

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

CRR-2480-2015

Date of decision :13.09.2017

Chunni Lal

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. Suresh Kumar Kaushik, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

H.S. MADAAN, J.

Ashok Kumar and his father Pyare Lal residents of Dera Brahman, Sirta Road, Kaithal both of them being accused in FIR No.376 dated 12.08.2008 for offences under Sections 323, 325/34 IPC registered with Police Station City Kaithal faced trial by Chief Judicial Magistrate, Kaithal who vide judgment dated 11.10.2013 convicted accused Ashok Kumar for offences under sections 323, 325 IPC whereas acquitted accused Pyare Lal by giving him benefit of doubt, vide order dated 15.10.2013 accused Ashok Kumar was sentenced as follows:-

“Rigorous imprisonment for a period of six months and

also to pay a fine of ₹500/- and in default of payment of fine to further undergo simple imprisonment for a period of one month for offence punishable under Section 323 IPC.

Rigorous imprisonment for a period of one year and also to pay a fine of ₹500/- and in default of payment of fine to further undergo simple imprisonment for a period of one month for offence punishable under Section 325 IPC.

Both the sentences were ordered to run concurrently.

Feeling aggrieved Ashok Kumar had filed appeal against said judgment of his conviction and order of sentence which was disposed of by Sessions Judge, Kaithal vide judgment dated 06.04.2015 in terms of which the impugned judgment was upheld as regards conviction part but regarding sentence, the said judgment was modified and the accused/convict was granted benefit of probation directing that accused - convict be released on probation of good conduct for a period of 6 months on furnishing bonds in the sum of ₹10,000/- with one surety in the like amount on the condition that the convict shall deposit a sum of ₹35,000/- as compensation and out of which a sum of ₹10,000/- shall be paid to the injured-complainant Chunni Lal and a sum of ₹25,000/- shall be paid to injured PW-2 Kapoor Kaur. However, in case the accused-convict did not deposit the amount of compensation the order of modification qua sentence would automatically stands withdrawn and accused-convict would receive sentence as rendered by the trial Court.

This judgment left the complainant aggrieved and he has filed the revision petition in this Court praying that the same be accepted and the

impugned judgment passed by learned Sessions Judge, Kaithal modifying the judgment passed by Chief Judicial Magistrate, Kaithal sentencing the accused-convict be set aside and judgment passed by the trial Court regarding the sentence part be restored.

Notice of the revision petition was given to the respondents and the State had put in appearance.

Briefly stated facts of the case as per prosecution version are that complainant-Chunni Lal son of Late Sh. Harbans Lal resident of H. No.822, Dera Brahman, Patii Afgan, Sirta Road, Kaithal, Tehsil and District Kaithal, Haryana on 08.08.2008 at about 10:00 p.m. after having dinner was sitting on a string bed in the street in front of his house, in the meanwhile accused - Ashok Kumar who was under the influence of liquor having a *Gandasi* came there. He was having a quarrel with his family members, and thereafter he gave a *Gandasi* below on the head of the petitioner; that when wife of the complainant Kapoor Kaur tried to intervene to rescue complainant-Chunni Lal from accused – Ashok Kumar then said accused gave a *Gandasi* blow to Kapoor Kaur hitting her on left shoulder stating that he would teach a lesson to them to place string bed in the street; that Pyare Lal father of accused – Ashok Kumar had also arrived at the spot and he started giving slaps and fist blows to the complainant, on an alarm having been raised by family members of the complainant who had arrived at the spot, both the assailants run away from the spot; that complainant – Chunni Lal and his wife Smt. Kapoor Kaur were removed to hospital by their son Charanjit Singh, where they were medico legally examined. Formal FIR was registered against Ashok Kumar and Pyare Lal on the basis of statement

made by complainant - Chunni Lal. The accused had been arrested and after completion of investigation challan was filed.

After filing of challan in the Court of Chief Judicial Magistrate, Kaithal, they faced trial and accused - Ashok Kumar was convicted and sentenced by the trial Court as mentioned supra, whereas his father Pyare Lal was acquitted of the charge framed against him.

I have heard learned counsel for the revision petitioner, learned State counsel, besides, going through the record.

The law is well settled that revisional jurisdiction of a Court is some what limited in nature unlike appellate jurisdiction. The revisional Court is to interfere only if the order passed by the Court below is patently illegal and perverse which means the error in the order must be apparent on the face of it and the order passed should have been in gross violation of settled principles of criminal jurisprudence. The order in hand does not suffer from any such infirmity. It is well settled principle that revisional Court is not be upset the order passed by the Court below in a light manner, simply because of the reason that another view in the matter is possible.

Here the judgment passed by the first Appellate Court / Court of Sessions Judge, Kaithal does not suffer from any illegality or legal infirmity much less the same being perverse or having been passed ignoring settled principles of criminal jurisprudence. Such Court had considered the relevant factors while coming to the conclusion that it was a fit case to grant benefit of probation to the accused-convict. The trend of modern penology is towards reform, rather than retribution. The criminals are treated like patients and their rehabilitation in the society is tried for.

Learned Sessions Judge, Kaithal has kept all these facts and circumstances in view while coming to the opinion that accused-convict deserved to be given benefit of probation. For ready reference relevant paras of the judgment are reproduced as under:-

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22. The MLRs (Ex.PW5/A and Ex.PW5/B) show that injured PW1 Chunni Lal and PW2 Kapoor Kaur reached General Hospital, Kaithal at 10.45 PM on 8.8.2008 and gave history of fight. Ruqqa (Ex.PW5/C) as proved by Dr.Vishal Singla shows that it was immediately sent on 8.8.2008. He also stated that on application dated 9.8.2008 (Ex.PW4/A) he declared injured unfit to make statement. The endorsement (Ex.PW5/D) shows that initially PWs were declared unfit and later on fit to make statement. PW4 the investigating officer stated that on receipt of ruqqa on 9.8.2008, he went to General Hospital, Kaithal and recorded statement of injured Chunni Lal (Ex.PA) and made his Crl.A. No. 12 of 2015 Ashok Kumar Vs. State of Haryana (CIS No.479-13) endorsement (Ex.PW4/A). All these facts and circumstances do not suggest that there was any delay that too purposeful in lodging the FIR. Whatever time was consumed in lodging the FIR, seems, it was normal and natural, for the police to arrive at the spot after receiving information regarding the admission of injured in the hospital as a case of assault.

23. It would be too far to expect from an injured or their

relatives to go to police first than to get medical aid for him. The natural and expected conduct of the victim or his relative is to first go to the hospital and get medical aid and then rush to police. Sometimes, a victim may not even know the importance of lodging the FIR promptly. Here in the present case, when doctor had sent the information, it was natural for victim and his relative to wait for arrival of police. If they did not go to police on their own, it is not fatal to them. Likewise if on the way to hospital they did not inform the police again is not fatal, as this shows that their first concern was to take medical aid. On this score, their conduct cannot be doubted. Further, they have stated that police had come at the spot and inquired. There was thus, no delay on part of PWs.

24. PWs (PW1/PW2/PW3/PW7) have stated that police had come at the spot on the day of incident. But they all stated that police did not record their statements. No question was asked from them nor suggested to them that they did not purposely gave statements to the police. There appears nothing foul on the part of PWs and it cannot be termed that they purposely did not give statements to police about the occurrence. On the other hand, SI Mahabir Parshad (PW4) the CrI.A. No. 12 of 2015 Ashok Kumar Vs. State of Haryana (CIS No.479-13) investigating officer stated that he came on duty on 9.8.2008, and got the information and went to the hospital and lodged the report. No further question was asked to clarify if any

report was lodged on 8.8.2008. If any police officer came at the spot, it was his duty to lodge the complaint. The version of PWs cannot be doubted on account of any lapse on the part of the police.

25. In view of the circumstances, discussed above, it is held that there was no purposeful delay in lodging FIR on the part of complainant. Whatever delay has occurred, the same appear natural and reasonable and duly explained. The prosecution discharged its onus to explain the delay.

26. It was urged that there is no aid from the independent witness. The PWs so far examined are interested witnesses and are relatives being members of the family. In the authority reported as State of Andhra Pradesh Vs Punati Ramulu AIR 1993 (SC) 2644, it was held by the Hon'ble Apex Court that evidence of a witness cannot be discarded for the mere fact that he was an interested witness. The relationship or the partisan nature of the evidence only puts the court on its guard to scrutinize the evidence more carefully.

27. Having considered the statements of PWs, the same is inspiring and worthy of reliance. No material discrepancy as to manner of occurrence and role played by the appellant-accused in causing injuries to PWs (PW1 and PW2), as spelled out by PWs, could be brought by the defence side in their cross examination. The PWs have specifically stated that accused is their relative. PW1 and PW2 stated that accused is their Crl.A.

No. 12 of 2015 Ashok Kumar Vs. State of Haryana (CIS No.479-13) nephew. PWs also stated that in routine/ordinary wrangle or disputes do take place in the families of the complainant or the accused, whereas there had been no enmity between the parties. There is thus, nothing to discard their said version. The appellant-accused too, did not bring out any facts or circumstance to show and suggest that there was any enmity between the parties and that was reason of his false implication.

28. The minor discrepancies as to who took injured to hospital or earlier any panchayat was convened, or that PW3 was confronted with statement (Ex.DA) wherein he did not speak of issuance of threat by accused, are hardly circumstances to reject the testimony of witnesses, when tested on the whole in the given allegations of the prosecution case. As these are minor discrepancies and do not touch the material and broad aspects of case. Such discrepancies are normal to occur. In fact, in an attempt to do well, PW often exaggerate the things. PW Charanjeet did state that he was told by his parents that accused gave injuries to them. However, it does not affect his statement on the account that it is hearsay. But his statement does show his conduct that when he after hearing the noise of fight arrived at the spot, the injured told him the cause of their receiving injuries. His statement is relevant in the matter in issue about the allegations that accused has inflicted injuries

on PWs.

29. The oral account of PWs received support from the medical evidence. PW6 (sinc PW5) Dr.Vishal Singla though, stated that injuries in question could also appear by fall but it is no case suggested by the accused. Rather, he suggested that PW1 and PW2 fought with each other Crl.A. No. 12 of 2015 Ashok Kumar Vs. State of Haryana (CIS No.479-13) and suffered injuries. As far as seat of injuries and time of injuries is concerned, the medical evidence helped their version.

30. In MLR (Ex.PW5/A) of PW1 Chunni Lal the doctor has opined the weapon used as blunt and PW1 has stated that sword (a sharp edged weapon) was used. The injury has appeared on head. It may have fallen from blunt side when struck the head. The head is a dense area, lacerated wound would appear with sharp object also, and having seen the nature of wound, the doctor gave the nature of weapon as blunt. The direct statements of PWs need to be preferred over the opinionated view of doctor, who is not an eye witness. As far as weapon used for PW2 is concerned, the same has been held as blunt by PW Dr.Vishal Singla. It thus, supports the statements of PWs as far as use of weapon is concerned as PWs have stated that accused caused injuries upon PW2 with reverse side of weapon. It is not a case where medical evidence is running contrary to oral account.

31. PWs stated that at the time of occurrence (which was night

time) when assault was given none came from nearby. The investigating officer (PW4) stated that except the houses of parties, there are no other houses, nearby. It was natural that none would have come at the spot. Only accused or family members of complainant party were the witnesses to the occurrence. Though, PW6 stated that persons from neighborhood came at the spot. Yet, it would not make any difference as he stated they came after hearing the noise. In the circumstances, the neighbours cannot be said 18 CrI.A. No. 12 of 2015 Ashok Kumar Vs. State of Haryana (CIS No.479-13) to be eye witnesses, who could speak on the role of accused. Their non joining is thus, not fatal.

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Learned counsel for the revision-petitioner has referred to a few authorities in support of his contention the benefit of probation was wrong granted to the accused-convict and the wrong be undone by accepting the revision petition. The authorities are as follows:-

- i. State vs. Naguesh G. Shet Govenkar and another, 1970 AIR (GOA) 49.
- ii. Prithvi Raj vs. Kamlesh Kumar, 2004(4) RCR (Criminal) 946.
- iii. Jabbar Singh vs. State of Rajasthan and others, 2013(26) RCR (Criminal) 354.
- iv. Upendra Nath Chaudhary vs. High Court of Judicature at Patna and another, 2008(1) Crimes 521.
- v. Halappa and others vs. State of Karnataka, 2009(4) RCR

(Criminal) 194.

vi. M.C.D. vs. State of Delhi and another, 2005 AIR (SC) 2658.

But those authorities are not applicable due to different facts and circumstances, besides, the context in which such observations have been made.

It has to be taken note that both the injured have been adequately compensated by making the accused-convict pay a sum of ₹35,000/- to them on account of the expenditure they might have incurred for their medical treatment and for shock, pain and suffering etc. Thus I find that there is no reason to interfere in the judgment passed by learned Sessions Judge, Kaithal granting benefit of probation to the accused-convict. That judgment is upheld, revision petition is found to be without merit and dismissed accordingly.

13.09.2017

Gaurav Sorot

**(H.S. MADAAN)
JUDGE**

1. Whether reportable? **No**

2. Whether speaking / reasoned? **Yes**