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

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Date of decision: 14.09.2015

Vijay Saini

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.K. Bansal, Advocate,
for the petitioner.

SABINA, J

Respondents No.2 to 6 had faced trial in FIR No.164, dated 13.09.2002, under Sections 323, 325, 506 and 149 of Indian Penal Code, 1860 ('IPC' for short), registered at Police Station Dharuhera.

Trial Court vide judgment/order dated 29.10.2010 ordered the acquittal of the private respondents. The said order was upheld in appeal by the Appellate Court vide order dated 11.08.2014. Hence, the present petition by the complainant.

Prosecution story, in brief, is that on 08.09.2002 at about 05:45 P.M., petitioner was getting the board of his hospital painted. Mother and brother of the complainant were standing near him. At that time, accused Parkash, Ram

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Chander and Vijay came to the spot. Parkash Saini picked up a brick and gave a blow with it on the face of the complainant. Accused Narender gave a lathi blow on the right thumb of Vijay Parkash. Balli gave an iron rod blow on the back of his brother Vijay. Accused Vijay gave a blow on the left elbow of Vijay Parkash, whereas, Dharampal gave a lathi blow on the right side of back of Vijay Parkash. Accused Parkash gave an iron rod blow on the head of the mother of the complainant. On hearing the alarm Bharpai, Ajit and Jaibir came to the spot. Balli gave an iron rod blow on the back of the mother of the complainant. Many persons gathered at the spot and the complainant party was got rescued by them.

The Courts below while ordering the acquittal of the respondents No.2 to 6 have taken in consideration that the parties were in litigation and were inimical towards each other. Raj Rani mother of the complainant was married to respondent No.2. There was a marital discord between them. Although, the occurrence was alleged to have taken place on 08.09.2002 but the FIR was got registered on 13.09.2002. The delay in lodging of the FIR had not been duly explained. Even the accused had suffered injuries in the occurrence but the said injuries had not been explained by the prosecution. Therefore, the Courts below rightly come to the conclusion that the prosecution had withheld the real genesis of the case. It could not be said with certainty as to whether the accused were aggressors and had

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committed the offence in question. Since there was litigation pending between the parties, the Courts below rightly came to the conclusion that the possibility of the present case being ante-timed cannot be ruled out.

The Appellate Court while dismissing the appeal filed by the petitioner has held as under:-

“In this case, DW4 Dr. Kamal Mehra proved the copies of MLRs of accused Parkash Saini and Balli, Ex.DW4/1 and DW4/2 respectively. As per MLR of accused Parkash Saini, Ex.DW4/1, he was examined by Dr. Kamal Mehra on 9.9.2002 at 5.05 p.m. and the doctor found nine injuries on his person. Injury no.3 is radish abrasion on the forehead of accused Parkash Saini. Nobody would suffer an injury on his forehead which is vital part of the body with a friendly hand. As per MLR of accused Balli Saini, Ex.DW4/2, he was examined on 9.9.2002 at 5.20 p.m. and the doctor found three injuries on his person. The duration of injuries has been given as within 24 hours. In all, the accused party had suffered twelve injuries. The complainant in his report Ex.PW3/A which is the basis of the case of the prosecution has not explained the injuries received by the accused party in the same occurrence. Nor in their deposition before the court as PW4 (Smt. Raj Saini), PW5 (Vishav

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Parkash) and PW6 (Vijay Saini), the complainant party has explained the injuries suffered by the accused party. In these circumstances, the prosecution has suppressed the genesis of fight and there is reason to believe that the occurrence did not take place in the manner as alleged by the prosecution and the accused were entitled to be acquitted on this ground only. More so, in the FIR and the deposition before the court, the complainant and injured witnesses had stated about seven injuries in all allegedly received by them at the hands of the accused party whereas as per MLRs of complainant Vijay, and PWs Raj Rani and Vishav Parkash, they had received fourteen injuries in all. Ex.DW3/1 is copy of statement of PW4 Raj Saini recorded in case FIR no.247 dated 26.10.2001 under sections 498-A, 506, 34 IPC of PS, Dharuhera wherein she had deposed that she was beaten up bitterly by her husband and middle finger of her left hand was broken which did not cure till that date. In the present case also, as per x-ray report of Smt. Raj Rani, Ex.PW8/C, there was a fracture of middle finger of her left hand. In these circumstances, it is apparent that in the present case, PW4 Smt. Raj Rani had got the old injuries x-rayed to prosecute the accused party for causing grievous hurt to her. A perusal of

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the FIR reveals that the said grievous hurt on the middle finger on the left hand of Smt. Raj Rani has not been attributed to any person. It has not been mentioned in the FIR that Smt. Raj Rani had received any injury on the middle finger of her left hand. As per x-ray report of complainant Vijay Saini, Ex.PW8/B, the doctor found fracture of nasal bone but in the FIR, it is no where mentioned that he had received any injury on his nose. Ex.D3 is copy of judgment dated 7.9.2006 passed in case FIR no.120 dated 12.6.2003 under sections 323, 452, 307, 506 read with section 34 of IPC, PS Dharuhera whereby the complainant of this case namely Vijay Saini, his mother Raj Saini and brother Vishav Parkash Saini were convicted and sentenced under sections 323, 325, 452, 506, 307 read with section 34 of IPC. Ex. D5 is copy of judgment dated 4.7.2008 passed in case FIR no.247 dated 26.10.2001 under sections 498-A, 506, 34 of PS Dharuhera lodged by PW4 Smt Raj Saini, wife of accused Parkash Saini whereby accused Parkash Saini, his mother and his other family members were acquitted by the court. The defence has produced a number of documents on the file to prove that both the parties are inimical towards each other and a number of cases were filed by them against each other. In such circumstances, the

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suppression of genesis of fight by the prosecution is fatal to the case of the prosecution. More so, the fact that PW4 Smt. Raj Rani got old injuries x-rayed to prosecute the accused party for graver offences has also caused a serious dent in the case of the prosecution. Further, the fact that as per MLRs of the complainant party, they had received fourteen injuries in all whereas in the FIR, they had stated about only seven injuries also casts a doubt on the case of the prosecution. All these facts and circumstances and law on the point were taken into consideration by learned trial court and rightly acquitted the accused giving them benefit of doubt. No interference in the well reasoned judgment under appeal is warranted and the same is hereby affirmed.”

Reasons given by the Appellate Court while dismissing the appeal are sound reasons. Hence, no ground for interference by this Court is made out.

Dismissed.

September 14, 2015
kapil

(SABINA)
JUDGE