

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

CRR No.4930 of 2016.
Decided on:-11.09.2017.

Avinash Kumar.

.....Petitioner.

Versus

State of Punjab and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Sandeep Arora, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner-complainant has filed the present revision petition against the judgment dated 07.09.2016 passed by learned Additional Sessions Judge, Jalandhar whereby his appeal against the judgment dated 18.09.2015 passed by learned Additional Chief Judicial Magistrate, Jalandhar acquitting the accused, was dismissed.

Briefly stated, FIR No.350 dated 16.12.2007 under Sections 323, 325 and 326 IPC was registered against the respondent No.2 Ram Lubhaya at Police Station Sadar Jalandhar, District Jalandhar with the allegations that on 01.12.2007 at about 4.00 P.M. near village Samana, District Jalandhar, the respondent No.2 along with some other unidentified persons caused simple as well as grievous injuries to the petitioner-complainant with blunt and sharp edged weapons.

After completion of investigation, report under Section 173 Cr.P.C. was filed in the Court. The copy of report along with other documents

was supplied to the accused, as envisaged under Section 207 Cr.P.C. Finding a prima facie case against the respondent No.2-accused, he was charge-sheeted under Sections 326, 325 and 324 IPC, to which he did not plead guilty and claimed trial.

After recording the evidence and hearing the parties, learned trial Court vide judgment dated 18.09.2015 had acquitted respondent No.2-accused of the charge framed against him. The trial Court further held that till such time the Radiographer who conducted the x-ray is examined, it cannot be said that grievous nature of injury is proved on record.

Aggrieved against the aforesaid judgment dated 18.09.2015 passed by learned trial Court, the petitioner-complainant filed an appeal before the Court of Session challenging the acquittal of respondent No.2. However, the said appeal was dismissed by learned Additional Sessions Judge, Jalandhar vide judgment dated 07.09.2016.

It is in the aforesaid circumstances, the petitioner-complainant has filed the present revision petition challenging the verdict of the Courts below.

Learned counsel for the petitioner-complainant has argued that the impugned judgments passed by the Courts below are void, illegal, against law and facts and have resulted in great miscarriage of justice. He has further contended that the injuries No.1 and 2 on the person of the petitioner were found to be grievous in nature and these injuries cannot be easily self-suffered or self-inflicted. Prior to the occurrence, there was some property dispute between the petitioner-complainant and respondent No.2-accused and, this possibly motivated the accused to commit the crime.

He has further argued that mere fact that the statement of the petitioner-complainant was recorded by the police after some days, will not in any way affect the merits of the case. Learned Courts below have not properly appreciated the evidence produced by the prosecution/complainant and the impugned judgments passed by the Courts below are liable to be set aside and respondent No.2 is liable to be convicted and sentenced for the offence committed by him.

I have heard learned counsel for the petitioner-complainant.

At the outset, it would be relevant to mention here that there are concurrent findings given by the Courts below in favour of the respondent No.2. The scope of revisional jurisdiction is vested with limited powers. Hon'ble Supreme Court in ***Johar and others Versus M/s Mangal Prasad and another, 2008(3) SCC 423*** while dealing with the scope of revisional jurisdiction, has observed as under:

“17. The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under section 397 and 401 of the Code of Criminal Procedure, it exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severally restricted, particularly when it arises from a judgment of acquittal.”

In ***Venkatesan Versus Rani and another 2013(4) RCR (Criminal) 919***, the Apex Court has held that while examining an order of acquittal, the revisional jurisdiction of the High Courts is extremely narrow and the same should be exercised only in case where the trial Court had committed a manifest error of law or procedure or had overlooked and

ignored relevant and material evidence. The language of Section 401 Cr.P.C. makes it amply clear that there is no power vested in the High Court to convert a finding of acquittal into one of conviction. The relevant paragraph No.7 of the said judgment reads as under:

“7. The above consideration would go to show that the revisional jurisdiction of the High Courts while examining an order of acquittal is extremely narrow and ought to be exercised only in cases where the Trial Court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Re-appreciation of evidence is an exercise that the High Court must refrain from while examining an order of acquittal in the exercise of its revisional jurisdiction under the Code. Needless to say, if within the limited parameters, interference of the High Court is justified the only course of action that can be adopted is to order a re-trial after setting aside the acquittal. As the language of Section 401 of the Code makes it amply clear there is no power vested in the High Court to convert a finding of acquittal into one of conviction.”

Moreover, perusal of the record reveals that the alleged incident had occurred on 01.12.2007, whereas the FIR in question was registered on 16.12.2007 i.e. after an inordinate delay of 15 days of the incident. The petitioner has deposed in his statement Ex.PW2/A that due to his ill health, he could not get his statement recorded before the police and due to this reason, the aforesaid delay of 15 days had occurred. However, the record reveals that the petitioner-complainant was declared fit to make a statement by the concerned doctor on 03.12.2007. But still the FIR was got registered on

16.12.2007. Therefore, the statement of the petitioner is not sufficient to explain the said delay.

Still further, there are contradictions in the statements of petitioner-complainant as PW2 and eye-witness Dev Raj as PW4 with regard to number and nature of injuries inflicted on the person of the complainant. PW4 Dev Raj has nowhere stated in his deposition on oath about any injury inflicted on the person of complainant Avinash Kumar by means of base bat blow by any of the accused. He has also not explained the seats of any injury allegedly inflicted on the person of the complainant by respondent-accused Ram Lubhaya. However, the petitioner-complainant has attributed only one injury to respondent-accused Rana (Ram Lubhaya).

The Courts below have rightly held that the ocular testimony of the petitioner-complainant as PW2 and eye-witness Dev Raj as PW4 and medical evidence of Dr. Baljit Singh Johal as PW1 is inconsistent with regard to number, nature and seats of injuries. The petitioner has failed to explain all the injuries on his person and PW4 Dev Raj has also failed to explain any injury on the person of petitioner-complainant Avinash Kumar. Even the presence of PW4 Dev Raj at the time of alleged occurrence is doubtful because had he been present at the time of alleged occurrence, he should have informed the family members of the injured-complainant or at least should have brought the injured to the hospital for his treatment. This is invariably a natural reaction of an eye-witness of the occurrence more particularly when PW4 Dev Raj is known to the complainant. But interestingly, he had neither informed the family members of the injured-complainant nor had taken him to the hospital.

It is settled law that the prosecution is required to prove its case beyond all probabilities. The accused is considered to be innocent unless proved guilty by the prosecution by leading cogent evidence. However, in the present case, the petitioner-complainant has not been able to prove his case against the respondent beyond shadow of reasonable doubt. The petitioner-complainant has also not been able to prove that in what manner, impugned judgments passed by the Courts below suffer from illegality, irregularity or perversity which may warrant interference of this Court by invoking its revisional jurisdiction.

Accordingly, the judgment of acquittal dated 18.09.2015 passed by learned Additional Chief Judicial Magistrate, Jalandhar as well as judgment dated 07.09.2016 passed by learned Additional Sessions Judge, Jalandhar are affirmed and the present revision petition, being devoid of any merit, is dismissed.

September 11, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No