

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No.3117 of 2015 (O&M)
Date of Decision: February 21st, 2017

Vinod @ Dhayala Gurjar
...Petitioner
Versus
State of Haryana
...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ashwani Bhardwaj, Advocate
for the petitioner.
Mr. R.K. Singla, A.A.G., Haryana.

AUGUSTINE GEORGE MASIH, J.

Challenging the judgment dated 28.11.2016 passed by the Additional Sessions Judge, Bhiwani, dismissing the appeal preferred by the petitioner against the judgment and order of conviction and sentence dated 03.03.2012 passed by the Sub Divisional Judicial Magistrate, Loharu, holding petitioner-Vinod alias Dhayala Gurjar and his co-accused Sanjay, guilty of offences under Sections 387 and 452 read with Section 34 of the Indian Penal Code with the sentence as follows:-

U/s 387/34 IPC	Rigorous imprisonment for a period of three years and to pay a fine of ₹3,000/- each and in default of payment of fine, to undergo simple imprisonment of six months each.
U/s 452/34 IPC	Rigorous imprisonment for a period of three years and to pay a fine of ₹2,000/- each and in default of payment of fine, to undergo simple imprisonment of six months each.

Apart from the above, compensation of ₹60,000/- was also granted in favour of complainant PW-4 Ravi Kumar. Both the sentences were ordered to run concurrently.

2. At the outset, it requires mention that the co-accused of the petitioner, Sanjay, has not preferred any Revision and has accepted the order of conviction and sentence after the dismissal of his appeal by the impugned judgment dated 28.11.2016.

3. Briefly the facts are that an application dated 28.04.2011 Exhibit PW4/A was submitted by Ravi Kumar PW4 alleging that on the said date at about 1:00 PM, he along with his cousin-Narender Sangwan PW-2 was sitting in his shop Patanjali Chikitsalaya situated near main Bus Stand, Behal. Six young boys entered the shop out of which one was armed with an iron rod, who was identified as Vinod alias Dhayala Gurjar and another named as Sanjay along with four others armed with armed with angle and *danda* and called for revenge to teach a lesson for the propaganda against corruption. When the complainant enquired about the grievance, Vinod alias Dhayala Gurjar (petitioner herein) threatened that they would destroy their medicines in the shop. He also stated that he was Vinod alias Dhayala Gurjar and was the don of the City Behal. These persons overturned the stock of medicines etc. available in the shop and also destroyed the table, books etc. One of them caught hold of the neck of the complainant and threatened that ₹50,000/- as ransom be paid to them by 5:00 PM. This was only a trailer which was being shown to them and if they do not give the ransom, the entire film will follow and thereafter they left the place. It would not be out of way to mention here that the complainant had called the police but he was asked to come to the Police Station and accordingly, he had gone there and submitted his complaint Exhibit PW4/A, on the basis of which FIR No.43 dated 28.04.2011 was registered against the petitioner, co-accused Sanjay

and four others whose names were not known. Both Vinod alias Dhayala Gurjar and Sanjay were arrested and since the other could not be identified nor could they be traced out, challan was only presented against two persons.

4. In order to prove the case of the prosecution, Head Constable Hardayal Singh was examined as PW-1, Narender Singh as PW-2, ASI Pawan Kumar as PW-3, Ravi Kumar as PW-4 and Head Constable Ramesh Chander as PW-5. The material witnesses would be Ravi Kumar PW-4 who is the complainant and Narender Singh PW-2 who is an eyewitness. Both these witnesses have supported the case of the prosecution. PW-3 ASI Pawan Kumar had recovered the iron angle from the house of petitioner-Vinod alias Dhayala Gurjar on the basis of his disclosure statement Exhibit PW3/C resulting in the conviction and sentence as recorded above.

5. It is the contention of learned counsel for the petitioner that there are discrepancies in the statements of the witnesses. He has referred to the complaint of Ravi Kumar that there were six accused who were armed with an iron rod, angle and *danda*. In the statement before the Court, Ravi Kumar PW-4 had stated that petitioner-Vinod alias Dhayala Gurjar was having iron rod and three of them were having *dandas*, whereas the remaining two were empty handed. PW-2 Narender Singh has stated that the iron rod had been thrown in the shop after damaging the same, whereas the recovery has been shown of the said iron angle from the house of the petitioner on the basis of his disclosure statement as per the statement of PW-3 ASI Pawan Kumar which is self-contradictory. If the iron rod had been thrown at the shop of the complainant then there was no question

of it being recovered from the possession of the petitioner. That apart, he contends that the site plan as has been prepared by the Investigating Officer Exhibit PW3/B does not show that the medicines and the counter has been damaged as stated by the complainant and the eyewitness. He submits that there are major contradictions in the statements recorded under Section 161 Cr.P.C. of the witnesses and improvements have also been made while appearing as witnesses in the Court. This gives an indication that the petitioner and the co-accused have been falsely implicated in the case out of enmity as the petitioner was not the follower of Baba Ramdev, whereas admittedly the complainant is one. Assertion has also been made that the Courts below have not properly appreciated the evidence and on the basis of the said evidence, the conviction could not have been ordered by the Courts below. Prayer has thus been made for setting aside the conviction and sentence imposed by the Courts below.

6. On the other hand, counsel for the State has asserted that the discrepancies as have been pointed out by the counsel for the petitioner are of minor nature which does not effect the material evidence which has been led by the prosecution. Even in the cross-examination, the credibility of the eyewitnesses could not be dented with. The contradictions, if any, are minor and insignificant and, therefore, have rightly been overlooked by the Courts below as the material evidence corroborates the case of the prosecution beyond doubt. The conviction and sentence thus passed by the Courts below do not call for interference and deserve to be upheld.

7. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the records and the evidence referred to by them.

8. It is true that there are minor discrepancies in the statement of PW 4 Ravi Kumar, the complainant and PW-2 Narender Singh but these are not material and significant which could be termed as fatal for the case of the prosecution. The alleged contradictions as has been pointed out by learned counsel for the petitioner cannot be in real terms be termed as contradictions but minor and insignificant difference in putting forth the things. It is well settled in law and is also common knowledge and experience that with the lapse of time, a person tends to fail to recollect exact and identical narration with regard to the incident which would have occurred. The same can be attributed to the lapse of memory which would lead to minor errors of perception and observation which cannot be used by the accused to its benefit except where the said discrepancy is major which goes to the basic root and crux of the incident. Similarly minor improvements which creep in the statement of the witnesses when they appear in Court after a period of time cannot be ruled out and thus, cannot be used to demolish the testimony or the prosecution case. If the material statement in the complaint/FIR has been corroborated on the basis of the cogent and reliable evidence produced by the prosecution, the Court needs to weigh the same in the right perspective and proceed with the case without being overwhelmed or overawed by minor discrepancies. In *Bishna alias Bhiswadeb Mehato Versus State of West Bengal, 2005(4) RCR (Criminal) SC 805*, the position stands clarified in this regard that minor discrepancies or improvements do not necessarily demolish the testimony of a witness and consequently the case of the prosecution.

9. The principle having been settled, the discrepancies as pointed out by the counsel for the petitioner that the iron rod is stated to have been

thrown at the shop while going away by the petitioner as per the statement of PW-4 Ravi Kumar, complainant, whereas the recovery has been effected as per Exhibit P4/A from the house of the petitioner on the basis of his disclosure statement by the Investigating Officer PW-3 ASI Pawan Kumar, this assertion when evaluated in the light of the statement and the evidence brought on record in the complaint Exhibit PW4/A, does not mention that the iron rod was thrown at the spot by the petitioner. The petitioner thus cannot take benefit of the statement of the complainant in Court which is after a considerable period of time, especially when the recovery has been duly proved at the behest and on the disclosure statement of petitioner-Vinod alias Dhayala Gurjar. For the same reason, recovery which is stated to have been planted upon the petitioner, cannot be accepted.

10. As regards the submission of the counsel for the petitioner that the Investigating Officer in the site plan Exhibit PW3/B has not mentioned nor has it been shown that any damage has been caused to the shop, suffice it to say that in the site plan Exhibit PW3/B, only the location of the shop and the place of incidence has been shown and mentioned, nothing more has been highlighted therein and, therefore, no benefit thereof can be derived by the petitioner or can be granted to him, especially in the light of the statement of complainant PW-4 Ravi Kumar and the eyewitness PW-2 Narender Singh.

11. Assertion of the counsel for the petitioner that the investigation has not been done earnestly as the challan has finally been presented only against the petitioner and one Sanjay, whereas a positive assertion has been made that there were six boys who had come to the shop and caused damage, again cannot be accepted as the other four persons were neither

identified nor could they be traced or arrested. It may be pointed out here that the names of both the accused who have been put to trial have been mentioned in the complaint on the basis of which the FIR was registered. They have been identified by the two eyewitnesses. That apart, recovery of iron rod has also been effected from the petitioner. The petitioner along with the co-accused had forcibly entered into the premises of the complainant and made an effort to extort money by demanding ₹50,000/- from him by giving him fear of death and grievous hurt. The evidence as led by the prosecution clearly establishes the offences having been committed by the two accused under Sections 387 and 452 read with Section 34 of the Indian Penal Code and thus have been rightly convicted by the Courts below. Similarly the sentence imposed upon the petitioner and his co-accused is fully justified which do not call for interference by this Court.

12. In view of the above, the judgment and order passed by the Courts below convicting and sentencing the petitioner, are hereby upheld.

13. It may be added here that the custody certificate has been produced by the State counsel, according to which the petitioner has already undergone the sentence in this case.

14. The revision being devoid of merit stands dismissed.

15. In the light of the dismissal of the revision petition, CRM No.27382 of 2015, stands disposed of as infructuous.

February 21st, 2017
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No