

216 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No. 4057 of 2012 (O&M)

Date of Decision: 11.09.2017

SONU @ PARDEEP

...Petitioner

VS.

STATE OF HARYANA

...Respondent

CRR No. 624 of 2013 (O&M)

NARESH

...Petitioner

VS.

SONU AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. Loveleen Dhaliwal, Advocate,
for the petitioner in CRR-4057-2012.

None for the petitioner in CRR-624-2013.

Mr. R.K. Makkad, DAG, Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest?

KULDIP SINGH, J. (ORAL)

This order will dispose of two cross-revisions bearing CRR No. 4057 of 2012 and CRR No. 624 of 2013 arising out of same occurrence..

Impugned in the present revision petition is the judgement dated 11.12.2012 passed by the learned Sessions Judge, Jind affirming the judgment of conviction and order of sentence dated 24.04.2012 of learned Additional Chief Judicial Magistrate, Jind vide which the present petitioner was convicted under Sections 323 and 325 of Indian Penal Code and was sentenced as under: -

Under Section 323 IPC:

Rigorous imprisonment for a period of three months and to pay a fine of ₹1,000/- and in case of non-payment of fine, convict shall further undergo rigorous imprisonment for 15 days.

Under Section 325 IPC:

Rigorous imprisonment for a period of one years and to pay a fine of ₹5,000/- and in case

of non-payment of fine, convict shall further undergo rigorous imprisonment for two months.

However, both the sentences were directed to run concurrently. It is further directed that out of the amount of fine realized, a sum of ₹ 5,000/- shall be paid to the injured namely Naresh as compensation under Section 357 Cr. P.C. whereas remaining amount of ₹1,000/- shall be appropriated towards costs of proceedings.

In the present revision, a criminal case was registered on the statement Ex. PW1/A of one Naresh-complainant wherein he submitted that he was running a chemist shop at Village Nidani, Jind. On 02.11.2009 at about 8:30 A.M, when he was at his shop, he had received a phone call from his father that his uncles i.e. elder brothers of his father, namely Satbir Singh and Balbir Singh alongwith Kaptan Singh Son of said Balbir Singh, Deepak and Sonu sons of Satbir Singh are following/chasing him with lathis etc. On receipt of said information, Naresh-complainant had rushed towards the fields after closing his chemist shop. However his uncles, Sonu, Kaptan and Deepak while riding a motorcycle met him on the way, stopped Naresh and started abusing him. The accused-petitioner Sonu @ Pardeep gave a lathi blow on the waist of the complainant. Another lathi blow was given on the shoulder of the complainant. Kaptan gave a lathi blow on the head of the complainant. Sonu @ Pardeep has given lathi blow on the left leg of the complainant. Thereafter, Balbir and Satbir, uncles of the complainant, gave him leg and fist blows on which the complainant fell down on the ground. In the meanwhile, Mahender and Surender, uncles of the complainant, came there and rescued him.

After the investigation, Dalbir and Satbir two uncles of the complainant alongwith their sons namely Deepak, Sonu and Kaptan were put

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on trial wherein the learned Additional Chief Judicial Magistrate, Jind acquitted 4 out of 5 accused whereas Sonu @ Pardeep was convicted and sentenced as aforesaid. The complainant as well as Sonu @ Pardeep have preferred cross appeals against the said judgment of conviction and order of sentence dated 24.02.2012 which were dismissed by the learned Sessions Judge, Jind vide judgment dated 11.12.2012.

I have heard learned counsel for petitioner as well as learned State counsel and have carefully gone through the case file.

Learned counsel for the petitioner has argued that there is misreading of the evidence and that the version given by the Naresh-complainant could not be believed. Since, out of the 5 accused, only Sonu @ Pardeep has filed the revision and acquittal of the remaining accused has become final, therefore, this Court will be confined to the role played by Sonu @ Pardeep. As per the statement of Naresh-complainant given to the police, Sonu @ Pardeep had given three Lathi blows. First was on the shoulder, second one was on the waist and the third one was on the left leg.

As per MLR Ex. PW3/B, Naresh Kumar-complainant had received the following two injuries :-

- 1. Reddish contusion of size 7 x 3 cm present on anterior medical surface of left lower leg. Advised X-ray.*
- 2. Reddish contusion of size 7 x 1.5 cm on posterior surface of left hand. Advised X-ray.*

On going through the aforesaid injuries, it comes out that injury No. 1 was a fracture and found to be grievous in nature. No other injury attributed to the petitioner i.e. on the waist, shoulder or leg was found, nor any

injury corresponding fist and leg blows was found. The injury attributed to the Kaptan on the head of the complainant-Naresh was also not found by the doctor. Probably, it is for this reason that the remaining accused were acquitted.

When the statement of complainant-Naresh (PW-1) is critically examined, it comes out that the parties are closely related. However, they were not in speaking terms since the childhood of the complainant. The complainant himself admitted in his cross-examination that one FIR under Section 326 of Indian Penal Code was registered against him. It goes to show that both the parties did not have good relations though they are closely related. Two of the accused named by him are his uncles and others are their sons. The statement of Dr. Ashish Jain, PW-6 shows that possibility of injury from a running bike cannot be ruled out. He also admitted that the injury on the left leg can be self suffered. Moreover, in the statement of radiologist, Dr Rajesh Gandhi, who medico legally examined the complainant, had admitted that the injury is possible due to fall on the road.

From the evidence one thing is established that two of the injuries attributed to the petitioner on the waist and shoulder were not found and the version of the complainant in this regard was found to be false. Similarly, injury attributed to Kaptan with the lathi blow on the head was also not detected and version qua him was also found to be false. The injuries attributed to Uncles of the complainant i.e. Balbir and Satbir, i.e. fist and leg blows were also not found. The injury No. 2 was found to be simple in nature being reddish contusion on the posterior surface of left hand and the same is minor in nature. Injury No. 1 is on the left lower leg is a fracture.

Now the question arises before this Court is that when the version of the complainant regarding most of the injuries was found to be false whether his version given qua Sonu @ Pardeep giving the lathi blow on the left lower leg can be believed or not?

I am of the view that when most of the version given by the complainant regarding remaining accused has been disbelieved and the parties are not in speaking terms with each other and the report of the doctor shows that injury can be self suffered or can be result of fall, the version of the complainant qua Sonu @ Pardeep also becomes doubtful. Since, the version of the petitioner is found to be doubtful, the other plea of the petitioner that he was below 18 years of age at the time of occurrence, need not be discussed. However, it is mentioned in the report obtained by the State that as per middle standard examination certificate, the date of birth of the accused-petitioner is 17.11.1991 and as per date of birth certificate, his date of birth is 18.12.1991. In both cases, he was below 18 years of age on the date of crime i.e. 02.11.2009. He is otherwise a juvenile offender but tried by the ordinary Court. It also comes out that uncle of the complainant, Mahender and Surender who had rescued the complainant were not examined. In this way, except the injured-complainant himself, none of the person who came at the spot was examined. Keeping in view the background of enmity between the parties, there was no independent corroboration from other witnesses.

After scrutinizing the evidence led before the lower court, I am of the view that the evidence has not been properly appreciated by the both the Courts below in the right perspective. Once the major portion of the version of the complainant has been disbelieved, the version of the complainant qua

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Sonu @ Pardeep is also to be disbelieved keeping in view the bitter relations between the parties and no corroboration from the independent witnesses.

Therefore, the revision bearing No. CRR-4057-2017 filed by Sonu @ Pardeep is allowed. The impugned judgement dated 11.12.2012 passed by the learned Sessions Judge, Jind affirming the judgment of conviction and order of sentence dated 24.04.2012 passed by the learned Additional Chief Judicial Magistrate, Jind are ordered to be set aside. Consequently, the petitioner is acquitted of all the charges framed against him.

In view of the above, criminal revision bearing No. CRR-624-2013 filed by Naresh is dismissed.

September 11, 2017

Suresh Kumar

(KULDIP SINGH)
JUDGE

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No