

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

**CRR No.953 of 2015 (O&M)
Date of Decision: July 10, 2017**

Naveen Kumar

...Petitioner

VERSUS

Jatinder Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ravish Bansal, Advocate
for the petitioner.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Naveen Kumar against Jatinder Kumar and other respondents, challenging the impugned judgment dated 04.02.2012 passed by learned Judicial Magistrate Ist Class, Abohar, vide which accused-respondents were acquitted and also challenging the judgment dated 26.08.2016 passed by learned Addl. Sessions Judge, Fazilka, vide which appeal filed by petitioner was also dismissed.

From the record, I find that the challan was presented against accused-respondent in case FIR No.17 dated 22.01.2014. The brief facts of the case as noted down in the judgment passed by learned JMIC, Abohar, are as under:-

“ Briefly put, the facts of prosecution case are that on 18-1-2004 MLR No.RKW/3/04 qua Navin Kumar, MLR No.RKE/1/04 qua Pankaj son of Mohinder Kumar and MLR No.RKW/2/2004 qua Savitari wife of Mohinder Kumar

residents of St. No.3, Abohar received on which SI Bachan Singh alongwith other Police Officials reached Civil Hospital, Abohar and obtained written opinion regarding injured. Doctor told that Savitari has been referred to DMC and other two were opined fit to make statement but Navin Kumar did not get his statement recorded. On 19-1-2004 SI Bachan Singh again went to Civil Hospital but even then Navin Kumar did not make statement. Both the injured told that they are mentally disturbed and will make statement. Both the injured told that they are mentally disturbed and will make statement later on. In the MLR of Navin Kumar total three injuries were shown in the MLR of Pankaj four injuries were shown. HC Ashok Kumar was sent to DMC to record statement of injured Savitari and Doctor opined her unfit to make statement. On 22-1-2004 SI Bachan Singh alongwith other Police Officials reached Civil Hospital, Abohar where Navin Kumar got his statement recorded to the effect that he is having arhat shop. On 18-1-2004 at about 1.30 PM, he and his brother Pankaj were watching television in their house, then he heard noise from outside. He and his brother went outside by running and saw that Jatinder Kumar son of Khem Chand armed with iron punch, Krishan Kumar son of Khem Chand armed with handle of spade and Suresh Chandak son of Beej Raj armed with handle of spade entered their (complainant's) house and while coming Krishan Kumar caught hold him and Suresh Chandak gave blow of handle of spade which hit on fingers of his left hand, Jatinder Kumar gave kick blow in his abdomen and gave fist blow on his neck, Jatinder Kumar gave blow with punch to Pankaj which hit above his nose and right eye. He (Jatinder Kumar) gave again blow with punch which hit on his left cheek. Suresh Chandak gave fist blow in the abdomen of Pankaj. He (complainant) and his brother Pankaj fell down and their mother Savitri Devi who had gone to fetch clothes on the roof of the house was pushed down from the top stair by the accused and also gave her beatings. Her mother received injuries on her forehead and head, right & lefts shoulders, left side of back and fingers of right and left feet and these persons (accused) caused injuries to his mother. On hearing noise, Anup Kumar son of Satya Naryan and Hari Krishan son of Radhe Sham came at the spot and all the accused fled away from the spot with their respective weapons. The cause of enmity is that there is property dispute between them and case is pending in the Court and due to this grudge they caused injuries and action be taken. The statement was read over to complainant and he signed the same after admitting it to be correct, upon which, SI Bachan Singh put his endorsement and finding prima facie offence U/S 452, 325, 323, 148, 149 IPC, the statement was sent to Police station and case was got registered. IO went to spot and prepared rough site plan. On 23-1-2004 statement of Krishan Kumar was recorded by SI Bachan Singh, on the basis of which Rapat No.19 dated 23-1-

2004 was entered. SI Bachan Singh recorded statement of injured Savitri Devi and Pankaj. During investigation offence U/S 452 IPC was deleted and accused Suresh Chandak was declared innocent. After completion of necessary investigation and all other formalities Challan against the accused Jatinder Kumar and Krishan Kumar was presented in the Court.”

Learned JMIC, Abohar, after appreciating the evidence, acquitted the accused-respondents as stated above. An appeal was filed by the petitioner and the same was also dismissed by learned Addl. Sessions Judge, Fazilka, vide judgment dated 26.08.2014.

Aggrieved from the above-said judgments, present revision petition has been filed.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that both the Courts below have given concurrent findings of fact. In no way, the findings can be held as perverse or against the evidence or law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Courts below.

The Court held that FIR was registered on the basis of the statement got recorded by Naveen Kumar to the police on 22.01.2004. The occurrence in the present case took place on 18.01.2004. No plausible explanation has been given by the prosecution for this delay in lodging the FIR. PW-8 SI Bachan Singh has stated in the cross-examination that Navin and Pankaj told him that they will get their statements recorded after consultation. PW-8 further deposed that he went to hospital on 20.01.2004 and on another day, but they stated that they will get their statement

and in view of the injuries suffered, I find that though delay is not fatal to the prosecution case but it leads to suspicion that version has been concocted, specially in the present case when the accused have also suffered injuries and DW-1 Jagdeep Singh has duly proved that Suresh Kumar was working with him on 17/18.01.2004 regarding preparation of statement of reconciliation of export of wheat. DW-2 DSP Swarandeeep Singh conducted enquiry and found Suresh Kumar innocent.

Further, in the present case, no radiologist has been examined nor any X-ray report has been proved as per law. Moreover, non-explanation of the injuries on the person of the accused also creates reasonable doubt in the prosecution version. From the record, I find that the genesis of the occurrence has been concealed, therefore, the accused-respondents have been rightly acquitted by both the Courts below.

In view of the above discussion, I find that the impugned judgments passed by the Courts below are correct, as per evidence and law and do not require any interference from this Court.

Therefore, finding no merit in the present revision petition, the same is dismissed.

July 10, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No