

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2767-2013 (O&M)
Date of decision: 21.08.2018

Dayakauri and another

... Petitioners

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. R.K. Katani, Advocate
for the petitioners.

Mr. Pritam Saini, Addl. AG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this revision petition is for setting aside the judgment of conviction dated 12.12.2009 passed by the trial Court, vide which the petitioners were held guilty for the offence punishable under Sections 323, 324, 326, 34 of the Indian Penal Code (for short 'IPC') and were sentenced to undergo R.I. for two years with a fine of Rs.1,750/- and in default of payment of fine, they were further ordered to undergo S.I. for three months vide order of sentence dated 14.12.2009 as well as the judgment dated 19.08.2013 passed by the lower appellate Court, vide which the appeal filed by the petitioners was dismissed.

It would be relevant to note here that learned State counsel has placed on record photocopy of the death certificate of petitioner No.1 Dayakauri, who died on 30.03.2014 and therefore, the petition qua her stands

abated.

Brief facts of the case are that complainant Bimla made a statement to the police on 17.07.2002 to the effect that on 15.07.2002 at about 5/5.30 pm, she along with her jethani Omi had gone to their fields for bringing dry fodder and wooden sticks. When they were putting the fodder, then all of a sudden Daya Kauri and Kalawati arrived there and remarked as to why they were taking possession of their land, they be taught a lesson for cultivating their share of land. Kalawati caught hold of Bimla and Ram Kumar, Rakesh and Jaibir also arrived there. Ram Kumar was armed with gandasi, he inflicted a blow on left hand of the complainant and thereafter, Rakesh inflicted blow of an axe on the left backside of the complainant. Jaibir gave kasi blow on the left and right side of head of the complainant and she fell down. Daya Kauri caught hold of Omi and Ram Kumar inflicted gandasi blow on the nose of Omi Devi. Rakesh inflicted kulhari blow on the right eye of Omi Devi and Jaibir gave kasi blow on the left eye of Omi Devi and gave another blow on her back. Rakesh inflicted danda blow on the face of the complainant, upon which they raised an alarm. It was further alleged that her husband Rajinder arrived at the spot and rescued them. Thereafter, all the assailants fled away from the spot with their respective weapons. On the basis of this statement, formal FIR was registered and thereafter, the accused were arrested. After completion of the investigation, report under Section 173 Cr.P.C. was presented before the trial Court.

Learned counsel for petitioner No.2 Rakesh submits that the FIR was registered against five persons namely Rakesh (petitioner No.2), Dayakaru (petitioner No.1-since deceased), Jaibir, Ram Kumar and Kalawati. During the investigation, Ram Kumar and Kalawati were found to be innocent and even

during the trial, the application filed by the prosecution under Section 319 Cr.P.C. was dismissed. It is further submitted that another co-accused Jaibir was declared juvenile and his trial was separated. Learned counsel further submits that the injured witness Omi died during course of the trial and she never appeared before the trial Court as a witness and therefore, her statement recorded under Section 161 Cr.P.C. cannot be read in evidence, as even the Investigating Officer, who recorded the said statement, was not examined by the prosecution.

Learned counsel for petitioner No.2 has submitted that it has come in the statement of Rajinder, husband of Bimla that he reached at the spot subsequently and therefore, he is not an eyewitness. Learned counsel has further submitted that there is delay in lodging the FIR, as the occurrence took place on 15.07.2002 at about 5/5.30 pm, whereas the FIR was registered on 17.07.2002. It is further submitted that there is no explanation of this delay and therefore, the possibility of false implication is apparent, as the complainant has made the statement after due consultation and by involving all family members of the petitioner in the case.

Learned counsel for petitioner No.2 has argued that the Courts below have convicted the petitioner only on the sole statement of injured Bimla and there are number of discrepancies in the statement of the prosecution witnesses, which make the case doubtful. It is further argued that in the absence of any independent witness of the occurrence, conviction of the petitioner is not legally sustainable.

Learned counsel for petitioner No.2 has next argued that no motive could be proved by the prosecution in this case, as the allegations in the FIR are

that the dispute was with regard to possession of the land and this fact was not denied. It is also argued that in the absence of proving the sketch of weapon of offence i.e. axe, the recovery from the petitioner is doubtful. It is lastly argued that the petitioner is not a previous convict; he is a young man; sole bread-earner of his family and was aged about 18 years at the time of occurrence, which took place at the spur of the moment. It is further submitted that the petitioner has his own family to support and his entire family had faced the agony of criminal trial since 2002 and subsequent to registration of the FIR in 2002, till date no such incident has been repeated by the petitioner or his family members and he has shown substantive improvement in his character.

Learned counsel for petitioner No.2 has further argued that the petitioner remained on bail during the trial and his sentence was suspended during pendency of the first appeal before the lower appellate Court as well as before this Court during pendency of the present revision petition. It is further submitted that during this period, the petitioner has not misused the concession of bail/suspension of sentence in any manner. It is also submitted that the petitioner has undergone 05 months and 10 days of actual sentence, out of two years R.I. awarded by the trial Court. It is thus submitted that the sentence awarded to the petitioner may be reduced to the period already undergone by him.

Learned State counsel has filed the custody certificate and has not disputed the fact that the petitioner has undergone 05 months and 10 days of actual sentence and he is not involved in any other case.

After hearing learned counsel for the parties, I find that both the Courts below have recorded a finding that on 15.07.2002, the accused persons

have caused injuries to PW Bimla and one Omi Devi and the injuries resulted into fracture of left scapula of left shoulder. The statement of PW Bimla is corroborated by the doctor, who appeared as PW1 and proved the injuries. Therefore, I hold that the Courts below have rightly convicted the petitioner,

However, considering the fact that petitioner No.2 is facing the trial for the last 16 years; he is not a previous convict; he is sole bread-earner of his family and also in view of the fact that he has not misused the concession of bail/suspension of sentence, I deem it appropriate to reduce the sentence i.e. 02 years R.I. awarded by the trial Court to the period already undergone by him i.e. 05 months and 10 days. This will however be subject to deposit of Rs.25,000/- with the trial Court/Illaq Magistrate along with the amount of fine, if not deposited, on or before 29.10.2018. The amount so deposited shall be treated as compensation under Section 357 (3) Cr.P.C. and will be payable to complainant Bimla by the trial Court/Illaq Magistrate.

Since the petitioner is on bail, his bail/surety bonds are also discharged.

With the aforesaid modifications, present petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

21.08.2018
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No