

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

CRR-2737-2015 (O&M)
Date of Decision: 27.10.2017

Rajinder Bhatia

..Petitioner

versus

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. M.S.Sachdev, Advocate, for the petitioner.

RAMENDRA JAIN, J.

CRM-24148 of 2015

1. For the reasons stated in the application for condonation of delay of 38 days in filing the revision, which is duly supported by an affidavit, the same is allowed. Accordingly, delay of 38 days in filing revision is condoned.

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2. Through this revision, the petitioner has laid challenge to judgment of conviction dated 16.3.2015 of the lower appellate court holding him guilty and convicted under sections 323 and 325 IPC by modifying the impugned judgment of the trial court dated 16.2.2013 acquitting him under sections 325 and 506 IPC and convicting him only under section 323 IPC.

3. Briefly stated, at around 8.45 PM on 6.9.2005 the petitioner along with 3-4 companions gave fist blows on the mouth and nose of the complainant, as a result of which, his tooth broke and blood started oozing out from his nose. On raising a hue and cry by complainant Sameer Bhatia,

one Arvinder Pal Singh and Dr. T.P.Singh came at the spot and rescued him from the clutches of the petitioner. After investigation, a final report under section 173, Code of Criminal Procedure, was filed against the petitioner.

4. The trial court, on completion of trial to the satisfaction of both the sides, while acquitting the petitioner under sections 325 and 506 IPC, convicted him under section 323 IPC vide impugned judgment and order of sentence dated 16.2.2013 and released him on probation subject to his furnishing personal bond in the sum of Rs.10,000/- with one surety in the like amount undertaking to keep peace and be of good behaviour for a period of six months.

5. The petitioner as well as complainant Sameer Bhatia filed their respective appeals. In appeal, the complainant sought conviction of the petitioner under sections 325 and 506 IPC and setting aside the order of sentence dated 16.2.2013 releasing him on probation. The petitioner, through his appeal, sought his acquittal even under section 323 IPC. The first appellate court, after hearing both the sides, modified the impugned judgment of conviction of the trial court and also convicted the petitioner under section 325 IPC, but maintained the order of sentence releasing the petitioner on probation under section 323 IPC, while dismissing the appeal of the complainant vide judgment dated 16.3.2015.

6. Learned counsel for the petitioner contends that the petitioner, through his appeal, had sought his acquittal even under section 323 IPC before the first appellate court, who instead of doing so, also convicted him under section 325 IPC. Dr. T.P.Singh, who had, allegedly, rescued the complainant from the petitioner was a Dental Surgeon and thus, was a

material witness, even named in the FIR, was not examined by the prosecution, which has rendered the entire prosecution case doubtful. Therefore, the petitioner ought to have been acquitted by both the courts below. There was no X-ray report qua declaring nature of injury upon the complainant-injured as grievous, therefore, the petitioner has wrongly been convicted under section 325 IPC because as per Modi Jurisprudence, x-ray report is must before opining an injury as grievous one. In support of his contention, he has placed reliance upon the **judgments in State of Punjab versus Harinder Singh @ Raju 2008(2) RCR (Criminal) 294 and State of Punjab versus Tehal Singh, 1992(2) RCR (Criminal) 184**

7. Having given thoughtful consideration to the submissions made by learned counsel for the petitioner, this court is of the view that the revision, being without any merit, deserves to be dismissed for the reasons to follow:-

8. Admittedly, both the petitioner and complainant are real brothers. Dr. Gurpal Singh stepped into the witness box as PW4 and deposed that he medico-legally examined the complainant and found following injuries on his person:-

“1. Central incisor tooth of left side of upper jaw was fractured.

Swelling was present on the upper lip with laceration inside the upper lip corresponding to the injury. Fresh blood was oozing from the mouth and from the base of fractured tooth. Hygienic condition of teeth was good. Kept for dental opinion.

2. swelling was present on the whole of nose. Tenderness was present. Fresh blood was present in both nostrils. X-ray nose A.P.lateral was advised.”

9. This witness proved Medico-legal Report Ex.PW4/A, Pictorial diagram Ex. PW4/B and Dental Surgeon's report Ex.PW4/C. PW5 Dr. A.K.Sharma, declared injury no.1 as grievous on the basis of Medico-legal Report of complainant as also examined him with naked eye noticing that there was fracture of crown of upper left central incisor tooth menial to distal side and more on the labial and on incisor surface of the upper left central incisor tooth.

10. The grouse of the petitioner is that said declaration by PW5 Dr.A.K.Sharma of injury no.1 as grievous without X-ray examination ought to have been ignored by both the courts below.

11. The learned trial court, after analysing the ocular as well as medical evidence on the record observed in para 13 of its judgment that “non-conducting of x-ray examination and declaring injury concerned as grievous on the basis of visual observations only by the doctor concerned is fatal to the case of prosecution. Thus, I hereby hold that prosecution has failed to bring home the guilt of accused for offence under section 325 IPC, beyond doubt.” While dealing with section 323 IPC on the basis of testimony of PW2 complainant-injured Sameer Bhatia that accused Rajinder Bhatia inflicted injuries on his face with fist blows and gave other latent injuries as well, which are corroborated by the medical evidence as also by an eye witness, namely, PW1 Arwinder Pal Singh, the trial court observed that non-examination of the other eye-witness, namely, Dr. T.P.Singh, whose name figured in the FIR, is not fatal to the prosecution, inasmuch as the conviction of the accused can be sustained from the testimony of single witness and as such, the prosecution has succeeded in bringing home the guilt of accused for offence under section 323 IPC beyond doubt.

12. The above observation made by the learned trial court on the strength of ocular as well as documentary evidence, in my considered opinion, was rightly reversed by the first appellate court, observing in para 9 of its judgment, which reads as follows:-

“ A collective reading of both these reports makes it clear that both the doctors found the tooth to be fractured. Moreover, the Dental Surgeon in his examination-in-chief has clearly stated that the blood was seen oozing from the pulp of the tooth. It may be mentioned that pulp of the tooth is located in the centre of each tooth which could only be visible in case the tooth is broken. It is the argument of the counsel for the accused that Section 325 IPC cannot be sustained where the injury, especially the bony one, is not examined through x-ray and that the Radiologist has to be examined in order to prove a fracture. The counsel has cited various judgments to substantiate this argument. These judgments, however, would not be applicable as in the present case, the injury is of a tooth which was visible from the naked eye and hence, this injury could be differentiated from other injuries where the fracture has to be ascertained through an x-ray as the injury is not visible on the surface. As per the version of the injured, at the time of incident, his tooth has fallen off. Then as per the report of the treating doctor, the central incisor tooth was fractured and swelling corresponding to the injury was present on the upper lip. Further, the dental expert Dr. A.K.Sharma in his statement has clearly stated that there is fracture of crown of upper left

central incisor tooth menial to distal side and more on the labial and on incisal surface of the upper left central incisor tooth. In his report Ex PW4/C he has mentioned that there was huge swelling of the upper lip and there was contusion of the oral mucosa. There is blood drop seen from the pulp of the fractured tooth. On the basis of the report, Dr.Gurpal Singh has made his endorsement Ex.PW4/D wherein he mentioned that as per dental surgeon opinion, injury No.1 is declared grievous in nature. I am of the considered view that such injury is not likely to be self suffered and can only be inflicted through external violence. Here, I am supported by **Dhana Singh Vs. State 1993 Vol.3 RCR 400**, wherein it has been held that where in the opinion of doctor the injury was declared as grievous, there the contention of the counsel that in the absence of X-ray it could not be held that injury was grievous, was repelled and accused was convicted under Section 326 IPC. I am also supported by **State of Punjab vs. Nasib Singh, 2003 (3) RCR (Criminal) 304 (P&H)**, wherein it was held that “Mere absence of X-ray film will not convert the offence from section 326 to 324 IPC when all ingredients of Section 326 IPC were proved.” Therefore, in every case it is not imperative that X-ray must be done. Hence, the finding of the learned trial court qua the first issue is hereby reversed. The accused is held guilty of causing injury of section 325 IPC.”

13. In view of the finding recorded by the first appellate court, convicting and sentencing the petitioner under section 325 IPC, in my

considered opinion, is correct and does not call for interference. Accordingly, the contention of the learned counsel that declaration by PW5 Dr. A.K.Sharma with respect to injury no.1 as grievous without X-ray examination should not have been ignored by both the courts below, does not find force keeping in view the fact that a Dental Surgeon, on the basis of his own experience, can visualise an injury of a tooth with naked eyes and declare it grievous even without x-ray examination. Learned counsel for the petitioner could not point out any infirmity and illegality in the above findings of the first appellate court nor this court finds any infirmity in the same. Moreso, the doctors, in due course of time, with their vast experience sometime, do not require any assistance from X-ray or other tests. They, without any such evidence with their long experience, can opine about the nature of injury examined by them. In the instant case, there is no illegality, in case PW5 Dr. A.K.Sharma has declared tooth injury grievous one, being completely visible, which was caused by the petitioner with fist blows on the face and mouth of the complainant.

14. So far as the judgments relied upon by the learned counsel for the petitioner that non-examination of the witness named in the FIR, would lead to rejection of all the evidence are concerned, the facts and circumstances of the instant case are entirely different from the judgments referred to above, inasmuch as one of the eye witnesses, namely, PW1 Arvinder Pal Singh, cited as an eye witness, was examined by the prosecution, who corroborated the testimony of the complainant in its entirety. His evidence is sufficient to connect the accused with the commission of crime. It is settled proposition of law that the quality has to be adjudged and not the quantity of the witnesses.

15. In view of the foregoing reasons, this court does not see any illegality or perversity in the impugned judgment of conviction recorded by the first appellate court. Accordingly, revision, being without any merit, fails and is dismissed.

27.10.2017
VK

(RAMENDRA JAIN)
JUDGE

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| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether Reportable: | Yes/No |