

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRR No.3551 of 2015 (O&M)****Date of Decision: December 09, 2015**

Harchand and others

...Petitioners

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Bipan Ghai, Senior Advocate with
Mr.V.S.Virk, Advocate
for the petitioners.

Mr.Brijesh Sharma, Asstt. Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioners Harchand, Sombir and Jaibir against State of Haryana under Section 401 Cr.P.C., challenging the impugned judgment of conviction dated 18.02.2013 and order of sentence dated 19.02.2013 passed by learned Sub Divisional Judicial Magistrate, Siwani, vide which the petitioners were convicted and sentenced to undergo imprisonment for a period of six months and to pay a fine of ₹300/- and in default of payment of fine, to undergo rigorous imprisonment for a period of fifteen days each under Section 323 read with Section 34 IPC and to further undergo imprisonment for a period of two years and to pay a fine of ₹700/- and in default of payment of fine, to undergo rigorous

imprisonment for a period of three months under Section 326 read with Section 34 IPC and also challenging the judgment dated 31.08.2015 passed by learned Addl. Sessions Judge, Bhiwani, vide which appeal filed by petitioners was dismissed.

Notice of motion was issued and learned State counsel appeared and contested the petition.

I have heard learned counsel for the petitioners as well as learned State counsel and have gone through the record.

The brief facts of the prosecution case are that on 28.05.2008, ruqa was received in Police Station Siwani from CHC Miran regarding admission of injured Mahender Singh. On this, Head Constable Mohan Lal reached at CHC Miran but the injured was not found present in the hospital. On 01.06.2008, Head Constable Mohan Lal along with Constable Atma Ram reached at General Hospital, Bhiwani and obtained medico-legal report of injured Mahender Singh and sought opinion regarding the fitness of injured Mahender Singh. After obtaining the opinion, the statement of Mahender Singh injured was recorded, in which he stated that on 28.05.2008 at about 9.30 A.M., he along with his brother namely Surender was going to Siwani court in order to meet his counsel. His brother Surender was walking behind him at a distance of about 50 steps. When, he reached near old bus stand, Siwani, in front of shop of Dr.Ramesh, then Harchand, Sombir and Jaibir came there. Harchand caught hold him from back side and Sombir caught hold his one hand from front side. Then Jaibir bitten middle finger of his right hand with his teeth, due to which

his finger was amputated. Then Nar Singh and Banarsi also came there and Nar Singh gave a lathi blow on his forehead and Banarsi gave a fist blow on his lips. The complainant has also alleged that the aforesaid accused caused injuries to him out of the enmity because some cases regarding land dispute were pending between his father and aforesaid accused. After completion of investigation, challan was presented against the accused-petitioners. On presentation of challan and after giving copies under Section 207 Cr.P.C., the accused-petitioners were charged under Sections 323, 326 read with Section 34 IPC.

In order to prove its case, prosecution examined PW-1 Mahender Singh, PW-2 Surender Kumar, PW-3 ASI Mohan Lal, PW-4 Dr.Anil Sharma and PW-5 Dr.Sukhbir Singh.

As per PW-4 Dr.Anil Sharma, he radiologically examined injured Mahender Singh on 29.05.2008 as per MLR and found amputated ring finger at terminal phalanx. He proved the X-ray report. In cross-examination, he stated that possibility of this injury caused by teeth bite is remote. PW-5 Dr.Sukhbir Singh, who medico legally examined injured Mahender Singh found following injuries:-

- (i) *Swelling 3cm x 3 cm present over forehead towards left side. Mild tenderness present. No bleeding. No complain of loss of consciousness. Nature of injury was simple, the weapon used was blunt in nature and the probable duration of injury was 06 hours.*
- (ii) *Complaining of pain in upper lip. On examination swelling was present in right lateral aspect of upper lip, mild tenderness present. There was no injuries to teeth/gum and no bleeding. Nature of injury was simple, the weapon used was blunt in nature and the probable duration of injury was within 6 hours.*

- (iii) *Patient complain of teeth bite on right middle finger adjacent to right little finger. On examination, partial amputation of distal phalanx of right middle finger present. Lacerated wound of 3cm x 2cm is present. Fresh bleeding was present. Patient was advised X-ray of right hand.*

In cross-examination, the doctor stated that there are less chances of sustaining amputation of finger by teeth bite.

In the present case, the occurrence had taken place on 28.05.2008 and the FIR was registered on 31.05.2008. No cogent explanation has been given regarding this delay in recording the FIR. Even if the case of the complainant-injured is presumed to be true, even then, for giving teeth bite on one finger, there is no need of any person to caught hold the injured

In view of the nature of injury and the fact that doctor PWs have deposed that chances of causing amputation of finger by teeth bite are remote, creates doubt in the prosecution version. Otherwise also, if five persons would come and cause injuries, then they will not cause such type of injury. The motive has already been proved in the present case regarding litigation. The motive is double edged weapon. If it can be held as motive for causing the occurrence then it can also be held as motive for false litigation.

Keeping in view the evidence on record and opinion of the doctors, I find that prosecution, on the face of it, has not proved its case beyond reasonable doubt and the version of the prosecution is not natural and improbable. The findings given by the Courts below are not as per evidence and the Courts below have not appreciated

the evidence in right perspective. The material evidence has been misread by the Courts below. The judgments and order passed by learned Courts below are set aside. Therefore, by holding that prosecution has failed to prove its case beyond reasonable doubt and by giving benefit of doubt to the present petitioners, the present revision petition is accepted. Petitioners Harchand, Sombir and Jaibir are acquitted of the charges framed against them and they be released forthwith if their custody is not required in connection with any other case.

December 09, 2015
Vgulati

(INDERJIT SINGH)
JUDGE