathuria, Advocate for the petitioners and Mr. Munish Sharma, AAG, Haryana for the State.

The story of the prosecution in brief is that on 30th July, 1993 around 8.00 AM in village Bamdaula under Police Station, Jhajjar, the complainant-injured Chandan Singh was coming to his house on a scooter. The accused with whom he had a land dispute armed with various weapons like lathies, jellies, farsa etc accosted him. It is alleged that accused-Surender had made remark on seeing the complainant, it is at this juncture PW Santra, mother of the complainant

came out of their house. Accused-Dhanpati and Roshni mother and sister-in-law (Bhabi) of accused-Surender also came out of their house and dragged mother of the complainant to their house and gave her injuries. The accused assaulted the complainant and caused him injuries when he tried to rescue his mother. Hearing commotion, the father of the complainant Bhagat Singh also reached the place and tried to rescue his son who was also given injuries. The injured were taken for medical treatment and then they made complaint Ex.PW1/A leading to the registration of the present F.I.R.

The prosecution to prove its case examined injured-complainant Chandan Singh as PW-1, eye-witness-PW-2 Karambir, injured eye-witness Bhagat Singh PW3 and Dr. Ram Kumar PW4 who conducted medico-legal examination and thereafter injured eye-witness Smt. Santra Devi testified as PW5. The prosecution proved documents PW4/A to PW4/E X-ray reports PW4/H to PW4/J.

The accused in the stand taken under Section 313 Cr. P.C. denied the allegations of the prosecution and proved their MLRs Ex.D1 to D2 to bring their defence that they too received injuries in this occurrence and that some of the accused namely Dhanpati, Roshani, Ravinder @ Rupinder were not present at the time of the occurrence. It is thereafter judgment of conviction was passed.

The very stand of the defence that they too received injuries in this occurrence establishes that the accused admit the occurrence

having taken place on the date, time and place. It is factually proved that there are 32 injuries on the person of Santra consisting of injuries by blunt means, by sharp-edged weapons, which further corroborates that some occurrence has certainly taken place. Similarly, complainant-Chandan Singh, his father Bhagat Singh have proved their injuries which are numbering 16, 6 and 10 respectively. On the other hand, as has been argued two members of the accused side have received 8 injuries which though are not grievous in nature and is also taken note of by the learned Magistrate. However, as has been argued by the accused-petitioners that being a fight involving number of persons the most important witness of the prosecution, Investigating Officer has not been examined by the prosecution and therefore material aspect of the recovery of the weapons, their examination and other vital pieces of prosecution evidence linking the weapons with the accused and injuries have remained unproved could not be controverted on behalf of the respondent-State assisted by Mr. Munish Sharma, AAG Haryana.

Keeping in view that being a case of version and cross-version examination of such a vital witness was very much essential which the prosecution failed to elicit.

Though, much arguments have sought to be put-forth by the convict-revisionist's counsel as to their injuries proved by MLRs Exs.D1 and D2 but these medico-legal reports were neither put to PW4-Dr. Ram Kumar who conducted medico legal examination of injured on both the

sides in his cross-examination nor had proved through legal means these injuries by calling for the doctor in their defence. Thus, a party is required to put each of his opponent's witness so much of his case as concerns that particular witness. If no such questions are put the Court needs to presume that the account of the witness has been accepted. Reliance placed on “1989 (1) PLR 349 *Hans Raj Puri Vs. Haryana State*”. The defence had merely exhibited illegible photocopies of their MLRs without adherence to due process of law of evidence. In the light of settled position of law as has been laid in “AIR 1971 SC 1865 *Sait Tarajee Khimchand and others Vs. Yelamarti Satyam and others*”, it has been held that mere exhibiting of a document does not dispenses with its proof and has to be proved in accordance with law. The learned courts below have totally failed to appropriately appreciate the fact that vital pieces of evidence to connect the accused with the commission of the offence was not forthcoming or proved in this case in accordance with the principle that the prosecution is supposed to prove its case beyond shadow of reasonable doubt. Nor the prosecution could satisfactorily explain the injuries on the defence side and have rather hidden the real truth from the Court and shows partisan investigations. The story of the prosecution in the absence of any proof hinges upon doubt. Neither the rough site plan alleged to have been prepared was ever proved much less supplementary report of the doctor regarding injured-Chandan Singh and their nature. The applications moved by the Police seeking

opinion of the doctor as to the fitness of the injured to make statements which could be vital for explanation of the delay are matters which totally makes the prosecution story unreliable and even the doctor who conducted X-Ray examination was not called for to bring about the nature of injuries which were subjected to X-Ray examination by him and, therefore, even the very factum how the injuries are covered under Sections 326/325 IPC remained unproved.

The courts below as has been contended on behalf of the petitioners side has certainly fallen into an error by passing a judgment of conviction merely on the basis of impoverished medical evidence and discordant ocular version. Being a case of version and cross-version the presence of the Investigating Officer would have assisted the Court in coming to the judicious conclusion as to which party was the aggressor in the incident and which fact has also remained unestablished. Thus, the entire prosecution version is bereft of truth and is rather doubtful not worth credence and reliance.

Of what as has been discussed above the findings are certainly perverse in outlook and illegal in their approach also unsustainable and needs to be set aside by way of acceptance of the revision. The petitioners conviction by impugned findings is thus set aside.

AUGUST 05, 2015*Dpr***(FATEH DEEP SINGH)
JUDGE**