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

CRR No.1552 of 2015

Date of Decision: 17.07.2015

Balwinder Singh and others

....Petitioners

Vs.

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Prabhjot Singh, Advocate
for the petitioners.

Mr. Arshdeep S. Kler, D.A.G., Punjab.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Petitioners were booked in FIR No.224 dated 18.10.2008, under Sections 325, 323, 34 IPC, Police Station Jalalabad and were accordingly sent to face trial for the aforesaid offences.

[2]. The aforesaid FIR was registered on the statement of Paramjit Singh that on 07.10.2008 in furtherance of common interest accused/petitioners voluntarily caused injuries to complainant. Balwinder Singh caused grievous hurt to the complainant. Police investigated the case and filed report under Section 173 Cr.P.C. Petitioners were chargesheeted and they pleaded not guilty and claimed trial.

[3]. Prosecution examined as many as six witnesses namely HC Hardev Singh as PW-1, ASI Salwinder Singh PW-2, Dr. H.S. Rana PW-3, Veerpal Singh PW-4, Chhinder Singh PW-5, and ASI Bhagwan Singh as PW-6. The accused/petitioners denied incriminating material in their statement recorded under Section 313 Cr.P.C. However they did not lead evidence in defence.

[4]. Trial Court found that injured witness/complainant has not been examined in this case. Prosecution gave up on the ground that he was unable to depose. The investigation was found to be faulty inasmuch as that blood-stained clothes were not produced by the Police nor the same were produced in the Court by the prosecution. The weapons of offence were also not produced in Court as case property. The prosecution story was surrounded by material contradictions. Trial Court on the basis of material on record acquitted the petitioner of the charges framed against them vide judgment dated 22.03.2014.

[5]. State moved an appeal against acquittal of petitioners. Lower Appellate Court reversed the judgment of acquittal by observing that the trial Court has ignored the material evidence. Appellate Court has opined that no doubt the injured was required to be examined though an application was moved before the trial Court for permission for assisting the complainant by his father or any other technical person as the complainant was unable to speak, but he was able to convey his feelings and was otherwise a competent witness. The application was not allowed by the trial Court and,

therefore, accused should not have been acquitted on this premise.

[6]. The medical evidence was held to be sufficient to record conviction. The Doctor has not found any external evidence or mark on injury No.4. Since injured was complaining of pain on left thumb which was x-rayed, and therefore, this aspect of the evidence was treated to be incriminatory against petitioners. Brothers of complainant namely Veer Pal Singh and Chhinder Singh were examined to corroborate the injury.

[7]. Veer Pal Singh PW-4 stated that Chhinder Singh had reached later on and he was there. Chhinder Singh having not seen the occurrence could not have made any difference as medical evidence has been corroborated by ocular version of Veer Pal Singh. The delay in lodging the FIR was explained by showing that no fault on behalf of complainant could be perceived as PW-2 ASI Salwinder Singh had deposed that on 07.10.2008, he received MLR of Paramjit Singh, Balwinder Singh and Jammu Singh and recorded their statement which showed that injuries on the person of Balwinder Singh were recorded and he also got recorded Ex.PW-2/B Rapat No.26 dated 07.10.2009 and FIR was later on registered.

[8]. Lower Appellate Court held that all the three accused have been attributed specific role by the prosecution and as such they were held guilty in appeal. However, keeping in view the fact that they were facing trial from 2008 and seeing the age, character and antecedents of accused, they were awarded benefit of Probation of Good Conduct under Section 4(1) of Probation of Offenders Act, on

their accepting probation bond in the sum of Rs.10,000/- each with one surety of the like amount along with undertaking to keep peace and tranquility during period of one year and not to commit any such offence during that period, failing which they shall be called upon to receive the sentence. Accused were burdened with cost of Rs.1000/- each towards litigation expenses and were also directed to deposit sum of Rs.15,000/- each as compensation payable to the complainant/injured.

[9]. Accused-petitioners being dissatisfied with the judgment passed by Lower Appellate Court filed present revision petition, assailing the order.

[10]. Learned counsel for the petitioners reiterated the stand that complainant has not been examined in the present case. The application for assisting the complainant for making deposition in the Court was moved by father of the complainant after one and half years of the framing of charges. Filing of this application has been claimed to be an evil design of the prosecution particularly when according to statement of PW-2, complainant himself got recorded his statement.

[11]. Learned counsel further argued that medical evidence did not correspond to the ocular version. Dr. H.S. Rana PW-3 in his cross-examination has deposed that injury No.5 on the person of Paramjit Singh could not be the result of pressing of neck by human hand. The doctor has also admitted that if the blow of dang has been given on the thumb and that resulted in fracture of the thumb then

some mark of injury has to be present. There was no external injury or mark of injury No.4. The doctor only described the injury No.4 on the MLR on mere asking of the injured. Necessary cross-examination of PW-3 Dr. H.S. Rana is extracted as under:-

“xxxxxxx Injury No.5 on the person of Paramjit Singh S/o Sajjan Singh could not be the result of pressing the neck by human hands. It is correct that if a blow of the dang has been given on the thumb and which resulted into the fracture on the thumb then there must be some mark of that injury. There was no external evidence of mark on the injury No.4. I have mentioned the injury No.4 in the MLR on the mere asking of the patient/injured. xxxxxx”

[12]. The Lower Appellate Court has ignored the fact that PW-4 and PW-5 are real brothers. Contradictions have erupted in their statements. Jeet Singh co-accused has been found innocent.

[13]. Looking to the entirety of the facts and circumstances, since the complainant/injured has not been examined, there was no effort by the prosecution to get the statement of complainant recorded by means of providing help to him in making statement to the Police. The application for the first time came after one and half years of making charges. The said application was filed by the father of complainant. The statement of Investigating Officer PW-2 gave different connotation when he said that complainant himself got his statement recorded. If that was so, there was no impediment in getting the statement of the complainant recorded at the time of

evidence.

[14]. The prosecution has miserably failed to answer the aforesaid latch and omission. Secondly the medical evidence did not correspond to the ocular version. The statement of Dr. H.S. Rana PW-3, in fact hit the deck when he said that injury No.5 on the person of complainant could not be the result of pressing of neck by human hands and thirdly for presumed injury No.4, there must be some external evidence of such injury. Fracture of thumb should carry some mark of injury. Moreover the injury No.4 was given by the doctor on the asking of the complainant. Therefore, statement of Dr. H.S. Rana PW-3 cannot be relied to attract culpability of petitioners in the context of inflicting injuries No.4 and 5.

[15]. Material contradictions vis-a-vis statements of PW-4 and PW-5 who are real brothers of complainant would go in a way to create dent in the prosecution version. Innocence of co-accused Jeet Singh also adds to the false implication of petitioners.

[16]. Cumulative effect, according to this Court is that the trial Court rightly gave benefit of doubt to the accused in acquitting them whereas Lower Appellate Court has committed error while convicting and releasing them on probation.

[17]. Consequently, judgment dated 04.02.2015 passed by Additional Sessions Judge, Fazilka is set aside. Accused/petitioners are acquitted of their charges.

July 17, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE