

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

**Crl. Revision No.3688 of 2012(O&M)
Date of decision: 30.07.2015**

Krishan Kumar

....Petitioner

versus

State of Haryana and others

...Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

Present: Mr. Rakesh Gupta, Advocate
for the petitioner.

Mr. C.S. Bakshi, Addl. A.G., Haryana.

PARAMJEET SINGH, J.

Instant criminal revision has been preferred by the petitioner-complainant against judgement dated 21.03.2012 passed by learned Additional Sessions Judge, Gurgaon and the judgement of conviction and order of sentence dated 29.05.2010 passed by Judicial Magistrate Ist Class, Gurgaon. The learned Judicial Magistrate Ist Class convicted respondents No.2 to 4 in a case arising from FIR No.531, dated

14.07.2002 registered under Sections 307, 325, 323, 34 of the Indian Penal Code (hereinafter referred to as the 'IPC') (Section 307 deleted and Section 326 added later on) and sentenced as under:-

Section	Sentence
323/34 IPC	One year simple imprisonment and to pay a fine of Rs.500/- and in default thereof, further simple imprisonment for three months
324/34	Two years simple imprisonment and to pay a fine of Rs.1000/- and in default thereof, further simple imprisonment for four months
326/34	Three years rigorous imprisonment and to pay a fine of Rs.2000/- and in default thereof, further simple imprisonment for five months

Learned Additional Sessions Judge, Gurgaon modified the order of learned Judicial Magistrate Ist Class and set aside the conviction and sentence of respondents No.3 and 4 and upheld the conviction and sentence of respondent No.1.

Brief facts of the case are to the effect that one medical ruqua bearing No.98 was received from Aryan Hospital, Gurgaon regarding admission of injured-Krishan Kumar upon which ASI Sukhdev Singh, reached the said hospital alongwith other police officials and sought the fitness of the injured from the doctor concerned. But the doctor had stated that injured was unfit for making statement but one eye witness Vijay Kumar made statement thereafter before the police to the effect that he used to work at Jai Bharat Boot House, Gurgaon. On 14.07.2002 at about

9:30 a.m. when he reached his house, he saw that Siri Bhagwan @ Pappu, Braham Parkash and Chander Bhan all sons of Babu Lal, who were neighbours of the complainant, were not having good relations with him, were abusing Krishan Kumar who is the elder brother of the complainant. It was stated by the complainant Vijay Kumar that Siri Bhagwan was having a 'Sua' in his hand which is used for breaking ice. He gave a blow of the Sua on the back of the shoulder of Krishan Kumar near the spine. Braham Parkash and Chander Bhan gave slaps and fist blows to Krishan Kumar and made him to lie on the ground. Vijay Kumar and one Mahender witnessed the occurrence. On the basis of said report, FIR was registered.

Initially, the FIR was registered under Sections 307, 325, 323, 34 IPC. However, when the case was committed to the Court of Sessions, the then learned Sessions Judge, Gurgaon vide order dated 13.11.2002, had not found the prima facie case under Section 307 IPC against respondents No.2 to 4 and charge-sheeted the accused-respondents on 14.11.2002 for the commission of offence punishable under Sections 326, 323, 324 read with Section 34 IPC to which they pleaded “not guilty” and claimed trial

In order to prove its case, the prosecution examined Sukhdev Singh as PW-1, Vijay Kumar- complainant as PW-2, Krishan Kumar-injured as PW-3, Sarwan Kumar-draftsman as PW-4, Tejpal-Retd.

Inspector as PW-5 and Dr. Prem Chand as PW-6.

Statements of accused under Section 313 of the Code of Criminal Procedure (in short, 'the Code') were recorded. All the incriminating evidence appearing against the accused was put to them. They denied the same and pleaded false implication. However, the accused did not lead any evidence in their defence.

The trial Court, vide judgment of conviction and order of sentence dated 29.05.2010, convicted respondents No.2 to 4. Feeling aggrieved, respondents No.2 to 4 preferred an appeal. Vide judgement dated 21.03.2012, learned Additional Sessions Judge, Gurgaon has set aside the judgment of conviction and order of sentence qua Chander Bhan-respondent No.3 and Braham Parkash-respondent No.4 and upheld the conviction and order of sentence qua Siri Bhagwan @ Pappu-respondent No.2. Hence, the present revision by Krishan Kumar-complainant against the impugned judgements/orders and for imposing appropriate sentence upon all the accused.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner has vehemently contended that judgments passed by both the Courts below are erroneous and perverse and not sustainable in the eyes of law. Learned counsel further contended that the trial Court has awarded three years sentence for the

offence punishable under Section 326 IPC whereas as per the statute, there is imprisonment for life or imprisonment of either description for a term which may be extended to 10 years and the injuries attributed to the accused were grievous in nature. Learned counsel further contended that learned Additional Sessions Judge has gravely erred in law in acquitting respondents No.3 and 4.

I have considered the contentions raised by learned counsel for the petitioner.

Perusal of the record shows that no reason or motive whatsoever has been mentioned for attacking the injured except the version that the parties do not have good relations with each other and Siri Bhagwan had earlier lodged an FIR against injured-Krishan Kumar. Even in the MLR, it is mentioned that the injury was simple in nature. Moreover, prosecution witnesses have also not supported the prosecution version. Despite availing more than reasonable opportunities, prosecution failed to conclude its evidence and same was closed by order of the Court.

Moreover, I am afraid, while exercising my revisional jurisdiction, I cannot re-appreciate the evidence. The basic object behind Section 401 of the Code of Criminal Procedure is to empower the high court to exercise the powers of an appellate court to prevent failure of justice in cases where the Code of Criminal Procedure does not provide for appeal. The power, however, is to be exercised only in exceptional

cases where there has been a miscarriage of justice owing to : a defect in the procedure or a manifest error on the point of law, excess of jurisdiction, abuse of power, where decision upon which the trial court relied has since been reversed or overruled when the revision is being heard. In exercising the power of revision, which is discretionary, the court should always bear in mind the limitation that under the garb of exercising its powers of revision; it cannot exercise the power of appeal in the face of statutory prohibitions. This is not a case where an important piece of evidence has been left out from consideration by the courts below while deciding the case.

In view of above, I do not find any illegality or perversity in the impugned orders. Moreover, there is a delay of 129 days in filing the present revision for which no cogent reason has been given.

Dismissed on merits as well as being barred by limitation.

(PARAMJEET SINGH)
JUDGE

July 30, 2015

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