

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.3714 of 2016 (O&M)

.....

Date of decision:22.11.2016

Dharmender

...Petitioner

v.

State of Haryana

...Respondent

....

**Coram: Hon'ble Mr. Justice Inderjit Singh**

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Present: Ms. Dhriti J. Sharma, Advocate for the petitioner.

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**Inderjit Singh, J.**

This criminal revision petition has been filed under Section 401 Cr.P.C. challenging the impugned judgment dated 22.9.2016 passed by learned Additional Sessions Judge, Faridabad, whereby the appeal filed by accused-Dharmender against the impugned judgment of conviction and order of sentence dated 26.8.2014/27.8.2014 passed by learned Principal Magistrate, Juvenile Justice Board, Faridabad (hereinafter referred to as 'JJB'), convicting and sentencing the petitioner, has been dismissed.

I have heard learned counsel for the petitioner and have gone through the record.

The brief facts of the case as noted down in the judgment dated 26.8.2014 passed by learned JJB are as under:-

“The case set up by the prosecution against the juvenile is that

on 18.6.2012, information was received by Inspt. Hemant Kumar, SI Tota Ram and EHC Baljit Singh, while they were present near Pyali Chowk in a Govt. vehicle, from ASI Yakub Khan that a boy named Amit has been murdered in Dabua Colony and his body is lying in Escort Hospital. Upon receipt of the said information, the said officials reached Escort Hospital, where ASI Yakub Khan, EHC Mam Chand and HC Satbir Singh were already present. After obtaining the ruqa and MLR of injured Ajay, his fitness certificate was sought from the concerned doctor and after he was rendered fit to give his statement, his statement was recorded to the effect that he is a resident of Dabua Colony, NIT, Faridabad. Dharmender and Mahender both sons of Ram Naresh lived alongwith their family in the street next to his house. Around 5 months ago, a small fight had taken place between his brother Amit Kumar and the said Dharmender and Mahender, which was later on orally settled between the parties but in spite thereof, both Dharmender and Mahender and their father Ram Naresh continue to harbour ill will towards them. On 18.6.2012, at around 7.00 P.M., he alongwith his brother Amit were going towards the house of their friend Vinod Kumar. The house of Vinod Kumar was near the house of Dharmender etc. When they reached near the house of Dharmender, they saw Dharmender, Mahender and their father Ram Naresh standing

outside in the street. They, on seeing Ajay and Amit, started to abuse them. When Ajay and Amit objected thereto, all three of them jumped upon Ajay and Amit and dragged them inside their house. At the gate of their house, Krishna wife of Ram Naresh, Pushpa D/o Ram Naresh and husband of Pushpa were standing with cricket stump in their hands alongwith five other unknown boys. It was alleged that after Ajay and Amit were dragged inside the house of Dharmender etc., Krishna, Pushpa, her husband and five other boys held their limbs and pushed them to the ground. It was alleged that Dharmender hit Amit with a cricket stump in the left side of his stomach. Mahender stabbed Amit on left side of his chest with a “gupti” (screw driver like object). He also inflicted an injury on the spine of Amit. Ram Naresh hit Amit with a knife like object on his head. Pushpa, her husband and Krishna also beat up Amit with cricket wicket. Krishna and her husband Ram Naresh hit Ajay with cricket stumps on his head, right shoulder, right leg, left thigh, left chest and back. After suffering the said injuries, Amit became unconscious. After hearing the commotion of fight, their father Bir Singh and grand father Bhim arrived at the spot who saved them from the clutches of all above said persons and brought them to Escort Hospital, where Amit was declared being brought dead. Upon the statement of injured Ajay Kumar, present case was registered. Investigation was

brought into action. Inquest proceedings under Section 174 Cr.P.C. was conducted. Scene of occurrence was got photographed and rough site plan was prepared. Blood samples were collected from the scene of occurrence. All the accused were arrested. Juvenile Dharmender was also apprehended. Weapons used in the occurrence were recovered. After completion of usual formalities of investigation, the final report against the juvenile in question was filed before the Board.”

On presentation of challan, the trial Court found *prima facie* case for the commission of offences under Sections 302 and 323 read with Section 34 IPC against the juvenile and notice of accusation was served upon him, to which the juvenile pleaded not guilty and claimed enquiry.

In support of its case, the prosecution examined 22 PWs and closed the evidence. The statement of the juvenile was recorded under Section 313 Cr.P.C., wherein he pleaded his complete innocence and false implication, however, no evidence was led in the defence.

The learned Principal Magistrate, JJB, Faridabad, vide judgment dated 26.8.2014 from the evidence on record convicted the petitioner for the offence under Section 323 IPC and directed him to be sent to Special Home, Ambala, for one year for involvement in offence punishable under Section 323 IPC. Aggrieved from this judgment, an appeal was filed, which was also dismissed by the learned Additional Sessions Judge, Faridabad, vide judgment dated 22.9.2016.

A perusal of the evidence on record shows that the present

petitioner is named in the FIR. He was armed with cricket stump and gave specific injury on the left side of stomach to deceased Amit.

Learned counsel for the petitioner argued that there is no such injury found in the post-mortem report.

A perusal of the record shows that as the present petitioner gave the injury with the cricket stump as dangwise, therefore, the learned JJB has convicted him for the offence under Section 323 IPC and not under Section 302 IPC. As per the post-mortem report, the cause of death of Amit was shown as injury given to the left lung.

Keeping in view the statements of the eye witnesses and the active role played by the present petitioner in the occurrence and in view of the statement that he was armed with a cricket stump and gave injury to Amit, who died later on, I find that the findings of fact given by both the Courts below are correct as per evidence and law. Nothing has been pointed out as to how the findings given by the Courts below are perverse or against the evidence. The medical evidence is only corroborative piece of evidence. The mere fact that in the post-mortem report, no injury has been shown on abdomen is no ground to acquit the accused.

Keeping in view the consistent findings of fact given by both the Courts below and in view of the evidence on record and in view of the fact that the findings are not perverse and nothing has been pointed out as to which material evidence has been misread and as to which material evidence has not been considered by the Courts below, I find that the findings given by the Courts below are correct as per evidence and law

which do not require any interference from this Court and the same are upheld.

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

November 22, 2016.

**(Inderjit Singh)**  
**Judge**

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| <b>NOTE:</b> | Whether speaking/reasoned: | Yes |
|              | Whether reportable:        | No  |