

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

**CRR No.3889 of 2014 (O&M)
Date of decision: 23.02.2017**

Ram Lubhaya

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Paramjit Batta, Advocate,
for the petitioner.

Ms. Manpreet Dhaliwal, AAG, Punjab.

Ritu Bahri, J.

This petition has been filed against the judgment dated 22.08.2014 passed by the Additional Sessions Judge, Hoshiarpur, dismissing the appeal filed by complainant-petitioner, Ram Lubhaya, against the judgment dated 16.10.2013 passed by the Judicial Magistrate Ist Class, Mukerian, whereby Sanjeev Kumar @ Sanju and Rajeev Kumar (respondent Nos.2 and 3) have been acquitted of the charges framed against them for commission of offences under Sections 354 and 506 IPC. However, they were convicted under Section 323 IPC and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/- each.

Brief facts of the case are that on 13.11.2010, two MLRs

pertaining to Ram Lubhaya-complainant and his wife-Naresh Kumari were

received at Police Station, Hajipur from Civil Hospital, Hajipur, whereupon, HC Major Singh visited the said hospital in order to record statements of the injured. However, the doctor on duty declared the injured unfit to make the statements. HC Major Singh, along with other police officials, again visited the hospital on 14.11.2010, where Ram Lubhaya-injured got recorded his statement to the effect that he was doing the shop of goldsmith. Two separate streets were adjoining his house and the house of his cousin brothers Sanjiv Kumar and Rajiv Kumar. There was courtyard in front of his house where they parked their respective vehicles. Complainant, along with his family members, was residing in a room constructed on the ground floor, whereas Rajiv Kumar and Sanjiv Kumar were residing with their respective families on the first floor of the said house. On 12.11.2010, at about 11:00 P.M., Rajiv Kumar and Sanjiv Kumar parked their scooter in the courtyard and thereafter, started blowing whistle loudly. Upon this, wife of the complainant namely Naresh Kumari, requested them not to do so in front of their door, due to which, they started scuffling with her. At that time, they were armed with iron pipe and stick. Sanjiv Kumar gave a blow of iron pipe, which hit above the right wrist of his wife and Rajiv Kumar gave a stick blow on her right biceps. Sanjiv Kumar again gave blow of iron pipe, which hit on the right side of breast Naresh Kumari. When the complainant came forward to save his wife, Sanjiv Kumar gave an iron pipe blow, which hit on his right biceps. Rajiv Kumar also gave two stick blows on the bicep of his left arm. Sanjiv Kumar gave blow of iron pipe which hit on his biceps. Thereafter, accused-respondent Nos. 2 and 3 had torn the clothes of complainant and his wife and broken the door of their house. When complainant and his wife raised hue and cry, their neighbour

Lakhwinder Singh came at the spot and on seeing him, both the accused ran away from the spot with their respective weapons. Complainant and his wife were got admitted in Civil Hospital, Hajipur for treatment. Motive behind the occurrence was that the accused used to park their scooter in the courtyard and in this regard, a case was pending in the court. The accused have also installed a door in the courtyard and have admitted for closing the same but now, they are not closing the same. On the basis of statement made by the complainant, FIR No.79 dated 13.12.2010, under Sections 323, 354, 506 read with Section 34 IPC had been registered against accused-respondent Nos. 2 and 3 at Police Station, Hajipur. On completion of investigation, challan was prepared and presented in the Court.

On appearance of accused-respondent Nos. 2 and 3 in the Court, copies of challan etc. were supplied to them free of costs as envisaged under Section 207 Cr.P.C. Thereafter, charges under Sections 323, 354, 506 read with Section 34 IPC were framed against them, to which, they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Ram Lubhaya-complainant (PW-1), Naresh Kumari (PW-2), Lakhwinder Singh (PW-3), Dr. Sukhdev Raj (PW-4), Jaswinderjit Singh, Radiographer (PW-5) and HC Major Singh (PW-6). On conclusion of the prosecution evidence, statements of accused-respondents under Section 313 Cr.P.C. were recorded, wherein entire incriminating evidence was put to them. However, they denied the same. In defence, no witness was examined.

Trial Court, after going through the evidence led by the prosecution, convicted accused-respondent Nos. 2 and 3 for commission of offence under Section 323 IPC and sentenced them in the aforesaid terms

vide judgment dated 16.10.2013. However, they were acquitted of the charge framed against them under Sections 354 and 506 IPC. Against the said judgment, complainant-petitioner preferred an appeal, which was dismissed by the Additional Sessions Judge, Hoshiarpur vide impugned judgment dated 22.08.2014. Hence, this petition.

Heard.

The occurrence had taken place on 12.11.2010. There was gap of one month between the date of occurrence and recording of supplementary statement of Naresh Kumari on 13.12.2010. The delay has been taken on account of the fact that some consultation was done by Naresh Kumari with her husband Ram Lubhaya-complainant to implicate the accused in a cognizable offence under Section 354 IPC. From the statements made by the complainant and Naresh Kumari, only non-cognizable offence under Section 323 IPC was made out. It was further admitted by complainant-Ram Lubhaya as well as Naresh Kumari that civil litigation was pending between them and accused-respondent Nos.2 and 3 prior to the present occurrence. Both the accused are brothers-in-law of Naresh Kumari.

Naresh Kumari (PW-2) got recorded her supplementary statement on 13.12.2010, wherein she had levelled allegations only with regard to the offence under Section 354 IPC. But she had not stated anything in this regard at the time of recording her statement under Section 161 Cr.P.C. In her statement dated 13.12.2010, Naresh Kumari had alleged that the accused persons had touched her breast with their hands, however at the time of her examination-in-chief before the Court, she stated that Sanjiv Kumar had given iron rod blow on her chest. There were contradictions in the depositions of Ram Lubhaya (PW-1) and his wife Naresh Kumari (PW-2).

Lakhwinder Singh (PW-3) was an eye witness of the occurrence, but he did not come forward to lodge FIR against the accused persons for commission of offence under Section 354 IPC. Ram Lubhaya (PW-1) and Naresh Kumari (PW-2) had stated that they had disclosed the incident to 3-4 persons, but none had come forward to depose in their favour.

In the absence of any evidence against the accused-respondent Nos.2 and 3 with regard to commission of offences under Sections 354 and 506 IPC, the scope of interference in the impugned judgments while exercising the revisional jurisdiction is very limited. Both the Courts below have rightly held that the prosecution has miserably failed to prove that offence under Section 354 IPC had actually been taken place, as no torn clothes had been recovered or produced before the police. There was no mark of external injuries as deposed by Dr. Sukhdev Raj (PW-4).

Having examined the impugned judgments, no illegality, much less perversity has been found therein warranting interference by this Court. The evidence has been appreciated in the right perspective.

Resultantly, finding no merit, the present petition is dismissed.

23.02.2017
ajp

(RITU BAHRI)
JUDGE

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