

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-1803-2015 (O&M)

Date of decision: 29.05.2015

Rajender @ Inder Singh

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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?*

PRESENT: Mr. MPS Chandel, Advocate for the petitioner.

Ms. Dimple Jain, AAG, Haryana.

R.P. NAGRATH, J.

The petitioner has challenged the concurrent findings of Courts below convicting him of the charges under Sections 323 and 325 of the Indian Penal Code (IPC) and awarding him the sentence to undergo simple imprisonment for a period of four months under Section 325 IPC and to pay compensation ₹ 2500/- to the complainant in terms of Section 357A Cr.P.C. and also to pay a fine of ₹ 1000/-, in default thereof to further undergo imprisonment for one month. The petitioner was also sentenced to undergo simple imprisonment for a period of one month under Section 323 IPC and to pay compensation of ₹ 2500/- to the complainant in terms of Section 357A Cr.P.C. The sentences of

imprisonment were to run concurrently.

2. The facts of case, briefly stated, are that Ram Kumar-complainant was grazing his cattle in the fields on 23.10.2008. At about 4.00 p.m. the petitioner and his brother-Ajit Singh came there armed with lathies. Ajit Singh, gave lathi blow on the chest of complainant whereas the petitioner inflicted blow with his lathi on the left knee thrice. The complainant raised an alarm which attracted Rajender S/o Sukbir Singh and Amar Devi who were working in the adjoining fields. These persons witnessed the occurrence.

3. On 23.10.2008 itself, a message was received in Police Post Achina Taal from Police Station City, Dadri about complainant having suffered injuries in the occurrence and that he was referred to General Hospital, Bhiwani from there. The police party did not go to General Hospital, Bhiwani on that day because it was late at night.

4. On the next day i.e. 24.10.2008, the police went to General Hospital, Bhiwani and obtained opinion of the doctor about fitness of injured to make the statement. During investigation, Ajit Singh co-accused was declared innocent and kept in column No. 2 of challan and after recording part evidence he was also summoned as an additional accused in terms of Section 319 Cr.P.C. During the course of trial, Ajit Singh brother of petitioner had expired, therefore, the proceedings against him obviously abated.

5. The eye-witnesses examined by prosecution are the complainant as PW-2 and other witnesses to support the eye-witness account are PW-3 Amar Bai and PW-4 Ramesh Kumar. The

eye-witness account was corroborated by medical evidence. After analysis of evidence, the Courts below have gave a firm finding of conviction against the petitioner. Learned Appellate Court observed as under:-

“16.The testimony of complainant is truthful. His statement is duly corroborated by medico legal report. The statement of the complainant is convincing coupled with the medical evidence which established that the accused had inflicted injuries on the person of the complainant. There are minor contradictions in the statement made by the complainant otherwise he has fully supported the case of the prosecution by stating true story, therefore, I do not find any merit in the contentions of the learned counsel for the appellant that the statement of the complainant cannot be believed due to contradictions. If a witness is not liable to be believed on one aspect of his statement, due to contradiction or any other reason, it does not mean that whole of his statement becomes unbelievable.....”

6. Learned Appellate Court also observed and rightly so, that when the testimony of complainant is truthful and corroborated by medical evidence then examination of Investigating Officer in such a case was of formal nature. There is no enmity for falsely implicating the petitioner in the case and it is quite well settled that the injured who is

victim of crime would not spare the real culprit and involve the innocent person.

7. In view of limited scope of challenge to the concurrent findings of Courts below especially that of Appellate Court, which has analyzed the matter quite elaborately, learned counsel for the petitioner did not challenge conviction of the petitioner on merits and confined his contention only qua the quantum of sentence.

8. Learned counsel for the petitioner submits that as per custody certificate dated 23/25.05.2015 filed by respondent-State, the petitioner has already undergone 2 months and 3 days including remissions which should be considered sufficient punishment in the circumstances of the case. Learned counsel for the petitioner further submits that grievous hurt on the person of complainant is on the non-vital part i.e. on the complainant's left knee and on examination slight swelling was present. The medico-legal examination of complainant was conducted by PW-6 Dr. Anita Gulia whose statement is Annexure P-2. The X-ray examination was conducted by PW-5 Dr. Anil Sharma whose statement is Annexure P-1. There was a fracture of left femur as evident from X-ray film which the witness brought and prepared X-ray report Ex. PW-5/A. Learned counsel for the petitioner further submits that the occurrence took place in a fit of anger and it was not a premeditated act. It is also submitted that this was happened because the complainant tried to enter his cattle in Guar crop of the petitioner.

9. Learned counsel for the petitioner submits that petitioner is a

heart patient and suffering from other diseases. He had a cardiac arrest and remained admitted in difference hospitals. He was under the treatment of Maharaja Agrasen Hospital, Punjabi Bagh, New Delhi as well as PGIMS Rohtak, as per document Annexure P-3 (Colly.).

10. When the matter was listed on 18.05.2015, the respondent-State was directed to file a specific response with regard to ailment of petitioner. The learned State counsel has filed the custody certificate of petitioner dated 23/25.05.2015 but the aforesaid contention raised on behalf of petitioner has not been contested in the affidavit of Superintendent of District Jail, Bhiwani.

11. Looking into the aforesaid contentions and the facts and circumstances, I am of the view that petitioner deserves some concession by reducing the sentence suitably. Learned trial Court, however, has awarded a fine of ₹ 1000/- as well as compensation under Section 357A Cr.P.C. but I am of the view that when the fine has been imposed, the compensation should be out of fine that is imposed. So, while reducing the substantive sentence, I direct that the amount of fine under Section 325 IPC is increased from ₹ 1000/- to ₹ 3500/- and out of the amount of fine, the amount of compensation i.e. ₹ 2500/- under Section 325 IPC shall be payable as compensation to the complainant whereas the amount of compensation under Section 323 would be maintained. In default of payment of fine, the imprisonment of petitioner would be increased from one month to two months under Section 325 IPC.

12. In view of the above discussion, the instant revision is dismissed on merits but partly allowed qua the quantum of sentence by

reducing the sentence under Section 325 IPC from 4 months simple imprisonment to imprisonment of 3 months or the period already undergone whichever is later and the fine is enhanced to ₹ 3500/- under Section 325 IPC with aforesaid default clause.

May 29, 2015
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(R.P. NAGRATH)
JUDGE