

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

**CRR No.2754 of 2017 (O&M)
Date of Decision: October 04, 2017**

Ramesh Kumar

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Devender Punia, Advocate
for the petitioner. .

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Ramesh Kumar against respondent State of Haryana, challenging the impugned judgment of conviction dated 04.02.2015 and order of sentence dated 05.02.2015 passed by learned Judicial Magistrate Ist Class, Hisar, vide which the petitioner was convicted and sentenced to undergo simple imprisonment for a period of two years and to pay fine of ₹2000/- and in default of payment of fine, to undergo simple imprisonment for a period of two months under Section 326 read with Section 34 IPC and also challenging the judgment dated 02.06.2017 passed by learned Addl. Sessions Judge, Hisar, vide which appeal filed by petitioner was dismissed.

From the record, I find that challan was presented against

accused-petitioner in case FIR No.469 dated 11.06.2011 under Sections 324, 326 and 34 IPC by the police of Police Station City Hisar. The brief facts of the case as noted down in the judgment passed by learned JMIC, Hisar, are as under:-

“1. The facts germane from the report under Section 173 Cr.P.C. are that the present case was registered on the statement of one Vijay Ex.PW2/B wherein he has alleged that on 5.6.2011 at about 8-30 PM he was sitting in the meat shop of Kalu. In the meantime, one boy namely Kikri, his father Ramesh and grand father Veer Bhan, came there. Virbhan and Ramesh, caught hold his hands and Kikri gave a Chhura blow in his stomach. Due to this reason, he fell on the ground and all the assailants fled away from the spot. His friends Goru and Sanjay shifted him to Sapra Hospital. On the basis, investigation was carried out by the police. Accused were arrested. After completion of investigation, police has found that Veer Bhan, accused was not present at the spot. So, he was not made accused in the present case and challan was filed against other two accused.

2. Vide order dated accused Aman was declared as juvenile and his case was sent to the Principal Magistrate, Juvenile Justice Board, Hisar.”

In support of its case, prosecution examined PW-1 Sanjay, eye witness, PW-2 Head Constable Vipin Kumar, Investigating Officer, PW-3 Dr.Tarun Sapra, PW-4 EASI Subhash Chander, PW-5 Dr.Balwinder Singh, PW-6 Dr.Rakesh Kumar, Medical Officer and PW-7 Vijay, complainant-injured.

The accused was examined under Section 313 Cr.P.C., wherein he pleaded his false implication and claimed innocence.

Learned JMIC, Hisar, after appreciating the evidence, convicted and sentenced the petitioner as stated above. An appeal was filed by the petitioner and the same was dismissed by learned Addl. Sessions Judge, Hisar, vide judgment dated 02.06.2017.

Aggrieved from the above-said judgments, present revision

petition has been filed.

Notice of motion was issued and learned State counsel appeared and contested the petition.

Record of the lower Courts was also requisitioned.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the lower Courts record.

From the record, I find that prosecution examined PW-1 Sanjay, eye witness, who has not supported the prosecution version and turned hostile, which means the only eye witness to the occurrence has not supported the prosecution case. PWs-3, 5 and 6 are the doctors, who deposed regarding the medical treatment. PW-4 is EASI Subhash Chander and PW-2 is Head Constable Vipin Kumar, Investigating Officer. The only evidence remains, is statement of complainant Vijay, who stated that present petitioner, who is father of main accused namely Kikri, has not caused injury to him. The only allegation against the present petitioner is that he caught hold the hand of the complainant along with his father Veerbhan. The police has already found Veerbhan, father of the present petitioner and grandfather of main accused Kikri, as innocent and challan has not been presented against him.

Therefore, from the record, I find that the only allegation against the present petitioner is that he caught hold the hands of the complainant and his son Kikri gave *chura* (knife) blow in the stomach of Vijay. The occurrence is of 05.06.2011 and the FIR has been got registered on 11.06.2011 i.e. after delay of six days. There is no explanation regarding the delay of six days when the occurrence was also seen by PW-1 Sanjay.

law that delay in itself is not fatal to the prosecution case but in the case of unexplained delay, the Court is to cautiously and carefully appreciate the evidence. In the case of delay, there is ample opportunity with the complainant party to implicate other members of the family of the main accused and to concoct a version. In the present case, delay of six days, perhaps has been used for implicating more accused. The complainant's version that Veerbhan also caught hold the complainant, has already been disbelieved by the Investigating Officer and Veerbhan was found innocent and has not been challaned.

As regarding the present petitioner, it looks unnatural that a father will caught hold the injured and will allow his juvenile son, main accused to cause injury in stomach with *chura* (knife). It looks improbable that a father would allow his juvenile son to give injury in his presence. There is also no motive of the father to participate in the commission of the offence. Both the Courts below have not considered this aspect of the evidence in right perspective. Otherwise also, except statement of the complainant, there is no cogent evidence against the accused that he participated in the commission of the offence or caught hold the injured. The delay of six days in recording the FIR, specially, when the eye witness was available and could have easily got registered the FIR, show that there is no cogent evidence against the present petitioner Ramesh.

In view of the above discussion, I find that the findings given by both the Courts below are perverse and not as per evidence and law. Both the Courts below have misread the evidence and have wrongly convicted the present petitioner. Therefore, the impugned judgment of

by learned JMIC, Hisar and judgment dated 02.06.2017 passed by learned Addl. Sessions Judge, Hisar, are set aside and petitioner Ramesh Kumar is acquitted of the charges framed against him.

Therefore, finding merit in the present petition, the same is allowed.

Petitioner Ramesh Kumar, who is in custody, be released forthwith, if his custody is not required in connection with any other case.

October 04, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No