

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.249 of 2014

.....

Date of decision:10.3.2017

Ishwar Singh and another

...Petitioners

v.

State of Haryana

...Respondent

.....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Salil Bali, Advocate for the petitioners.

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

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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 18.1.2014 passed by learned Additional Sessions Judge, Bhiwani, whereby the appeal against the judgment of conviction dated 12.9.2011 and order of sentence dated 13.9.2011 passed by Chief Judicial Magistrate, Bhiwani, convicting the accused/petitioners for the offences under Sections 323, 325 read with Section 34 IPC and sentencing them to undergo imprisonment for six months each for the offence under Section 323 read with Section 34 IPC and further sentencing to undergo imprisonment for one year each and to pay a fine of ₹500/- each for the offence under Section 325 read with Section 34

IPC, has been dismissed.

From the record, I find that challan was presented against Ishwar Singh and Wazir Singh by Police of Police Station, Bawanikhera, for the offences under Sections 323 and 325 IPC in FIR No.123 dated 19.7.2006 registered for the offences under Sections 323 and 325 IPC at Police Station, Bawanikhera. The brief facts of the case as noted down by the learned Chief Judicial Magistrate, Bhiwani, in his judgment dated 12.9.2011 are as under:-

“Briefly, the case of the prosecution is that on 10.07.2006 HC Surender Singh along with other police officials was present at T. Point, General Hospital, Bawanikhera in connection with patrol duty and crime detection. In the meanwhile, one doctory Ruqa along with M.L.R of Mukesh daughter, of Krishan, resident of Bawanikhera received through peon of General Hospital, Bawanikhera. On this, HC Surender Singh recorded her statement to the effect that she is resident of above referred address and does sewing work. At about 8 A.M. there was drizzling and her father was cleaning the drain in front of their house and she was standing nearby her father. At that time, Wazir son of Ishwar, caste Harijan, resident of Ward No.6, Bawanikhera came and asked her father Krishan why he has blocked the drain and started abusing. On hearing his noise, his father Ishwar son of Hardas, Santosh wife of Ishwar, Suman daughter of Ishwar also came there. Her brother Vikas, her

mother Laxmi also came out of the house. Wazir started abusing when her father resisted, Wazir lifted brick from the street and gave its blow on her nose then Ishwar also lifted brick and gave its blow to her head. He also gave second brick blow which hit her on the lower side of her eye. Santosh and Suman after lifting the bricks from the street gave its blow to her father Krishan, brother Vikas and mother Laxmi. The inhabitants of the Mohalla arrived at the spot. The assailants fled away from the spot. Thereafter, complainant, her father Krishan, brother Vikas and mother Laxmi arrived in General Hospital, Bawanikhera for treatment. Doctor got admitted them in the hospital. All of them caused injuries to them. Legal action be taken.

3- On this complaint Ex.PB, D.D.R No. 22 dated 10.07.2006 was recorded. Thereafter, on the receipt of X-ray report as doctor opined fracture and injury on the person of complainant-Mukesh is grievous one, therefore, a prima facie case punishable under sections 323, 325 of the Indian Penal Code is made out against the accused. On this Ruqa Ex. PW47B was sent to the Police Station on the basis of which formal FIR was lodged. During the investigation, site plan of the place of occurrence was prepared. Accused were arrested. M.L.R and X-ray reports of the injured were obtained. Statements of the witnesses were recorded and after completing formalities of

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investigations challan against the accused was presented in the Court.”

The learned Chief Judicial Magistrate, Bhiwani, on the basis of evidence convicted and sentenced the accused as mentioned above. Aggrieved from this judgment, appeal was filed before the Court of Session, which was also dismissed vide judgment dated 18.1.2014 passed by learned Additional Sessions Judge, Bhiwani. Aggrieved from both these judgments, the present revision petition has been filed.

Notice of motion was issued in this case.

Mr. B.S. Virk, learned Deputy Advocate General, Haryana, has put in appearance on behalf of the respondent-State and contested this revision petition. Record of the lower Courts was also summoned.

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

From the record, I find that as per the prosecution version no X-ray films or X-ray report had been proved by the prosecution. Therefore, the injury grievous in nature had not been proved by the prosecution beyond a reasonable doubt. Nothing has been shown as to why any X-ray films or X-ray report had not been produced on the file nor proved as per law. Therefore, the prosecution has failed to prove the grievous injury and the Courts below have wrongly convicted the accused for the offence under Section 325 IPC.

As regards the offence under Section 323 IPC, I find that injured Krishan Kumar, Laxmi and Mukesh had consistently deposed

regarding the injuries caused by the accused/petitioners to them.

Keeping in view the facts and circumstances of the present case and in view of the consistent evidence produced by the PWs, I find that the prosecution has proved the case for the offence under Section 323 read with Section 34 IPC beyond a reasonable doubt. Therefore, the findings of the Courts below qua the offence under Section 323 IPC read with Section 34 IPC, are correct as per law and the conviction of the present petitioners is upheld for the said offence.

However, the present petitioners/accused are acquitted for the offence under Section 325 IPC.

Learned counsel for the petitioners prayed for taking a lenient view and also requested for reduction of sentence. Learned counsel for the petitioners argued that the petitioners have already undergone substantial period of sentence.

In view of the fact that the petitioners are suffering from the long protracted criminal proceedings since the year 2006 and keeping in view the nature of the offence i.e. Section 323 IPC and they are the first offenders, the sentence imposed upon the petitioners is reduced to already undergone i.e. more than three months and 11 days as per the order passed by this Court on April 29, 2014. Therefore, the sentence of imprisonment of the petitioners is reduced to already undergone but subject to payment of fine imposed under Section 323 read with Section 34 IPC, if not already paid.

Keeping in view the facts and circumstances of the present

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case, I accept this revision petition partly regarding the modification of the sentence and the sentence of the petitioners is reduced to already undergone. Since the petitioners are on bail, their bail bonds/surety bonds stand discharged.

The criminal revision petition is partly allowed accordingly.

March 10, 2017.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No