

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

(1)

CRR No.3488 of 2014 (O&M)

Ram Chander

...Petitioner

VERSUS

State of Haryana and others

...Respondents

(2)

CRR No.3618 of 2014 (O&M)

Jagdish and another

...Petitioners

VERSUS

State of Haryana and another

...Respondents

Date of Decision: October 20, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Bhupender Ghanghas, Advocate
for the petitioner (in CRR No.3488 of 2014) and
for respondent No.2 (in CRR No.3618 of 2014).

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

Mr.Sanjay Vashisth, Advocate
for the petitioners (in CRR No.3618 of 2014) and
for respondent No.2 in (in CRR No.3488 of 2014).

INDERJIT SINGH, J.

This order shall dispose of both the above-mentioned connected
revisions as the point for determination in both the revisions is the same.

CRR No.3488 of 2014 has been filed by petitioner Ram

Chander against respondents State of Haryana, Jagdish and Joginder, for modifying the judgment of conviction dated 01.09.2014 passed by learned Addl. Sessions Judge, Bhiwani and to convict accused-respondents under Sections 323, 324 read with Section 34 IPC and impose sentence accordingly.

CRR No.3618 of 2014 has been filed by petitioners Jagdish and Joginder against respondents State of Haryana and Ram Chander, challenging the impugned judgment of conviction and order of sentence dated 01.09.2014 passed by learned Addl. Sessions Judge, Bhiwani convicting the accused-respondents under Sections 323, 324 read with Section 34 IPC, though releasing them on furnishing probation bonds in the sum of ₹25,000/- each with one surety each and also setting aside the judgment of acquittal dated 30.01.2012 passed by learned Judicial Magistrate Ist Class, Bhiwani.

Notice of motion was issued and learned State counsel and learned counsel for respective respondents appeared and contested the petitions.

The challan in the present case was presented in case FIR No.260 dated 28.12.2006 under Sections 323, 324, 506 and 34 IPC registered at Police Station Civil Lines, Bhiwani. The brief facts of the case as noted down in the judgment dated 30.01.2012 passed by learned JMJC, Bhiwani, are as under:-

“2. In brief, facts of prosecution case are that on 28.12.2006 one telephone was received from Police Post General Hospital, Bhiwani regarding admission of Ram Chander son of Krishan Lal. On this Head Constable Ram Kishan No.863 along with Constable Bhoop Singh No.1106 reached at General Hospital Bhiwani and moved an application to the Doctor regarding obtaining his opinion and on this the doctor

opined the injured to be fit for statement and thereafter he recorded the statement of complainant to the effect that he hails from Vidya Nagar, Bhiwani and is doing the labour work. On 28.12.2006, at about 12.30 noon he was present in his house then accused Jagdish and Joginder made a call to him and in reply to the same he went up stairs where the accused asked him whether they can remove the base from the Wall of the complainant, on which, he gave a positive note whereon, accused Jagdish caught hold of him and accused Joginder gave a Kassi blow on his left leg, on which, he raised the alarm "Mar Diya Mar Diya". On hearing the same his son Dharampal came and on seeing him accused run away after giving a threat. Action was prayed to be taken against the accused person."

Learned JMIC, Bhiwani, after appreciating the evidence, acquitted the accused vide judgment dated 30.01.2012. An appeal was filed by the complainant Ram Chander and the appeal was allowed by learned Addl. Sessions Judge, Bhiwani, while setting aside the judgment of acquittal dated 30.01.2012 and convicting the accused Jagdish and Joginder and releasing them on probation, as stated above vide judgment of conviction and order of sentence dated 01.09.2014.

Aggrieved from the above-said judgment dated 01.09.2014, CRR No.3488 of 2014 has been filed by petitioner-complainant Ram Chander for modifying the judgment dated 01.09.2014 and for sentencing the accused and CRR No.3618 of 2014 has been filed by petitioners-accused Jagdish and Joginder, for setting aside the judgment dated 01.09.2014 passed by learned Addl. Sessions Judge, Bhiwani and to uphold the judgment of acquittal dated 30.01.2012 passed by learned JMIC, Bhiwani.

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

From the record, firstly I find that in this case, the accused have

but in appeal, they have been convicted. It is settled law that in appeal against acquittal, the finding can be interfered with by the Appellate Court if the findings given by trial Court are found perverse i.e. against the evidence or illegal i.e. against the law or some material evidence has been misread or some material evidence has not been considered. If these findings are not given by the Appellate Court then merely that the Appellate Court has second opinion, acquittal cannot be set aside. If the Appellate Court has the second opinion on re-appreciation of the evidence, the opinion favourable to the accused is to be taken.

The perusal of the findings given by learned Addl. Sessions Judge, Bhiwani, nowhere shows that the findings given by learned JMIC, Bhiwani, are perverse or illegal or some material evidence has been misread by the trial Court etc. The defence of the accused is that complainant is relative of accused and in criminal case No.254/1 of 2006, accused Dharampal and Rajbala i.e. one of their brother-in-law and sister were convicted on the testimony of their other brother-in-law and sister. The said case was looked after by the complainant and complainant put pressure upon the accused for getting the matter compromised but the matter could not be patched up, due to which the complainant was having grudge against the accused persons and got them falsely implicated.

It is the case of the accused that complainant inflicted injuries upon Vijay, who was the younger brother of the accused and Vijay pushed the complainant, who fell down on a sharp edged article and received injury. It is further the case of the accused that they are government servants and that is why the complainant got implicated them in a false case.

supported the version of the complainant and has turned hostile. Moreover, when the complainant appeared as a witness, he stated in examination-in-chief that both the accused were discussing that the *Budha* is to be taken on task and thereafter, Jagdish inflicted a *kassi* blow on left leg of the complainant. This raising of *lalkara* that *Budha* is to be taken on task, has not been mentioned in statement Ex.PA. The trial Court further held that complainant version is that PW-4 Dharmapal reached upstairs on hearing noise '*mar diya mar diya*' but when PW-4 Dharampal was cross-examined, he admitted that he was on the roof when his father received injuries, which is again a contradiction. Further, this witness has stated that his statement was recorded at 6.30 on 28.12.2006, whereas as per record his statement under Section 161 Cr.P.C., was recorded on 16.01.2007. This unusual delay in recording the statement under Section 161 Cr.P.C. of the alleged witness creates reasonable doubt in the prosecution version.

DW-2 Dr.N.K.Garg, proved the documents Ex.DW2/A to Ex.DW2/E, which revealed that Vijay was also admitted in the same hospital on the alleged date. PW-4 has stated that he does not know whether Vijay, who is his younger son-in-law, was admitted in the hospital or not. The trial Court held that due to the peculiar relationship, he must be knowing this fact and he is trying to conceal the genesis of the occurrence and is not deposing true facts. The defence raised by the accused, which is duly supported by the defence evidence, shows that genesis of the occurrence has been concealed. Injuries on the person of Vijay have not been explained. The defence version creates reasonable doubt in the prosecution version.

question was asked that how many false MLRs have been prepared by him. He has given the answer that 'its my personal matter. I cannot disclose this in the court. But there is no case regarding the false MLR against prepared by me in all over India'. This cross-examination of the Doctor further creates doubt in the prosecution version. That doctor is not denying specifically that he has ever prepared false MLR.

In view of the above discussion, I find that the findings given by learned Magistrate are correct, as per evidence and law. No material evidence has been misread by the trial Court nor anything has been pointed that any material evidence has not been considered. Nothing has been pointed out as to how the findings given by learned Magistrate are perverse or against the evidence. Therefore, the judgment dated 01.09.2014 passed by learned Addl. Sessions Judge, Bhiwani, setting aside the well reasoned judgment dated 30.01.2012 passed by learned JMIC, Bhiwani, accepting the appeal filed by the complainant and convicting the accused-petitioners, is not as per law and the same is set aside. The accused-petitioners Jagdish and Joginder are acquitted of the charges levelled against them.

Resultantly, CRR No.3618 of 2014 filed by the petitiones Jagdish and Joginder stands allowed.

As regarding CRR No.3488 of 2014 filed by complainant-petitioner Ram Chander, for enhancement of the sentence, I find that the accused were convicted under Sections 323, 324 read with Section 34 IPC and 506 IPC and in these circumstances, the sentence imposed upon them cannot be held as inadequate. However, as discussed above, as the revision petition filed by the accused-petitioners has been accepted and they are acquitted of the charges, therefore, the revision petition filed by the

complainant has become redundant.

Resultantly, CRR No.3488 of 2014 filed by complainant-
petitioner Ram Chander stands dismissed as having been rendered
redundant.

October 20, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No