

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

Criminal Revision No.55 of 2010(O&M)

Date of Decision : 22.03.2018

Ashu

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Ms. Gagan Mohini, Legal Aid Counsel
for the petitioner.

Mr. Ashok Muthreja, DAG, Haryana.

RAJ SHEKHAR ATTRI, J. (Oral)

The petitioner has challenged the judgment of conviction dated 13.03.2007 and order of sentence dated 14.03.2007, passed by the learned Sub Divisional Judicial Magistrate, Ferozepur Jhirka, vide which he has been convicted and sentenced to undergo rigorous imprisonment for a period of 06 months under Section 353 IPC and rigorous imprisonment for a period of 01 year under Section 332 IPC and further challenged the judgment dated 24.12.2009, passed by the learned Addl. Sessions Judge, Fast Track Court, Nuh, dismissing the appeal preferred by the petitioner against the aforesaid judgment of conviction and order of sentence.

Briefly stated, it is a case of the prosecution that on 02.01.1995, ASI Tejpal alongwith other police officials had proceeded to investigate a case under Section 380 IPC against the accused. On seeing him, the petitioner raised alarm which called upon the villagers. About 14-

15 persons of the village came there and started beating the police party. Even the petitioner threw a stone which hit constable Ram Singh on his knee. Other persons also attacked the other members of the police party. On the aforesaid statement of ASI Tej Pal, FIR was registered. The report under Section 173 Cr.P.C. was presented.

On appreciation of evidence, the learned trial court has convicted and sentenced the petitioner, as stated above. The appeal preferred by the petitioner against the aforesaid judgment of conviction and order of sentence was also dismissed.

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

In order to prove the offence under Section 353 IPC, the prosecution requires to establish the following ingredients:-

- (i) That there was assault or use of criminal force against any person;*
- (ii) That such assault or use of criminal force was otherwise than on grave and sudden provocation given by that person;*
- (iii) That the victim of assault or user of force was a public servant within the meaning of Section 21 IPC. or the assault or user of force was made with an intention to prevent or deter the public servant concerned from discharging his duty qua public servant or the assault or user of force was made in consequence of anything done or attempted to be done by the concerned public servant in discharge of his duty qua public servant.*

In the case in hand, it is alleged that the police party had gone to interrogate the petitioner but no document, even the case diary, of the

criminal case under Section 380 IPC has been proved on the record. There is no other material to infer if the police party had gone to interrogate the petitioner.

The word used under Section 353 “duty as public servant” means duty imposed by law on such public servant. This Section has no application where public servant was acting under an order which was illegal or having no authority to act as a public servant. In the case in hand, no material has been placed on record to show that the police party had gone to interrogate the petitioner in a case under Section 380 IPC. Neither the FIR nor arrest of the petitioner in the said case under Section 380 IPC has been placed on the record. Without such a document, it cannot be said if any of the police officials was executing his duty as a public servant.

PW Ram Singh has stated that he received a stone blow from the hands of the petitioner but no medical has been produced to this effect. Surprisingly, various accused persons had suffered injuries but no explanation has been furnished by the police. No doctor has been examined to prove the injuries.

Accused was not arrested from the spot rather, it is alleged that he was arrested on 05.01.1995 alongwith 12 more persons. No test identification parade was got conducted. PW3 Moti Ram who was also present at the spot has alleged that he did not know the accused persons from their names. In these circumstances, the conducting of the test identification parade was necessary.

In this case, nobody had suffered a grievous hurt. The conviction has been recorded only for the offences under Sections 353 and

332 IPC but offence under Section 333 IPC was added at the time of obtaining remand. Even FIR was registered under Sections 353, 332, 147, 148, 427 and 506 IPC. It seems that the investigating agency acted unfairly and solely to obtain the remand, the offence under Section 333 IPC was added in the remand application. Keeping in view of the seriousness of the offence under Section 333 IPC, the learned Magistrate passed the following order on 05.01.1995:-

“The offence committed by accused punishable u/ss 332/ 333/ 353/ 427/506/147/148 IPC is exclusively triable by the Court of Sessions. The sentence prescribed U/S 333 IPC is imprisonment for 10 years and fine and the same is exclusively triable by the Court of Sessions. No bail application on behalf of the accused persons submitted. Hence, the accused are remanded to judicial custody to be produced on 18.1.95.”

Except the remand papers, offence under Section 333 IPC has not been added in any other document. Even the documents prepared on 02.01.1995 do not depict addition of the offence under Section 333 IPC. Even the personal search memo prepared on 05.01.1995 does not figure the offence under Section 333 IPC. It seems that the investigating agency acted highly in an improper manner.

So far as the offence under Section 332 IPC is concerned, it is essential that following ingredients must be proved to establish this offence:-

(1)The accused voluntarily caused hurt to a public servant;

(2)The hurt was caused--

(a) When the public servant was discharging his duty as such, or

(b) with the intention to deter him from discharging

his duties, or

(c) in consequence of anything done or attempted to be done in the lawful discharge of his duties as such public servant.

Again, there is no material on the record if constable Ram Singh or ASI Tej Pal Singh were discharging official duties or the petitioner had intended to deter them from discharging their respective duty. Even no medical record is produced to prove the fact of causing hurt to any of the police officials. Surprisingly, ASI Tejpal Singh has not been produced as a witness before the court who was the investigating officer of the case under Section 380 IPC and also the eye witness of the occurrence. In the circumstances of the case, his non-examination is fatal to the prosecution. To the mind of this Court, the prosecution has not been able to prove the charges against the accused beyond reasonable shadow of doubt.

However, trial court as well as first appellate court failed to appreciate properly the facts and evidence available on the record. The impugned judgments as well as sentence order suffer from illegality, infirmity and irregularity. Therefore, those are not sustainable in the eyes of law.

Consequently, the instant revision petition is accepted and the impugned judgment dated 24.12.2009, passed by the learned first appellate court as well as the judgment of conviction dated 13.03.2007 and order of sentence dated 14.03.2007, passed by the trial court are set aside and reversed by holding that the prosecution has not been able to prove the charges against the petitioner beyond reasonable shadow of doubt. Thus,

Criminal Revision No.55 of 2010(O&M)

6

the petitioner stands acquitted of the charges as framed against him.

22.03.2018

mamta-M

(RAJ SHEKHAR ATTRI)

JUDGE

Whether speaking/reasoned

Whether Reportable :

Yes/No

Yes/No

Mamta Malhotra

2018.06.20 18:12

I attest to the accuracy and

integrity of this document