

CRR-2065-2008 &
CRR-2305-2008

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

(1)

CRR-2065-2008

Narender Kumar and another

...Petitioners

Versus

State of Haryana

...Respondent

(2)

CRR-2305-2008

Amrit Lal

...Petitioner

Versus

State of Haryana and others

...Respondents

Date of Decision:-9.1.2018

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sanjay Vashisht, Advocate
for the petitioners in CRR-2065-2008.

Ms.Deepa Singh, Advocate
for the petitioner in CRR-2305-2008.

Mr.Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

Vide this judgment, I propose to dispose of two criminal

revisions i.e. **CRR-2065-2008** filed by petitioners/accused Narender Kumar and Surender Kumar and **CRR-2305-2008** filed by petitioner/complainant Amrit Lal.

Accused Narender Kumar and Surender Kumar, both real brothers, residents of village Luhana having been booked in FIR No.291 dated 2.11.1998 for the offences under Sections 323, 324, 325, 34 IPC, Police Station Khol faced trial by Chief Judicial Magistrate, Rewari on the allegations that on 29.10.1998 at about 2 ½ p.m., complainant Amrit Lal along with his uncle Kanwar Singh were going on a bullock cart from his fields and when they reached the well of Jagmal Singh, Ex. Sarpanch, then they were intercepted by Narender Singh and Surender Singh sons of Sadhu Ram, who were part of an unlawful assembly with eight males and four ladies; that Narender had given a *jelly* blow on the back side of head of Amrit Lal besides causing injuries on left hand finger, whereas Surender Singh has given a blow on teeth of the complainant; that while the complainant had fallen down, he was given kick blows on chest and another parts of the body by the other assailants; that thereafter all the assailants fled from the spot on a tractor. Injured was taken to hospital, where he was medico-legally examined. A police party had gone to that hospital and recorded statement of complainant Amrit Lal. Accused were arrested in this case. After completion of investigation and other formalities, only Narender Kumar and Surender Kumar were challaned.

On presentation of challan in the Court concerned, copies of documents relied upon in the challan were supplied to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Chief Judicial Magistrate, Rewari finding that charge for offences under Sections 323, 325 read with Section 34 IPC was disclosed against the accused, charge-sheeted the accused for the said offences, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined as many as seven witnesses, namely, Dr.Ashok Saini as PW1, Amrit Lal as PW2, Bishamber as PW3, Kanwar Singh as PW4, ASI Om Parkash as PW5, SI Bharat Singh as PW6 and SI Ram Singh as PW7.

With that the prosecution evidence stood closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and had been involved in this case due to enmity with their family.

In defence evidence, accused examined Dr.Ramesh Kumar Bhayana as DW1, Smt.Sumanlata, Record-keeper as DW2, Dr.Rajiv Gulati as DW3, Pardeep Kumar, Ahlmad as DW4, Smt.Sumanlata, Record-keeper as DW5, Inspector Bharat Singh as DW6 and Shri Ram as DW7.

After hearing arguments, learned Chief Judicial Magistrate, Rewari vide judgment dated 6.5.2004 convicted both the accused for the offences under Sections 323, 325 read with Section 34 IPC and vide order dated 8.5.2004 sentenced them as under:

Under Sections	Sentence Awarded
323 IPC	One year each.
325 IPC	Imprisonment for one year and to pay a fine of Rs.2,000/- each and in default thereof, to further undergo imprisonment for a period of 30 days each.

Both the sentences were ordered to run concurrently.

The appeal preferred against the judgment of conviction and order of sentence passed by the Chief Judicial Magistrate, Rewari was also decided against the accused by learned Additional Sessions Judge, Rewari vide order dated 7.10.2008, which left petitioners – accused aggrieved and they have filed **CRR-2065-2008**.

The complainant was also dissatisfied with the sentence awarded to both the accused/convicts and has preferred **CRR-2305-2008** for enhancement of the sentence, notices of which had been issued to the respondent – State, which put in appearance through counsel.

I have heard learned counsel for the petitioners-accused-convicts and learned Assistant Advocate General for the State of Haryana and learned counsel for the complainant besides going through the record.

In this case PW2 Amrit Lal – injured and PW4 Kanwar Singh have provided the eye-witness account of the incident deposing in consonance with the prosecution story. Both of them were cross-examined at length on behalf of the accused but they remained unshattered and were unanimous regarding material details of the episode. A few minor contradictions in their statements do not go to the root of matter since those are bound to occur due to difference in power of

perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc. They are natural witnesses and their presence at the spot at the relevant time cannot be doubted.

The medical evidence corroborates the ocular evidence. The investigation in this case has been conducted in a fair and impartial manner. The Investigating Officer had no reason to involve the accused in this case wrongly, challan them falsely or to depose against them to secure their conviction.

Though in their statement to the police, the eye-witnesses have stated that the present petitioners were accompanied by eight males and four ladies at that time, who had participated in the incident but during investigation the involvement of other persons was not found to be there but then merely due to that fact a question-mark cannot be put on credibility of the eye-witnesses.

The maxim *falsus in uno falsus in omnibus* i.e. false in part, false in whole is not made applicable by the Courts in India, rather the Courts are required to separate grain from the chaff i.e. truth from the falsehood. Merely because a witness has deposed wrongly regarding certain aspects of the case does not mean that his statement is to be discarded outrightly, if his deposition comes out to be convincing and inspiring confidence regarding other aspects.

Furthermore, a tendency does exist amongst people of this region to throw a net wide so as to rope in as many persons as possible of the opposite party in an incident of this nature. But for that reason the

entire case of the prosecution cannot be discarded.

The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done.

The judgments of conviction passed by the Courts below are well reasoned ones, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. Therefore, the impugned judgments are upheld as regards conviction part qua the petitioners.

However, coming to the sentence part, it has been urged by learned counsel for the revision petitioners of CRR-2065-2008 that both the petitioners are married having children and their families are dependent upon them for financial support; that the incident is of the year 1998; that the petitioners/convicts do not have any previous criminal record and they have not indulged in any criminal act after having been released on bail; that they have undergone four months of imprisonment each in the case, therefore, a lenient view in the matter may be taken. He further stated that the petitioners are ready to pay any reasonable compensation to the injured.

Learned State counsel and learned counsel for the petitioner/complainant of CRR-2305-2008 has opposed the request vehemently.

However, I find that keeping in view the facts and

circumstances of the case, the antecedents of the petitioners of CRR-2065-2008 and the fact that fortunately the injury suffered was on non-vital part and about more than 19 years have passed since the occurrence, the ends of justice would be squarely met if the petitioners of CRR-2065-2008 are sentenced to imprisonment already undergone by them, while in custody in the present case and adequate compensation can be awarded to the complainant. Therefore, both the petitioners of CRR-2065-2008 are directed to pay a sum of Rs.25,000/- each to the complainant/petitioner in CRR-2305-2008 by depositing the amount in the trial Court within three weeks from today. The complainant may withdraw the amount by moving application in the trial Court. In case of petitioners of CRR-2065-2008 not depositing the amount of compensation within the stipulated period, the CRR-2065-2008 would be deemed to be dismissed in toto.

As such the **CRR-2065-2008**, challenging the impugned judgments stand disposed of with above modification in sentence, whereas connected **CRR-2305-2008** stands dismissed.

Necessary intimation be sent to the quarter concerned.

9.1.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : **Yes/No**

Whether reportable : **Yes/No**