

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR 3295-2014 (O&M)
Date of decision: 02.11.2017

Rajesh

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.R.N.Lohan, Advocate for the petitioner
Mr.R.K.Makkad, Deputy Advocate General, Haryana

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

This is revision against the judgment dated 7.10.2014, passed by learned Sessions Judge, Jind, affirming that of learned Chief Judicial Magistrate, Jind dated 11.9.2013, vide which, present petitioner was convicted under Sections 332 and 353 IPC and sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1000/- under Section 332 IPC. He was further sentenced to undergo Rigorous Imprisonment for one year and fine of Rs.1000/- under Section 353 IPC. In default of payment of fines, he was ordered to undergo further Simple Imprisonment for two months. Both the sentences were directed to run concurrently.

Allegations against the present petitioner, who is husband of Sunita -Sarpanch of village Jaijawanti are that on 29.7.2011, Dev Raj, BDPO, accompanied by Dharambir Singh Kharb, SEPO and his driver Prem

Chand, went to the said village in connection with inquiry regarding cutting of illegal trees by village Sarpanch. It was at about 12.00 noon, when Dev Raj was inspecting the site, then accused Rajesh who is husband of village Sarpanch namely Sunita, came armed with Lathi (stick) and after abusing the petitioner for coming to the spot and inquiring into the matter, gave lathi blows on the forehead, fingers of right hand and 3-4 more blows on the right leg of Dev Raj, BDPO. Accused Rajesh also gave some leg and fist blows, due to which, Dev Raj suffered injuries on the nose as a result of which there was profused bleeding from his nose. When BDPO tried to make a phone call, accused gave a lathi blow, which damaged his mobile.

Before the trial Court, the prosecution examined, Dev Raj, BDPO to prove their case as PW1, Dr.Dhan Kumar as PW2, ASI Ram Niwas as PW3, ASI Jai Bhagwan as PW4, Parveen Kumar as PW5, Om Parkash EASI as PW6, Dr.Jatinder Kumar, Medical Officer as PW7.

In the statement recorded under Section 313 Cr.P.C., accused while denying evidence led against him, took the plea that his wife Sunita is Sarpanch of village Jijawanti. On 29.7.2011, Dev Raj, BDPO entered his house and teased his wife. Many people gathered at the spot, who had a scuffle with Dev Raj, BDPO. He was not present in the village on that day. His wife had made a complaint to the police on the same day. In defence, accused examined Prem Chand driver, who had retired from service at that time as DW1 and Ram Chander ASI as DW2.

I have heard learned counsel for both the parties and have also carefully perused the record.

Learned counsel for the petitioner has vehemently argued that in this case, the material eye witness i.e. Dharambir Singh Kharb, SEPO

was not examined to corroborate the statement of Dev Raj, BDPO. Prem Chand driver was examined as DW1, who has stated that he had not seen the occurrence, though in examination-in-chief, he has stated that BDPO has come and after suffering of injuries, he had taken him to hospital. ASI Ram Chander has affirmed that a complaint was made on 29.7.2011 by Sunita village Sarpanch against the said BDPO.

Learned counsel for the petitioner has further argued that PW5 Parveen Kumar has not supported the prosecution case and in this way, there is sole testimony of Dev Raj, BDPO.

Now, the question would arise as to whether defence version is to be believed or the sole statement or the complainant, supported by the medical evidence, is to be believed?

As per statement of Dr.Dhan Kumar Medical Officer, four injuries were found on the person of Dev Raj when he was medico legally examined on 29.7.2011 at 1.00 p.m. The said injuries are reproduced as under:-

1. *Lacerated wound (5x1 cm) s.d on middle of forehead.*
Kind of weapon used-blunt. Duration within 24 hours.
Nature of injury after X-ray and Surgical opinion.
4. *Lacerated wound on nose (3x0.5 cm) s.d*
Kind of weapon used-blunt. Duration within 24 hours.
Nature of injury: After X-ray and ENT Surgeon opinion.
6. *Swelling Rt ankle on medial aspect (7x7 cm).*
Kind of weapon used blunt. Duration within 24 hours.
Nature of injury: After X-ray & Ortho Surgeon opinion.
8. *Pain Rt Index finger.*

All the said injuries were later on found to be simple in nature.

The perusal of the injuries shows that injury no.1 is on the middle of forehead and injury no.2 is on the nose. Normally, injury on the head and

nose cannot be self inflicted. Dev Raj, who is a public servant, while appearing as PW1, has fully supported his case and stated that when he had gone to spot in connection with the inquiry regarding cutting of trees by the village Sarpanch, he was assaulted by the present accused, who is husband of the village Sarpanch, namely, Sunita. He has also detailed the injuries as given in the complaint.

I am of the view that statement of DW1 driver cannot be given much weightage. He has already retired from the service. He has not denied the injury but has stated that the injuries were not inflicted in his presence. However, he has admitted that he has taken the BDPO to the Civil Hospital. The medical examination of BDPO was conducted within one hour of the injuries. Therefore, the fabrication of injuries is ruled out. So far as defence version is concerned, it appears to be a counter blast to move a complaint which was never pressed, when the police had not taken any action on the complaint regarding molestation of the lady village Sarpanch. She being conversant with the law, could have filed a criminal complaint before a Magistrate, which was never done. It being so, filing of the complaint before the police on the same day, appears to be an act of defence, after coming to know that her husband is involved in an assault on the BDPO. BDPO has no enmity with said Rajesh or Sunita Sarpanch and there is no reason for him to self inflict the injuries and level false allegations against the petitioner.

Learned counsel for the petitioner has further argued that in this case, a complaint which was being inquired into by BDPO has not been produced on file.

I am of the view that even if it is not produced, the BDPO has

claimed that regarding cutting of trees a separate FIR is registered. The said complaint was the reason for BDPO to visit the village for inquiry. BDPO could otherwise visit the village in case he is given an oral complaint. The fact remains that he was assaulted by the accused petitioner and given as much as four injuries with the help of lathi.

Learned counsel for the petitioner further contends that as per statement of DW2 ASI Ram Chander, a complaint was filed by the village Sarpanch at 10.30 a.m. Statement of ASI Ram Chander is belied from the complaint Ex.DA which is typed on computer and according to which, she was molested at his house, allegedly by Dev Raj, BDPO at 10.30 a.m. It appears that thereafter, it might have taken sometime to type the complaint and then approach the police. Therefore, the complaint cannot be received at the police station at 10.30 a.m., as claimed by DW2 ASI Ram Chander.

Both the Courts below have believed the version given by the victim. There is no ground to differ with the concurrent findings recorded by both the Courts below. There are no merits in the present petition.

Resultantly, the present revision petition stands dismissed.

Petitioner be re-arrested and committed to jail to undergo the remaining part of sentence.

02.11.2017

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

No