

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 1933 of 2008 (O&M)

Date of decision : 17.2.2018

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Prem Singh

.....Petitioner

vs.

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Arihant Jain, Advocate
for the petitioner.

Mr. Neeraj Poswal, Assistant Advocate General,
Haryana.

Mr. K.S. Dhaliwal, Advocate for respondents No. 2 and 3.

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H. S. Madaan, J. (Oral)

Accused - Dhup Singh @ Pappa, Bhim Singh and Raj Singh @ Raja all sons of Manka residents of Village Pauli, Police Station Julana, District Jind, were booked in FIR No. 159 dated 4.12.2003 for offences under Sections 323, 325, 506, 307, 34 IPC, registered at Police Station, Julana, on the allegations that on 20.11.2003, at about 7.30 P.M. while complainant was alone in his fields then Raj Singh @ Raja , Dhup Singh @ Pappa and Bhim Singh, were sitting in the fields concealing their presence. While complainant was returning home, all three of them assaulted him. Raj Singh @ Raja armed with

a spade, Dhup Singh @ Pappa with a jaily, Bhim Singh with a lathi. Raj Singh @ Raja gave spade blow on the head of complainant, whereas Dhup Singh @ Pappa gave several blows with jaily to the complainant, Bhim Singh gave lathi blow to the complainant. In that way all of the three accused with a common intention to kill the complainant had caused injuries to him. The injured was removed to PGIMS Rohtak. The motive for the incident was that a few days earlier, the complainant had refrained Raj Singh @ Raja and Dhup Singh @ Pappa son of Manka not to use the path which left them aggrieved. Accused Dhup Singh @ Pappa and Bhim Singh were arrested in this case, whereas Raj Singh @ Raja was not arrested.

After completion of investigation, Dhup Singh @ Pappa and Bhim Singh were sent to face trial. Subsequently, Raj Singh @ Raja was arrested on 12.10.2004 and supplementary challan was filed against him. The Magistrate concerned in whose Court the challan and supplementary challan had been filed, had committed the case to the Court of Sessions and it was assigned to the Additional Sessions Judge, (I), Jind, who finding a prima facie case, framed charge for offences under Sections 307, 323, 325 read with Section 34 IPC, charge sheeted the accused accordingly, to which they pleaded not guilty and claimed trial. However, Raj Singh @ Raja, being in Army service, proceedings against him were transferred to Military authorities.

During the course of prosecution evidence, it examined PW-1 Dr. Asha Sehrawat, Casualty Medical officer, PW-2 Dr. Suchit Aggarwal, PW-3 Dr. N.K. Sharma, Ex. Professor and Head Deptt. Of

Neuro Surgery, PGIMS Rohtak, PW-4 Prem Singh - complainant, PW-5 Constable Jagdish Kumar, PW-6 Sunehra Singh, PW-7 ASI Bharat Singh, PW-8 Satish Kumar, PW-9 Ram Kumar Halqa Patwari and thereafter closed the prosecution evidence.

After closure of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating evidence was put to them, to which they pleaded false implication. The accused further examined DW-1 Krishan Lal, Record Keeper, Judicial Record Room, Jind, DW-2 Karambir and closed the defence evidence after tendering certain documents.

After hearing the arguments, the trial Court acquitted the accused of the charge framed against them. The reasoning given mainly comprised of the fact that :-

- 1) FIR was lodged on the basis of statement of Prem Singh s/o Laxman on 4.12.2007 under Sections 323, 325, 506 and 34 IPC, against Raj Singh and Dhup Singh, though the occurrence had taken place on 20.11.2003. Thus there was inordinate delay of 13 days in lodging the FIR which had not been explained creating a serious doubt in the prosecution story.
- 2) As per statement of Prem Singh he was alone in his fields and his family members had left for home, which also creates doubt in prosecution version.
- 3) The complainant – injured Prem Singh had not named accused Bhim Singh and his name is not there in the

FIR.

- 4) PW-6 Sunehra and PW-8 Satish had not witnessed the occurrence. Accused Raj Singh was not present at the alleged place of occurrence since he was on duty on 20.11.2003 in the Army. The case of Raj Singh was tried by Army Court in pursuance of the order passed by this Court and he was discharged/acquitted by the Army Court, observing in its order, copy Exhibit DA, that Raj Singh was present in Ranchi on the date of offence and has no connection with the alleged incident; he has been falsely implicated in the said criminal case and investigation of the police of Police Station Julana qua accused Raj Singh is not correct. This decision also creates doubt in prosecution version.
- 5) Furthermore, alleged injury on the head of Prem shown to have been inflicted by Raj Singh with spade, becomes doubtful in view of the decision of the Army Court.
- 6) The police had not joined any person as witness, who had assembled at the time of alleged recovery.
- 7) The injured – complainant Prem Singh had earlier suffered injuries in a quarrel with Surat Singh and some of the alleged injuries are the same. Further more there is inconsistency between medical and ocular evidence.

8) PW-1 Dr. Asha when had earlier given opinion that the injury No.1 is grievous in nature then gave opinion again on the same basis vide report Ex. PE is not understandable at all. Furthermore the doctor has not given any definite opinion that the injury is dangerous to life. The opinion given by the doctor falls in the definition of Section 320 IPC grievous hurt and Section 325 only was attracted. No offence under Section 307 IPC is made out as there is no intention or knowledge of the alleged accused to commit murder. Moreover, lathi was not recovered from any of the accused and no injury of jaily and spade was found to have been caused. The alleged spade or jaily were not sent for chemical analysis, no finger print were lifted for purpose of comparison by expert which cast cloud over the story of prosecution.

9) The trial Court has noticed several material contradictions in the statements of witnesses about time, place, scene and occurrence, stating that PW-4 Prem Singh, PW-6 Sunehra and PW-8 Satish were confronted with their previous statements, which clearly proved improvements made by them.

The trial Court in paragraph 17 of its judgment has observed as under:-

“17. PW-7 Bharat Singh has stated that Section 307 was added at the instance of Public Prosecutor and

as per the opinion of the doctor the injuries were grievous in nature and that challan was prepared under Section 323/325/34 IPC, Public Prosecutor is not an expert and the offence cannot be added or deleted as per wishes of Public Prosecutor. PW-2 Doctor Asha Sehrawat has stated injuries were caused by blunt weapon and as per Ex. PD she has opined that injury No.1 is grievous in nature and when she gave the said report Ex.PD, then report of radiologist and Neuro Surgeon opinion was before her and she has admitted that she has given the report Ex.PD and Ex.PE on the basis of same report. The opinion of the doctor regarding the nature of injury is vague the benefit of which will go to the accused. The doctor has not opined specifically that the injury is sufficient to cause death in the ordinary course of nature and, as such, the very ingredient required for bringing offence under Section 307 IPC were lacking. Moreover, the identity of the accused is not established at all and they have been falsely implicated in this case and they are entitled to acquittal.”

Feeling aggrieved by the said judgment, the complainant has approached this Court by filing the present revision petition, notice of which was given.

I have heard learned counsel for the petitioner, learned State counsel, learned counsel for respondents No. 2 and 3, besides going through the record.

After hearing rival contentions, I find that there is no illegality or infirmity with the impugned judgment passed by the trial Court, which might have called for interference by this Court, while exercising revisional jurisdiction. It is well settled that the scope of revisional jurisdiction of this Court is quite limited and the Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment under challenge. This is not the case here. The judgment passed by the trial Court is well reasoned one, based upon proper appraisal of appreciation of evidence and correct interpretation of law. It can certainly be not termed as perverse judgment passed in violation of settled principles of criminal law.

The revision petition is found to be without any merit and is dismissed accordingly.

17.2.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No