

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1983-2007

Date of decision : 30.09.2015

Vinod and others

...Petitioners

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present : Ms. Samiksha Jain, Advocate,
for Mr. A.S. Virk, Advocate,
for the petitioners.

Mr. Arun Luthra, AAG, Haryana.

JITENDRA CHAUHAN, J.

Assailed in the present revision petition is the judgment dated 05.10.2007, passed by the learned Additional Sessions Judge-II, Jind (for short, 'the Appellate Court'), thereby, dismissing the appeal of the petitioners and affirming the judgment of conviction and order of sentence dated 16/17.09.2005, passed by the learned Judicial Magistrate 1st Class, Jind (for short, 'the trial Court'). The petitioners stands convicted and sentenced as under:-

<i>Conviction under Section</i>	<i>Sentence</i>
323 IPC	RI for 06 months and fine of Rs.250/- each

<i>Conviction under Section</i>	<i>Sentence</i>
452 IPC	RI for 01 year and fine of Rs.500/-each
506 IPC	RI for 01 year and fine of Rs.250/-each

In default of payment of fine, the convicts were to further undergo SI for 15 days. However, all the sentences were ordered to run concurrently.

The prosecution story, in nutshell, finds mention in para No.2 of the judgment passed by the learned Appellate Court, which reads thus:-

“2. Brief facts of the case are that the case against the appellants/accused persons was registered on the allegations that on 17.07.1999 at about 7-15 P.M. in the area of City, Jind, all the accused persons in furtherance of their common intention had committed house-tress pass by entering into the building of the complainant Rajinder which was used as a human dwelling having made preparation for causing simple hurts to the complainant Rajinder voluntarily with blunt weapons and criminally intimidated the complainant Rajinder by threatening him with

dire consequences. On the basis of the complaint Ex.PW-6/A, a case was registered against the accused persons. They were arrested. After the completion of the usual formalities of investigations, a challan report under Section 173 of Cr.P.C. was forwarded to the court.”

After completion of the investigation, challan under Section 173 Cr.P.C. was filed. The accused were charged for commission of offences under Sections 323, 452, 506 read with Section 34 IPC to which the accused pleaded not guilty and claimed trial.

In order to prove its case against the accused-petitioners, the prosecution examined Rajpal son of Ranjit Singh as PW-1, Jai Bhagwan son of Matu Ram as PW-2, HC Naresh Kumar as PW-3, Naresh s/o Rati Ram as PW-4, Raghbir son of Nihal Singh as PW-5, Rajinder Kumar s/o Ram Chander, complainant, as PW-6 and Prem Singh, Store Keeper as PW-7.

When examined under Section 313 Cr.P.C., the accused denied all the incriminating evidence put to them and pleaded innocence.

The learned trial Court, after hearing learned counsel for the parties and perusing the evidence put on record, convicted

and sentenced the accused as noticed at the outset of this judgment.

Feeling aggrieved, the accused preferred an appeal before the learned Additional Sessions Judge-II, Jind, which also stood dismissed.

Hence, the present revision petition which was admitted by this Court on 15.10.2007.

The learned counsel for the petitioners contends that the petitioners have been falsely implicated in the present case. The alleged occurrence took place on 17.07.1999. Initially, the complainant was lodged with the Incharge, Police Post, Rohtak Road, Jind, in his own hand, wherein, he had stated that Lilu and his three sons attacked him with knife and he got himself rescued with great difficulty and prayed for his security. Subsequently, on 23.07.1999, the complainant moved the present complaint with regard to the same incident of 17.07.1999, wherein, entirely improved version has been put forth implicating the accused-appellants by name. On this basis of his subsequent complaint, the present FIR came to be recorded. It is further contended that neither the Investigating Officer, nor the doctor who conducted the MLR of the complainant, was examined by the prosecution and therefore, the material documents as well as the medical evidence could not be proved in the Court.

On the other hand, the learned State counsel contended that the learned Courts below have recorded concurrent findings against the petitioners, thus, the scope for interference in the present revision petition is very limited.

I have heard learned counsel for the parties and gone through the record carefully.

In ***Siddanki Ram Reddy Vs. State of Andhra Pradesh (SC), 2010 AIR (SC) 3000***, the Hon'ble Supreme Court has held as under:-

*“It is true, as has been submitted by Mr. Reddy, that both the trial court and the High Court have arrived at concurrent findings on the basis of the evidence of PWs 1,5, 6 and other witnesses that the appellant was the assailant of the deceased and that concurrent findings of fact arrived at on the basis of evidence by the trial court and the High Court are not normally interfered with by this Court in appeal. But as has been held by this Court in **A. Subair v. State of Kerala 2009(3) R.C.R. (Criminal) 370**, when the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence and the judgments of the*

courts below will have to be interfered with. This Court has also held in ***Mankamma v. State of Kerala 2010(1) R.C.R. (Criminal) 227*** that *ordinarily this Court does not interfere in a matter by re-appreciating the evidence but when it is found that the evidence has been appreciated by the High Court in a mechanical manner and without proper consideration of facts and circumstances on record, this Court will have to re-appreciate the evidence in the interest of justice. This is one such case in which both the trial Court and the High Court have mechanically relied on the evidence of PWs 1, 5 and 6 that it was the appellant who had attacked the deceased with the axe in the court premises without appreciating that it was unsafe to rest conviction upon the evidence of PWs 1, 5 and 6 with regard to the identification of the assailant.*”

In the present case, there is no doubt with regard to the fact that the learned Courts below have recorded concurrent findings against the accused-petitioners. At the same time, it is also apparent from the facts and circumstances of the present case,

that the learned Courts below have appreciated the evidence on record in a very mechanical manner, resulting into grave miscarriage of justice.

In this case, the first and foremost version came in the form of complaint dated 17.07.1999, Ex.D-1, the contents whereof, read as under:-

“I, Rajinder Jangra s/o Shri Ram Chander Jangra, am working as Truck Body Building at bye pass, Bhiwani Road, Jind. Today at about 7 P.M. I was sitting with Ishwar, an owner of truck, at that time Lilu, caste Bania alongwith his three sons came to my shop and started abusing. Despite my pleas with folded hands, they attacked me with knife and I got my self rescued with great difficulty. Hence, it is requested that I be provided security. I shall remain highly obliged throughout my life.”

From the perusal of the above statement, which is the initial version, it is seen that the accused have not been named specifically. Further, there is no mention as to whether the complainant actually received any injury. There is also no mention of the arms allegedly carried by them at the time of the assault. On the contrary, in the subsequent version which forms

basis of the FIR in question, all the accused have been named, all armed with weapons and have been attributed specific injuries.

This Court is not oblivious of the fact that the first version, which generally forms the basis of registration of the FIR, need not be an encyclopedia of the facts, however, in the instant case, the tone and tenor of the two versions on record is completely different. While in the initial version, it is stated that the accused attacked the complainant with knife and he could rescue himself with great difficulty, whereas, in the subsequent version is completely coloured wherein all the accused have been alleged to have inflicted injuries with their respective weapons. Furthermore, the only eye-witness named in Ex.D-1, has not even been cited by the prosecution, whereas, not even a single witness from the list of witnesses examined by the prosecution finds mention in the first version.

Interestingly, none of the weapons, including the knife, allegedly carried by the petitioners could be recovered by the police.

The medical evidence brought on record by the prosecution is also very weak in this case. No doctor was examined to prove the MLR. The prosecution has examined PW-7, Prem Singh, Storekeeper of the General Hospital, Jind, who brought the bed head ticket about the treatment of the complainant. He deposed that the complainant remained admitted

in the hospital during the night of 17/18-7-1999 and was discharged on the next date. The testimony of PW7, Prem Singh, is of no consequence as he is not the expert witness to prove the MLR and the injuries sustained by the injured. As per the prosecution story, the complainant-injured received a sharp-edged injury on his arm. On the contrary, as per the MLR, the injury sustained by the complainant is with a blunt weapon.

In this case, for the reasons best known the prosecution, the Investigating Officer was also not been examined to prove the documents on record. The accused also did not get a chance to cross-examine him. On the contrary, all the prosecution witnesses are interested witnesses and can not be termed as an independent witness.

In order to bring home guilt to an accused who is charged of committing a criminal act, the evidence required is of highest quality. The prosecution should be able to prove its case beyond a shadow of reasonable doubt. Considering the evidence brought on record by the prosecution in this case, this Court has no hesitation to hold that it has failed to prove its case against the accused-petitioners beyond reasonable doubt and the benefit thereof, must be accorded to the accused.

In view of the above discussion, the present revision petition is allowed, the impugned judgments of conviction and sentence passed by the learned Courts below are set aside and the

petitioners are acquitted of the charges framed against them. The petitioners are stated to be on bail. Their bail bonds shall stand discharged.

30.09.2015
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(JITENDRA CHAUHAN)
JUDGE