

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i)

CRR No.1584 of 2015 (O&M)

Rajender Kumar

...Petitioner

VERSUS

State of Haryana

...Respondent

(ii)

CRR No.2240 of 2015 (O&M)

Hans Raj

...Petitioner

VERSUS

State of Haryana and another

...Respondents

(iii)

CRR No.2354 of 2015 (O&M)

Hans Raj

...Petitioner

VERSUS

State of Haryana and another

...Respondents

Date of Decision: February 24, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Akashdeep Singh, Advocate
for the petitioner (in CRR No.1584 of 2015),
for respondent No.2 (in CRR No.2240 of 2015) and
for respondent No.2 (in CRR No.2354 of 2015).

Mr.Dalip Kumar Tuteja, Advocate
for the petitioner (in CRRs No.2240 and 2354 of 2015).

Mr.Vikramjit Singh, Addl. Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

This judgment shall dispose of above-mentioned three connected cases as the matter in dispute is same in all the cases.

CRR No.1584 of 2015 has been filed by petitioner Rajender Kumar challenging the judgment of conviction dated 03.03.2014 and order of sentence dated 07.03.2014 passed by learned Chief Judicial Magistrate, Rohtak, whereby he was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹5000/- and in default of payment of fine, to undergo simple imprisonment for a period of one month under Section 325 IPC and also challenging the judgment dated 27.03.2015 passed by learned Addl. Sessions Judge, Rohtak, whereby appeal filed by the petitioner was partly accepted and he was released on probation while upholding his conviction.

CRR No.2240 of 2015 has been filed by petitioner Hans Raj challenging the judgment dated 27.03.2015 passed by learned Addl. Sessions Judge, Rohtak, whereby appeal filed by accused-respondent No.2 Rajender Kumar was partly accepted and he was released on probation while upholding his conviction.

CRR No.2354 of 2015 has been filed by petitioner Hans Raj challenging the judgment dated 03.03.2014 passed by learned Chief Judicial Magistrate, Rohtak, whereby accused-respondent No.2 Vikram was acquitted of the charges framed against him.

The brief facts of the case as taken from CRR No.1584 of 2015 are that DRR No.29 dated 24.04.2003 was registered on the

statement of Hans Raj at Police Station Kalanaur. In the statement made by the complainant, it is stated that on 24.04.2003, his water turn was to start at 6.00 P.M. and thereafter, turn of his brother Rajender was to start. Complainant owed 3½ hours of canal water to his brother Rajender and he had requested him to take two hours on that day and to take the remaining 1½ hours of canal water on the next turn. At that time, complainant's son was also accompanying him. However, the complainant's brother refused to accept his request and became adamant that he will take the whole canal water on that very day. The complainant refused to give the entire canal water and tried to cut the water towards his fields, whereupon his nephew Vikram caught him from the backside and Rajender inflicted injury on the index and middle finger of his right hand with a spade. The complainant raised noise, whereupon, his son Sumit Kumar rushed to the spot, whereupon, Rajender and his son returned back to their house. Thereafter, complainant went to the police station for getting the case registered and on the statement of complainant DDR was registered and after receipt of report of radiologist, offence under Section 325 IPC was incorporated and formal FIR was registered. Accused was arrested. After necessary investigation challan was presented against accused Rajender and accused Vikram was summoned on an application under Section 319 Cr.P.C.

On presentation of challan against accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused were charge-

sheeted under Section 325 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Hans Raj, complainant-injured, who mainly deposed as per prosecution version. PW-2 Pawan Kumar, SHO mainly deposed regarding preparing of report under Section 173 Cr.P.C. PW-3 Dr.Sube Singh, Medical Officer mainly proved the MLR of Hans Raj and X-ray reports. PW-4 EASI Om Parkash proved the site plan. PW-5 ASI Mahabir mainly proved the formal FIR. PW-6 Sumit deposed regarding prosecution version. PW-7 Hans Raj, complainant-injured again appeared.

At the close of prosecution evidence, the accused were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves as innocent.

No witness was examined in defence.

Learned CJM, Rohtak vide impugned judgment dated 03.03.2014 after appreciating the evidence acquitted the accused Vikram but convicted accused Rajender Kumar under Section 325 IPC and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹5000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month.

Appeals were filed by the complainant Hans Raj against the acquittal of accused Vikram as well as by accused Rajender Kumar against his conviction. Learned Addl. Sessions Judge, Rohtak,

vide judgment dated 27.03.2015, dismissed the appeal filed by complainant Hans Raj but released accused Rajender Kumar on probation by partly accepting his appeal while upholding the conviction.

Aggrieved from the judgment dated 27.03.2015, two revisions petitions i.e. CRRs No.2240 and 2354 of 2015 have been filed by complainant-petitioner Hans Raj against acquittal of accused Vikram and release of accused Rajender Kumar on probation and other revision petition i.e. CRR No.1584 of 2015 has been filed by accused-petitioner Rajender Kumar against his conviction.

Notice of motion was issued in all the petitions and learned State counsel as well as learned counsel for the respective respondents in each petition, appeared and contested the revisions.

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

From the record, first of all, I find that these are revision petitions and this Court is only to see whether the judgments passed by the Courts below are perverse or against the evidence and law or whether the Courts below have misread evidence or some material evidence has not been considered. This Court in the revision petition, is not to re-appreciate the evidence like Court of an appeal.

As regarding acquittal of accused Vikram, I find that he was not armed with any weapon nor he has caused any injury to the injured-complainant Hans Raj. After investigation, accused Vikram was found innocent but he was summoned on the application under

Section 319 Cr.P.C. The only allegation against Vikram was that he caught hold the injured Hans Raj from the back. Even, *lalkara* has not been attributed to Vikram. PW-3 Dr.Sube Singh while appearing into the witness box, in cross-examination has stated that the injuries with spade as stated are not possible if the injured is caught by someone from behind. Therefore, in view of the evidence on record, the Courts below have rightly acquitted accused Vikram by giving benefit of doubt. Nothing has been pointed out that the findings given by both the Courts below regarding acquittal of Vikram, are perverse or against the evidence and law. Nothing has been pointed out as to which material evidence has been misread or which material evidence has not been considered by the Courts below.

In view of the fact that no injury has been attributed nor accused Vikram was armed with any weapon nor he raised any *lalkara* and the doctor has given the opinion that injuries in such a manner cannot be given if the person is caught hold from backside, it is clear that findings given by learned Courts below qua acquittal of Vikram are correct, as per law and do not require any interference from this Court. Therefore, CRR No.2354 of 2015 filed by petitioner Hans Raj against acquittal of Vikram, stands dismissed.

As regarding CRR No.1584 of 2015 filed by Rajender Kumar, I find that as per prosecution version and in the DDR, the injuries are stated to have been given by spade by accused-petitioner Rajender. But no injury was found with sharp edged weapon on the person of injured. Spade is a sharp edged weapon but the injuries

found on the person of Hans Raj injured, are with the blunt weapon as deposited by PW-3 Dr.Sube Singh in his affidavit and found injuries as under:-

- “1. A lacerated wound was present on the right hand on the posterolateral and on the palmar aspect of size 6 cm x 1 cm, the wound was tender to touch, movement of little finger was present. Advised x-ray Right hand-antero posterior and lateral view.*
- 2. A contusion was present on the right forearm on the lateral aspect of size 4 cm x 2 cm. Wound was reddish in color and was tender to touch. Advised x-ray right forearm-Anterio posterior and lateral view.”*

Keeping in view the injuries found on the person of Hans Raj, I find that the ocular version is not supported by medical evidence as there is no injury, stated to have been caused with sharp edged weapon i.e. spade in the MLR. There is nothing in the statements of the witnesses that injury has been given from the reverse side of the spade. Furthermore, as per prosecution version, the injuries were given on the fingers i.e on the index finger and middle finger of right hand but there is nothing in the statement of the complainant that any injury has been caused on the right forearm nor there is anything in the statement of the complainant that injury has been given on the hand but the injuries are found on right forearm and on the hand as stated above. Therefore, the oral version of the complainant is not supported by medical evidence and is contradictory, which creates reasonable doubt in the prosecution version. The benefit of doubt is always to go to the accused.

Furthermore, the version given by complainant in the DDR

as well as in his statement recorded before filing of application under Section 319 Cr.P.C. and also in his statement after filing of application under Section 319 Cr.P.C., amount to material improvements qua injuries, which creates reasonable doubt in the prosecution version. Hence, by giving benefit of doubt to the accused-petitioner Rajender Kumar, he is acquitted of the charges framed against him. The judgments passed by the Courts below are not as per evidence on record and amount to misreading of evidence qua conviction of Rajender Kumar. Therefore, CRR No.1584 of 2015 stands allowed.

As accused Rajender Kumar has been acquitted of the charges, therefore, CRR No.2240 of 2015 filed by Hans Raj against the order of releasing of Rajender Kumar on probation, has become infructuous and the same is dismissed.

As accused-petitioner Rajender Kumar is on probation, his probation bonds stand discharged.

February 24, 2016
Vgulati

(INDERJIT SINGH)
JUDGE