

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

**CRR No.414 of 2013 (O&M)
Date of Decision: November 22, 2016**

Subhash and others

...Petitioners

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Subhash Godara, Advocate
for the petitioners.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioners against respondent State of Haryana, challenging the impugned judgment of conviction dated 26.09.2011 and order of sentence dated 27.09.2011 passed by learned Judicial Magistrate Ist Class, Sonipat, vide which the petitioners were convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay fine of ₹100/- and in default of payment of fine, to undergo imprisonment for a period of 15 days each under Section 323 IPC and further to undergo rigorous imprisonment for a period of one year and to pay fine of ₹100/- and in default of payment of fine, to undergo imprisonment for a period of 15 days each under Section 325 IPC and also challenging the judgment dated 30.10.2012 passed by learned Sessions

Judge, Sonipat, vide which appeal filed by petitioners was dismissed.

From the record, I find that the challan was presented against petitioners in case FIR No.164 dated 20.12.2004. The brief facts of the case as noted down in the judgment passed by learned JMIC, Sonipat, are as under:-

“2. The brief facts of the prosecution case are that the complainant Mahender Singh has made a complaint to the effect that he is in Govt. service and presently posted as Lab attendant in Govt. Sr. Sec. School, Bhigan. He has enmity with Subhash s/o Kali ram of village Larsoli. On 22.11.2004 at about 10 p.m. he was sitting in front of his house in the street, then Subhash, Naresh and Om Parkash sons of Kali Ram caste Chamar Harijan came there. Om Parkash was having a bat in his hand and he said that the complainant is giving complaints in the Police Stations against him, he will teach a lesson to you to give complaints against them. Subhash fell the complainant on the land and started giving fist and kick blows to the complainant. Naresh gave kick blows on the chest and back of the complainant and Om Parkash caused injuries on the right side of his back by his bat. The complainant raised alarm of Bachao Bachao, then the wife of his brother Parvati w/o Surrender reached to the spot and rescued him from the clutches of accused persons. Then he went to the Govt. Hospital, Sonipat for treatment. On this complaint of complainant, FIR was registered. Further investigation was conducted. On completion of investigation challan was presented in the court.”

On presentation of challan, the Court finding prima facie case, framed the charge under Sections 323, 325 and 34 IPC against accused, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 SI Kadam Singh, PW-2 Dr.Jai Kishore, PW-3 Dr.S.K.Gosain, PW-4 Parvati and PW-5 SI Ishwar Chander.

In the statement under Section 313 Cr.P.C., the accused denied the correctness of the evidence and pleaded themselves as innocent.

Learned JMIC, Sonipat after appreciating the evidence,

convicted and sentenced the petitioners as stated above. An appeal was filed by the petitioner and the same was dismissed by learned Sessions Judge, Sonipat, vide judgment dated 30.10.2012.

Aggrieved from the above-said judgments, present revision petition has been filed.

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

At the time of arguments, learned counsel for the petitioners contended that with regard to petitioner No.1 Subhash, he did not want to press this revision because he was subsequently found guilty of murder of complainant of the present case. As regarding petitioners Om Parkash and Naresh, learned counsel argued that they have been falsely implicated in the present case. In the alternative, learned counsel for the petitioners, prayed for reduction of the sentence imposed upon the petitioners.

On the other hand, learned State counsel argued that PWs have consistently deposed regarding the prosecution version. The injuries are supported by medical evidence. Both the Courts below have given concurrent findings regarding the guilt of the accused. There are no material contradictions or improbabilities in the version of the prosecution and the petitioners Om Parkash and Naresh have been rightly convicted and sentenced along with co-accused Subhash.

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

The perusal of the record shows that Subhash caught hold the complainant and started giving kick and fist blows to him. Naresh gave kick

injuries to him on the right side of back by inflicting bat blows. The oral statement of PW-4 Parvati wife of the complainant has been supported and corroborated by the medical evidence. PW-2 Dr.Jai Kishore, medico legally examined Mahender Singh and PW-3 Dr.S.K.Gosain examined the injuries suffered by Mahender Singh. Fracture of 7th and 8th ribs of right side of chest was seen.

The occurrence took place on 22.11.2004 at about 10 p.m. and Dr.Jai Kishore, who medico legally examined injured Mahender Singh on 23.11.2004 at 7.00 a.m., had sent the ruqa to the police, which was received at 10.00 a.m. on 23.11.2004. Statement of Mahender Singh was recorded by the police on 23.11.2004 at 12.30 p.m., on the basis of which DDR was recorded. At that time, as no cognizable offence was made out, therefore, the FIR was registered after receipt of X-ray report. The delay in recording the FIR has been explained accordingly.

PW-4 Parvati, eye witness has deposed as per prosecution version and proved the injuries given by the accused to Mahender Singh. Injured Mahender Singh could not be examined in the case as accused of this case namely Subhash, has murdered him before he could be examined.

The perusal of the evidence on record and the findings given by the Courts below, in no way, shows that these findings are perverse or illegal. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Courts below. No material contradictions or material improvements have been pointed out in the statements of the PWs. Both the Courts below have consistently gave findings of fact. These findings are correct, as per

evidence and law and do not require any interference from this Court. The

petitioners have been sentenced to undergo imprisonment for a maximum period of one year, which is adequate sentence and no ground is made out to reduce the sentence also.

Therefore, finding no merit in the present revision petition, the same is dismissed.

November 22, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No